

Court File No.:

FEDERAL COURT

B E T W E E N :

KEVIN MCFALL

Plaintiff

- and -

CANADIAN REAL ESTATE ASSOCIATION, NEWFOUNDLAND AND LABRADOR ASSOCIATION OF REALTORS®, PRINCE EDWARD ISLAND REAL ESTATE ASSOCIATION, NOVA SCOTIA ASSOCIATION OF REALTORS®, GREATER MONCTON REALTORS®, THE REAL ESTATE BOARD OF THE FREDERICTON AREA, INC., SAINT JOHN REAL ESTATE BOARD, QUEBEC PROFESSIONAL ASSOCIATION OF REAL ESTATE BROKERS, BANCROFT AND AREA ASSOCIATION OF REALTORS®, BARRIE AND DISTRICT ASSOCIATION OF REALTORS®, BRAMPTON REAL ESTATE BOARD, BRANTFORD REGIONAL REAL ESTATE ASSOCIATION, CAMBRIDGE ASSOCIATION OF REALTORS® INC., CENTRAL LAKES ASSOCIATION OF REALTORS®, CHATHAM KENT ASSOCIATION OF REALTORS®, CORNWALL AND DISTRICT REAL ESTATE BOARD, DURHAM REGION ASSOCIATION OF REALTORS®, GUELPH AND DISTRICT ASSOCIATION OF REALTORS®, HURON PERTH ASSOCIATION OF REALTORS®, KAWARTHA LAKES REAL ESTATE ASSOCIATION INC., KINGSTON AND AREA REAL ESTATE ASSOCIATION, KITCHENER-WATERLOO ASSOCIATION OF REALTORS®, THE LAKELANDS ASSOCIATION OF REALTORS®, LONDON AND ST. THOMAS ASSOCIATION OF REALTORS®, MISSISSAUGA REAL ESTATE BOARD, NIAGARA ASSOCIATION OF REALTORS®, NORTH BAY REAL ESTATE BOARD, NORTHUMBERLAND HILLS ASSOCIATION OF REALTORS®, OAKVILLE, MILTON AND DISTRICT REAL ESTATE BOARD, OTTAWA REAL ESTATE BOARD, PARRY SOUND & AREA ASSOCIATION OF REALTORS®, PETERBOROUGH AND THE KAWARTHAS ASSOCIATION OF REALTORS®, QUINTE & DISTRICT ASSOCIATION OF REALTORS® INC., REALTORS® ASSOCIATION OF GREY BRUCE OWEN SOUND, REALTORS® ASSOCIATION OF HAMILTON-BURLINGTON, RENFREW COUNTY REAL ESTATE BOARD, RIDEAU-ST. LAWRENCE REAL ESTATE BOARD, SARNIA-LAMBTON REAL ESTATE BOARD, SAULT STE. MARIE REAL ESTATE BOARD, SIMCOE AND DISTRICT REAL ESTATE BOARD, SOUTHERN GEORGIAN BAY ASSOCIATION OF REALTORS®, SUDBURY REAL ESTATE BOARD, THUNDER BAY REAL ESTATE BOARD, TILLSONBURG DISTRICT REAL ESTATE BOARD, TIMMINS, COCHRANE & TIMISKAMING DISTRICTS ASSOCIATION OF REALTORS®, WATERLOO REGION ASSOCIATION OF REALTORS®, WINDSOR-ESSEX COUNTY ASSOCIATION OF REALTORS®, WOODSTOCK-INGERSOLL & DISTRICT REAL ESTATE BOARD, BRANDON AREA REALTORS®, WINNIPEG REGIONAL REAL ESTATE BOARD, SASKATCHEWAN REALTORS® ASSOCIATION, ALBERTA WEST REALTORS® ASSOCIATION, CALGARY REAL ESTATE BOARD, CENTRAL ALBERTA REALTORS® ASSOCIATION, THE FORT

MCMURRAY REALTORS®, GRANDE PRAIRIE & AREA ASSOCIATION OF REALTORS®, LETHBRIDGE & DISTRICT ASSOCIATION OF REALTORS®, MEDICINE HAT REAL ESTATE BOARD CO-OPERATIVE LTD., REALTORS® ASSOCIATION OF EDMONTON, REALTORS® ASSOCIATION OF LLOYDMINSTER & DISTRICT, REALTORS® ASSOCIATION OF SOUTH CENTRAL ALBERTA, ASSOCIATION OF INTERIOR REALTORS®, BC NORTHERN REAL ESTATE BOARD, CHILLIWACK AND DISTRICT REAL ESTATE BOARD, FRASER VALLEY REAL ESTATE BOARD, KAMLOOPS & DISTRICT REAL ESTATE ASSOCIATION, KOOTENAY ASSOCIATION OF REALTORS®, POWELL RIVER SUNSHINE COAST REAL ESTATE BOARD, REAL ESTATE BOARD OF GREATER VANCOUVER, VANCOUVER ISLAND REAL ESTATE BOARD, VICTORIA REAL ESTATE BOARD, YELLOWKNIFE REAL ESTATE BOARD, YUKON REAL ESTATE ASSOCIATION, CIR REALTY, EXP REALTY, MACDONALD REAL ESTATE GROUP INC., MAXWELL CAPITAL REALTY, OAKWYN REALTY LTD., REAL ESTATE PROFESSIONALS INC., ROYAL PACIFIC REALTY CORP, TEAM 3000 REALTY LTD., CENTURY 21 CANADA LIMITED PARTNERSHIP, COLDWELL BANKER CANADA, EXIT REALTY CORP. INTERNATIONAL (CANADA), HOMELIFE REALTY SERVICES INC., KELLER WILLIAMS REALTY CANADA, MACDONALD REAL ESTATE GROUP INC., RE/MAX, LLC, MAX WRIGHT REAL ESTATE CORPORATION, RESIDENTIAL INCOME FUND L.P. and SUTTON GROUP REALTY SERVICES LTD.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [Federal Courts Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Courts Rules](#).

Copies of the [*Federal Courts Rules*](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 18, 2024

Issued by:

Address of local office:

TO:	CANADIAN REAL ESTATE ASSOCIATION 200 Catherine Street, 6th Floor Ottawa, Ontario, K2P 2K9
AND TO:	NEWFOUNDLAND AND LABRADOR ASSOCIATION OF REALTORS® 28 Logy Bay Road St. John's, NL A1A 1J4
AND TO:	PRINCE EDWARD ISLAND REAL ESTATE ASSOCIATION 75 St. Peter's Road Charlottetown, PE C1A 5N7
AND TO:	NOVA SCOTIA ASSOCIATION OF REALTORS® 68 Highfield Park Dr. Ste 112 Dartmouth, Nova Scotia, B3A 0E4
AND TO:	GREATER MONCTON REALTORS® 541 St. George Blvd, Moncton NB E1E 2B6
AND TO:	THE REAL ESTATE BOARD OF THE FREDERICTON AREA INC. 544 Brunswick St, Fredericton NB, E3B 1H5
AND TO:	SAINT JOHN REAL ESTATE BOARD 1000 Sandy Point Road Saint John, NB E2K 5H3

AND TO:	QUEBEC PROFESSIONAL ASSOCIATION OF REAL ESTATE BROKERS 990 Avenue Holland, Québec City, QC G1S 3T1
AND TO:	BANCROFT AND AREA ASSOCIATION OF REALTORS® 69 Hastings St North Bancroft, ON K0L 1CO
AND TO:	BARRIE AND DISTRICT ASSOCIATION OF REALTORS® 30 Mary Street Barrie, ON L4N 1S8
AND TO:	BRAMPTON REAL ESTATE BOARD 60 Gillingham Drive #401 Brampton, ON L6X 0Z9
AND TO:	BRANTFORD REGIONAL REAL ESTATE ASSOCIATION 106 George St Brantford, ON N3T 2Y4
AND TO:	CAMBRIDGE ASSOCIATION OF REALTORS® INC. 2040 Eagle Street N. Cambridge, ON N3H 0A1
AND TO:	CENTRAL LAKES ASSOCIATION OF REALTORS® 1100 Bennett Road Unit 5 Bowmanville, ON L1C 0Y7
AND TO:	CHATHAM KENT ASSOCIATION OF REALTORS® 252 Wellington St. West Chatham, ON N7M 5K5
AND TO:	CORNWALL AND DISTRICT REAL ESTATE BOARD 103 11TH St W, Cornwall, ON K6J 3A8
AND TO:	DURHAM REGION ASSOCIATION OF REALTORS® 1100 Bennett Road Unit 5 Bowmanville ON L1C 0Y7
AND TO:	GUELPH AND DISTRICT ASSOCIATION OF REALTORS® 400 Woolwich Street Guelph, ON N1H 3X1
AND TO:	HURON PERTH ASSOCIATION OF REALTORS® 55 Lorne Ave E, Unit 5

	Stratford ON N5A 6S4
AND TO:	KAWARTHA LAKES REAL ESTATE ASSOCIATION INC. 31 Kent Street East Lindsay, ON K9V 2C3
AND TO:	KINGSTON AND AREA REAL ESTATE ASSOCIATION 720 Arlington Park Place Kingston, ON K7M 8H9
AND TO:	KITCHENER-WATERLOO ASSOCIATION OF REALTORS® 540 Riverbend Drive Kitchener, ON N2K 3S2
AND TO:	THE LAKELANDS ASSOCIATION OF REALTORS® 34 Cairns Crescent Huntsville, ON P1H 1Y3
AND TO:	LONDON AND ST. THOMAS ASSOCIATION OF REALTORS® 342 Commissioners Road West London, ON N6J 1Y3
AND TO:	MISSISSAUGA REAL ESTATE BOARD 3450 Ridgeway Drive, Unit 1 Mississauga, ON L5L 0A2
AND TO:	NIAGARA ASSOCIATION OF REALTORS® 116 Niagara Street St. Catharines, ON L2R 4L4
AND TO:	NORTH BAY REAL ESTATE BOARD 926 Cassells Street North Bay, ON P1B 4A8
AND TO:	NORTHUMBERLAND HILLS ASSOCIATION OF REALTORS® 975 Elgin Street, Suit 14 Coburg, ON K9A 5J3
AND TO:	OAKVILLE, MILTON AND DISTRICT REAL ESTATE BOARD 125 Navy St Oakville ON L6J 2Z5
AND TO:	OTTAWA REAL ESTATE BOARD 1826 Woodward Drive Ottawa, ON K2C 0P7

AND TO:	PARRY SOUND & AREA ASSOCIATION OF REALTORS® 47A James St. Parry Sound, ON P2A 1T6
AND TO:	PETERBOROUGH AND THE KAWARTHAS ASSOCIATION OF REALTORS® 273 Charlotte Street Box 1330 Peterborough, ON K9J 7H5
AND TO:	QUINTE & DISTRICT ASSOCIATION OF REALTORS® INC. 250 Sidney Street Belleville, ON K8P 3Z3
AND TO:	REALTORS® ASSOCIATION OF GREY BRUCE OWEN SOUND 517 – 10 th Street Lower Level Hanover, ON N4N 1R4
AND TO:	REALTORS® ASSOCIATION OF HAMILTON-BURLINGTON 505 York Boulevard Hamilton, ON L8R 3K4
AND TO:	RENFREW COUNTY REAL ESTATE BOARD 197 Pembroke Street East Pembroke, ON K8A 3J6
AND TO:	RIDEAU-ST. LAWRENCE REAL ESTATE BOARD 1275 Kensington Parkways, Unit 12 Brockville, ON K6V 6C3
AND TO:	SARNIA-LAMBTON REAL ESTATE BOARD 555 Exmouth Street Sarnia, ON N7T 5P6
AND TO:	SAULT STE. MARIE REAL ESTATE BOARD 372 Albert Street East Sault Ste. Marie, ON P6A 2J6
AND TO:	SIMCOE AND DISTRICT REAL ESTATE BOARD 191 Queensway West Simcoe, ON N3Y 2M8
AND TO:	SOUTHERN GEORGIAN BAY ASSOCIATION OF REALTORS® 243 Saint Marie Street Collingwood, ON L9Y 3K6

AND TO:	SUDBURY REAL ESTATE BOARD 190 Elm Street Sudbury, ON L9Y 3K6
AND TO:	THUNDER BAY REAL ESTATE BOARD 1135 Barton Street Thunder Bay, ON P7B 5N3
AND TO:	TILLSONBURG DISTRICT REAL ESTATE BOARD 1 Library Lane, P.O. Box 35 Tillsonburg, ON N4G 4H3
AND TO:	TIMMINS, COCHRANE & TIMISKAMING DISTRICTS ASSOCIATION OF REALTORS® 255 Algonquin Blvd East Timmins, ON P4N 1B4
AND TO:	WATERLOO REGION ASSOCIATION OF REALTORS® 540 Riverbend Dr, Kitchener ON N2K3S2
AND TO:	WINDSOR-ESSEX COUNTY ASSOCIATION OF REALTORS® 3020 Denziel Drive Windsor, ON N8W 5K8
AND TO:	WOODSTOCK-INGERSOLL & DISTRICT REAL ESTATE BOARD 65 Springbank Avenue Unit 6 Woodstock, ON N46 8V8
AND TO:	BRANDON AREA REALTORS® 312-10th Street Brandon, MB R7A 4G1
AND TO:	WINNIPEG REGIONAL REAL ESTATE BOARD 1240 Portage Avenue Winnipeg, MB R3G 0T6
AND TO:	SASKATCHEWAN REALTORS® ASSOCIATION 1705 McKercher Drive Saskatoon SK S7H 5N6
AND TO:	ALBERTA WEST REALTORS® ASSOCIATION 162 Athabasca Avenue Hinton, AB T7V 2A5

AND TO:	CALGARY REAL ESTATE BOARD 300 Manning Rd NE Calgary AB T2E 8K4
AND TO:	CENTRAL ALBERTA REALTORS® ASSOCIATION 922 - 45 Street Red Deer, AB T4N 1K6
AND TO:	THE FORT MCMURRAY REALTORS® 217 - 3332 20 St. SW Calgary, AB T2T6T9
AND TO:	LETHBRIDGE & DISTRICT ASSOCIATION OF REALTORS® 516 6 St S Lethbridge AB T1J 2E2
AND TO:	MEDICINE HAT REAL ESTATE BOARD CO-OPERATIVE LTD. 403 4 St SE Medicine Hat AB T1A 0K5
AND TO:	REALTORS® ASSOCIATION OF EDMONTON 101, 18354 – 118 Avenue NW Edmonton AB T5S 2G2
AND TO:	REALTORS® ASSOCIATION OF LLOYDMINSTER & DISTRICT 217 - 3332 - 20 St. SW Calgary, AB T2T 6T9
AND TO:	REALTORS® ASSOCIATION OF SOUTH-CENTRAL ALBERTA 217 - 3332 - 20 St. SW Calgary, AB T2T 6T9
AND TO:	ASSOCIATION OF INTERIOR REALTORS® 112 – 140 Commercial Drive Kelowna, BC V1X 7X6
AND TO:	BC NORTHERN REAL ESTATE BOARD 2609 Queensway Prince George, BC V2L 1N3
AND TO:	CHILLIWACK AND DISTRICT REAL ESTATE BOARD 1 – 8433 Harvard Place Chilliwack, BC V2P 7Z5

AND TO:	FRASER VALLEY REAL ESTATE BOARD 15463 – 104 Avenue Surrey, BC V3R 1N9
AND TO:	KAMLOOPS & DISTRICT REAL ESTATE ASSOCIATION 01 - 418 St Paul Kamloops BC V2C 2J6
AND TO:	KOOTENAY ASSOCIATION OF REALTORS® 402 Baker Street Nelson BC V1L 4H7
AND TO:	POWELL RIVER SUNSHINE COAST REAL ESTATE BOARD P.O. Box 307 Powell River, BC V8A 5C2
AND TO:	REAL ESTATE BOARD OF GREATER VANCOUVER 2433 Spruce Street Vancouver, BC V6H 4C8
AND TO:	VANCOUVER ISLAND REAL ESTATE BOARD 6374 Metral Drive Nanaimo, BC V9T 2L8
AND TO:	VICTORIA REAL ESTATE BOARD 3035 Nanaimo Street Victoria, BC V8T 4W2
AND TO:	YELLOWKNIFE REAL ESTATE BOARD 5204 – 50 th Avenue, Suite 103 Diamond Plaza Yellowknife, NT X1A 1E2
AND TO:	YUKON REAL ESTATE ASSOCIATION 201 – 106 Strickland Street Whitehorse, YK Y1A J25
AND TO:	CIR REALTY 130 – 703 64 th Avenue SE Calgary AB T2H 2C3
AND TO:	MACDONALD REAL ESTATE GROUP INC. 2105 38 th Avenue West Vancouver BC V6M 1R8
AND TO:	MAXWELL CAPITAL REALTY 3604 52 Avenue NW

	Calgary AB T2L 1V9
AND TO:	OAKWYN REALTY LTD. 3195 Oak Street Vancouver, BC V6H 2L2
AND TO:	REAL ESTATE PROFESSIONALS INC. 202 - 5403 Crowchild Trail NW Calgary, AB T3B 4Z1
AND TO:	ROYAL PACIFIC REALTY CORP. 1200 73 rd Avenue W. Vancouver BC V6P 6G5
AND TO:	TEAM 3000 REALTY LTD. 303 – 1338 West Broadway Vancouver, BC V6H 1H2
AND TO:	CENTURY 21 CANADA LIMITED PARTNERSHIP 500 – 1285 West Pender Street Vancouver, BC V6E 4B1
AND TO:	COLDWELL BANKER CANADA 1001 – 5500 North Service Road Burlington, ON L7L 6W6
AND TO:	EXIT REALTY CORP. INTERNATIONAL (CANADA) 2626 Argentia Road Mississauga, ON L5N 5N2
AND TO:	HOMELIFE REALTY SERVICES INC. 28 Drewry Avenue North York, ON M2M 1C8
AND TO:	KELLER WILLIAMS REALTY CANADA Suites 27-29 16945 Leslie Street Newmarket, ON L3Y 9A2
AND TO:	MACDONALD REAL ESTATE GROUP INC. 2105 38 th Avenue West Vancouver, BC V6M 1R8
AND TO:	RE/MAX, LLC 340 – 1060 Manhattan Drive Kelowna, BC V1Y 9X9

AND TO:	MAX WRIGHT REAL ESTATE CORPORATION 1867 Yonge Street Suite 100 Toronto, ON M4S 1Y5
AND TO:	RESIDENTIAL INCOME FUND L.P. 39 Wynford Drive Toronto, ON M3C 3K5
AND TO:	SUTTON GROUP REALTY SERVICES LTD. 1080 Mainland Street, Suite 203 Vancouver, BC V6B 2T4

I. THE CLAIM

1. The Plaintiff claims:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff on behalf of:

All persons, wherever they may reside or be domiciled, who sold residential real estate listed on a Multiple Listing Service (“MLS”) owned and operated by a Regional Real Estate Board Defendant (defined herein) after March 11, 2010 (the “**Relevant Period**”) (the “**Class**” or “**Class Members**”).

- (b) a declaration that the Brokerage Defendants (defined herein) and their co-conspirators:

- (i) are competitors in the market for the provision of buyer brokerage services for residential real estate during the Relevant Period;
- (ii) conspired, agreed or arranged with each other to fix, maintain, increase or control the price for the supply of buyer brokerage services for residential real estate during the Relevant Period contrary to subsection 45(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34 (“*Competition Act*”);
- (iii) acted in furtherance of a conspiracy, agreement or arrangement to control the price for the supply of buyer brokerage services for residential real estate during the Relevant Period;

- (c) a declaration that the Brokerage Defendants, the Canadian Real Estate Board, the Regional Real Estate Board Defendants and the Franchisor Defendants (defined herein) aided, abetted and counseled a conspiracy, agreement or arrangement contrary to subsection 45(1)(a) of the *Competition Act*;

- (d) a declaration that the conspiracies, agreements or arrangements caused damage to the plaintiff and the Class Members;

- (e) general damages and special damages for conduct that is contrary to Part VI of the *Competition Act* in an amount to be proven at trial;

- (f) prejudgment interest and postjudgment interest, pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;

- (g) costs of investigation and prosecution of this action pursuant to s. 36(1) of the *Competition Act*; and

- (h) such further and other relief as this Honourable Court deems just.

II. OVERVIEW

2. This action arises out of a conspiracy, agreement or arrangement between competitors for the supply of residential real estate buyer brokerage (“**Buyer Brokerage**”) services within each defined geographic area of each Regional Real Estate Board Defendant, to fix, maintain, increase or control the price for the supply of Buyer Brokerage services in connection with the purchase and sale of residential real estate listed on the MLSs owned and operated by each Regional Real Estate Board Defendant (defined below).

3. Each Regional Real Estate Board Defendant serves as the real estate board or association within a defined geographic area (the “**Regional Board Area**”).

4. Each Regional Real Estate Board Defendant is made up of and controlled by its members, all of whom are licensed brokerages, brokers or salespersons who are competitors for the supply of Buyer Brokerage services within the relevant Regional Board Area.

5. Each Regional Real Estate Board Defendant promulgates and enforces rules governing the conduct of its affairs and those of its members (the “**Regional Board Rules**”).

6. To become a member of a Regional Real Estate Board, brokerages, and the brokers and salespersons they employ, must agree to abide by the applicable Regional Board Rules.

7. The Canadian Real Estate Association (“**CREA**”) is also made up of and controlled by its members, all of whom are licensed brokerages, brokers or salespersons, or real estate boards and associations, and include each of the Regional Real Estate Boards and each of their member brokerages, brokers or salespersons.

8. CREA promulgates and enforces rules governing the conduct of its affairs and those of its members (the “**CREA Rules**”).

9. To become a member of CREA, each Regional Real Estate Board and its members must agree to abide by the CREA Rules.

10. An MLS is a database of residential real estate listings used by real estate brokerages, and the brokers and salespersons they employ, to assist their clients to purchase and sell residential real estate.

11. Each Regional Real Estate Board owns and operates an MLS system for use by its members (each Regional Board's MLS, a "**Regional Board MLS**").

12. In respect of properties listed for sale on a Regional Board MLS, the CREA Rules include rules relating to commissions offered by residential real estate sellers to brokerages acting for residential real estate buyers.

13. One such CREA rule, located in the CREA Rules and its predecessors (hereinafter, "**CREA Rule 11.2.1.3**"), obliges the seller of residential real estate listed on a Regional Board MLS to make an offer of commission to any Buyer Brokerage acting for a prospective buyer, making the seller responsible to pay for the Buyer Brokerage services used by the buyer. This rule also stipulates that an offer of zero commission is not permitted.

14. Under CREA Rule 11.2.1.3, the offer of commission made by the seller to Buyer Brokerages must be a blanket offer, open for acceptance by all Buyer Brokerages accessing a Board's MLS.

15. The seller's offer of commission to Buyer Brokerages is contained in the listing agreement that the seller enters with the brokerage that agrees to sell the seller's property (the "**Listing Brokerage**").

16. On each Regional Board MLS, the amount of the commission offered by a seller to Buyer Brokerages is information available for Buyer Brokerages and their brokers and salespersons. That information is not, however, available through any public source. Therefore, residential real estate sellers must decide what commission to offer to Buyers Brokerages without knowing what commission amounts other sellers, with competing properties, are offering to Buyer Brokerages.

17. Additionally, certain Regional Boards have also promulgated rules in relation to Buyer Brokerage commissions (hereinafter, the “**Additional Regional Board Rules**” listed in **Appendix “A”**).

18. All brokerage, brokers and salesperson members of each Regional Board that have promulgated the Additional Regional Board Rules, have been agreed to abide by those rules.

19. In relation to CREA Rule 11.2.1.3 and the Additional Regional Board Rules, as applicable, within each Regional Board Area, brokerage, brokers and salesperson competitors for the supply of Buyer Brokerage services have entered into an agreement, arrangement or a conspiracy to fix, maintain, increase or control the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period, within the meaning of subsection 45(1)(a) of the *Competition Act* (the “**Arrangements**”).

III. THE PARTIES

A. The Plaintiff

20. The Plaintiff, Kevin McFall, is a resident of Milton, Ontario.

21. On May 16, 2023, Mr. McFall sold a property located at 925 Hollinrake Crescent, which was listed on the Oakville, Milton and District Real Estate Board MLS, owned and operated by the Defendant, the Oakville, Milton and District Real Estate Board.

22. In this transaction, the Plaintiff was represented by Royal LePage Meadowtowne Realty, a franchisee of the Defendant Residential Income Fund L.P., and the buyer was represented by the same brokerage.

23. For the sale of his residential real estate property, Mr. McFall paid a total commission of 5%, including a commission of 2.5% plus HST to the Buyer Brokerage.

B. The Defendants

i. CREA

24. CREA is a not-for-profit trade association that represents over 135,000 real estate brokerages, brokers and salespersons, working through approximately 90 CREA-member real estate boards and associations across Canada (collectively, the “**CREA Members**”), including the Regional Real Estate Boards.

25. CREA is the registered owner of certain MLS certification marks, which include the MLS®, Multiple Listing Service® and REALTOR® marks (“**MLS Marks**”). It licenses the MLS Marks to its member real estate boards.

26. CREA Members include brokerages which compete with one another in the market for residential real estate services, including Buyer Brokerage services for residential real estate.

27. The interests of CREA are the interest of its members.

28. As particularized below, CREA has encouraged, counselled, aided, abetted, assisted and required the CREA Members to enter into and maintain the Arrangements. At all material times, CREA had knowledge that the CREA Members intended to enter a conspiracy, agreement or

arrangement to fix, maintain, increase or control the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period.

ii. The Regional Real Estate Board Defendants

29. The regional real estate board defendants listed below together constitute the “**Regional Real Estate Board Defendants**”.

a. Newfoundland and Labrador

30. Newfoundland and Labrador Association of REALTORS® is the regional real estate trade association for Newfoundland and Labrador which represents real estate brokerages, brokers and salespersons in all regions of the province.

a. Prince Edward Island

31. Prince Edward Island Real Estate Association is the regional real estate trade association for Prince Edward Island which represents real estate brokerages, brokers and salespersons across the province.

b. Nova Scotia

32. Nova Scotia Association of REALTORS® is the regional real estate trade association for Nova Scotia which represents real estate brokerages, brokers and salespersons across the province.

c. New Brunswick

33. Greater Moncton REALTORS® is a regional real estate trade association in New Brunswick which represents real estate brokerages, brokers and salespersons in the cities of Moncton and Dieppe, as well as nearby communities in southeastern New Brunswick.

34. Real Estate Board of the Fredericton Area, Inc. is a regional real estate trade association in New Brunswick which represents real estate brokerages, brokers and salespersons in the City of Fredericton and surrounding area.

35. Saint John Real Estate Board is a regional real estate trade association in New Brunswick which represents real estate brokerages, brokers and salespersons in the southern part of New Brunswick to the U.S. border in St. Stephen, which includes the counties of St. John, Kings, Charlotte and portions of Queens County.

d. Québec

36. Québec Professional Association of Real Estate Brokers is the regional real estate trade association for Québec which represents more than 13,000 real estate brokerages, brokers and salespersons across the province.

e. Ontario

37. Bancroft and Area Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Bancroft.

38. Barrie and District Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographical area that includes the City of Barrie and part or all of the surrounding townships, including Springwater, Oro-Medonte, Innisfil, Essa, Bradford-West Gwillimbury and Clearview.

39. Brampton Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that includes the City of Brampton and the Town of Caledon.

40. Brantford Regional Real Estate Association is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the rural areas and communities in Brant County, which includes the City of Brantford, Town of Paris, Villages of Burford, Mount Pleasant, Oakland, Scotland and St. George.

41. Cambridge Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Cambridge and surrounding communities.

42. Central Lakes Association of REALTORS® is a regional real estate trade association in Ontario representing real estate brokerages, brokers and salespersons in the geographic area that includes Ajax, Brock, Clarington, Oshawa, Pickering, Scugog, Uxbridge and Whitby.

43. Chatham-Kent Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the Municipality of Chatham-Kent.

44. Cornwall and District Real Estate Board is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that includes the City of Cornwall and the Counties of Stormont, Glengarry, Prescott, and part of Dundas.

45. Durham Region Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the Durham region, which includes the cities of Oshawa and Pickering.

46. Guelph and District Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Guelph

and much of Wellington County, including Drayton, Ariss, Teviotdale, Fergus/Elora, Campbellville and Rockwood.

47. Huron Perth Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Huron and Perth Counties, and the surrounding area, including Goderich, Exeter, Wingham, Seaforth, Clinton, Bayfield, Listowel, Milverton, Mitchell, St. Marys, Sebringville, Shakespeare and Stratford.

48. Kawartha Lakes Real Estate Association is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Kawartha Lakes.

49. Kingston and Area Real Estate Association is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that includes the County of Frontenac (Kingston, North Frontenac Township, Central Frontenac Township, South Frontenac Township & Frontenac Islands Township), the County of Lennox and Addington (Greater Napanee, Stone Mills Township, Addington Highlands Township and Loyalist Township), the County of Leeds and all incorporated villages, towns and cities within the same geographic area.

50. Kitchener-Waterloo Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages and salespersons in the Kitchener-Waterloo region.

51. Lakelands Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic region that includes Clearview, Collingwood, Georgian Bay Township, Grey Highlands, Haliburton,

Meaford, Midland, Muskoka Lakes, Orillia, Parry Sound, Penetanguishene, Severn, Tay, Tiny, The Blue Mountains and Wasaga Beach.

52. London and St. Thomas Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Middlesex and Elgin Counties.

53. Mississauga Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Mississauga and surrounding areas.

54. Niagara Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that includes the communities of Fort Erie, Fonthill/Pelham, Lincoln, Niagara Falls, Niagara-on-the-lake, Port Colborne/Wainfleet, St Catharines, Thorold and Welland.

55. North Bay Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of North Bay as well as the towns of Callander, East Ferris, Mattawa, Powassan, West Nipissing, Temagami, South River.

56. The Northumberland Hills Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that covers the municipalities of Cobourg and Port Hope and stretches from the shores of Lake Ontario across the 401 as far north as Rice Lake, as far east as the Township of Cramahe (which includes the Village of Colborne) and as far west as the easterly limits of Highway 115 in Clarington (formerly the Township of Clarke).

57. Oakville, Milton and District Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the communities of Oakville, Milton, Halton Hills and the surrounding areas.

58. Ottawa Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Ottawa and surrounding areas.

59. Parry Sound and Area Association of Realtors® is a regional real estate association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area of Parry Sound.

60. Peterborough and the Kawarthas Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Peterborough County, including the City of Peterborough and the communities of Ennismore, Bridgenorth, Lakefield, Millbrook, Norwood, Apsley, Bancroft as well as other adjacent rural communities.

61. Quinte & District Association of REALTORS® Inc. is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the Belleville, Quinte West, Prince Edward, Madoc, Marmora, Stirling, Tweed, Brighton, Trent Hills, Colborne, and Deseronto areas as well as other adjacent communities.

62. REALTORS® Association of Grey Bruce Owen Sound is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area bordered by Lake Huron and Georgian Bay, including Bruce and Grey Counties, and part of Wellington County.

63. REALTORS® Association of Hamilton-Burlington is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the cities of Hamilton and Burlington and their surrounding areas.

64. Renfrew County Real Estate Board is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the County of Renfrew.

65. Rideau-St. Lawrence Real Estate Board is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic area that includes the United Counties of Leeds & Grenville, Lanark and part of Dundas County in Eastern Ontario.

66. Sarnia-Lambton Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Lambton County, which includes the City of Sarnia and surrounding communities.

67. Sault Ste. Marie Real Estate Board is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the Sault Ste. Marie and the Algoma District.

68. Simcoe and District Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in Norfolk County, which includes the towns of Port Dover, Turkey Point, Long Point, Simcoe, Delhi, Waterford and Port Rowan.

69. Southern Georgian Bay Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic region that includes the Towns of Midland and Penetanguishene, the Townships of Tay and Tiny

and parts of Severn and Georgian Bay Townships; Wasaga Beach, Clearview Township, Collingwood, The Blue Mountains and portions of the Municipality of Meaford and Grey Highlands.

70. Sudbury Real Estate Board is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the Greater Sudbury area.

71. Thunder Bay Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Thunder Bay and towns of Marathon, Terrace Bay, Manitouwadge, Geraldton, Sioux Lookout, Dryden, Kenora, Sioux Narrows, Fort Frances and Atikokan.

72. Tillsonburg District Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the town of Tillsonburg and surrounding areas of Oxford County.

73. Timmins, Cochrane & Timiskaming Districts Association of REALTORS® is a local real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the geographic region covering the most northerly Ontario border to the north boundary of Temagami in the south, and west to east from Pagwa River to the Québec border.

74. Waterloo Regional Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Cambridge and surrounding communities and in the Kitchener-Waterloo region.

75. Windsor-Essex County Association of REALTORS® is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Windsor and surrounding communities.

76. Woodstock-Ingersoll & District Real Estate Board is a regional real estate trade association in Ontario which represents real estate brokerages, brokers and salespersons in the City of Woodstock and surrounding communities, including the townships of Zorra, Blandford-Blenheim, South-West Oxford, Ingersoll and Norwich.

f. Manitoba

77. Brandon Area REALTORS® is a local real estate trade association in Manitoba which represents real estate brokerages, brokers and salespersons in the City of Brandon and surrounding rural areas.

78. Winnipeg Regional Real Estate Board is a local real estate trade association in Manitoba which represents real estate brokerages, brokers and salespersons in the City of Winnipeg and its metropolitan region.

g. Saskatchewan

79. Saskatchewan REALTORS® Association is the regional real estate trade association for Saskatchewan which represents real estate brokerages, brokers and salespersons across Southern Saskatchewan.

h. Alberta

80. Alberta West REALTORS® Association is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the geographic area that includes the communities of Hinton, Edson, Jasper, Grande Cache, Whitecourt, Slave Lake, Athabasca and Canmore & Banff, as well as many other hamlets in between.

81. Calgary Real Estate Board is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Calgary and across the surrounding region.

82. Central Alberta REALTORS® Association is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Red Deer and throughout Central Alberta.

83. Fort McMurray REALTORS® is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the geographic area that includes the Regional Municipality of Wood Buffalo and the Lac La Biche County Area.

84. Grande Prairie & Area Association of REALTORS® is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Grande Prairie and surrounding areas.

85. Lethbridge & District Association of REALTORS® is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Lethbridge, the County of Lethbridge, Cardston County, County of Warner, the municipal districts of Taber, Warner, Willow Creek, Pincher Creek, and the municipality of Crowsnest Pass.

86. Medicine Hat Real Estate Board Co-operative Ltd. is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Medicine Hat and surrounding communities.

87. REALTORS® Association of Edmonton is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the Edmonton Metropolitan Area.

88. REALTORS® Association of Lloydminster & District is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Lloydminster and surrounding district which intersects the provincial border between Alberta and Saskatchewan.

89. REALTORS® Association of South-Central Alberta is a regional real estate trade association in Alberta which represents real estate brokerages, brokers and salespersons in the City of Brooks, the towns of Hanna and Drumheller areas and the surrounding counties.

i. British Columbia

90. Association of Interior REALTORS® is a local real estate trade association which represents real estate brokerages, brokers and salespersons in the interior of British Columbia from Revelstoke south to the United States border, east to Rock Creek, west to Eastgate Manning Park to communities in the South Peace River region.

91. BC Northern Real Estate Board is a local real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the region from Fort Nelson in the north to 100 Mile House in the south and from the Alberta border to Haida Gwaii.

92. Chilliwack and District Real Estate Board is a regional real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the City of Chilliwack and surrounding communities, including Hope, Agassiz, Boston Bar, Yarrow and Harrison Hot Springs.

93. Fraser Valley Real Estate Board is a regional real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the communities of North Delta, Surrey, White Rock, Langley, Abbotsford, and Mission.

94. Kamloops & District Real Estate Association is a local real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the City of Kamloops and surrounding communities of Ashcroft, Barriere, Chase, Lillooet, Clearwater, Logan Lake, Merritt and Sun Peaks.

95. Kootenay Association of REALTORS® is a local real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the East and West Kootenays and the Boundary region, in southeast British Columbia.

96. Powell River Sunshine Coast Real Estate Board is a local real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the Powell River Regional District.

97. Real Estate Board of Greater Vancouver is a regional real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the Greater Vancouver Area, including the municipalities of Whistler, Sunshine Coast, Squamish, West Vancouver, North Vancouver, Vancouver, Burnaby, New Westminister, Richmond, Port Moody, Port Coquitlam, Coquitlam, Pitt Meadows, Maple Ridge, and South Delta.

98. Vancouver Island Real Estate Board is a real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons on Vancouver Island.

99. Victoria Real Estate Board is a Regional real estate trade association in British Columbia which represents real estate brokerages, brokers and salespersons in the Greater Victoria Area from Sooke to Sidney, up-Island as far as Cherry Point Road in Cobble Hill, and the Gulf Islands.

j. Northwest Territories

100. Yellowknife Real Estate Board is the local real estate trade association in the Northwest Territories which represents real estate brokerages, brokers and salespersons in the City of Yellowknife.

k. Yukon

101. Yukon Real Estate Association is the local real estate trade association in the Yukon Territory which represents real estate brokerages, brokers and salespersons in the Territory.

102. As particularized below, each Regional Real Estate Board Defendant has encouraged, counselled, aided, abetted, assisted and required their members to enter into and maintain the Arrangements. At all material times, the Regional Real Estate Board Defendants had knowledge that their members intended to enter into a conspiracy, agreement or arrangement to fix, maintain, increase or control the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period.

iii. The Brokerage Defendants

103. CIR Realty is a real estate brokerage with office locations in Calgary, Red Deer, Lethbridge, Canmore, Crossfield, Irricana, Sundre, Brooks, Okotoks, Cochrane, Olds, Strathmore, Crowsnest Pass, Kelowna and Edmonton.

104. eXp Realty is a real estate brokerage with offices in every province and territory of Canada.

105. MacDonald Real Estate Group Inc. is a real estate brokerage with offices in Vancouver, Burnaby, Coquitlam, Kelowna, Langley, Maple Ridge, North Delta, Parksville, Richmond, Salt Spring Island, Sidney, Squamish, South Surrey / White Rock, Victoria and Whistler.

106. Maxwell Capital Realty is a real estate brokerage with offices in Calgary and surrounding areas, Lethbridge, Claresholm, Irricana and Brooks.

107. Oakwyn Realty Ltd. is a real estate brokerage with offices in Vancouver.

108. Real Estate Professionals Inc. is a real estate brokerage with offices in Calgary.

109. Royal Pacific Realty Corp. is a real estate brokerage with offices in Vancouver, Richmond and Coquitlam.

110. Team 3000 Realty Ltd. is a real estate brokerage with offices in Victoria.

111. CIR Realty, eXp Realty, MacDonald Real Estate Group Inc., Maxwell Capital Realty, Oakwyn Realty Ltd., Real Estate Professionals Inc., Royal Pacific Realty Corp., and Team 3000 Realty Ltd. are hereinafter collectively referred to as the “**Brokerage Defendants**”.

112. During the Relevant Period, each of the Brokerage Defendants provided Buyer Brokerage services.

113. The Brokerage Defendants and other unnamed brokerages are competitors. They compete in the provision of Buyer Brokerage services for residential real estate, including in the Regional Board Areas in which they operate.

Each of the Brokerage Defendants has entered into the Arrangements in the Regional Board Areas in which they operate, *i.e.*, a conspiracy, agreement or arrangement to fix, maintain, increase or control the price for the supply of Buyer Brokerage services in connection with the purchase and sale of residential real estate listed on an MLSs during the Relevant Period

iv. The Franchisor Defendants

114. Century 21 Canada Limited Partnership (“**Century 21**”) is a limited partnership with its head office in Vancouver, British Columbia. Century 21 holds the exclusive Canada-wide rights to use and franchise the Century 21 brand and sales systems and operates as the brand’s master franchisor in Canada.

115. Coldwell Banker Canada (“**Coldwell**”) is a real estate franchisor with franchisees in each of Canada’s provinces and territories.

116. Exit Realty Corp. International (Canada) (“**Exit**”) is a real estate franchisor with franchisees in each of Canada’s provinces and territories.

117. HomeLife Realty Services Inc. (“**HomeLife**”) is a corporation with its head office in Toronto, Ontario. HomeLife is a real estate master franchisor with franchises across Canada operating under the HomeLife brand.

118. Keller Williams Realty Canada (“**Keller Williams**”) is a real estate franchisor with franchisees in each of Canada’s provinces and territories.

119. MacDonald Real Estate Group Inc. (“**MacDonald**”) is a corporation with its head office in Vancouver, British Columbia. MacDonald is a franchisor with franchises across British Columbia.

120. Max Wright Real Estate Corporation (“**Sotheby’s**”) is a corporation operating under the trade name “Sotheby's International Realty Canada”, with its head office in Vancouver, British Columbia. Sotheby’s is an independent real estate brokerage with 11 branch offices in Ontario.

121. RE/MAX Ontario-Atlantic Canada, Inc. o/a RE/MAX Integra (“**RE/MAX Integra**”) is a corporation with its head office in Mississauga, Ontario. RE/MAX Integra holds the exclusive

rights to use and franchise the RE/MAX brand and sales systems and operates as the brand's master franchisor in the provinces of Ontario, Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and New Brunswick.

122. Residential Income Fund L.P. is a limited partnership with its head office in Toronto, Ontario. Residential Income Fund L.P. holds the Canada-wide rights to use and franchise the Royal LePage brand and sales systems and operates as the brand's master franchisor in Canada, with multiple brokerage franchisees.

123. Sutton Group Realty Services Ltd. ("**Sutton Group**") is a corporation with its head office in Vancouver, British Columbia. Sutton Group is a real estate master franchisor with more than 7,500 sales associates in over 200 offices across Canada, operating under the Sutton Group brand.

124. The Defendants Century 21, Coldwell, Exit, HomeLife, Keller Williams, MacDonald, Sotheby's, RE/MAX Integra, Residential Income Fund L.P. and Sutton Group, are hereinafter collectively referred to as the "**Franchisor Defendants**".

125. Each of the Franchisor Defendants has entered into franchise agreements with franchisees that provide Buyer Brokerage services.

126. As particularized below, the Franchisor Defendants have encouraged, counselled, aided, abetted, assisted and required their franchisees to enter into and maintain the Arrangements.

127. At all material times, each of the Franchisor Defendants had knowledge that their franchisees intended to enter into a conspiracy, agreement or arrangement to fix, maintain, increase or control the price for the supply of Buyer Brokerage services in connection with the purchase and sale of residential real estate listed on the Toronto MLS during the Relevant Period.

IV. FACTUAL BACKGROUND

A. Canadian MLS Systems

128. Each Regional Real Estate Board owns and operates an MLS.

129. The Regional Real Estate Board MLSs contain all MLS listings for residential real estate properties which are, at any given time, listed for sale in the Regional Board Area covered by the relevant Regional Real Estate Board.

130. Regional Real Estate Board MLSs can only be accessed by members of the relevant Board.

131. In respect of each Regional Real Estate Board and Regional Board Area, the MLS is the primary medium for residential real estate transactions.

132. Each Regional Real Estate Board MLS provides brokerages, brokers and agents with a broad range of information, including historical sales information and other data regarding properties, in respect of the relevant Regional Board Area.

133. Much of the information on the Regional Board MLSs, including information regarding Buyer Brokerage commissions, is only available to registered brokerages, brokers and agents. It cannot be accessed by the public. In this regard, the MLSs are different from REALTOR.ca, a public website which provides consumers with a limited and much smaller subset of information about currently listed residential real estate properties on the MLS systems. REALTOR.ca does not provide any information about Buyer Brokerage commissions offered by residential real estate sellers.

B. Provincial and Territorial Legislation Governing Real Estate Professionals

134. Provincial licensing laws regulate who can represent property buyers and sellers in real estate transactions in their respective jurisdictions. The legislation set out at **Appendix “A”** governs real estate professionals in each Canadian province/territory (the “**Provincial Real Estate Legislation**”).

135. Under each provincial and territorial real estate licensing regime, there are two main categories of licensees: (1) real estate brokerages; and (2) individual real estate salespersons.

136. Licensed brokerages can be independent corporations, but are often franchises, operating one or more offices under the banner of a corporate franchisor.

137. In this Statement of Claim, the term “**salesperson**” means (as the case may be):

- (a) a “real estate broker” and “licensee” as defined in section 1(1) of the Alberta Legislation;
- (b) an “associate broker”, “managing broker” and “representative” as defined in section 1 of the British Columbia Legislation;
- (c) a salesperson “registrant” as defined in section 1 of the Manitoba Legislation;
- (d) a “salesperson” and “manager” as defined in section 1 of the New Brunswick Legislation;
- (e) a “salesperson” as defined in section 2 of the Newfoundland and Labrador Legislation;
- (f) a “salesperson” as defined in section 1 of the Northwest Territories and Nunavut Legislation;
- (g) a “salesperson” and “broker” as defined in section 1 of the Nova Scotia Legislation;
- (h) a “salesperson” and “broker” as defined in section 1 of the Ontario Legislation;
- (i) a “salesman” as defined in section 1 of the Prince Edward Island Legislation;

- (j) a “broker” as defined in section 4 of the Québec Legislation;
- (k) a “salesperson” and “broker” as defined in section 2 of the Saskatchewan Legislation; and
- (l) a “salesperson” as defined in section 1 of the Yukon Legislation.

138. Salespersons must be employed by a brokerage to offer residential real estate services to consumers. A listing agreement (described below) is therefore between a seller and a Listing Brokerage, rather than between the seller and a particular salesperson. Similarly, a buyer seeking assistance in the purchase of a property will enter into a contract with a brokerage, not with a particular salesperson who works for the brokerage. All commissions paid by residential real estate sellers are thus paid to brokerages, who in turn remunerate salespersons that they employ.

139. Where there is no Buyer Brokerage representing the buyer in a residential real estate transaction, the Listing Brokerage typically retains the entire commission paid by the seller, including the portion that would otherwise be payable to the Buyer Brokerage, save in those instances where there is agreement that the commission paid by the seller will be reduced in that circumstance.

140. Although residential real estate transactions can be completed without a brokerage, the vast majority of residential real estate sellers and buyers use brokerages.

C. CREA and the Regional Real Estate Boards’ Rules and MLS Governance

141. In addition to the Provincial Real Estate Legislation, brokerages, and the salespersons they employ are governed by the applicable Regional Board Rules, the CREA Rules and the rules of each province's real estate association, as applicable.

142. The CREA Rules provide that, "A [provincial real estate] Association must provide in its bylaws that all its member Boards and licensed real estate practitioner members must be members of CREA." (CREA Rule 2.1.2.1)

143. CREA, each Regional Real Estate Board and each province's real estate association have entered into a contractual relationship known as the "Three Way Agreement" under which Regional Real Estate Board members are required to also become CREA members and members of their provincial real estate association and agree to be bound by CREA and provincial real estate association rules, in addition to Regional Real Estate Board rules.

i. CREA's Governance Structure

144. CREA is governed by a Board of Directors comprised of licenced real estate salespersons from across Canada.

145. CREA's Governance and By-Laws Committee is charged with managing CREA rules and governance. CREA's Governance and By-Laws Committee's responsibilities include:

- (a) reviewing and providing guidance and/or recommendations to the CREA Board of Directors for improvement of any and all governance policies and practices; and
- (b) overseeing and recommending changes to CREA's By-laws.

146. CREA's Governance and By-Laws Committee is comprised of licenced real estate salespersons from across Canada, including Regional Real Estate Board-member salespersons doing business.

147. Pursuant to CREA Rules 11.1.3 and 11.8.1.1, each CREA-member Regional Real Estate Board is authorized to own and operate an MLS system in its defined geographic region and must promulgate and enforce rules governing the operation of their MLS system that, at a minimum, give effect to the CREA Rules.

148. Pursuant to CREA Rule 2.1.3.1, only one Regional Real Estate Board is permitted to operate in a geographic area.

ii. Regional Real Estate Board Governance

149. Every Regional Real Estate Board, each of which is a CREA-member, operates under the direction of an elected board of directors comprised of licensed real estate salespersons.

iii. Members Not Adhering to Regional Board Rules and the CREA Rules will Lose the Ability to use the MLS

150. CREA has promulgated rules regarding the use of its MLS Marks, which it licenses to Member Boards, brokerages and salespersons. All CREA member Boards, brokerages and the salespersons they employ, who use the MLS Marks, including Regional Real Estate Board-member brokerages and salespersons, must agree to adhere to the CREA Rules regarding the use of the MLS Marks.

151. Where CREA determines that a licensee, including a Board, brokerage or a salesperson that it employs, has failed to comply with the CREA Rules, “CREA has the absolute right to withhold, withdraw or suspend any licensee’s right to use, reproduce or display the Marks, or any one of them, at any time.” (CREA Rule 10.3.1)

152. In addition, under the CREA Rules, a license to use the MLS Marks “shall terminate upon each licensee ceasing to be a Member in good standing of CREA, or upon CREA suspending or terminating the license as provided for in CREA's Rules”. (CREA Rule 10.3.3.1)

153. A brokerage or a salesperson who’s right to use the MLS has been suspended or terminated cannot use the MLS. (CREA Rule 10.3.3.2)

154. Complaints about a Regional Real Estate Board member brokerage or a salesperson made to CREA, including complaints regarding a member’s failure to abide by the CREA Rules, can be referred by CREA to the Regional Real Estate Board to be dealt with through the Regional Real Estate Board’s Professional Standards process.

155. Most of the rules governing the use of the MLSs are promulgated by the Regional Real Estate Boards, further to conditions established by CREA which govern the use of the MLS, REALTOR and other marks. Membership in Regional Real Estate Boards and, by extension, use of Regional Board MLSs, is conditioned on brokerages and salespersons they employ agreeing to adhere to the CREA and the applicable Regional Real Estate Board Rules, including those rules pertaining to the MLSs.

156. A member of a Regional Board that fails to adhere to the Board’s Regional Board or CREA Rules, including the rules pertaining to the use of the MLS, REALTOR or other marks, can be suspended or expelled from membership in that Regional Real Estate Board.

iv. CREA Rule 11.2

157. CREA Rule 11.2 prescribes conditions for the acceptance of listings into Regional Board MLSs.

158. CREA Rule 11.2.1 sets out “The Three Pillars of the MLS Mark”.

159. CREA Rule 11.2.1.3 requires every Listing Brokerage to pay compensation to the Buyer Brokerage “for the co-operative selling of the property.” It further provides that an “offer of compensation of zero is not acceptable.” CREA Rule 11.2.1.3 states:

Rule 11.2.1.3: The listing REALTOR® member agrees to pay to the co-operating (i.e. selling) REALTOR® member compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.

160. CREA Rule 11.2.1.3 has been in force since at least March 11, 2010.

v. The REALTOR® Code

161. CREA By-Law 4.2 states that to qualify and maintain membership in CREA, members shall agree to adhere and be bound by the REALTOR® Code:

4.2: Qualifying For and Maintaining Membership

To qualify and to maintain membership in CREA, prospective and current members shall agree to adhere to and be bound by the following, as applicable, and as amended from time to time:

4.2.1: CREA’s By-Laws, Rules and Policies;

4.2.2: The 3-Way Agreement;

4.2.3: The REALTOR® Code; [...]

162. CREA Rules rule 2.1.5 requires member boards and associations to adopt and enforce the REALTOR® Code:

2.1.5: The REALTOR® Code

Each Board/Association shall adopt and enforce the REALTOR® Code in the manner and according to the standards established in the Three-Way Agreement and CREA’s By-Laws, Rules and Policies, all as amended from time to time and shall ensure through its By-Laws and membership agreements that all Board members are bound by the REALTOR® Code.

163. The REALTOR® Code makes various references to a “listing”, which must involve an offer of compensation to the selling office:

LISTING	means an agreement between a brokerage and a Client granting the brokerage the authority to offer for sale the Client’s real property with defined terms and conditions. A listing on MLS® must involve agency and an offer of compensation to the selling office
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vi. Additional Regional Board Rules

164. Certain Regional Boards have promulgated Additional Regional Board Rules relating to the price for the supply of Buyer Brokerage commissions. The Additional Regional Board Rules are set out in **Appendix “B”**.

165. The Additional Regional Board Rules have been agreed to by residential real estate brokerages, and the brokers and salespersons they employ, who are competitors within each Regional Board Area.

166. The Additional Regional Board Rules are organized into three categories, set out below. Some Regional Real Estate Boards fall within more than one such category.

a. Rules that Re-Iterate CREA Rule 11.2.1.3

167. All Regional Real Estate Boards have agreed to require their members to agree to CREA Rule 11.2.1.3.

168. Additionally, some Regional Real Estate Boards have enacted specific rules within their regional rules re-iterating the CREA Rule 11.2.1.3 requirement that the Listing Brokerage agrees to pay commission to the Cooperating Brokerage, or that an offer of compensation of zero is not acceptable. These are:

- (a) Saint John Real Estate Board MLS® Rules and Regulations Rules 2.04, 2.05 and 6.01(1);
- (b) Greater Moncton REALTORS® MLS® Rules and Regulations Rule 1;
- (c) The Real Estate Board of the Fredericton Area, Inc. Multiple Listing Services® Rules and Regulations Rule 2;
- (d) Prince Edward Island Real Estate Association Rules & Regulations Rule 4.3;
- (e) Québec Professional Association of Real Estate Brokers, Québec Provincial Collaboration Bylaw Annex B, Rule 1.1 and 1.1.3;
- (f) Information Technology Systems Ontario (“ITSO”) Rule 2.02;
- (g) Windsor-Essex County Association of Realtors® MLS® Rules and Regulations Rule 2.02(a);
- (h) Chatham Kent Association of Realtors® and Sarnia-Lambton Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rule 2.02(a);
- (i) Rules & Regulations REALTORS® Association of Hamilton-Burlington Rule 1.03;
- (j) Thunder Bay Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rule 2.02(a);

- (k) MLS® Rules of the Saskatchewan Realtors® Association preamble;
- (l) Calgary Real Estate Board Rules Rule 2.02;
- (m) Rules of Cooperation of the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver preamble; and
- (n) Victoria Real Estate Board Regulations Rule 1.1.

b. Rules Requiring the Commission offered by the Listing Brokerage to be Stated on the MLS

169. Each Regional Real Estate Board requires Listing Brokerages to disclose the commission offered to Co-Operating Brokerages on its Regional Board MLS.

170. Some of the Regional Real Estate Boards have enacted specific rules re-iterating the requirement that Listing Brokerages disclose the commission offered to all Co-Operating Brokerages on the Regional MLS. These are:

- (a) Real Estate Board of the Fredericton Area, Inc. Multiple Listing Services® Rules and Regulations Rule 11.01;
- (b) Prince Edward Island Real Estate Association Rules & Regulations Rule 11.1;
- (c) Québec Professional Association of Real Estate Brokers, Québec Provincial Collaboration Bylaw Rule 19;
- (d) Information Technology Systems Ontario (“ITSO”) Rule 3.01;
- (e) Brampton Real Estate Board MLS® Rules and Policies, Rules R-705 and R-710;
- (f) Ottawa Real Estate Board MLS® Rules and Regulations, Rule 10.5;
- (g) Windsor-Essex County Association of Realtors® MLS® Rules and Regulations Rule 4.01;
- (h) Chatham Kent Association of Realtors® and Sarnia-Lambton Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rule 4.01;
- (i) Rules & Regulations REALTORS® Association of Hamilton-Burlington Rule 11.01;

- (j) Thunder Bay Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rule 4.01; and
- (k) Rules of Cooperation of the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver Rule 7.01.

171. These rules require sellers to compensate both the Listing Brokerage and the Co-Operating Brokerage.

c. Rules that Place Limitations and Controls on Negotiation or Alteration of the Price for the Supply of Buyer Brokerage services

172. Some Regional Real Estate Boards have enacted rules that establish limitations on the negotiation and the alternation of the price for the supply of Buyer Brokerage Services. These are:

- (a) MLS® Rules and Regulations for the Nova Scotia Association of REALTORS® Rule 9.01 and 9.03;
- (b) Saint John Real Estate Board MLS® Rules and Regulations Rules 6.04(i) and 6.04(ii);
- (c) Greater Moncton REALTORS® MLS® Rules and Regulations Rule 4 and 5;
- (d) The Real Estate Board of the Fredericton Area, Inc. Multiple Listing Services® Rules and Regulations Rules 11.04 and 11.05;
- (e) Prince Edward Island Real Estate Association Rules & Regulations Rule 11.4;
- (f) Information Technology Systems Ontario Rule 3.03;
- (g) Ottawa Real Estate Board MLS® Rules and Regulations, Rules 10.7, 10.8 and 10.9;
- (h) Brampton Real Estate Board MLS® Rules and Policies, Rules R-730 and R-740;
- (i) Windsor-Essex County Association of Realtors® MLS® Rules and Regulations Rules 4.03(a) and 4.03(b);
- (j) Chatham Kent Association of Realtors® and Sarnia-Lambton Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rule 4.03(a) and 4.03(b);

- (k) Rules & Regulations REALTORS® Association of Hamilton-Burlington Rules 11.02, 11.03, 11.04, 11.05, 11.06;
- (l) Thunder Bay Real Estate Board Standard Board Multiple Listing Service® Rules and Regulations Rules 4.03(a) and 4.03(b);
- (m) MLS® Rules of the Saskatchewan Realtors® Association Rule 13.2;
- (n) Calgary Real Estate Board Rules Rule 14.01;
- (o) Rules of Cooperation of the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver Rule 7.04; and
- (p) Victoria Real Estate Board Regulations Rule 3.4.1.

173. These rules limit when and how a change of commission may be requested.

D. The Interests of the Defendants are Aligned and Intertwined

174. In each Regional Board Area, the interests of the Defendants (and the salespersons that form their membership and that they employ, as the case may be) and their competitors carrying on business in that area are aligned and intertwined in respect of, among other things, the price for the supply of residential real estate Buyer Brokerage services for the Relevant Period.

175. CREA, the Regional Real Estate Boards, the Brokerage Defendants and the Franchisor Defendants (and the salespersons that form their membership and that they employ, as the case may be) have an interest in fixing, maintaining, increasing or controlling the price for the supply of residential real estate Buyer Brokerage services generally and in each of the Regional Board Areas specifically.

176. The Defendant Brokerages benefit from elevated Buyer Brokerage commissions because:

- (a) the Buyer Brokerage commissions are paid directly to the Defendant Brokerages, who in turn provide a portion of those commissions to salespersons who they employ; and

- (b) the elevated Buyer Brokerage commissions cause greater “entry” by salespersons who must be employed by brokerages, and greater numbers of salespersons allow brokerages to generate greater revenue, including through “desk fees” from salespersons.

177. Even though commissions are not paid directly by residential real estate sellers to the Franchisor Defendants, the Franchisor Defendants benefit from elevated Buyer Brokerage commissions for Buyer Brokerage services. This flows from the fact:

- (a) that there is a direct relationship between the price that the Franchisor Defendants can command for the franchisees they sell and the earnings that franchisees can generate; and
- (b) that some or all the Franchisor Defendants are remunerated by their franchisees based on franchisee revenue, which is in turn derived, in part, from Buyer Brokerage commissions.

178. The interests of CREA and the Regional Real Estate Boards are the interests of their members. CREA and the Regional Real Estate Boards are vehicles used by their members to promote their own interests.

E. The Arrangements

i. The Arrangements Generally

179. Since at least March 11, 2010, the Brokerage Defendants and their competitors within each Regional Board Area have conspired, agreed or arranged with each other to fix, maintain, increase or control the price for the supply of Buyer Brokerage services for residential real estate.

180. Members of each of the Regional Real Estate Boards who compete over the supply of buyer brokerage services, including the Brokerage Defendants, as applicable, carrying on business in the relevant Regional Board Areas, have agreed to promulgate, implement and enforce CREA Rule 11.2.1.3 and the Additional Regional Board Rules, as applicable. Without such agreement, the Arrangements would not exist.

181. The Regional Real Estate Boards and CREA have aided, abetted and counseled the Defendant Brokerages (and the salespersons that they employ) and other Regional Real Estate Board-member brokerages that provided Buyer Brokerage services during the Relevant Period to enter into and participate in the Arrangements.

182. The Franchisor Defendants have aided, abetted and counseled their franchisee brokerages that provide Buyer Brokerage services during the Relevant Period (and the salespersons that they employ) to enter into and participate in the Arrangements.

183. In the alternative, the Defendants have aided, abetted and counselled each of the salespersons employed by Buyer Brokerages during the Relevant Period to enter into and participate in the Arrangements.

ii. The Brokerage Defendants

184. By joining and maintaining membership in a Regional Real Estate Board and expressly agreeing to abide by the applicable CREA Rules and Regional Board Rules, each of the Brokerage Defendants has agreed to and entered into the Arrangements within the Regional Board Areas in which they compete.

185. Each of the Brokerage Defendants and the Franchisor Defendants' franchisees that provide Buyer Brokerage services has agreed to, implemented and acted in furtherance of the Arrangements within the Regional Board Areas in which they compete, as applicable, including by:

- (a) joining a Regional Real Estate Board and CREA and agreeing to CREA Rule 11.2.1.3 and Additional Regional Board Rules, as applicable;
- (b) requiring each of the brokers and salespersons they employ to be members of a Regional Real Estate Board, and as such, requiring them to certify that

they agree to be bound by CREA Rule 11.2.1.3 and Additional Regional Board Rules, as applicable;

- (c) requiring the salespersons they employ to abide by CREA Rule 11.2.1.3 and Additional Regional Board Rules, as applicable
- (d) disseminating and recommending the use of the standard form Listing Agreement which contractually binds home sellers to CREA Rule 11.2.1.3 and Additional Regional Board Rules, as applicable;
- (e) exchanging information, data and documents, including information regarding commission rates, including the rates of Buyer Brokerage commissions for MLS transactions, which were not disseminated to the public, including to residential real estate buyers or sellers.

186. In the alternative, the Brokerage Defendants aided, abetted and counseled their salespersons to enter into and participate in the Arrangements in the Regional Board Areas in which they compete.

187. During the Relevant Period, each of the Brokerage Defendants required each of the salespersons they employ, as a condition of doing business with them, to join and/or maintain membership in a Regional Real Estate Board (and therefore CREA membership) and to comply with and implement CREA Rule 11.2.1.3 and the Additional Regional Board Rules, as applicable. In so doing, the Brokerage Defendants have aided in, abetted, required and encouraged each of their salespersons to join, and maintain their participation in the Arrangements, as applicable.

188. By joining and maintaining membership in a Regional Real Estate Board and expressly agreeing to abide by CREA Rule 11.2.1.3 and the Additional Regional Board Rules, as applicable, each of the Brokerage Defendants' salespersons has agreed to and entered into an Arrangement, and each of the Brokerage Defendants' salespersons has implemented and acted in furtherance of an Arrangement in accordance with the conduct described herein at paragraph 186.

189. In imposing these requirements on their salespersons, the Brokerage Defendants have aided, abetted and counseled their salespersons and others to enter into and participate in an Arrangement.

iii. The Franchisor Defendants

190. During the Relevant Period, each of the Franchisor Defendants entered, renewed or continued franchise agreements with franchisee brokerages that provide Buyer Brokerage services for residential real estate in some or all of the Regional Board Areas.

191. During the Relevant Period, each of the Franchisor Defendants required each of their franchisees that provide Buyer Brokerage services for residential real estate (and by extension, the salespersons they employ), as a condition of doing business with them, to join and/or maintain membership in a Regional Real Estate Board (and therefore CREA membership) and to comply with and implement CREA Rule 11.2.1.3 and the Additional Regional Board Rules, as applicable. This requirement is contained in the franchise agreements between each Franchisor Defendant and each Franchisor Defendant franchisee. In so doing, the Franchisor Defendants have aided in, abetted, required and encouraged each of their franchisees to join and maintain their participation in an Arrangement.

192. By joining and maintaining membership in a Regional Real Estate Board and expressly agreeing to abide by CREA Rule 11.2.1.3 and the Regional Board Rules, as applicable, each of the Franchisor Defendants' franchisees has agreed to and entered into an Arrangement, and each of the Franchisor Defendants' franchisees has implemented and acted in furtherance of the Arrangements, in accordance with the conduct described herein at paragraph 186.

193. Furthermore, at all material times the Franchisor Defendants had knowledge that:

- (a) CREA Rule 11.2.1.3 and the Additional Regional Board Rules contained rules fixing, maintaining, increasing or controlling the price for the supply of Buyer Brokerage services;
- (b) the Arrangements would be more effective and durable in fixing, maintaining, increasing or controlling the price for the supply of Buyer Brokerage services if the Franchisor Defendants required their franchisees to join and/or maintain membership in a Regional Real Estate Board (and therefore CREA membership) and to comply with and implement CREA Rule 11.2.1.3 and the Regional Board Rules; and
- (c) their franchisors intended their franchisees to commit the offence within subsection 45(1)(a) of the *Competition Act*.

194. In imposing these requirements on their franchisees, the Franchisor Defendants have aided, abetted and counseled the Defendant Brokerages, their franchisees, and others, to enter into and participate in the Arrangements.

iv. CREA and the Regional Real Estate Boards

195. CREA Rule 11.2.1.3 was enacted, implemented and enforced by CREA and each Regional Real Estate Board, with the approval of each member of each Regional Real Estate Board and CREA's members, who compete with one another in the market for Buyer Brokerage real estate services.

196. The Additional Regional Board Rules were enacted, implemented and enforced by each Regional Real Estate Board, as applicable, with the approval of members of each Regional Real Estate Board, who compete with one another in the market for Buyer Brokerage real estate services.

197. CREA and each Regional Real Estate Board has aided, abetted and counseled the Brokerage Defendants and their competitors for the supply of Buyer Brokerage services operating within the relevant Regional Board Area; the Franchisor Defendants' franchisees that provide Buyer Brokerage services for residential real estate (or, in the alternative, salespersons that are

employed by brokerages that provide Buyer Brokerage services for residential real estate) operating within the relevant Regional Board Area; and, other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services within the relevant Regional Board Area, to enter into an Arrangement, including by:

- (a) developing and promulgating CREA Rule 11.2.1.3 and the Regional Board Rules, as applicable, and the anti-competitive restraints therein, including the rules that make up the Arrangements;
- (b) providing a forum in and vehicle through which the conspirators have conspired (*i.e.*, CREA and the Regional Real Estate Board meetings and CREA and the Regional Real Estate Board membership);
- (c) entering into the “Three Way Agreement” thereby requiring all Regional Real Estate Board members to also become members of CREA, in turn requiring them to adhere to the CREA Rules;
- (d) conditioning the benefits of participation in the MLS on adherence to the CREA and Regional Board Rules, including the Arrangements;
- (e) requiring a seller to make an offer of commission to a Buyer Brokerage in order to post the seller’s residential real estate on the MLS;
- (f) disciplining their members who failed to comply with the CREA and Regional Board Rules, including the Arrangements;
- (g) failing to pass rules or discipline brokerages that provide Buyer Brokerage services for residential real estate and the salespersons they employ who engage in steering, and failing to police this conduct, despite knowledge of its prevalence and its impact on the price for the supply of Buyer Brokerage services; and
- (h) disseminating and recommending the use of standard form Listing Agreements which contractually bind residential real estate sellers to the Arrangements.

198. In addition to the foregoing, each Regional Real Estate Board has aided, abetted and counseled the Brokerage Defendants and their competitors operating within its Regional Board Area; the Franchisor Defendants’ franchisees that provide Buyer Brokerage services for residential real estate (or, in the alternative, salespersons that are employed by brokerages that provide Buyer Brokerage services for residential real estate) operating within its Regional Board Area; and, other

Regional Real Estate Board-member brokerages that provide Buyer Brokerage services within its Regional Board Area, to enter into an Arrangement, including by:

- (a) repeatedly promulgating and approving versions of the Regional Board Rules, each of which contained the Regional Board rules which form part of the Arrangements;
- (b) requiring all applicants for membership in Regional Real Estate Boards to certify that they agree to be bound by the CREA Rules and the Regional Real Estate Board Rules;
- (c) disseminating and recommending the use of standard form Listing Agreements which contractually bind residential real estate sellers to an Arrangement; and
- (d) imposing rules and policies rendering certain information in the MLS database accessible only to Regional Real Estate Board members, the effect of which is to prevent residential real estate sellers and the public from, in the normal course, discovering the commissions offered by other sellers to Buyer Brokerages and from discovering the effects of the Arrangements generally.

199. In addition to the foregoing, CREA has aided, abetted and counseled the Brokerage Defendants and their competitors; the Franchisor Defendants' franchisees that provide Buyer Brokerage services for residential real estate (or, in the alternative, salespersons that are employed by brokerages that provide Buyer Brokerage services for residential real estate); and, other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, to enter into the Arrangements by:

- (a) promulgating CREA Rule 11.2.1.3, which requires every Listing Brokerage to pay compensation to the Buyer Brokerage "for the co-operative selling of the property"; and, further provides that an "offer of compensation of zero is not acceptable.";
- (b) promulgating By-Law 4.2 requiring members to adhere to CREA's rules and bylaws, the Three-Way Agreement and the REALTOR® Code;
- (c) promulgating CREA Rule 2.1.5 requiring each board and association to adopt and enforce the REALTOR® Code; and to ensure that all members are bound by the REALTOR® Code;

- (d) promulgating the REALTOR® Code requiring each MLS listing to contain an offer of compensation to the Buyer Brokerage;
- (e) promulgating CREA Rule 2.1.1.4, which provides that to qualify for and maintain membership in CREA, real estate boards, including the Regional Real Estate Boards, must include a provision in their bylaws requiring that all their member brokerages and the brokers and salespersons they employ to also be members of CREA; and
- (f) promulgating CREA Rule 2.1.8, requiring that member boards, through their own by-laws and membership agreements, require their members abide by the CREAs Rules.

200. The implementation and enforcement of the Arrangements and their impact on the price for the supply of Buyer Brokerage services for residential real estate in each of the Regional Board Areas during the Relevant Period, would not be possible without the actions of each of the Regional Real Estate Boards, CREA, the Brokerage Defendants and the Franchisor Defendants.

201. As particularized below, the Arrangements have and continue to fix, maintain, increase and control the price for the supply of Buyer Brokerage services for residential real estate.

202. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators and/or parties aiding, abetting and counselling an Arrangement in each of the Regional Board Areas, including the other named Defendants and any unnamed co-conspirators.

203. In addition, various persons and firms involved in the creation and implementation of the Arrangements alleged herein, not named as defendants in this action, may have participated in the Arrangements alleged and may have performed acts and made statements in furtherance thereof.

v. The Arrangements Fix, Maintain, Increase and Control the Price of Brokerage Services

204. The Arrangements fixed, maintained, increased or controlled the price for the supply of Buyer Brokerage services in each Regional Board Area during the Relevant Period.

205. First, by forcing sellers to bear the cost of services used by buyers, which in a competitive marketplace, would otherwise be paid for by buyers, the Arrangements fixed, maintained, increased or controlled the cost of Buyer Brokerage that the Plaintiff and the Class Members must pay.

206. Second, by requiring a seller to pay a commission to Buyer Brokerages, the Arrangements fixed, maintained, increased or controlled the cost of Buyer Brokerage services by making the seller responsible for paying the cost of services that, in a competitive marketplace, would otherwise be borne by the buyer.

207. Because Arrangements make sellers responsible for paying for services used by buyers, there is no incentive for buyers to:

- (a) consider not using a Buyer Brokerage at all, but rather act on their own behalf in locating a property and negotiating an agreement of purchase and sale, using readily available tools, such as the Internet, thereby eliminating altogether the need to utilize any Buyer Brokerage services; or
- (b) seek to reduce the price for the supply of Buyer Brokerage services by negotiating with prospective Buyer Brokerages or “shopping around” to find the most favourable price for the supply of Buyer Brokerage services.

208. In this way, the Arrangements eliminate the downward pressure on the price for Buyer Brokerage services that, but for the Arrangements, would be exerted by normal competitive market forces that exist in markets where the person paying for a service is the person using the service.

209. Third, by requiring that the commission offered by the seller to the Buyer Brokerage be a blanket, unilateral offer made to all Regional Real Estate Board members, the Arrangements prevent competitive market forces from determining the price for the supply of Buyer Brokerage

services and the negotiation of the price for the supply of such services on an individual basis. The Arrangements prevent sellers from deciding what price they are prepared to pay to any given Buyer Brokerage based on objective measures of value, such as the level of experience or service quality provided by that Buyer Brokerage.

210. As a result of the foregoing, a Buyer Brokerage with a wealth of experience, offering a comprehensive basket of services, is paid the same for the supply of Buyer Brokerage services as a Buyer Brokerage with limited experience, unremarkable service quality and “barebones” service.

211. In markets for other kinds of services, where competitive forces are not prevented from operating, such objective measures of value drive competition on price, service levels and other dimensions of competition. In effect, the Arrangements reward and incentivize marketing efforts by Buyer Brokerages directed at procuring the highest volume of clients possible, over optimizing the service quality and the value proposition provided to their clients.

212. Fourth, because the commission offer to Buyer Brokerages is posted on the MLS database where Buyer Brokerages and the salespersons they employ can readily compare a commission offer on a particular residential real estate property with that of other similar properties, there is tremendous pressure on sellers not to deviate from the “standard” commission offered to Buyers Brokerages. This pressure stems from “steering” that results when a seller offers a commission below the standard rate. This pressure also stems from sellers' reasonable perceptions or beliefs that such steering will occur.

213. The rational, foreseeable and predictable result of the Arrangements is that Buyer Brokerage commission offers below the standard rate incent Buyer Brokerages to steer their clients away from such residential real estate properties to other properties offering the higher standard commission, resulting in less service and less choice for clients.

214. Listing Brokerages also dissuade their clients who inquire about offering below-standard Buyer Brokerage commissions, by explaining or suggesting the likelihood that their listing will be disadvantaged if they make such an offer.

215. Steering occurs due to an inherent incongruity of interests between Buyer Brokerages and buyers themselves. Buyer Brokerages are primarily interested in earning the highest commission possible. Buyers are interested in purchasing a property fitting their desired criteria, within their budget and minimizing transaction costs.

216. The pervasiveness of steering was acknowledged by CREA in a 2011 speech by its then-general counsel William Harrington, who stated:

As it stands right now, hordes of real estate agents are constantly in breach of their agency duties because they are not showing buyers all of the properties available that meet the buyer's requirements, because many of those properties only pay \$1.00. And the agent ain't working for a dollar. So those properties get shifted to the back, where hopefully the buyer won't see them. And that of course is a problem. The licensee has an agency obligation to show everything whether or not a commission is being paid. But we're being naïve if we really think that's happening. I'm shocked that there is not a ton of litigation on this.

217. That the Buyer Brokerage commissions offered by sellers posted on the MLS is not publicly available exacerbates the steering problem by creating an information imbalance between Listing Brokerages and sellers. A seller must decide the amount of the commission to offer to Buyer Brokerages without knowing the commission amounts being offered by other sellers of competing residential real estate properties.

218. The fact that sellers lack this knowledge substantially increases the likelihood that the seller will offer a standard 2.5% or 3% commission as a means of attenuating their risk of being disadvantaged. Since the sale of residential real estate is by far and away the largest transaction

that the vast majority of individuals will enter into in their lives, the perceived risk of erring by offering too low a commission is huge.

219. In addition to the foregoing, since neither the buyer nor the seller has access to the MLS and therefore cannot see the full range of posted listings and corresponding Buyer Brokerage commission offers that MLS participants can access, they do not have information that would allow them to identify whether steering has occurred. If sellers had ready access to information regarding the level of Buyer Brokerage commission offers, this would assist them in evaluating whether steering had occurred and would tend to “chill” or have a bracing effect on Buyer Brokerage incentives and ability to steer.

220. Despite the Defendants’ knowledge of the scope of the steering problem, they have made little effort to police it. Instead, they have imposed a strict rules regime that actively facilitates and incents anti-competitive behaviour and steering by their members without risk of consequence.

221. Fifth, the Arrangements frustrate competition between Buyer Brokerages on the price for the supply of Buyer Brokerage services by impeding active negotiation. The Arrangements operate to thwart negotiation by:

- (a) from a buyer’s perspective, providing no incentive to negotiate and/or discouraging the negotiation of the price for the supply of Buyer Brokerage services, since buyers are not required to pay the direct cost of the Buyer Brokerage services they use;
- (b) from a seller’s perspective, creating a dynamic in which, prior to a listing agreement being signed, the downward negotiation of the price for the supply of Buyer Brokerage services is discouraged and perceived as risky and disadvantageous; and
- (c) from both buyer and seller perspectives, after a listing agreement has been signed, impeding re-negotiation of the price for the supply of Buyer Brokerages services.

222. Sixth, by requiring that the seller make an offer to the Buyer Brokerage, and specifying that such offer cannot be zero, definitionally, the Arrangements increase the price for the supply of Buyer Brokerage services.

223. As for the Additional Regional Board Rules, the first set of Additional Regional Board Rules re-iterate the CREA Rule 11.2.1.3 requirement that the Listing Brokerage agrees to pay commission to the Cooperating Brokerage, and that an offer of compensation of zero is not acceptable.

224. The second set of Additional Regional Board Rules also re-iterate the CREA Rule 11.2.1.3 requirement which requires the seller to compensate both the Listing Brokerage and the Cooperating Brokerage. In so doing, they prevent Cooperating Brokerages from negotiating their commissions directly with their client. The impact of this on the price for the supply of Buyer Brokerage services is described elsewhere herein in reference to the Arrangements.

225. The third set of Additional Regional Board Rules limits when and how a change of commission may be requested.

226. Due to the Arrangements, the price for the supply of Buyer Brokerage services has remained detached from general marketplace trends that would have otherwise had a major impact on the price for the supply of Buyer Brokerage services in a competitive marketplace.

227. The price for the supply of Listing Brokerage services has declined (in percentage terms) with advancements in technology and the entry of new discount brokerages and business models, which help drive price competition for those services. By contrast, the price for the supply of Buyer Brokerage services, insulated from competition by the Arrangements, has remained stubbornly

constant, in percentage terms. This demonstrates how the Arrangements maintain the price for the supply of Buyer Brokerage services.

228. The “sticky” price for the supply of Buyer Brokerage services, coupled with enormous increases in housing prices, has resulted in a tremendous increase in the price for Buyer Brokerage services over the Relevant Period, even after adjusting for inflation. These prices are completely detached from what would otherwise exist in a competitive marketplace. At the same time, efficiency gains flowing from, among other things, technology, have actually reduced the cost for Buyer Brokerages to provide Buyer Brokerage services.

229. Since the vast majority of the prices for the supply of Buyer Brokerage services are determined as a percentage of the selling price, the Arrangements have operated to allow Buyer Brokerages to greatly increase their remuneration (at a rate far outpacing inflation) without providing added value to consumers to justify this increase.

230. For these reasons, the Arrangements have fixed, maintained, increased or controlled the price for the supply of Buyer Brokerage services for residential real estate in the Regional Board Areas during the Relevant Period.

V. RIGHTS OF ACTION

231. On behalf of the Class, the Plaintiff pleads the right of action under section 36 of the *Competition Act*.

A. The Brokerage Defendants

i. The Brokerage Defendants’ Principal Liability

232. The Brokerage Defendants and their co-conspirators are competitors with respect to Buyer Brokerage services for buyers of residential real estate.

233. As particularized at paragraphs 185 to 187, above, the Brokerage Defendants and their co-conspirators entered into the Arrangements described herein.

234. In so doing, the Brokerage Defendants conspired, arranged and agreed to control the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period.

235. The Brokerage Defendants committed various acts in furtherance of the Arrangements, as described herein.

236. Each Brokerage Defendant and its co-conspirators intentionally entered into an illegal conspiracy, agreement or arrangement.

237. The Brokerage Defendants had a subjective intention to agree and had knowledge of the terms of the Arrangements, as applicable.

238. The Brokerage Defendants had knowledge that each of the other Regional Real Estate Board-member Brokerage Defendants and co-conspirators were and are their competitors for the supply of Buyer Brokerage services during the Relevant Period.

239. The Brokerage Defendants had the objective intention, that is, a reasonable person in the Brokerage Defendants' position, would or should have been aware that the likely effect of the Arrangements would be to control the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period.

240. The Arrangements alleged herein were and are contrary to subsection 45(1)(a) of the *Competition Act*.

ii. The Brokerage Defendants' Party Liability for Aiding, Abetting and Counselling

241. In the alternative, the Brokerage Defendants are parties to the offence under subsection 45(1)(a) of the *Competition Act*.

242. As particularized herein at paragraphs 188 to 190 above, the Brokerage Defendants aided, abetted and counselled their salespersons in committing the offence under subsection 45(1)(a) of the *Competition Act*.

243. Under subsections 21(1) and 22(1) of the *Criminal Code*, the Brokerage Defendants are liable as parties to the offence under subsection 45(1)(a) of the *Competition Act* for their conduct particularized herein which constitutes aiding, abetting and counselling their salespersons in committing the offence under subsection 45(1) of the *Competition Act*.

244. At all material times, the Brokerage Defendants' conduct alleged herein was for the purpose of aiding, abetting and counselling their salespersons, as alleged herein, to engage in conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

245. As alleged herein, the Brokerage Defendants assisted and encouraged the salespersons they employ in joining and maintaining their participation in the Arrangements. At all material times, the Brokerage Defendants intended to help and encourage their salespersons to join and maintain their participation in the Arrangements, and knew that their salespersons intended to join and maintain their participation in the Arrangements.

246. As alleged herein, the Brokerage Defendants deliberately encouraged and actively induced the salespersons they employ to join and maintain their participation in the Arrangements, and knowingly counselled the joining in and maintaining their participation in the Arrangements while aware of the unjustified risk that the offence counselled was in fact likely to be committed as a result of the Brokerage Defendants' conduct.

247. At all material times, the Brokerage Defendants had knowledge that their aiding, abetting and counselling as alleged herein would lead to conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

B. The Franchisor Defendants' Liability for Aiding, Abetting and Counselling

248. The Franchisor Defendants are parties to the offence under subsection 45(1)(a) of the *Competition Act*.

249. As particularized herein at paragraphs 191 to 195, above, the Franchisor Defendants aided, abetted and counselled their franchisee brokerages (and the salespersons that they employ) in committing the offence under subsection 45(1)(a) of the *Competition Act*.

250. Under subsections 21(1) and 22(1) of the *Criminal Code*, the Franchisor Defendants are liable as parties to the offence under subsection 45(1)(a) of the *Competition Act* for their conduct particularized herein which constitutes aiding, abetting and counselling their franchisee brokerages that provided Buyer Brokerage services during the Relevant Period (and the salespersons that they employ) to enter into and participate in the Arrangements in committing the offence under subsection 45(1)(a) of the *Competition Act*.

251. At all material times, the Franchisor Defendants' conduct alleged herein was for the purpose of aiding, abetting and counselling the principal offenders, as alleged herein, to engage in conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

252. As alleged herein, the Franchisor Defendants assisted and encouraged their franchisee brokerages that provide Buyer Brokerage services during the Relevant Period (and the salespersons that they employ) in joining and maintaining their participation in the Arrangements.

253. At all material times, the Franchisor Defendants intended to help and encourage their franchisee brokerages that provide Buyer Brokerage services during the Relevant Period (and the salespersons that they employ) to join and maintain their participation in the Arrangements, and knew that these franchisees intended to join and maintain their participation in the Arrangements.

254. As alleged herein, the Franchisor Defendants deliberately encouraged and actively induced their franchisee brokerages that provide Buyer Brokerage services during the Relevant Period (and the salespersons that they employ) to join and maintain their participation in the Arrangements, and knowingly counselled the joining in and maintaining their participation in the Arrangements, while aware of the unjustified risk that the offence counselled was in fact likely to be committed as a result of the Franchisor Defendants' conduct.

255. At all material times, the Franchisor Defendants had knowledge that their aiding, abetting and counselling as alleged herein would lead to conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

C. Regional Real Estate Board and CREA's Liability for Aiding, Abetting and Counselling

256. CREA and the Regional Real Estate Boards are parties to the offence under subsection 45(1)(a) of the *Competition Act*.

257. As particularized herein at paragraphs 196 to 204, above, CREA and the Regional Real Estate Boards aided, abetted and counselled the Brokerage Defendants and other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, and the salespersons they employ, during the Relevant Period, in committing the offence under subsection 45(1)(a) of the *Competition Act*.

258. Under subsection 21(1) and 22(1) of the *Criminal Code*, CREA and the Regional Real Estate Boards are liable as parties to the offence under subsection 45(1)(a) of the *Competition Act* for their conduct particularized herein which constitutes aiding, abetting and counselling the Brokerage Defendants and other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, and the salespersons they employ, during the Relevant Period, in committing the offence under subsection 45(1)(a) of the *Competition Act*.

259. At all material times, CREA and the Regional Real Estate Boards had knowledge that their aiding, abetting and counselling as alleged herein would lead to conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

260. As alleged herein, CREA and the Regional Real Estate Boards assisted and encouraged the Brokerage Defendants and other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, and the salespersons they employ, in joining and maintaining their participation in the Arrangements.

261. At all material times, CREA and the Regional Real Estate Boards intended to help and encourage the Brokerage Defendants and other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, and the salespersons they employ, to join and maintain their participation in the Arrangements, and knew that these individuals and entities intended to join and maintain their participation in the Arrangements.

262. As alleged herein, CREA and the Regional Real Estate Boards deliberately encouraged and actively induced the Brokerage Defendants and other Regional Real Estate Board-member brokerages that provide Buyer Brokerage services, and the salespersons they employ to join and maintain their participation in the Arrangements, and knowingly counselled the joining in and maintaining their participation in the Arrangements, while aware of the unjustified risk that the

offence counselled was in fact likely to be committed as a result of the Regional Real Estate Boards' and CREA's conduct.

263. At all material times, CREA and the Regional Real Estate Boards' conduct alleged herein was for the purpose of aiding, abetting and counselling the principal offenders, as alleged herein, to engage in conduct that was contrary to subsection 45(1)(a) of the *Competition Act*.

D. Damages Suffered by the Class

264. The Plaintiff and Class Members suffered actual loss or damage as a result of the Defendants' contravention of Part VI of the *Competition Act*.

265. By entering into the Arrangements and by aiding, abetting and counselling the Arrangements, as alleged, the Defendants have put in place a scheme which, in respect of the purchase and sale of properties listed on the Regional Board MLSs, was intentionally designed to and has resulted in fixing, maintaining, increasing or controlling the price for the supply of Buyer Brokerage services for residential real estate during the Relevant Period in excess of what Class Members would have paid but for the Arrangements.

266. The fact that the Arrangements applied to all transactions in respect of the purchase and sale of properties listed on the MLSs during the entirety of the Relevant Period means that the Arrangements caused damages to the entire Class.

267. The Plaintiff and Class Members have suffered damages as a result of the Arrangements.

The Arrangements had the following effects:

- (a) it has forced the Class Members to pay for the supply of Buyer Brokerage services which, but for the Arrangements, would be a cost borne by buyers;
- (b) it has restrained and eliminated price competition with respect to the price for the supply of Buyer Brokerage services for residential real estate;

- (c) it has resulted in the price for the supply of Buyer Brokerage services for residential real estate being fixed, maintained, increased or controlled at levels higher than would have been the case absent the Arrangements; and
- (d) it has resulted in the Class Members paying more for Buyer Brokerage services than they otherwise would have paid in the absence of the Arrangements.

268. The Class Members' damages are capable of being quantified on an aggregate basis.

269. Aggregate damages are the amounts paid by the Class Members in Buyer Brokerage commissions.

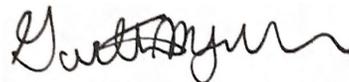
270. In the alternative, aggregate damages are the difference between the amounts actually paid for Buyer Brokerage services in respect of transactions occurring on the MLSs and the amounts which would have been paid in the absence of the Arrangements.

E. Relevant Legislation

271. The Plaintiff pleads and relies upon the *Federal Courts Act*, the *Criminal Code*, the *Competition Act* and the Provincial Real Estate Legislation, all as amended.

272. The plaintiff proposes that this action be tried at Toronto, Ontario.

January 18, 2024



Kalloghlian Myers LLP
35 Prince Arthur Avenue
Toronto, ON M5R 1B2

Garth Myers (LSO#: 62307G)
garth@kalloghlianmyers.com

Tel: (647) 969-4472
Fax: (647) 243-6620

Serge Kalloghlian (LSO#: 55557F)

serge@kalloghlianmyers.com

Tel: (647) 812-5615
Fax: (647) 243-6620

Paul Bates (LSO#22619D)

pbates@batesbarristers.com

Tel: (416) 869-9898 x 101
c/o Kalloghlian Myers LLP

John Syme (LSO#29333H)

jsyme@jls-law.ca

Tel: (613) 290-3332
c/o Kalloghlian Myers LLP

Lawyers for the Plaintiff

APPENDIX “A” – ADDITIONAL REGIONAL BOARD RULES

MLS System/ Member Board(s)	Additional Regional Real Estate Board Rules
a. Nova Scotia	
1. Nova Scotia Association of REALTORS®	<p>MLS® Rules and Regulations for the Nova Scotia Association of REALTORS®</p> <p>9.01 Listings being submitted to the NSAR MLS® System shall contain an indication by the Seller’s Brokerage of the amount of commission payable to the Buyer’s Brokerage (see rule 3.03 regarding restrictions). The Buyer’s Brokerage may only be paid a lesser amount if an agreement has been reached, in writing, between the Listing and Selling Brokerages.</p> <p>9.03 A Seller’s Brokerage may not unilaterally alter the compensation to be paid to a Buyer’s Brokerage on an offer procured and lodged with such listing office by the Buyer’s Brokerage should such offer be accepted.</p>
b. New Brunswick	
2. Saint John Real Estate Board	<p>Saint John Real Estate Board MLS® Rules and Regulations</p> <p>1.01 W. “THREE PILLARS” means the Three Pillars adopted by the Canadian Real Estate Association (“CREA”) in Rule 17 of its Rules, including the interpretations of the Three Pillars contained therein (the “Interpretations”).</p> <p>2.04 The Board expressly adopts herein the Three Pillars, and each of the Three Pillars is hereby deemed to form part of these MLS® Rules and Regulations.</p> <p>2.05 The MLS® Rules and Regulations set out herein are adopted pursuant to the Three Pillars and the Interpretations. All efforts have been made by the Board to ensure that these Rules and Regulations comply with the principles set out in the Three Pillars. In the event that it is found that any rule or regulation set out herein violates any of the Three Pillars,</p>

	<p>such rule or regulation shall be read down or otherwise narrowly interpreted so as to comply with the Three Pillars.</p> <p>6.01 (i) Listings being submitted through the Board's MLS® System shall contain an indication by the Listing Agent of the commission rate or fee or amount that he shall pay to the Selling Agent or Co-operating Agent, except that an offer of compensation of zero is not acceptable.</p> <p>6.04 (i) Where the commission to be paid to a Co-operating Agent is specified under the terms of sections 6.01, 6.02 or 6.03 above, the Listing Agent shall be required to pay to the Co-operating Agent such commission unless such commission is modified by agreement in writing between the Co-operating Agent and the Listing Agent.</p> <p>6.04 (ii) A Co-operating Agent, whether acting as a Purchaser's agent or a Sub-agent, shall not use the terms of an Agreement of Purchase and Sale or an offer to lease to modify the Listing Agent's commission rate or fee, or amount that the Listing Agent shall pay to the Co-operating agent, nor make the submission of an executed offer to purchase/lease contingent on the Listing Agent's commission rate or fee, or amount that the Listing Agent shall pay to the Co-operating Agent.</p>
<p>3. Greater Moncton REALTORS®</p>	<p>Greater Moncton REALTORS® MLS® Rules and Regulations</p> <p>1. In order to be placed on the MLS® System, a Listing must comply with CREA's Rules and Regulations, including the Three Pillars of MLS® and the Interpretations. The Three Pillars of MLS® are: [...] iii. Compensation: There must be an offer of remuneration by the Listing Agent to the co-operating Member.</p> <p>4. The cooperating commission to be paid to the Selling Agent cannot be altered after receipt of an offer, unless otherwise mutually agreed to by all parties.</p> <p>5. Where the commission to be paid to a Buyer's Agent is specified under the terms in sections XVII - 2 and 3, the Listing Agent shall be required to pay to the Buyer's Agent</p>

	such commission unless such commission is reduced by agreement in writing between the Buyer's Agent and the Listing Agent.
4. The Real Estate Board of the Fredericton Area, Inc.	<p>Multiple Listing Services® Rules and Regulations</p> <p>2 Compensation: The Listing Agent agrees to pay to the co-operating Agent compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>11.01 Listing Agreements shall contain the amount of the Commission the Listing Agent will pay to the Buyer Agent.</p> <p>11.04 A Buyer Salesperson Member shall not use the terms of a purchase and sale agreement or offer to lease to modify the Listing Agent's Commission or fee, or amount that the Listing Agent shall pay to the Buyer Agent, nor make the submission of an executed offer to purchase/lease contingent on the Listing Agent's Commission rate or fee, or amount that the Listing Agent shall pay to the Buyer Agent.</p> <p>11.05 Where a Commission is to be paid to a Buyer Agent, the Listing Agent shall be required to pay to the Buyer Agent such Commission unless the Commission is reduced by agreement in writing between the Buyer Agent and the Listing Agent.</p>
c. Prince Edward Island	
5. Prince Edward Island Real Estate Association	<p>Prince Edward Island Real Estate Association Rules & Regulations</p> <p>4. THE THREE PILLARS OF THE MLS</p> <p>...</p> <p>4.3 COMPENSATION: The listing REALTOR agrees to pay the co-operating (ie: selling) REALTOR compensation for the co-operating selling of the property. An offer of compensation of zero is not acceptable.</p>

	<p>11.1: Listings being submitted through the MLS® System shall contain an indication by the Vendor's REALTOR® of the amount of commission and/or fee they shall pay to the Selling Broker/Agent or Purchaser's REALTOR®.</p> <p>11.4: Where the commission to be paid to a Seller REALTOR® or Purchaser's REALTOR® is specified under the terms of 11.1, 11.2 and 11.3 above, the Vendor's REALTOR® shall be required to pay to the Selling REALTOR® or Purchaser's REALTOR® such commission unless such commission is reduced by agreement in writing between the Selling REALTOR® or Purchaser's REALTOR® and the Vendor's REALTOR®.</p>
<p>d. Québec</p>	
<p>6. Québec Professional Association of Real Estate Brokers</p>	<p>Québec Provincial Collaboration Bylaw</p> <p>19. Remuneration of Selling Member (Buyer's Broker): the remuneration offered to the selling member (buyer's broker) by the listing member (seller's broker) must be stated on the brokerloading form and published in the Centris system. No anti-competitive indications relating to remuneration sharing can be published in the detailed sheet. The offer of remuneration sharing between the listing broker (seller's broker) and the selling broker (buyer's broker) is an essential aspect of a listing.</p> <p>ANNEX B</p> <p>THE THREE PILLARS, USAGE AND ENFORCEMENT OF THE CANADIAN REAL ESTATE ASSOCIATION'S MLS® TRADE MARKS</p> <p>Modified and adopted on December 6, 2012</p> <p>The Québec Federation of Real Estate Boards adheres to the three pillars relating to the usage and enforcement of The Canadian Real Estate Association's trademarks, which are indicated below:</p> <ol style="list-style-type: none"> 1. Acceptance of listings

	<p>1.1 The three (3) pillars of the MLS® mark: only listings that comply with the following three (3) pillars of the MLS® mark can be placed on a Board’s or Association’s MLS® system.</p> <p>...</p> <p>REAL ESTATE BROKER/agency and the selling owner.</p> <p>1.1.3 Compensation to selling broker: the listing REAL ESTATE BROKER agrees to pay to the selling REAL ESTATE BROKER compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p>
<p>e. Ontario</p>	
<p>7. Bancroft and Area Association of REALTORS®</p> <p>8. Barrie and District Association of REALTORS®</p> <p>9. Brantford Local Real Estate Association</p> <p>10. Guelph and District Association of REALTORS®</p> <p>11. Huron Perth Association of REALTORS®</p> <p>12. Kingston and Area Real Estate Association</p> <p>13. London and St. Thomas Association of REALTORS®</p> <p>14. Mississauga Real Estate Board</p> <p>15. Niagara Association of REALTORS®</p> <p>16. North Bay Real Estate Board</p> <p>17. Oakville, Milton and District Real Estate Board</p> <p>18. REALTORS® Association of Grey Bruce Owen Sound</p>	<p>Information Technology Systems Ontario (“ITSO”) Rules</p> <p>2.02 Only listings that comply with the following three pillars of the MLS® Marks shall be listed on the MLS® System database:</p> <p>...</p> <p>(c) The Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>3.01: Listings being submitted through the MLS® System shall state the compensation that the Listing Brokerage shall pay to the Co-operating Brokerage in accordance with the provisions of Article 2, Section 2.19.</p> <p>3.03: Where the compensation to be offered to a Co-operating Brokerage is specified under the terms of Sections 3.01 or 3.02 above, the Listing Brokerage shall be required to pay the Co operating Brokerage such compensation unless such compensation is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.</p>

<p>19. Simcoe and District Real Estate Board</p> <p>20. The Lakelands Association of REALTORS®</p> <p>21. Tillsonburg District Real Estate Board</p> <p>22. Waterloo Region Association of REALTORS®</p> <p>23. Woodstock-Ingersoll & District Real Estate Board</p>	
<p>24. Brampton Real Estate Board</p>	<p>Brampton Real Estate Board MLS® Rules and Policies</p> <p>R- 705 The commission offered by the Listing Brokerage to a Co-operating Brokerage including any exclusions, incentives and/or adjustments shall be disclosed on the stratus™ MLS® System and be clearly and fully stated in the “Commission to Co-operating Brokerage” field. Where necessary these remarks may be continued in the “Remarks for Brokerage” field</p> <p>R – 710 The publication of an MLS® Listing on the stratus™ MLS® System constitutes an offer by the Listing Brokerage to any Co-operating Brokerage that upon obtaining an Offer that is accepted for the MLS® Listing the Co-operating Brokerage shall be entitled to earn the commission on the stratus™ MLS® System, subject to the arbitration provisions of the BREB By-law and the MLS® Rules and Polices. Publication does not constitute an offer by such Listing Brokerage to pay commission as principal except as set out in Rules R – 711, R – 712 and R – 713.</p> <p>R – 730 If a Member is unwilling to accept the commission offered on the stratus™ MLS® System, such Member may request a change before an Offer is signed, and shall not use the terms of an Offer or an Agreement of Purchase and Sale to include or modify such commission. Any agreed upon change shall be separate and in writing. A Listing Brokerage may unilaterally refuse to change such commission.</p>

	<p>R – 740 Commission offered to a Co-operating Brokerage on the stratus™ MLS® System shall not be altered between the time of registration of an Offer and final acceptance of that Offer.</p>
<p>25. Ottawa Real Estate Board</p>	<p>Ottawa Real Estate Board MLS® Rules and Regulations</p> <p>10.5 Commission to Co-operating Brokerage: Listings being submitted through the Board’s MLS® System must state the compensation that the Listing Brokerage will pay to the Co-operating brokerage, as set out in Section 2 of the Listing Agreement. The Commission offered by the Listing Brokerage to a Co-operating Brokerage including any exclusions, incentives and/or adjustments must be disclosed on the Board’s MLS System and be clearly and fully stated in the “commission to Co-operating Brokerage” field. Any reference to the amount of commission a Seller is willing to pay to the Co-operating Brokerage must be true and accurate.</p> <p>10.7 Changing Commission to Selling Office: Where the compensation to be offered to a Co-operating Brokerage is specified under the terms of MLS® Rule 10.5 and MLS® Rule 10.6, the Listing Brokerage will be required to pay the Co-operating Brokerage such compensation unless such compensation is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.</p> <p>10.8 Any modification to the commission, fee or amount that the Listing Brokerage will pay to the Co-operating Brokerage will be determined in advance in writing, and the agreed upon modification will be confirmed on the Confirmation of Cooperation and Representation form.</p> <p>10.9 A Co-operating Brokerage may not use the terms of an Agreement of Purchase and Sale to modify the Listing Brokerage’s commission rate, fee, or amount that the Listing Brokerage will pay to the Co-operating Brokerage, nor make the submission of an executed Offer contingent upon the Listing Brokerage’s agreement to modify the Listing Brokerage’s commission rate, fee, or amount that the Listing Brokerage will pay to the Co-operating Brokerage.</p>

<p>26. Windsor-Essex County Association of REALTORS®</p>	<p>Windsor-Essex County Association of Realtors® MLS® Rules and Regulations</p> <p>Article 2 – LISTING PROCEDURES</p> <p>2.02 (a) Only listings that comply with the following three pillars of the MLS marks as established by CREA can be listed on the Board's MLS system database:</p> <p>...</p> <p>3. The Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the cooperative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>4.01: Listings being submitted through the Board’s MLS® System shall contain an indication by the Listing Brokerage of the commission rate or fee or amount that it shall pay to the Co-operating Brokerage.</p> <p>4.03 (a): Where the commission to be paid to a Co-operating Brokerage is specified under the terms of sections 4.01 or 4.02 above, the Listing Brokerage shall be required to pay to the Co-operating Brokerage such commission unless such commission is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.</p> <p>4.03 (b): A Co-operating Brokerage, whether acting as a Buyer’s Representative or otherwise, shall not use the terms of an Agreement of Purchase and Sale or an Offer to Lease to modify the Listing Brokerage’s commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed Offer to Purchase/Lease contingent on the Listing Brokerage’s agreement to modify the Listing Brokerage’s commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.</p>
<p>27. Chatham Kent Association of Realtors® 28. Sarnia-Lambton Real Estate Board</p>	<p>Standard Board Multiple Listing Service® Rules and Regulations</p> <p>2.02 (a) Only listings that comply with the following three pillars of the MLS® Marks as established by CREA can be listed on the Board’s MLS® System database: ... 3. The Listing</p>

	<p>Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>4.01 Listings being submitted through the Board's MLS® System shall contain an indication by the Listing Brokerage of the commission rate or fee or amount that it shall pay to the Co-operating Brokerage.</p> <p>4.03 (a) Where the commission to be paid to a Co-operating Brokerage is specified under the terms of sections 4.01 or 4.02 above, the Listing Brokerage shall be required to pay to the Co-operating Brokerage such commission unless such commission is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.</p> <p>4.03 (b) A Co-operating Brokerage, whether acting as a Buyer's representative or otherwise, shall not use the terms of an agreement of purchase and sale or an offer to lease to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed offer to purchase/lease contingent on the Listing Brokerage's agreement to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.</p>
<p>29. REALTORS® Association of Hamilton-Burlington</p>	<p>Rules & Regulations REALTORS® Association of Hamilton-Burlington</p> <p>1.03 Acceptance of Listings (a) Only Listings that comply with the following three (3) pillars of the MLS® Marks may be placed on the Association's MLS® System. (b) The Three Pillars of the MLS® Marks are: ... (iii) Compensation to Co-operating Brokerage The Listing REALTOR®/Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>11.01 Listings being submitted through the Association's MLS® System shall contain the amount of commission the Listing Brokerage shall pay to the Co-operating Brokerage expressed either as a percentage of the selling price, or a specified amount.</p>

	<p>11.02 No Member shall attempt to negotiate the distribution of commission between Members in the presence of the Seller or Buyer.</p> <p>11.03 A Co-operating Brokerage shall not use the terms of an agreement of purchase and sale or an offer to lease or other agreement in respect of a Trade to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed Offer, contingent on the Listing Brokerage's agreement to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.</p> <p>11.04 If representing a Seller in the negotiation of Offers, a Listing Brokerage with a competing Offer must disclose the details of any commission reduction or other inducement to any Person who makes a written Offer to Purchase to such Listing Brokerage, at the earliest practicable opportunity and before any Offer is presented.</p> <p>11.05 The Co-operating Brokerage may be paid a lower commission than that specified on the Association's MLS® System if an agreement in writing has been reached between the Listing Brokerage and the Co-operating Brokerage, or their authorized representatives. No attempt may be made to negotiate such an agreement in the presence of the Seller.</p> <p>11.06 Should the Co-operating Brokerage initiate any suggestion of a reduction in commissions, the Listing Brokerage shall be permitted to retain an amount equal to that as shown on the Listing Agreement, which they would have retained had such action not been taken.</p>
<p>30. Thunder Bay Real Estate Board</p>	<p>Standard Board Multiple Listing Service® Rules and Regulations</p> <p>2.02 (a) Only listings that comply with the following three pillars of the MLS® Marks as established by CREA can be listed on the Board's MLS® System database: [...] 3. The Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p>

	<p>4.01 Listings being submitted through the Board’s MLS® System shall contain an indication by the Listing Brokerage of the commission rate or fee or amount that it shall pay to the Co-operating Brokerage.</p> <p>4.03 (a) Where the commission to be paid to a Co-operating Brokerage is specified under the terms of sections 4.01 or 4.02 above, the Listing Brokerage shall be required to pay to the Co-operating Brokerage such commission unless such commission is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.</p> <p>4.03 (b) A Co-operating Brokerage, whether acting as a Buyer’s representative or otherwise, shall not use the terms of an agreement of purchase and sale or an offer to lease to modify the Listing Brokerage’s commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed offer to purchase/lease contingent on the Listing Brokerage’s agreement to modify the Listing Brokerage’s commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.</p>
<p>f. Saskatchewan</p>	
<p>31. Saskatchewan REALTORS® Association</p>	<p>MLS® Rules of the Saskatchewan Realtors® Association</p> <p>In this cooperative effort, all parties must uphold the Rules and Regulations of the Multiple Listing Service® System. Interpretation of these rules is at the discretion the Chief Executive Officer (CEO). The CEO may seek legal opinion as warranted. In order to be placed on the Association’s MLS® System, a listing must comply with CREA’s Rules and regulations, including the Three Pillars of MLS® System and the related Interpretations.</p> <p>The Three Pillars of MLS® are as follows:</p> <p>...</p> <p>Compensation to Co-operating Broker</p> <p>The listing Brokerage agrees to pay to the co-operating, i.e. selling or Buyer’s Brokerage compensation for the co-operative selling of the property. An offer</p>

	<p>of compensation of zero is not acceptable.</p> <p>13.2: The Seller’s Brokerage may modify the amount of commission to be paid to a cooperating Buyer’s Brokerage prior to a Contract of Purchase and Sale being submitted to the Seller’s Brokerage. Any such amendment must be submitted to the Association office for publication in the MLS® System database in accordance with the Association’s Rules regarding reporting of sales. If the modification has not yet been published by the Association, then the Seller’s Brokerage must notify the Buyer’s Brokerage of the change in commission prior to the Contract of Purchase and Sale being presented.</p>
<p>g. Alberta</p>	
<p>32. Calgary Real Estate Board 33. Central Alberta REALTORS® Association 34. Alberta West REALTORS® Association 35. The Fort McMurray REALTORS® 36. REALTORS® Association of Edmonton 37. Grande Prairie & Area Association of REALTORS® 38. REALTORS® Association of Lloydminster & District 39. Medicine Hat Real Estate Board Co-operative Ltd. 40. Lethbridge & District Association of REALTORS® 41. REALTORS® Association of South Central Alberta</p>	<p>Calgary Real Estate Board Rules</p> <p>14.01 Provincial Practice Rules for Alberta, Rule 14.01, Fee Alteration and Payment Timeframe: The Seller’s Brokerage shall pay the Buyer’s Brokerage the fee as posted on the MLS® System at the time the offer was written and signed by the party who initiated the Purchase Contract. The posted fee shall not be altered during the course of negotiations without disclosure and agreement from the Buyer’s Brokerage. Any changes to fees payable to either Brokerage will be in the form of a signed written agreement between the two Brokerages. The fee shall be paid within ten (10) Business Days of the following:</p> <ul style="list-style-type: none"> a. Receipt of funds by the Seller’s Brokerage or b. Permission to release the funds has been received by the Seller’s Brokerage. [...] <p>Provincial MLS System Listing Rules for Alberta</p> <p>2.02 Three Pillars of the MLS® System a. Only listings that comply with the following Three Pillars of the MLS® Marks as established by CREA can be listed in the Board’s MLS® System: [...] The Listing Brokerage agrees to pay the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.</p>

h. British Columbia	
<p>42. Real Estate Board of Greater Vancouver 43. Chilliwack and District Real Estate Board 44. Fraser Valley Real Estate Board</p>	<p>Rules of Cooperation of the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver</p> <p>In order to be placed on the Board’s MLS® System, a listing must comply with CREA’s Rules and Regulations, including the Three Pillars of the MLS® Mark and the Interpretations as approved by the CREA General Assembly. The Three Pillars of the MLS® Mark are as follows:</p> <p>Compensation: The listing Member agrees to pay to the cooperating Member compensation for the cooperative selling of the property. An offer of compensation of zero is not acceptable.</p> <p>7.01, Commission Stated in Listing Contract: All contracts must show the amount of commission payable as negotiated by the Listing Brokerage and the seller. That portion of the Listing Brokerage’s commission available to Cooperating Brokerages must be shown on the listing contract.</p> <p>7.04, Commission Payable to Cooperating Brokerage upon Completion: Where a particular transaction completes, that portion of the Listing Brokerage’s commission available to Cooperating Brokerages is payable to the Cooperating Brokerage upon completion unless the Listing Brokerage and Cooperating Brokerage mutually agree, in writing, to alter said commission.</p>
<p>45. Victoria Real Estate Board 46. Vancouver Island Real Estate Board</p>	<p>Victoria Real Estate Board Regulations</p> <p>1.1 CREA Compliance All Listings must comply with CREA’s Three pillars of the MLS Certification Mark: ... 3. Compensation is offered to a Co-Operating Brokerage.</p> <p>3.1.2 – Zero Commission No listing may be entered into the Boards’ Listing Database where the commission payable to the Co-operating Brokerage is zero.</p> <p>3.4.1 – Co-operating Representative – Commission Negotiation A Co-operating Brokerage, when negotiating on behalf of a Buyer, may only use the terms of an offer to</p>

	<p>purchase to modify the Listing Brokerage's offer of compensation to Co-operating Brokerages if: (a) the Buyer has authorized the Co-operating Brokerage to do so in a separate written document; and (b) there has been prior consultation regarding the compensation between the Co-operating Brokerage and the Listing Brokerage.</p>
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APPENDIX “B” – PROVINCIAL REAL ESTATE LEGISLATION

The following legislation governs real estate professionals in each Canadian province/territory:

- (a) in Alberta, the *Real Estate Act*, RSA 2000, c R-5 (the “**Alberta Legislation**”);
- (b) in British Columbia, the *Real Estate Services Act*, SBC 2004, c 42 (the “**British Columbia Legislation**”);
- (c) in Manitoba, *The Real Estate Brokers Act*, CCSM c R20 , which will be repealed on January 1, 2022 and replaced by *The Real Estate Services Act*, SM 2015, c 45 (the “**Manitoba Legislation**”);
- (d) in New Brunswick, the *Real Estate Agents Act*, RSNB 2011, c 215 (the “**New Brunswick Legislation**”);
- (e) in Newfoundland and Labrador, the *Real Estate Trading Act, 2019*, SNL 2019, c R-2.1(the “**Newfoundland and Labrador Legislation**”);
- (f) in the Northwest Territories and Nunavut, the *Real Estate Agents' Licensing Act*, RSNWT (Nu) 1988, c 48 (Supp) (the “**Northwest Territories and Nunavut Legislation**”);
- (g) in Nova Scotia, the *Real Estate Trading Act*, SNS 1996, c 28 (the “**Nova Scotia Legislation**”);
- (h) in Ontario, the *Real Estate and Business Brokers Act*, 2002, S.O. 2002, c. 30, Sched. C (the “**Ontario Legislation**” or “**REBBA**”);
- (i) in Prince Edward Island, the *Real Estate Trading Act*, RSPEI 1988, c R-2 (the “**Prince Edward Island Legislation**”);
- (j) in Québec, the *Real Estate Brokerage Act*, CQLR c C-73.2 (the “**Québec Legislation**”);
- (k) in Saskatchewan, *The Real Estate Act*, SS 1995, c R-1.3 (the “**Saskatchewan Legislation**”); and
- (l) in Yukon, the *Real Estate Agents Act*, RSY 2002, c 188 (the “**Yukon Legislation**”).

(collectively the “**Provincial Real Estate Legislation**”)

FEDERAL COURT

STATEMENT OF CLAIM

Kalloghlian Myers LLP
35 Prince Arthur Avenue
Toronto, ON M5R1B2

Garth Myers (LSO#: 62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Serge Kalloghlian (LSO#: 55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615
Fax: (647) 243-6620

Lawyers for the Plaintiff

Paul Bates (LSO#: 22619D)
pbates@batesbarristers.com
Tel: (416) 869-9898 x 101
c/o Kalloghlian Myers LLP

John Syme Law
78 George Street, Suite 204
Ottawa, ON K1N 5W1

John Syme (LSO#29333H)
jsyme@jls-law.ca
Tel: (613) 290-3332