

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**) approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**) in effect as of July 31, 2015.

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint, including annexes, to you by email as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <https://www.icann.org/resources/pages/policy-2012-02-25-en>
- The **Rules** can be found at <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/supplemental/eudrp/newrules.html>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by email at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide an alternate email address to which you would like (a) the Complaint, including Annexes and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

CONCIERGE AUCTIONS LLC
405 Lexington Avenue, 26th Floor
New York, NY 10174
(Complainant)

-v-

REPOSSESSED BY WILD WEST DOMAINS
14455 N. Hayden Road, Suite 219
Scottsdale, Arizona 86260
(Respondent)

Disputed Domain Name(s):

conciergeauctionscams.com

COMPLAINT

I. INTRODUCTION

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”), approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”) in effect as of July 31, 2015.

II. THE PARTIES

A. The Complainant

2. The Complainant in this administrative proceeding is Concierge Auctions LLC, a Delaware limited liability company.
3. The Complainant’s contact details are:

Address: 405 Lexington Avenue, New York, NY 10174
Telephone: 212-498-9947
Fax: 212-554-7700
Email: larry.garten@conciergeauctions.com

4. The Complainant's authorized representative in this administrative proceeding is:

Name: Gregory S. Shatan
Firm Name: Moses & Singer LLP
Address: 405 Lexington Avenue, 12th Floor, New York, NY 10174
Telephone: 212-554-7810
Fax: 917-206-4310
Email: gshatan@mosessinger.com

5. The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: email
Address: gshatan@mosessinger.com
Contact: Gregory S. Shatan

Material including hardcopy (where applicable)

Method: Fax
Fax: 917-206-4310
Contact: gshatan@mosessinger.com

B. The Respondent

6. According to the WHOIS database maintained by Wild West Domains, LLC, the Respondent in this administrative proceeding is Repossessed by Wild West Domains. A copy of the printout of the database search conducted on July 16, 2019 is provided as Exhibit A.

7. All information known to the Complainant regarding how to contact the Respondent is as follows:

Name: REPOSSESSED BY WILD WEST DOMAINS
Address: 14455 N. Hayden Road, Scottsdale, Arizona 86260
Phone: +1.4805058800
Fax: +1.4805058844
Email: repossesseddomain@wildwestdomains.com

8. Previously, WHOIS indicated that the <conciergeauctionscams.com> domain was registered to Domains by Proxy, LLC ("Domains by Proxy"). See Exhibit B. Domains by Proxy is a privacy/proxy service, used by domain name registrants to shield their identity. While the identity of the actual registrant is not yet publicly available, we strongly believe that the real party in interest in this matter is Mr.

Howard Appel, who is an individual domiciled in California, or an entity associated with him. This is discussed further below.

III. THE DOMAIN NAME(S) AND REGISTRAR(S)

9. This dispute concerns the domain name(s) identified below (the “Domain Name”):

Conciergeauctionscams.com, registered September 6, 2018

10. The registrar with which the Domain Name is registered is:

Registrar:	Wild West Domains, LLC
Registrar IANA ID:	440
Registrar Abuse Contact Email:	abuse@wildwestdomains.com
Registrar Abuse Contact Phone:	+1.4806242505
Reseller:	Domains Priced Right

Previously, WHOIS indicated that the Reseller was Act Now Domains. *See* Exhibit B.

IV. LANGUAGE OF PROCEEDINGS

11. The language of the Registration Agreement is English, a copy of which is provided as Exhibit C to this Complaint and can be found at https://www.domainspricedright.com/legal-agreement?id=reg_sa&pl_id=1592. The Complaint has been submitted in English.

V. JURISDICTIONAL BASIS FOR THE ADMINISTRATIVE PROCEEDING

12. This dispute is properly within the scope of the Policy (as defined below) and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the Domain Name that is the subject of this Complaint is registered, incorporates the Policy. A true and correct copy of the domain name dispute policy (the “Policy”) that applies to the Domain Name is provided as Exhibit D to this Complaint and can be found at <https://www.icann.org/resources/pages/help/dndr/udrp-en>.

VI. FACTUAL AND LEGAL GROUNDS

13. This Complaint is based on the following grounds:

A. The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

14. Complainant has made continuous commercial use of the CONCIERGE AUCTIONS mark since at least as early as April 30, 2008. Complainant is the owner of U.S. trademark registration No. 5684443 for CONCIERGE AUCTIONS for “On-line auction services; arranging and conducting auctions; auction advertising and marketing services; real estate auctions; arranging and conducting real estate auctions; real estate auction advertising and marketing.” The registration issued on February 26, 2019. A copy of Complainant’s U.S. Trademark Registration is attached as Exhibit E.
15. Concierge Auctions is the market leader in luxury real estate auctions, in the United States and around the world.
16. Complainant’s adoption of the mark CONCIERGE AUCTIONS on or before April 30, 2008 precedes Respondent’s registration of the Domain Name <www.conciergeauctionscams> on September 6, 2018.
17. The CONCIERGE AUCTIONS trademark forms the dominant portion of the Domain Name, and the Domain Name as a whole is clearly understood as a reference to the Complainant and the Complainant’s mark. The Domain Name is thus identical in part to Complainant’s mark and confusingly similar when taken as a whole. Because the Domain Name incorporates Complainant’s mark in its entirety, the Domain Name is confusingly similar to the Complainant’s registered CONCIERGE AUCTIONS mark.

B. The Respondent Has No Rights Or Legitimate Interests In Respect Of The Domain Name.

18. “Repossessed by Wild West Domains” (“Registrant”) is the registrant of record of the Domain Name and thus the Respondent in this action. However, we have strong reasons to believe that the Domain Name was registered by and continues to be owned and/or controlled by Mr. Howard Appel or an entity associated with him. Since it is likely that Mr. Appel will ultimately be the Respondent in this action, we will apply the UDRP to each of Registrant and Mr. Appel as Respondent, distinguishing between them as necessary.

19. Regardless of whether Registrant or Mr. Appel is the Respondent, the following is equally true: Complainant is not affiliated in any way with Respondent and has never authorized Respondent to register or use the Domain Name at issue or the CONCIERGE AUCTIONS mark. Respondent has no right or legitimate interest in the mark CONCIERGE AUCTIONS, or in the Domain Name. There is no evidence of Respondent's use of, or any preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Respondent is not commonly known by the name "CONCIERGE AUCTIONS," or any variation thereof. Respondent has no trademark rights in the mark CONCIERGE AUCTIONS (and cannot acquire such). "UDRP panels have made it quite clear that it takes more than domain name registration to obtain rights in the domain name." Jerome Gilson, TRADEMARK PROTECTION AND PRACTICE § 7A.06[2][b][iii] at page 7A-82 & n.236 (Matthew Bender 2014) (citing panel decisions).
20. The Domain Name points to an active website (the "Site"). The content of the Site provides strong evidence that Mr. Appel owns and/or controls the Domain Name and the Site. Mr. Appel previously operated a website found at <conciergeauctionslawsuits.com> (the "Prior Website"). The Prior Website contained virtually the same content and links as the current Site. Based on the selection and arrangement of content and on typographical errors, the content of the Site was clearly taken from the Prior Website. The Prior Website clearly identified Mr. Appel as the operator. That website is no longer active and the domain name registration has lapsed. *See Exhibit F* for screenshots of that site as of July 23, 2018.
21. Mr. Appel is currently engaged in multiple litigations with Concierge Auctions relating to an unconsummated transaction. Mr. Appel has sued Concierge Auctions. He has sued Concierge's outside counsel personally, and he has sued the title company used by Concierge. This is discussed in more detail below.
22. Of even greater relevance to this matter, Mr. Appel is engaged in a coordinated campaign of social media and Internet disinformation, defamation, intimidation, and "fake news," all intended to injure the business and reputation of Concierge and its officers. The Site is at the center of the coordinated campaign, which also uses Facebook posts, Twitter tweets and Medium "articles" to convey and amplify a web

of misleading, false and damaging claims regarding Concierge Auctions, its personnel and its business.

23. As set forth more fully below, given the facts of this case, it is indisputable that the Respondent had knowledge of Complainant's well-known mark prior to the registration of the Domain Name.
24. As discussed in detail below, the Respondent is not making a legitimate non-commercial or fair use of the Domain Name. The respondent is using the Domain Name and the website found at the Domain Name to make false and defamatory statements regarding Complainant. Respondent's clear intent is to tarnish the CONCIERGE AUCTIONS trademark, the goodwill and reputation for which it stands, and the reputation of Complainant. Respondent also clearly intends to cause business injury to Complainant and to attain "leverage" over Complainant in pending litigation.
25. Leveraging is a core example of cybersquatting. See Paragraph 4(b)(i) of the Policy. The Respondent violates the Policy even if the benefit sought is not money, but another benefit. See *DSPT Int'l v. Nahum*, 624 F.3d 1213, 1219 (9th Cir. 2010) ("As for whether use to get leverage in a business dispute can establish a violation, the statutory factors for 'bad faith intent' establish that it can."); *The Thread.com, LLC v. Jeffrey S. Poploff*, Case No. D2000-1470 (WIPO 2001) where the Panel stated that "it strains credibility for Respondent to argue that he is holding the Domain Name for any purpose other than as 'leverage' in his negotiations with Complainant" and *William Mushi v. Great Thinkers*, FA0805001183235 (Forum June 23, 2008).
26. However, the core of this matter involves Respondent's holding of the Domain Name and does not require assessing multiple issues and complex facts beyond that. The additional facts are set forth simply to demonstrate Respondent's bad faith.

C. The Domain Name Was Registered And Is Being Used In Bad Faith.

27. The Respondent has registered and is using the Domain Name in bad faith. As set forth above, the Domain Name was registered primarily for the purpose of tarnishing the Complainant's registered CONCIERGE AUCTIONS trademark, Complainant's business and reputation, and attaining leverage over Complainant.

28. The Site and the Domain Name are clearly intended to create impression and convey the alleged “fact” that Concierge Auctions is engaged in “scams” (i.e., some type of dishonest scheme, fraud, or swindle), a type of illegal activity which is seen as a particularly reprehensible type of illegal activity. This is infringing, it is false and it is defamatory.
29. On the Site’s home page, the Site purports to contain “The Truth About Concierge Auctions.” This is stated right below the large headline screaming “CONCIERGE AUCTION SCAMS.” See Exhibit G for screenshots of the Site. The Site attempts to bolster its claim to deliver “The Truth” by offering what appears to be a substantial amount of material. Many of the links to these materials have provocative titles referring to “scams” or similar activity.
30. However, if one takes the time to read these materials, it becomes readily apparent that the materials do not supply factual support for the Respondent’s false, misleading and defamatory claims. Instead, the material primarily consists of complaints and other litigation documents from old, closed litigations, all of which were either won by Concierge Auctions, or settled favorably to Concierge Auctions. In other words, these cannot be used to prove anything, or even to represent that a current allegation exists.
31. This is not a case involving the right to criticize or “fair use.” By claiming to reveal “The Truth” about Complainant and charging Complainant with “scams” (an illegal and reprehensible activity), Respondent clearly intends the Domain Name and the Site to stand for assertion of facts, and not opinion.
32. Importantly, the Site and the larger social media campaign exists to create commercial gain or advantage for Respondent. The Site also attempts to exercise “leverage” over Complainant in Respondent’s ongoing and overlapping litigations. These facts are not set forth for a non-commercial purpose, but merely to advance Respondent’s commercial and litigation objectives. Clearly, the Site should not be confused in any way with a legitimate “complaints site.”
33. In *Meat and Livestock Commission v. David Pearce aka OTC / The Recipe for BSE*, Case No. D2003-0645 (2003), the panel accepted the argument that “malicious dissemination of deliberately misleading material would not constitute legitimate or

fair use.” This is clearly on point here. As demonstrated below, the content is clearly and deliberately false, misleading and malicious, and bears no resemblance to the free and orderly exchange of ideas.

34. The WIPO Jurisprudential Overview 3.0 (“WIPO 3.0”) recommends that panels avoid black-and-white reasoning in favor of a more nuanced examination of the evidence. WIPO 3.0 takes into account the “totality of the circumstances”: “[it] is neither inherently incompatible with the UDRP, nor always permitted by the UDRP, and that its compatibility with the UDRP depends on the circumstances.”
<https://www.wipo.int/export/sites/www/amc/en/docs/overview3.pdf>
35. The line of cases relating to genuine critical commentary is inapposite and thus irrelevant here. As noted in *Nestle Waters*, the “phrase ‘truth about’ had no such connotations [of carrying critical commentary].” *Nestle Waters No. Am. Inc. v. JAT*, FA 220027 (Forum February 2, 2004) (<truthaboutpolandsprings.com>). *See also Rockstar, Inc. v. RSRESELLER LTD c/o Andrey Litovchenko*, FA0908001279865 (Forum September 29, 2009) (Domain name thetruthaboutrockstarenergydrink.com transferred on the theory of misleading Internet users,).
36. Respondent’s intent to tarnish the Complainant’s mark is also relevant here. *See* WIPO 3.0, second part of the model paragraph 4(c)(iii) defense (“legitimate noncommercial or fair use . . . [must be] without intent . . . to tarnish the trademark or service mark at issue.”) By seeking to associate the Complainant’s mark with unsavory activity and to gain financially or in litigation as a result, Respondent is clearly engaging in “classic” tarnishment, which is clearly actionable under the UDRP. *See, e.g., E. & J. Gallo Winery v. Spider Webs Ltd.*, 286 F.3d 270 (5th Cir. 2002) (“[T]he fact that [defendant] hosted a web site using Gallo’s trademarked name, at which it disparaged the instant litigation and alcohol, is evidence of intent to harm Gallo’s goodwill and to tarnish its mark.”)
37. In *Dykema Gossett PLLC v DefaultData.com and Brian Wick*, FA0104000097031 (Forum May 29, 2001), the Panel held that in order to fall under the paragraph 4(c)(iii) safe harbor, Respondent must exercise some degree of control, manner and self-regulation to avoid abuses. There, the Panel based its decision on the content of Respondent’s website, which accused Complainant of “reprehensible behavior.” This

conduct (according to Respondent) resulted in “victims who have suffered and had their lives destroyed” and who “took their lives as a result. . . .” However, the respondent in this case did not specify or explain what “reprehensible behavior” meant and concluded that “Without support, this innuendo serves no purpose other than to tarnish the reputations of Complainants and their trademarks.”

38. Similarly the Panel in *The Royal Bank of Scotland Group and National Westminster Bank v. Pedro Lopez and A&A System Solutions and Alberto Rodriguez*, D2002- 0823 (WIPO December 3, 2002) stated that:

it must be highlighted that the instant defamation and damage to goodwill not supported by any evidence nor substantiated in the Response, is occurring via use of a sign confusingly similar to complainants’ registered trademarks and is therefore likely to tarnish and damage those marks irreparably.

39. In *Council of American Survey Research Organizations [CASRO] v. The Consumer Information Organization, LLC, aka Pinelands Web Services*, D2002-0377 (WIPO July 19, 2002), the Panel found that Respondent’s use of the trademark to “disparage that mark, the mark’s product, the mark owner, or his business practice” was unacceptable. The CASRO Panel held that not all so-called criticism is “legitimate” or “fair”:

The right to criticize is fully enjoyed when expressed on the author’s own web site under a domain name unique to the author. Our decision of course does not denigrate that constitutional right. But the right to criticize does not carry with it the right to tarnish another’s mark, as we find Respondent is here doing, by the use of that mark as the domain name for a web site to criticize and disparage the mark and its proprietor.

40. However, the case that provides the greatest guidance is *AlgaeCal Inc. v. AlgaeCal Fraud*, D2013-1248 (WIPO September 12, 2013). *AlgaeCal*, which involved the domain name <algaecalfraud.com>, is strikingly similar to the matter before the Panel.

41. Finding for Complainant, the *AlgaeCal* panel stated that “Respondent posted to its website highly prejudicial allegations against the Complainant and its products— information which the Respondent expressly indicated on its website was then unsupported. . . . These allegations—regardless of whether they are true or not, just by

being expressed, will simply drive those customers away from the Complainant's products and thus decrease the Complainant's sales."

42. The *AlgaeCal* Panel also notes that, while panels are not "equipped to ascertain whether any specific content posed to a website is truthful or not," the Panel can "categorize the general nature of the content, regardless of its truth, i.e., whether ... a disputed domain name is being used in conjunction with a site that is generally intended to provide critical comment or not -- regardless of its accuracy, and thus falls within the safe harbor of being a legitimate noncommercial or fair use; or whether the intent of a respondent evidences some mendacious motive through which the use is actually one designed to achieve commercial gain or to tarnish the mark(s) at issue."

43. The *AlgaeCal* panel, in reasoning very much on point here, states:

[A]t a very cursory level, the Respondent's website would appear to be a "gripe" site.... However, upon closer examination and as discussed in the following section below, the Respondent's intention, as manifested through the collective nature of its activities, is not to merely provide critical comments but rather to damage the Complainant's marks and reputation, and disrupt the Complainant's business. This does not constitute legitimate noncommercial or fair use of the disputed domain name under paragraph 4(c)(iii).

44. The *AlgaeCal* panel expands on this reasoning, stating that:

While the Respondent's website itself first appears to be a complaint site (also known as a so-called "gripe" site) on which the Respondent has posted considerable commentary highly critical of the Complainant and its products and thus seemingly protected as free speech, close examination of the Respondent's actions, viewed collectively, reveals a different and rather illicit purpose behind its use of the disputed domain name and the associated website: to intentionally cause injury and disruption to the Complainant's marks, reputation and business. [emphasis added]

45. Finding for the complainant, the *AlgaeCal* panel concludes:

All these facts taken together causes the Panel to seriously question the Respondent's true intention: whether to offer negative commentary through a legitimate complaint site, or use its complaint site as a subterfuge to embark on an deliberate campaign to seriously injure the Complainant's marks and reputation, and damage its business. Once the Panel viewed the facts of record here in their entirety, its conclusion became plainly evident: the latter is far more likely to reflect the Respondent's true underlying intention than the

former and, once implemented by the Respondent, resulted in bad faith registration and use of the name.

The Site Provides No Factual Support for its False and Misleading Claims of “Scams.”

46. The Site claims to convey factual information about Concierge Auctions – the “Truth” – and claims that this “truth” involves “scams. However, the Site provide no factual support for these claims. Instead, the Site uses deceptive and misleading tactics to create a false impression of the content of the materials presented by the Site.
47. Exhibit H consists of two charts, which review in detail the content and links on the Site, and reveals that the actual content does not support the disparaging statements in the Domain Name and on the Site. The Site is cleverly arranged to create the impression of an extensive dossier of “truth,” but this is a false and misleading impression. The Site does not provide any materials with any objective facts that support the “scam” claim. Many of the materials are obsolete, irrelevant or redundant. The “truth” revealed by these documents is actually that Concierge Auctions has overcome aggressive competitors and false allegations and resolved all closed disputes in a manner favorable to Concierge.
48. The Site relies heavily on litigation documents and reports of filed litigation to create an impression of wrongdoing. While there are approximately 71 items on the Site relating to litigations. However, there are only 16 discrete litigation cases discussed on the Site (*see Exhibit H*). The Site makes the litigation “docket” look much larger than it is through various tactics: putting unimportant pleadings on the website, having duplicate entries and irrelevant entries, and including numerous articles and self-serving press releases describing the complaints. However, the substance and resolution of these cases does not support in any way the claim that Concierge Auctions has engaged in “scams.”
49. The Site relies very heavily on the “*Grand Estates*” case, *4 K & D Corp. v. Concierge Auctions, LLC*, 13 Civ. 2527(JGK) (SDNY), referring to this case at least 10 separate times, as if it were an ongoing and significant case. However, this case was dismissed **over five years ago** in favor of Concierge Auctions on all counts. *See Exhibit I*. The plaintiffs in this case were 4 K & D Corporation d/b/a Grand Estates Auction Company (“Grand Estates”), Sherwin & Deborah Jarol and John & Nancy Bloeser.

The Jarols and Bloesers were Concierge customers recruited by Grand Estates to serve as plaintiffs. The Bloesers later withdrew from this litigation; and stated they were hardly aware of this case and that they had not retained the attorneys who were representing them.

50. Grand Estates is a business competitor of Complainant. It filed suit in New York federal district court in April 2013 on behalf of itself, the Jarols and the Bloesers. The suit claimed that Complainant had engaged in alleged fraudulent business conduct in violation of Federal Civil RICO and New York consumer protection statutes. Complainant had sued Grand Estates in Florida for defamation and tortious interference with contract; this case was a counter-attack by Grand Estates.
51. Complainant (defendant in the *Grand Estates* action) moved to dismiss the *Grand Estates* Complaint in its entirety. The Court granted Complainant's motion on March 10, 2014, dismissing with prejudice all claims by Grand Estates against Complainant. Grand Estates' claims were found to be legally insufficient and failed to assert "enough facts to support a claim for relief that was plausible on its face." See the Court's Opinion and Order in Exhibit I.
52. Claims by the Jarols against two employees of Complainant remained, but were soon dismissed with prejudice pursuant to a Stipulation of Dismissal. Per the terms of the settlement, no monies were paid to the Jarols on account of any of the claims they made in the litigation. The Jarols dismissed their case with prejudice, and Complainant retained the majority of the "breakup fee" previously paid by the Jarols.

The Site relies heavily on Complaints, which are merely a plaintiff's unproven and subjective allegations.

53. Many of the court documents found on the Site are Complaints, which are of no probative value. Many of the other materials are press releases, descriptions or articles based on the Complaints, which similarly have no objective factual value. Complaints consist of unproven (and often unsworn) allegations that are written by plaintiffs to state their case most favorably to them. Notably absent from the court documents are any judicial findings that support the unproven allegations. Thus, all these materials must be disregarded in any attempt to demonstrate "truth." This includes the description of Mr. Appel's unproven claims and the Complaints from

several pending litigations Appel filed against Concierge, its title company and even its lead counsel, Robert Wolf. (Exhibit H, Chart 1, Rows 7-14)

54. The Site misleadingly portrays closed cases as if they were still pending. It does not disclose that these cases were either dismissed in favor of Complainant or ended in settlements favorable to Complainant, thus creating a false impression. There is a section misleadingly titled a “Sampling” of other cases (falsely implying this is only the tip of a litigation iceberg). Only one case in this “sampling” is still pending, and nothing has been decided in that case. Of the remaining cases, one (Grand Estates) ended with the dismissal of all claims against Complainant. The remaining five cases all settled favorably to Concierge. (Exhibit H, Chart 1, Rows 15-21). Many of these are referred to yet again in the “Additional Disputes” section of the Site, in a similarly misleading manner. (Exhibit H, Chart 2, Rows 44-53). *See Exhibits K, L, M and N*, which are documents evidencing the settlements and/or dismissal of several of these cases.
55. Many of the remaining litigation documents are from cases brought by Mr. Appel. These are either merely procedural or convey unproven allegations. The 28 “Current Lawsuit Documents” (Exhibit H, Chart 2, Rows 16-43) all refer to cases Appel himself has brought, all of which are in very early stages where nothing has been proven. The first 14 relate to Mr. Appel’s case against Complainant, complaining about a transaction that never took place. The next three are from a case Appel brought against escrow agent Boston National Title Agency, because they allegedly didn’t return the escrow to Mr. Appel fast enough for his liking. The last 11 documents are from Mr. Appel’s libel suit against Concierge’s outside counsel (a highly unusual move). The Site depends on the casual viewer’s ignorance of the merits (or lack of merit) of any of these cases. What they see is a small avalanche of 28 litigation documents. Respondent’s hope is that the casual viewer will not investigate further, and will assume the worst.
56. Finally, Rows 54-55 relate to an irrelevant personal bankruptcy matter involving a Complainant’s executive, Chad Roffers, presumably placed here for purposes of embarrassing Mr. Roffers by advertising his status as a “Debtor.”

57. Critically, there is not one court opinion on the Site finding any wrongdoing on the part of Complainant. This is because Concierge Auctions hasn't lost a single case. Indeed, there is not even a single case where allegations against Complainant have been adjudicated on the merits.
58. Of the 16 "litigations" identified on the website, five settled favorably to Concierge, with Complainant being paid well over \$1,000,000 collectively. Two were dismissed or dropped, two were failed motions to stay arbitrations commenced by Complainant, one was a personal bankruptcy matter, one was a failed motion to lift the stay against litigation in the bankruptcy matter, three are pending cases brought by Mr. Appel, and only two others are pending. In the end, not one legal document on the Site survives scrutiny to support the Domain Name's and the Site's false, defamatory and tarnishing claims of "scams."

The Articles, the Wall Street Journal "Highlights" and the Remaining Materials Also Provide No Support for Claims of "Scams".

59. Similarly, the so-called "News" items on the Site are old, irrelevant, misleading and redundant. True to form, almost half of these discuss the long-dead and favorably decided *Grand Estates* case. In the Site's "Concierge Auction in the News" section, the sixth item (from 2013, though there are no dates on the website) covers the long-ago dismissed *Grand Estates* case. While clicking the link reveals an "update" disclosing that the "case was dismissed in 2014," the Site makes it appear as if Concierge is currently being accused of fraud (items about the *Grand Estates* case are in yellow on the charts, to show the extremes of redundancy on the Site). The seventh item again describes the *Grand Estates* case. The eighth item is a 2014 press release from Grand Estates about the *Grand Estates* case, but misleadingly listed to look like an article, with the provocative title "Principles of Concierge Auctions Remain Mired in RICO Lawsuit." The ninth item is a 2013 Grand Estates press release about the same dispute, again made to look like a current headline. The *Grand Estates* case resurfaces in item 12, which (if one were to read it) describes the court ruling where all claims against Concierge are dismissed. Item 14 is the actual court ruling dismissing all claims against Concierge in the *Grand Estates* case. Finally, item 17 is another article about the *Grand Estates* case from 2013, before the case was even

filed. In all, 6 of the 17 items on this supposedly damning list are about a single case **which was dismissed in favor of Concierge over five years ago!**

60. Of the remaining materials found in the “Concierge Auction in the News” section, two items have no relevance to the accusation of scams (unless they are insinuating that news about Barbara Corcoran, a leading real estate executive, is a “scam”). One article reports on Suzanne Somers’ decision to cancel an auction of her Palm Springs home, but the article makes no mention of wrongdoing or even seller unhappiness in the article. One is an irrelevant 2017 report of a complaint filed in an employment litigation, which settled months ago. Another refers again to the *May* case. (Chart 2, Rows 1-15). Next is an irrelevant (but inflammatory) reference from 2012 to a bankruptcy filing by one of Concierge’s principals. After that is a ruling in a 2017 case where Concierge was actually the plaintiff; the other party counterclaimed, and both ended up abandoning their claims.
61. The “highlights” from the Wall Street Journal article featured on the Site’s home page are particularly misleading.
62. On February 7, 2019, The Wall Street Journal (“WSJ”) published (both digitally and in print) a highly inaccurate article (the “Article”) distorting Concierge’s litigation history. This forced Concierge to send an explanatory email to past and present customers (both buyers and sellers), and many others with whom they had business relationships, providing accurate information regarding the lawsuits and defending the unjustified and baseless attack on its professional reputation. Indeed, the undisputed facts demonstrate that of the ten “litigations” identified in the Article, five settled favorably, two were dismissed or dropped, one was a failed motion to stay an arbitration, one was compelled to arbitration in which Concierge is the claimant, and only one is pending. Thus, with respect to the resolution of the “litigations” identified in the article, Concierge has been successful in all of them. Those uncontroverted facts were effectively concealed or intentionally omitted from the Article to create a misleading and irresponsible narrative. See Exhibit J for the entire Article.
63. Three of the six Article “highlights” on the Site are essentially the same inaccurate recounting of allegedly pending cases, similar to those already debunked above. Of the remainder, one quotes a series of unsupported claims made by Mr. Appel himself

regarding his current litigation and one repeats the preliminary allegations in a case that actually settled with a significant payment to Concierge. (Chart 1, Rows 1-5)

64. The first “highlight” quotes from a 2-minute recording received by the WSJ in an anonymous email. This was lifted from a longer 6 minute 17 second recording, which the WSJ did not receive. This 2-minute sound bite contained statements made by Jackie Moldawer, a former Concierge employee, to Frank Kivo, Concierge’s former videographer, who was surreptitiously recording the exchange. Mr. Kivo had been sued by Concierge (in a case that ultimately settled favorably to Concierge). A disgruntled and vengeful Mr. Kivo apparently prepared the shorter recording, taking this excerpt out of context in a misleading way. This recording was clearly manufactured evidence. We have reviewed the longer recording, ending with the WSJ’s 2 minutes. In the first 4 minutes, which were concealed from the WSJ, Ms. Moldawer denies that Concierge used fake bidders in an auction, notwithstanding Mr. Kivo’s efforts to get her to agree. This doctored recording should not have been used by the WSJ.
65. Additionally, the Wall Street Journal article misleadingly cites two cases as active. One was settled, with payments to Concierge (Concierge Auctions v. Donald J. Schroeder). In the other, Concierge won an arbitration and is in the process of getting the arbitration award confirmed and judgment entered for the full amount of its claim, plus interest, attorneys’ fees, and costs (*See the Concierge Auctions v. Viola S. Hansen award, attached as Exhibit K*).
66. Concierge contacted the WSJ, pointing out numerous inaccuracies in the Article. In March 2019, the WSJ corrected the online version of the Article. As a result, the Article is now more accurate, and thus more favorable to Concierge. Nonetheless, the Site still uses the original February 7, 2019 version of the Article and not the more accurate updated version.

The Documents Don’t Show Any “Scams”; Instead They Show that Concierge Auctions Beats Back Baseless Charges.

67. The Domain Name and Site promise to reveal the “truth” about Concierge Auction “scams.” As demonstrated above, that promise is not kept by the contents of the Site. Instead, the Domain Name and the Site’s “pitch” misleadingly mischaracterize the

materials on the Site. However, very few viewers will be dedicated enough to read through the materials and learn that these materials amount to nothing. The vast majority of online users are not so dedicated, and will only get the false message -- something that Respondent has clearly relied on.

VII. REMEDIES REQUESTED

68. In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the <conciergeauctionscams.com> domain name be transferred to the Complainant.

VIII. ADMINISTRATIVE PANEL

69. The Complainant elects to have the dispute decided by a three member Administrative Panel.
70. Complainant names the following panelists:

- a) Peter L. Michaelson
- b) Jordan S. Weinstein
- c) Luca Barbero

IX. MUTUAL JURISDICTION

71. In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the Domain Name(s) that is/are the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar.

X. OTHER LEGAL PROCEEDINGS

72. No other legal proceedings have been commenced or terminated in connection with or relating to the Domain Name that is the subject of this Complaint.

XI. COMMUNICATIONS

73. This Complaint has been submitted to the Center in electronic form, including Exhibits, in the appropriate format.
74. A copy of this Complaint has been transmitted to the concerned registrar(s) on July 18, 2019 in electronic form in accordance with paragraph 4(c) of the Supplemental Rules.

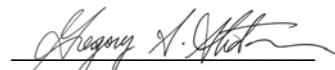
XII. PAYMENT

75. As required by the Rules and Supplemental Rules, payment in the amount of USD will be made by credit card using the Center's [secure online payment facility](#).

XIII. CERTIFICATION

76. The Complainant agrees that its claims and remedies concerning the registration of the Domain Name(s), the dispute, or the dispute's resolution shall be solely against the Domain Name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar(s), (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.
77. The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,



Gregory S. Shatan
Moses & Singer LLP
405 Lexington Avenue, 12th Floor
New York, NY 10174
gshatan@mosessinger.com
212-554-7810
Date: July 18, 2019

XIV. LIST OF EXHIBITS

- A. WHOIS record for conciergeauctionscams.com, as of July 16, 2019.
- B. WHOIS record for conciergeauctionscams.com, as of April 15, 2019.
- C. Registration Agreement.
- D. Uniform Domain Name Dispute Resolution Policy.
- E. U.S. Trademark Registration No. 5,684,443 for CONCIERGE AUCTIONS.
- F. conciergeauctionslawsuits.com, screenshots as of July 23, 2018
- G. conciergeauctionscams.com, screenshots as of July 18, 2019
- H. Charts Analyzing Content of conciergeauctionscams.com
- I. Opinion and Order (Dismissing All Claims Against Concierge Auctions), 4 K & D Corp., et al. v. Concierge Auctions, LLC, et al., 2 F.Supp.3d 525 (S.D.N.Y., 2014)
- J. “Luxury Real-Estate Firm Concierge Auctions Fights Allegations of Fraudulent Bids,” Wall Street Journal, February 7, 2019
- K. Award in Concierge Auctions v. Viola S. Hansen.
- L. Bisson.
- M. Brois.

WHOIS

Is this your domain?

Add hosting, email and more.

Go

Raw WHOIS Record

```
Domain Name: conciergeauctionscams.com
Registry Domain ID: 2307055044_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.wildwestdomains.com
Registrar URL: http://www.wildwestdomains.com
Updated Date:
Creation Date: 2018-09-06T20:48:09Z
Registrar Registration Expiration Date: 2020-09-06T20:48:09Z
Registrar: Wild West Domains, LLC
Registrar IANA ID: 440
Registrar Abuse Contact Email: abuse@wildwestdomains.com
Registrar Abuse Contact Phone: +1.4806242505
Reseller: Domains Priced Right
Domain Status: clientTransferProhibited http://www.icann.org
/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registry Registrant ID: Not Available From Registry
Registrant Name: Repossessed by Wild West Domains
Registrant Organization: Repossessed by Wild West Domains
Registrant Street: 14455 N Hayden Rd
Registrant Street: Suite 219
Registrant City: Scottsdale
Registrant State/Province: AZ
Registrant Postal Code: 85260
Registrant Country: US
Registrant Phone: +1.4805058800
Registrant Phone Ext:
Registrant Fax: +1.4805058844
Registrant Fax Ext:
Registrant Email: repossesseddomain@wildwestdomains.com
Registry Admin ID: Not Available From Registry
Admin Name: Repossessed by Wild West Domains
Admin Organization: Repossessed by Wild West Domains
Admin Street: 14455 N Hayden Rd
Admin Street: Suite 219
Admin City: Scottsdale
Admin State/Province: AZ
Admin Postal Code: 85260
Admin Country: US
Admin Phone: +1.4805058800
Admin Phone Ext:
Admin Fax: +1.4805058844
Admin Fax Ext:
Admin Email: repossesseddomain@wildwestdomains.com
Registry Tech ID: Not Available From Registry
Tech Name: Repossessed by Wild West Domains
Tech Organization: Repossessed by Wild West Domains
Tech Street: 14455 N Hayden Rd
Tech Street: Suite 219
Tech City: Scottsdale
Tech State/Province: AZ
Tech Postal Code: 85260
Tech Country: US
Tech Phone: +1.4805058800
Tech Phone Ext:
Tech Fax: +1.4805058844
Tech Fax Ext:
Tech Email: repossesseddomain@wildwestdomains.com
Name Server: NS09.DOMAINCONTROL.COM
Name Server: NS10.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
>>> Last update of WHOIS database: 2019-07-18T21:00:00Z <<<
```

[Home](#) [Cart](#) [My Account](#) [Help](#) [Contact Us](#) [WHOIS](#)

Use of this Site is subject to express terms of use. By using this site, you signify that you agree to be bound by these [Universal Terms of Service](#).

[Legal](#) [Privacy Policy](#)

Raw WHOIS Record

Domain Name: conciergeauctionscams.com
Registry Domain ID: 2307055044_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.wildwestdomains.com
Registrar URL: http://www.wildwestdomains.com
Updated Date: 2019-02-08T16:42:25Z
Creation Date: 2018-09-06T20:48:09Z
Registrar Registration Expiration Date: 2020-09-06T20:48:09Z
Registrar: Wild West Domains, LLC
Registrar IANA ID: 440
Registrar Abuse Contact Email: abuse@wildwestdomains.com
Registrar Abuse Contact Phone: +1.4806242505
Reseller: Act Now Domains
Domain Status: clientTransferProhibited
<http://www.icann.org/epp#clientTransferProhibited>
Domain Status: clientUpdateProhibited
<http://www.icann.org/epp#clientUpdateProhibited>
Domain Status: clientRenewProhibited
<http://www.icann.org/epp#clientRenewProhibited>
Domain Status: clientDeleteProhibited
<http://www.icann.org/epp#clientDeleteProhibited>
Registry Registrant ID: Not Available From Registry
Registrant Name: Registration Private
Registrant Organization: Domains By Proxy, LLC
Registrant Street: DomainsByProxy.com
Registrant Street: 14455 N. Hayden Road
Registrant City: Scottsdale
Registrant State/Province: Arizona
Registrant Postal Code: 85260
Registrant Country: US
Registrant Phone: +1.4806242599
Registrant Phone Ext:
Registrant Fax: +1.4806242598
Registrant Fax Ext:
Registrant Email: conciergeauctionscams.com@domainsbyproxy.com
Registry Admin ID: Not Available From Registry
Admin Name: Registration Private
Admin Organization: Domains By Proxy, LLC
Admin Street: DomainsByProxy.com
Admin Street: 14455 N. Hayden Road
Admin City: Scottsdale
Admin State/Province: Arizona
Admin Postal Code: 85260
Admin Country: US
Admin Phone: +1.4806242599
Admin Phone Ext:
Admin Fax: +1.4806242598
Admin Fax Ext:
Admin Email: conciergeauctionscams.com@domainsbyproxy.com
Registry Tech ID: Not Available From Registry
Tech Name: Registration Private
Tech Organization: Domains By Proxy, LLC
Tech Street: DomainsByProxy.com
Tech Street: 14455 N. Hayden Road
Tech City: Scottsdale
Tech State/Province: Arizona

Tech Postal Code: 85260
Tech Country: US
Tech Phone: +1.4806242599
Tech Phone Ext:
Tech Fax: +1.4806242598
Tech Fax Ext:
Tech Email: conciergeauctionscams.com@domainsbyproxy.com
Name Server: NS53.DOMAINCONTROL.COM
Name Server: NS54.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System:
<http://wdprs.internic.net/>
>>> Last update of WHOIS database: 2019-04-15T14:00:00Z <<<

For more information on Whois status codes, please visit
<https://www.icann.org/resources/pages/epp-status-codes-2014-06-16-en>

Notes:

IMPORTANT: Port43 will provide the ICANN-required minimum data set per ICANN Temporary Specification, adopted 17 May 2018.
Visit <https://www.secureserver.net/whois?plid=1387> to look up contact data for domains
not covered by GDPR policy.

The data contained in this Registrar's Whois database, while believed by the registrar to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of this registrar. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the owner of the domain name is specified in the "registrant" section.

In most cases, the Registrar is not the owner of domain names listed in this database



Legal Agreements

Domains Priced Right

DOMAIN NAME REGISTRATION AGREEMENT

Last Revised: December 18, 2018

PLEASE READ THIS AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES.

1. OVERVIEW

This Domain Name Registration Agreement (this "Agreement") is entered into by and between Domains Priced Right ("Domains Priced Right") and you, and is made effective as of the date of electronic acceptance. This Agreement sets forth the terms and conditions of your use of Domains Priced Right's Domain Name Registration services (the "Domain Name Registration Services" or the "Services"). The terms "we", "us" or "our" shall refer to Domains Priced Right. The terms "you", "your", "User" or "customer" shall refer to any individual or entity who accepts this Agreement. Unless otherwise specified, nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

Your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, which incorporates by reference each of (i) Domains Priced Right's [Universal Terms of Service Agreement](#) ("UTOS"), (ii) all agreements, guidelines, policies, practices, procedures, registration requirements or operational standards of the top-level domain ("TLD") in which you register any domain ("Registry Policies"), and (iii) any plan limits, product disclaimers or other restrictions presented to you on the Domain Name Registration Services landing page of the Domains Priced Right website (this "Site").

TO LINK TO AND REVIEW THE REGISTRY POLICIES FOR THE TLD IN WHICH YOU WISH TO REGISTER A DOMAIN NAME, PLEASE CLICK [HERE](#).

You acknowledge and agree that (i) Domains Priced Right, in its sole and absolute discretion, may change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to this Site, and (ii) your use of this Site or the Services found at this Site after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) this Site or the Services found at this Site. In addition, Domains Priced Right may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your shopper account ("Shopper Account") information, including your email address, current. Domains Priced Right assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate or out-of-date email address. Domains Priced Right is an Internet Corporation for Assigned Names and Numbers ("ICANN") accredited registrar. You acknowledge and agree that as an ICANN-accredited registrar, Domains Priced Right is bound by an agreement with ICANN. You acknowledge and agree that Domains Priced Right may modify this Agreement in order to comply with its agreement with ICANN, as well as any other terms and conditions set forth by (i) ICANN and/or (ii) the registry applicable to the TLD or country code top level domain ("ccTLD") in question. As used herein, the terms "registry", "Registry", "registry operator" or "Registry Operator" shall refer to the registry applicable to the TLD or ccTLD in question. To identify the sponsoring registrar, click [here](#).

2. PROVISIONS SPECIFIC TO ALL REGISTRATIONS

Unless otherwise noted, the provisions below in this Section 2 are generally applicable to all TLDs that we offer. Special provisions specific to any TLD or ccTLD (those in addition to posted Registry Policies) are identified elsewhere below in this Agreement.

1. Registry Policies. You agree to be bound by all Registry Policies (defined above in this Agreement) applicable to your domain name registration (at any level). IT IS YOUR RESPONSIBILITY TO VISIT THE APPLICABLE TLD SITE AND READ AND REVIEW ALL APPLICABLE REGISTRY POLICIES PRIOR TO YOUR REGISTRATION IN THE TLD. REGISTRY POLICIES FOR EACH TLD CAN BE FOUND BY VISITING THE CORRESPONDING TLD LINK LISTED [HERE](#). Notwithstanding anything in this Agreement to the contrary, the Registry Operator of the TLD in which the domain name registration is made is and shall be an intended third party beneficiary of this Agreement. As such the parties to this agreement acknowledge and agree that the third party beneficiary rights of the Registry Operator have vested and that the Registry Operator has relied on its third party beneficiary rights under this Agreement in agreeing to Domains Priced Right being a registrar for the respective TLD. The third party beneficiary rights of the Registry Operator will survive any termination of this Agreement.
2. Registration Requirements. To the extent any TLD or ccTLD requires you meet eligibility (e.g., residency for .JP, .EU, etc.), validation (e.g., DNS validation) or other authentication requirements as a condition to registering a domain name in the TLD, you agree that by submitting an application or registering or renewing your domain name, you represent and warrant that: (a) all information provided to register or renew the domain name (including all supporting documents, if any) is true, complete and correct, and is not misleading in any way, and the application is made in good faith; (b) you meet, and will continue to meet, the eligibility criteria prescribed in the Registry Policies for the applicable TLD for the duration of the domain name registration; (c) you have not previously submitted an application for the domain name with another registrar using the same eligibility criteria, and the other registrar has rejected the application (if applicable); (d) you acknowledge and agree that even if the domain name is accepted for registration, your

entitlement to register the domain name may be challenged by others who claim to have an entitlement to the domain name; and (e) you acknowledge and agree that the Registry or the registrar can cancel the registration of the domain name if any of the warranties required are found to be untrue, incomplete, incorrect or misleading.

3. Ownership. You acknowledge and agree that registration of a domain name does not create any proprietary right for you, the registrar, or any other person in the name used as a domain name or the domain name registration and that the entry of a domain name in the Registry shall not be construed as evidence or ownership of the domain name registered as a domain name. You shall not in any way transfer or purport to transfer a proprietary right in any domain name registration or grant or purport to grant as security or in any other manner encumber or purport to encumber a domain name registration.
4. ICANN Requirements. You agree to comply with the ICANN requirements, standards, policies, procedures, and practices for which each applicable Registry Operator has monitoring responsibility in accordance with the Registry Agreement between ICANN and itself or any other arrangement with ICANN. For additional ICANN-related helpful information, please see [ICANN Education Materials](#) and [ICANN Benefits and Responsibilities](#).
5. Indemnification of Registry. You agree to indemnify, defend and hold harmless (within 30 days of demand) the Registry Operator and Registry Service Provider and their subcontractors, subsidiaries, affiliates, divisions, shareholders, directors, officers, employees, accountants, attorneys, insurers, agents, predecessors, successors and assigns, from and against any and all claims, demands, damages, losses, costs, expenses, causes of action or other liabilities of any kind, whether known or unknown, including reasonable legal and attorney's fees and expenses, in any way arising out of, relating to, or otherwise in connection with the your domain name registration, including, without limitation, the use, registration, extension, renewal, deletion, and/or transfer thereof and/or the violation of any applicable terms or conditions governing the registration. You shall not enter into any settlement or compromise of any such indemnifiable claim without Registrar's or Registry Operator's prior written consent, which consent shall not be unreasonably withheld, and you agree that these indemnification obligations shall survive the termination or expiration of the Agreement for any reason. IN NO

EVENT SHALL THE REGISTRY OPERATOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTIES, EITHER EXPRESS OR IMPLIED, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES YOUR INABILITY TO USE THE DOMAIN NAME, YOUR LOSS OF DATA OR FILES OR OTHERWISE, EVEN IF THE REGISTRY OPERATOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Regulated TLDs. For domain name registration in any “Regulated” TLD, you acknowledge and agree your registration is subject to the following additional requirements: (a) comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures; (b) if you collect and maintain sensitive health and financial data you must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law. Regulated TLDs include: *.games, .juegos, .school, .schule, .toys, .eco, .care, .diet, .fitness, .health, .clinic, .dental, .healthcare, .capital, .cash, .broker, .claims, .exchange, .finance, .financial, .fund, .investments, .lease, .loans, .market, .money, .trading, .credit, .insure, .tax, .mortgage, .degree, .mba, .audio, .book, .broadway, .movie, .music, .software, .fashion, .video, .app, .art, .band, .cloud, .data, .digital, .fan, .free, .gratis, .discount, .sale, .media, .news, .online, .pictures, .radio, .show, .theater, .tours, .accountants, .architect, .associates, .broker, .legal, .realty, .vet, .engineering, .law, .limited, .show; .theater; .town, .city, .reise, and .reisen*
7. Highly Regulated TLDs. In addition to the requirements for Regulated TLDs, domain name registration in any Highly-Regulated TLD is subject to the following requirements: (a) you will provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or Industry self-regulatory, bodies in their main place of business; (b) you represent that you possess any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with such Highly-regulated TLD; and (c) you will report any material changes to the validity of you

authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the Highly-regulated TLD to ensure you continue to conform to the appropriate regulations and licensing requirements and generally conduct your activities in the interests of the consumers they serve. Highly Regulated TLDs include: *.abogado, .attorney, .bank, .bet, .bingo, .casino, .charity (and IDN equivalent), .cpa, .corp, creditcard, .creditunion, .dds, .dentist, .doctor, .fail, .gmbh, .gripe, .hospital, .inc, .insurance, .lawyer, .lifeinsurance, .llc, .llp, .ltda, .medical, .mutuelle, .pharmacy, .poker, .university, .sarl, .spreadbetting, .srl, .sucks, .surgery, .university, .vermogensberater, .versicherung, and .wtf*. For *.doctor*, registrants who hold themselves out to be licensed medical practitioners must be able to demonstrate to the Registrar and Registry, upon request, that they hold the applicable license.

8. *Special Safeguard TLDs*. In addition to the requirements for Regulated and Highly-Regulated TLDs, by registering a domain name in any “Special-Safeguard” TLD, you agree to take reasonable steps to avoid misrepresenting or falsely implying that you or your business is affiliated with, sponsored or endorsed by one or more country's or government's military forces if such affiliation, sponsorship or endorsement does not exist. Special Safeguard TLDs include: *.army, .navy, .airforce*
9. *Third Party Beneficiary*. Notwithstanding anything in this Agreement to the contrary, the Registry Operator for any TLD in which you register a domain name is and shall be an intended third party beneficiary of this Agreement. As such the parties to this agreement acknowledge and agree that the third party beneficiary rights of the Registry Operator have vested and that the Registry Operator has relied on its third party beneficiary rights under this Agreement in agreeing to Domains Priced Right being a registrar for the TLD. Third party beneficiary rights of the Registry Operator shall survive any termination of this Agreement.
10. *Variable and Non-Uniform Pricing*. You acknowledge, understand and agree that certain domain names in certain TLDs are established by Registry Policies to be variably priced (i.e., standard v. premium names) and/or may have non-uniform renewal registration pricing (such that the Fee for a domain name registration renewal may differ from other domain names in the same TLD, e.g., renewal registration for one domain may be \$100.00 and \$33.00 for a different domain name).

11. Restriction on Availability of Privacy or Proxy. You acknowledge and agree that you may not be permitted to purchase private or proxy TLD registrations in certain markets, countries and territories or for certain TLDs. In such case, you must register for any and all TLD registrations using your personal information, which information you represent and warrant is current, accurate and complete.

3. FEES AND PAYMENTS

(A) GENERAL TERMS, INCLUDING AUTOMATIC RENEWAL TERMS

You agree to pay any and all prices and fees due for Services purchased or obtained at this Site at the time you order the Services. Domains Priced Right expressly reserves the right to change or modify its prices and fees at any time, and such changes or modifications shall be posted online at this Site and effective immediately without need for further notice to you. If you have purchased or obtained Services for a period of months or years, changes or modifications in prices and fees shall be effective when the Services in question come up for renewal as further described below.

Unless otherwise specifically noted (for reasons such as those highlighted in Section 2 (x) above), the renewal price for any domain name in any TLD will be the same as the list (non-sale) price shown when you search for and select a domain, and again in the cart prior to purchase. For example, if the list price is \$9.99, and a different renewal price is not specifically identified, then the renewal price is also \$9.99. Likewise, if a domain name has a sale price of \$8.99, with the list (non-sale) price shown (as a strike-through) at \$9.99, the renewal price will be \$9.99*.

Renewal price subject to change prior to actual date of renewal.

For all other terms and conditions relating to fees, payment, refund and billing, etc. applicable to the Services offered under the scope of this Agreement, please refer to the “Fees and Payments” section of our [UTOS](#).

(B) DOMAIN NAME RENEWAL TERMS

When you register a domain name, you will have three renewal options: (i) "Automatic Renewal" (ii) "Extended Automatic Renewal", and (iii) "Manual Renewal":

1. *Automatic Renewal.* Automatic Renewal is the default setting. Therefore, unless you select Extended Automatic Renewal, Domains Priced Right will enroll you in Automatic Renewal. Domain names will automatically renew, for a period equivalent to the length of your original domain name registration, any domain name that is up for renewal and will take payment from the Payment Method you have on file with Domains Priced Right, at Domains Priced Right's then current rates. Thus, if you have chosen to register your domain name for one (1) year, Domains Priced Right will automatically renew it for one (1) year. If you have chosen to register your domain name for two (2) years, Domains Priced Right will automatically renew it for two (2) years, and so on.
2. *Extended Automatic Renewal.* If you enroll in the Extended Automatic Renewal plan, Domains Priced Right will automatically renew any domain name that is up for renewal for an additional one-year period on each and every anniversary of your domain name registration, so the initial registration period will always remain intact. Thus, if you have chosen to register your domain name for two (2) years, Domains Priced Right will automatically renew it for one (1) additional year on each and every anniversary of your domain name registration so your two (2) year registration period will always remain intact. If you have chosen to register your domain name for five (5) years, Domains Priced Right will automatically renew it for one (1) additional year on each and every anniversary of your domain name registration so your five (5) year registration period will always remain intact, and so on. Domains Priced Right will take payment from the Payment Method you have on file with Domains Priced Right, at Domains Priced Right's then current one-year domain name registration rate.
3. *Manual Renewal.* If you have elected to turn off automatic renewal and cancel the product (i.e., cancel the domain name registration) effective at expiration of the then current term, you may nonetheless elect to manually renew the domain name at anytime prior to its expiration date by logging into your [Account Manager](#) and manually implementing the renewal or by calling customer service (should you in fact want the domain name to be renewed). If you fail to manually implement the renewal before the expiration date, the domain name will be cancelled and you will no longer have use of that name.

All renewals will be subject to the terms of this Agreement, as it may be amended from time to time, and you acknowledge and agree to be bound by the terms of this Agreement (as amended) for all renewed domains. Domain name renewals will be non-refundable. In the event that we are unable to automatically renew your domain name for the renewal option selected for any reason, we may automatically renew your domain name for a period less than your original registration period to the extent necessary for the transaction to succeed. If for any reason Domains Priced Right is not able to take the payment from the Payment Method you have on file, and you fail to respond to our notices, your domain name registration will expire. It is your responsibility to keep your Payment Method information current, which includes the expiration date if you are using a credit card.

For certain ccTLDs (.am, .at, .be, .br, .ca, .cn, .com.cn, .net.cn, .org.cn, .de, .eu, .fm, .gs, .it, .jp, .ms, .nu, .nz, .co.nz, .net.nz, .org.nz, .tc, .tk, .tw, .com.tw, .org.tw, .idv.tw, .uk, and .vg), renewal billing will occur on the first day of the month prior to the month of expiration.

For certain ccTLDs (.am, .at, .be, .ca, .cn, .com.cn, .net.cn, .org.cn, .de, .eu, .fm, .gs, .it, .jp, .ms, .nu, .nz, .co.nz, .net.nz, .org.nz, .tc, .tk, .tw, .com.tw, .org.tw, .idv.tw, .uk, and .vg), renewal will occur, or must occur manually if the product was previously cancelled, no later than the 20th of the month prior to the expiration date, or your domain name will be placed in non-renewal status. For some ccTLDs (.es) renewal must be processed no later than seven days before the expiration date, or your domain name will be placed in non-renewal status. When the domain name is in non-renewal status, you can renew the domain name only by calling Domains Priced Right and requesting that the domain name be renewed. You cannot renew the domain name through your [Account Manager](#). If you fail to manually implement the renewal of any cancelled product before the expiration date, the domain name will be cancelled and you will no longer have use of that name.

You agree that Domains Priced Right will not be responsible for cancelled domain names that you fail to renew in the timeframes indicated in this Agreement. In any case, if you fail to renew your domain name in a timely fashion, additional charges may apply. If you signed up for privacy services, protected registration, or any other similar service,

with your domain name registration, these services will automatically be renewed when your domain name registration is up for renewal, and you will incur the applicable additional renewal fee unless you cancel in advance.

If you fail to renew your domain name in the timeframes indicated in this Agreement, you agree that Domains Priced Right may, in its sole discretion, renew your expired domain name on your behalf. If Domains Priced Right decides to renew your expired domain name on your behalf, you will have a Renewal Grace Period during which you may reimburse Domains Priced Right for the renewal and keep your domain name. The Renewal Grace Period is currently twelve (12) days but subject to change under the terms of this Agreement. For certain ccTLDs (.am, .at, .be, .cn, .com.cn, .net.cn, .org.cn, .de, .eu, .fm, .gs, .it, .jp, .ms, .nu, .nz, .co.nz, .net.nz, .org.nz, .tc, .tk, .tw, .com.tw, .org.tw, .idv.tw, .uk, and .vg) there is no Renewal Grace Period after the expiration date of the domain name. If you do not reimburse Domains Priced Right for the renewal during the Renewal Grace Period your domain name will be placed on Hold and flagged for deletion after which you may have up to a 30-day redemption period to redeem your domain name, provided that your domain name is not subject to an expired domain name auction bid and you pay Domains Priced Right a Redemption fee. The Redemption fee is currently \$80.00 USD and is subject to change under the terms of this Agreement. If you do not redeem your domain name prior to the end of the 30-day redemption period Domains Priced Right may, in its sole discretion, delete your domain name or transfer it to another registrant on your behalf. During the redemption period your domain name may be parked.

If your domain name is deleted, the Registry also provides a 30-day Redemption Grace Period during which you may pay Domains Priced Right a redemption fee and redeem your domain name. The redemption fee is currently \$80.00 USD and is subject to change under the terms of this Agreement. If you do not redeem your domain name prior to the end of the Registry's Redemption Grace Period the Registry will release your name and it will become available for registration on a first-come-first-served basis.

Renewal Grace Periods and Redemption Grace Periods vary for different ccTLDs. Please refer to the specific terms for the applicable TLD. In the event there is a conflict between the provisions of this paragraph and the ccTLD terms, the ccTLD terms shall control.

Our registration expiration notification policy and associated fees are described [here](#).

(C) FREE PRODUCT TERMS

In the event you are provided with free products with the registration of a domain name, you acknowledge and agree that such free products will only be available with a valid purchase and may be terminated in the event the domain name is deleted or cancelled. For free domain names, you acknowledge and agree that you may not change the account associated with such free domain for the first five (5) days after registration. In the event a free domain name is offered with the registration of another domain and if the paid domain name registered fails, then we may, in its sole discretion, either delete the registration of the free domain or refund the difference between the amount paid and the value of the free domain. Failed registrations associated with promotional offers may result in the deletion of the free or discounted item or an adjustment between the registered domain price and the value of the discounted item, in our sole discretion.

4. TERM OF AGREEMENT; TRANSFERS; DOMAIN TASTING

The term of this Agreement shall continue in full force and effect as long as you have any domain name registered through Domains Priced Right.

You agree that you will not transfer any domain name registered through Domains Priced Right to another domain name registrar during the first sixty (60) days after its initial registration date. You agree that you may not transfer any domain name for ten (10) days after a Change of Account.

You further agree that you will not engage in "domain tasting" by using the five (5) day grace period in which a registrant may choose to cancel a domain name and get a full refund of the registration fee as a vehicle to test the marketability or viability of a domain name. If Domains Priced Right determines (which determination shall be made by Domains Priced Right in its sole and absolute discretion) that you have been engaging in "domain tasting", then Domains Priced Right reserves the right to (a) charge you a small fee (which fee shall be deducted from any refund issued) or (b) refuse your

cancellation/refund request altogether. Domains Priced Right will not charge you a fee if Domains Priced Right cancels your domain name during the five (5) day grace period due to fraud or other activity outside of your control. The five (5) day grace period does not apply to Premium Domains, which are non-refundable.

You agree that Domains Priced Right shall not be bound by (i) any representations made by third parties who you may use to purchase services from Domains Priced Right, or (ii) any statements of a general nature, which may be posted on Domains Priced Right's website or contained in Domains Priced Right's promotional materials.

5. UP TO DATE INFORMATION; USE OF INFORMATION AND EXPIRATION

You agree to notify Domains Priced Right within five (5) business days when any of the information you provided as part of the application and/or registration process changes. It is your responsibility to keep this information in a current and accurate status. Failure by you, for whatever reason, to provide Domains Priced Right with accurate and reliable information on an initial and continual basis, shall be considered to be a material breach of this Agreement and a basis for suspension and/or cancellation of the domain name. Failure by you, for whatever reason, to respond within five (5) business days to any inquiries made by Domains Priced Right to determine the validity of information provided by you, shall also be considered to be a material breach of this Agreement and a basis for suspension and/or cancellation of the domain name. You agree to retain a copy for your record of the receipt for purchase of your domain name.

You agree that for each domain name registered by you, the following contact data is required: postal address, email address, telephone number, and if available, a facsimile number for the Registered Name Holder and, if different from the Registered Name Holder, the same contact information for, a technical contact, an administrative contact and a billing contact.

You acknowledge and agree that domain name registration requires that this contact information, in whole or in part, be shared with the registry operator, for their use, copying, distribution, publication, modification and other processing for (among other

uses in accordance with our Privacy Policy) the purpose of administration of the domain name registration, which may require such information be transferred back and forth across international borders, to and from the U.S. to the EU, for example. As required by ICANN, this information must also be made publicly available by means of Whois, and that the registry operator may also be required to make this information publicly available by Whois. Both Domains Priced Right and the registry operator may be required to archive this information with a third-party escrow service. You hereby consent and give permission for all such requirements and disclosures. Further, you represent and warrant that, if you are providing information about a third party, you have notified the third party of the disclosure and the purpose for the disclosure and you have obtained the third party's consent to such disclosure. Registrar will not process data in a way that is incompatible with this Agreement. Registrar will take reasonable precautions to protect data from loss or misuse.

You agree that for each domain name registered by you the following information will be made publicly available in the Whois directory as determined by ICANN Policy and may be sold in bulk as set forth in the ICANN agreement:

- The domain name;
- Your name and postal address;
- The name, email address, postal address, voice and fax numbers for technical and administrative contacts;
- The Internet protocol numbers for the primary and secondary name servers;
- The corresponding names of the name servers; and
- The original date of registration and expiration date.
- Name of primary name server and secondary name server.
- Identity of the registrar.

You agree that, to the extent permitted by ICANN, Domains Priced Right may make use of the publicly available information you provided during the registration process. If you engage in the reselling of domain names you agree to provide any individuals whose personal information you've obtained, information about the possible uses of their personal information pursuant to ICANN policy. You also agree to obtain consent, and evidence of consent, from those individuals for such use of the personal information they provide.

You agree that Domains Priced Right has the right to make public and share with third parties certain information in connection with the sale or purchase of domain names on the website, including but not limited to (a) the name of the domain name sold or purchased, (b) the sale or purchase price of the domain name sold or purchased, and (c) information relating to the timing of the sale or purchase.

In order for us to comply with any current or future rules and policies for domain name systems including any rules or policies established by the CIRA or any provincial or federal government or by other organization having control or authority to establish rules or policies, you hereby grant to us the right to disclose to third parties through an interactive publicly accessible registration database the following information that you are required to provide when applying for a domain name:

1. The domain or sub-domain name(s) registered by you;
2. Your organization name, type and postal address;
3. The name(s), position(s), postal address(es), e-mail address(es), voice telephone number(s) and where available the fax number(s) of the technical and administrative contacts for your domain or sub-domain name(s);
4. The full hostnames and Internet protocol (IP) addresses of at least two (2) name server hosts (one primary and at least one secondary) for your domain or sub-domain name. Up to six (6) name servers may be specified. If a host has more than one (1) IP address, use a comma-separated list;
5. The corresponding names of those name servers;
6. The original creation date of the registration; and

7. The expiration date of the registration.

We may be required to make this information available in bulk form to third parties. We may also transfer or assign this information to CIRA or such other third party as we may decide, in our sole discretion.

6. DISPUTE RESOLUTION POLICY

You agree to be bound by our current Dispute Resolution Policy. This policy is incorporated herein and made a part of this Agreement. You can view the [Uniform Domain Name Dispute Resolution Policy](#) online. You agree that Domains Priced Right may from time to time modify its Dispute Resolution Policy. Domains Priced Right will post any changes to its Dispute Resolution Policy at least thirty (30) days before they become effective. You agree that by maintaining your domain name registrations with Domains Priced Right after the updated policy becomes effective that you agree to the Dispute Resolution policy as amended. You agree to review Domains Priced Right's website periodically to determine if changes have been made to the Dispute Resolution Policy. If you cancel or terminate your Services with Domains Priced Right as a result of the modified Dispute Resolution policy, no fees will be refunded to you. You also agree to submit to proceedings commenced under ICANN's Uniform Rapid Suspension System, if applicable.

You agree that if a dispute arises as a result of one (1) or more domain names you have registered using Domains Priced Right, you will indemnify, defend and hold Domains Priced Right harmless as provided for in this Agreement. You also agree that if Domains Priced Right is notified that a complaint has been filed with a governmental, administrative or judicial body, regarding a domain name registered by you using Domains Priced Right, that Domains Priced Right, in its sole discretion, may take whatever action Domains Priced Right deems necessary regarding further modification, assignment of and/or control of the domain name deemed necessary to comply with the actions or requirements of the governmental, administrative or judicial body until such time as the dispute is settled. In this event you agree to hold Domains Priced Right harmless for any action taken by Domains Priced Right.

You agree to submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of your domicile, (2) where registrar is located or (3) where the registry operator is located (e.g., China for .CN, Columbia for .CO, UK for .EU, etc.).

In the case of .ca domain names, you agree that, if your use of the service or the registration of a .ca domain name is challenged by a third party, you will be subject to the provisions specified by CIRA in their dispute resolution policy, in effect at the time of the dispute.

7. TRANSFER OF DOMAIN NAMES; RESALE PRACTICES

If you transfer any domain name, you agree to provide the information required by, and to abide by, the procedures and conditions set forth in our [Domain Name Transfer Agreement](#) and [Change of Registrant Agreement](#). You may view the latest versions of our Domain Name Transfer Agreement and Change of Registrant Agreement online. In order to further protect your domain name, any domain name registered with Domains Priced Right or transferred to Domains Priced Right shall be placed on lock status, unless an opted-out has occurred as defined in our Change of Registrant Agreement or Domain Name Proxy Agreement. The domain name must be placed on unlock status in order to initiate a transfer of the domain name away from Domains Priced Right to a new Registrar. You may log into your account with Domains Priced Right at any time after your domain name has been successfully transferred to Domains Priced Right, and change the status to unlock.

In the event you are purchasing a domain name on behalf of a third party, you agree to inform any customer of yours, who may be acquiring a domain name through you using Domains Priced Right's registration services, that they are in fact registering their domain name through Domains Priced Right and that Domains Priced Right is an accredited registrar with ICANN. You agree not to represent that you are an ICANN-accredited registrar or that you are in any way providing superior access to the ICANN Domain Name Registry. You also agree not to use the ICANN trademark logo in any of your promotional materials including your website.

You agree to obtain each of your customers' acceptances to the then current version of this Agreement, and to retain evidence of their acceptance for a period of not less than three (3) years. Should you require that your customers accept additional terms and conditions that are not required by Domains Priced Right, you agree that such additional terms and conditions shall not conflict with this Agreement and the policies and procedures adopted by ICANN.

You agree that Domains Priced Right is not lending you access to its registrar connections or its registry access, nor will you be deemed to be a registrar in your own right. Furthermore, you agree you will not attempt to gain access to Domains Priced Right's registrar connections or registry access. You agree to provide complete, accurate and current data for each registrant to be added to a registry in accordance with ICANN requirements for inclusion in the Whois database.

You agree to provide your customers with adequate customer support, and to maintain contact with them with regard to providing a medium for them to communicate changes in the information they provided as part of the domain name registration process. Upon receiving corrected or updated information you will, within five (5) business days, provide such information to Domains Priced Right so Domains Priced Right may update its registration records. You will retain copies of all communications between you and your customers and will upon request provide Domains Priced Right copies of same.

8. YOUR OBLIGATIONS; SUSPENSION OF SERVICES; BREACH OF AGREEMENT

You represent and warrant to the best of your knowledge that, neither the registration of the domain nor the manner it is directly or indirectly used, infringes the legal rights of any third party. You will comply with all applicable laws, including, but not limited to those relating to privacy, data collection, consumer protection, fair lending, debt collection, organic farming, and disclosure of data and financial disclosures. If you collect and maintain sensitive health and financial data, you must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law. You represent that you possess any necessary authorization, charter, license, and/or other related credential for participation in the sector associated

with the associated registry tld string. You will report any material changes to the validity of your authorization, charter, license, and/or other related credential. You will indemnify and hold harmless the registrar and registry operator, and their directors, officers, employees and agents, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable legal fees and expenses) arising out of or related to the domain name registration. This obligation shall survive expiration or termination of this Agreement or the domain name registration.

You agree that, in addition to other events set forth in this Agreement:

1. Your ability to use any of the services provided by Domains Priced Right is subject to cancellation or suspension in the event there is an unresolved breach of this Agreement and/or suspension or cancellation is required by any policy now in effect or adopted later by ICANN;
2. Your registration of any domain names shall be subject to suspension, cancellation or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any Domains Priced Right procedure not inconsistent with an ICANN adopted specification or policy (a) to correct mistakes by Domains Priced Right or the registry operator in registering any domain name; or (b) for the resolution of disputes concerning any domain name.

You acknowledge and agree that Domains Priced Right and registry reserve the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on lock, hold or similar status, as either deems necessary, in the unlimited and sole discretion of either Domains Priced Right or the registry: (i) to comply with specifications adopted by any industry group generally recognized as authoritative with respect to the Internet (e.g., RFCs), (ii) to protect the integrity and stability of, and correct mistakes made by, any domain name registry or registrar, (iii) for the non-payment of fees to registry, (iv) to protect the integrity and stability of the registry, (v) to comply with any applicable court orders, laws, government rules or requirements, requests of law enforcement, or any dispute resolution process, (vi) to comply with any applicable ICANN rules or regulations, including without limitation, the registry agreement, (vii) to avoid any liability, civil or criminal, on the part of registry operator, as well as its affiliates, subsidiaries, officers, directors, and employees, (viii) per the terms of this Agreement, (ix) following an occurrence of any of

the prohibited activities described in Section 8 below, or (x) during the resolution of a dispute.

You agree that your failure to comply completely with the terms and conditions of this Agreement and any Domains Priced Right rule or policy may be considered by Domains Priced Right to be a material breach of this Agreement and Domains Priced Right may provide you with notice of such breach either in writing or electronically (i.e. email). In the event you do not provide Domains Priced Right with material evidence that you have not breached your obligations to Domains Priced Right within ten (10) business days, Domains Priced Right may terminate its relationship with you and take any remedial action available to Domains Priced Right under the applicable laws. Such remedial action may be implemented without notice to you and may include, but is not limited to, cancelling the registration of any of your domain names and discontinuing any services provided by Domains Priced Right to you. No fees will be refunded to you should your Services be cancelled or terminated because of a breach.

Domains Priced Right's failure to act upon or notify you of any event, which may constitute a breach, shall not relieve you from or excuse you of the fact that you have committed a breach.

9. RESTRICTION OF SERVICES; RIGHT OF REFUSAL

If you are hosting your domain name system ("DNS") on Domains Priced Right's servers, or are using our systems to forward a domain name, URL, or otherwise to a system or site hosted elsewhere, or if you have your domain name registered with Domains Priced Right, you are responsible for ensuring there is no excessive overloading on Domains Priced Right's servers. You may not use Domains Priced Right's servers and your domain name as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, or other abusive attack. Server hacking or other perpetration of security breaches is prohibited. You agree that Domains Priced Right reserves the right to deactivate your domain name from its DNS if Domains Priced Right deems it is the recipient of activities caused by your site that threaten the stability of its network.

You agree that Domains Priced Right, in its sole discretion and without liability to you, may refuse to accept the registration of any domain name. Domains Priced Right also may in its sole discretion and without liability to you delete the registration of any domain name during the first thirty (30) days after registration has taken place.

In the event Domains Priced Right refuses a registration or deletes an existing registration during the first thirty (30) days after registration, you will receive a refund of any fees paid to Domains Priced Right in connection with the registration either being cancelled or refused. In the event Domains Priced Right deletes the registration of a domain name being used in association with spam or morally objectionable activities, no refund will be issued.

10. DEFAULT SETTINGS; PARKED PAGE

Choosing Your Domain Name Settings. When you register a domain name with Domains Priced Right, you will be prompted to choose your domain name settings during the checkout process. If you plan on using another provider for your website or hosting needs, then you should enter the name servers of such provider when you choose your domain name settings. This will direct your domain name away from Domains Priced Right's name servers. If you are an existing Domains Priced Right customer and have already set up a customer profile designating your domain name settings for new domain name registrations, you will not need to complete this step again during the checkout process.

Domains Priced Right's Default Settings. If you do not direct your domain name away from Domains Priced Right's name servers as described above, Domains Priced Right will direct your domain name to a "Parked Page" ("Default Setting"). You acknowledge and agree that Domains Priced Right has the right to set the Default Setting.

Parked Page Default Setting. Domains Priced Right's Parked Page service is an online domain monetization system designed to generate revenue (through the use of pay per click advertising) from domain names that are not actively being used as websites. If your domain name is directed to a Parked Page, you acknowledge and agree that

Domains Priced Right may display both (a) in-house advertising (which includes links to Domains Priced Right products and services) and (b) third-party advertising (which includes links to third-party products and services) on your Parked Page through the use of pop-up or pop-under browser windows, banner advertisements, audio or video streams, or any other advertising means, and we may aggregate for our own use, related usage data by means of cookies and other similar means. In addition, you acknowledge and agree that all in-house and third-party advertising will be selected by Domains Priced Right and its advertising partners, as appropriate, and you will not be permitted to customize the advertising, or entitled to any compensation in exchange therefor. Please note that the third-party advertising displayed on Domains Priced Right's Parked Pages may contain content offensive to you, including but not limited to links to adult content. Domains Priced Right makes no effort to edit, control, monitor, or restrict the content and third-party advertising displayed on Domains Priced Right's Parked Pages, and expressly disclaims any liability or responsibility to you or any third party in connection therewith.

Changing Domains Priced Right's Default Settings. You may change Domains Priced Right's Default Settings at any time during the term of your domain name registration.

1. Content Displaying On Your Parked Page. You can not modify the content displaying on your Parked Page. You may select one of the other options listed below.
2. Participating In Domain Name Monetization. If you wish to participate in the domain monetization potential presented by Domains Priced Right's Parked Page service, please review and consider purchasing our CashParking® service.
3. No Content. If the options listed above are not acceptable to you, please contact customer support to learn what other options might be available to you.

Return To Parked Page Default Setting Upon Domain Name Expiration. Upon domain name expiration, and regardless of how you use your domain name during the term of your domain name registration, your domain name will automatically return to the Parked Page Default Setting described above. As used in this paragraph, "expiration" is deemed to include any "renewal period" or "redemption period" immediately after the domain name expires, but before the domain name is returned to the registry. Once your domain name has returned to the Parked Page Default Setting described above,

the only way to opt out of the Parked Page service is to renew, redeem, or re-register your domain name in accordance with Section 2(B), Domain Name Renewal Terms, of this Agreement.

11. DOMAIN ADD-ONS

Business Registration: Business registration allows You to display additional information about the business that is the basis of Your domain name, including, but not limited to, such information as Your fax number, street address, and hours of operation.

Certified Domains. The certified domain service generally allow You to: (i) put a Certified Domain Validation seal on Your website; and (ii) have Your domain name listed as "Certified", in WHOIS lookups on our website. The Certified Domain Validation seal renews independently of Your domain. When You renew Your domain, You must also, when necessary, separately renew Your Certified Validation seal. However, the Certified Domain Validation seal can be cancelled independently of Your domain. If the domain is cancelled, the Certified Domain associated with the cancelled domain will automatically cancel. The Certified Domain seal is a trademark and is protected by copyright, trademark and other intellectual property laws. You may use the Certified Domain seal only in conjunction with the purchase of the Services set forth in the Agreement, and subject to the terms and conditions hereof. Other than provided for in this Agreement, You may not otherwise use, reproduce, or modify the mark for any additional promotional use, without our prior written approval. Your right to the use of the Certified Domain seal is immediately terminated upon expiration or termination of this Agreement.

Expiration Consolidation. You understand and acknowledge the expiration consolidation service may only be used to consolidate the expiration of .com and .net domain names. The service may not be used to consolidate domains that are on Registrar HOLD, Registry HOLD, or pending Transfer status. You acknowledge the service may only be used to push the expiration date of Your domains forward in time, at least one (1) month forward and no more than ten (10) years forward, and then, only for a period lasting less than twelve (12) months. Once the service has been used to consolidate domains, the new expiration date may not be reversed. To ensure the

service is not abused or used as an alternative to renewals, you may only use the service on each domain once in any 12-month period. The service may only be used on domain names that have not passed their expiration date. In order to change the expiration date again, You will be required to renew the domain name first. You further understand and acknowledge the service may only be used to coordinate domains where we are the registrar of record. Domains not registered with us must be transferred before we can perform the Service.

Discount Domain Club. In exchange for purchasing a Discount Domain Club membership, You will be able to purchase discounted products and services from us, including discounts on selected domain registrations, one (1) free Auctions account, one (1) free CashParking account, and discounts on Domain Buy Service. You are required to keep Your membership current as long as You have free or discounted products or services that are purchased with us. If You fail to renew Your membership, without canceling Your discounted domain registration or other services, we will automatically renew Your products and services at the regular pricing in effect at the time of renewal, charging the Payment Method on file for You, and You will be unable to purchase any more discounted products or services, or use Your free accounts until the Membership Agreement fee has been paid. All membership fees are non-refundable.

Backordering/Monitoring. You agree a domain name that has expired shall be subject first to a grace period of twelve (12) days, followed by the ICANN-mandated redemption grace period of thirty (30) days. During this period of time, the current domain name registrant may renew the domain name and retain registration rights. We do not guarantee your backorder will result in you obtaining the domain name and expressly reserves the right to (a) refuse additional backorders or (b) cancel existing backorders at any time for any reason. If your backorder is refused or cancelled, we agree to promptly refund any fees paid for such domain name backorder. The domain name may also be placed in a secondary market for resale through the Auctions® service. After your first year of Auctions membership, you agree that unless otherwise advised, we will automatically renew your Auctions membership using the payment method you have on file for so long as your backorder credit is active. You may learn more about Auctions by visiting the Auctions website. The domain name may also be subject to a drop pool process before it is available for purchasing. You understand we and our registrar

affiliates use our services, including backordering. Therefore, the domain name may be registered with a different registrar, but can be managed through your account. By using the Services, you will be able to, among other things:

1. Backorder any domain name under the top level domains .COM, .NET, .US, .BIZ, .INFO, .ORG, .MOBI. A backorder for a domain name will include the price of up to a one-year domain name registration. Should you successfully backorder any domain name, you will be subject to the terms and conditions of the Domain Name Registration and related agreements, which are incorporated herein by reference.
2. Change your backorder until you obtain a domain name. You will have the opportunity to change the credit to a different domain name until you successfully capture one. After three (3) years, if the credit is not used, we reserves the right to remove the credit.
3. Subscribe monthly to an expiring domain name list. You may also choose to purchase a subscription to a list of domain names expiring within the next five (5) days. If you subscribe to the expiring domain name list, you agree the payment method you have on file may be charged on a monthly subscription basis for the term of the Services you purchase.
4. Select domain names off the expiring domain name list you would like to register. Each domain name you attempt to backorder will include the price of up to a one-year domain name registration, as set forth in subsection (i) above.
5. Monitor your currently registered domain names for changes in registrar, status, expiration date or name servers at no additional cost.
6. Subscribe to Domain Alert Pro or monitoring, which enables you to monitor any currently registered domain name, regardless of registrar, for historical tracking of status changes and designation of multiple email notification addresses.

Registration Rights Protection. The Rights Protection Service (“the Service”) generally allows You to: (i) protect against losing a domain name; (ii) disallow the transfer of a domain name from registrar to registrar or registrant to registrant while this Service is active on that name; and (iii) receive an annual domain name report detailing the status of all domain names protected under this Service. THE SERVICE WILL NOT, HOWEVER, PREVENT TRANSFERS RESULTING FROM THE SALE OF PREMIUM

DOMAIN NAMES OR FROM YOUR ACTION OF LISTING A DOMAIN NAME FOR SALE ON ANY OF DOMAINS PRICED RIGHT'S PLATFORMS, REGARDLESS OF WHEN YOU PURCHASED REGISTRATION RIGHTS PROTECTION SERVICE. Once You have elected to purchase the Service for any and all domain names, the automatic renewal function will be activated for each domain name and those names will not be transferable until the renewal of the Service or until you sell the Premium domain name. Accordingly, You acknowledge and agree You have carefully considered the implications accompanying the purchase of the Service and understand the restrictions the Service will place upon Your ability to transfer any domain names for which You have purchased the Service. You further acknowledge and agree any domain name for which You have purchased the Service will not be transferable for any reason, with the exception of selling Premium domain names, until the next regularly occurring renewal of such domain name, provided, You have previously elected to deactivate the Service for that particular domain name, which deactivation may not occur until the expiration of the current term of the Service. By way of example and not as a limitation, if You elect to purchase the Service for a domain name, which You have registered for a period of five (5) years, the Service will remain active for the same five (5) year period and You will not be able to engage in any transfer of that domain name during such five (5) year period.

Premium Domain Names.

1. Description of Service. The Premium Domain Name service ("Service") is provided to facilitate the buying and selling of currently registered domain names. We provide a venue and a transaction facilitation process. We are not an auctioneer or an escrow agent. We are not in custody of all of the domain names listed on the web site. As result, we have no control over the quality, safety or legality of the domain names listed. Domain names listed may be withdrawn at any time by the seller or by us. We act as a transaction facilitator to help You make and receive payments from third parties. We are not an escrow agent, rather we act as Your agent based upon Your direction and requests to use the Services that require us to perform tasks on Your behalf. We will not use Your funds for its operating expenses or any other corporate purposes, and will not voluntarily make funds available to its creditors in the event of bankruptcy or for any other purpose. You acknowledge we are not a bank and the Service is a payment processing service rather than a banking service. You further acknowledge we are not

acting as a trustee, fiduciary or escrow with respect to Your funds. In all transactions, where the domain name is registered to us, domain names purchased through the Service may not be transferred away from us to another registrar for a period of sixty (60) days following the change of registrant date.

2. Your Obligations.

Listing Domain Names. You may use the Services to list domain names to which You: (i) have registration rights for sale; and (ii) are able to transfer in accordance with Your obligations under this Agreement. By using the Services for such purposes, You represent and warrant that: (i) You have all rights, titles and interests in the domain name necessary to complete the transaction; (ii) the domain name does not infringe on the intellectual property rights of anyone else; (iii) You have the right to transfer the domain name in accordance with Your obligations under this Agreement; and (iv) any Registration Rights Protection service that is present on the domain will not prevent you from listing the domain name and having its registration rights transferred away from You. You further agree the domain name is not currently or will not in the foreseeable future be associated with a Uniform Dispute Resolution Policy Dispute or other such litigation. In the event You are unable to comply or fail to comply with Your obligations under this Agreement, we expressly reserves the right to delist any or all of Your domain names immediately upon becoming aware of Your failure to comply. You may list Your domain name for any duration offered on the web site. You agree to pay the listing fee associated with the duration period You choose at the time of the listing. You may choose to supplement the listing with various additional services provided, if any. By using the additional services, You agree to pay any additional charges we may associate with the additional services. We reserve the right to modify its pricing structure at any time. If You find a Buyer using the Services, the transaction must be completed within the Services. For each transaction completed within the Services, You agree to pay us a transaction fee according to the fee schedule published on the site. Such transaction fee will be payable directly to us. You agree not to sell the domain name to any Buyer found through the Services without using the Services to complete the transaction. Should we find You are circumventing the Services, we reserve the right to terminate Your account and cancel all of Your listings. In the event that you update your sale price, you acknowledge and agree that it may take up to 24 hours to update the price shown to buyers. In the event your domain name sells prior to the price being

updated on the website, you agree that the price listed will be enforced.

Purchasing Domain Names. As a Buyer, You are obligated to complete the transaction if You purchase the domain name. You acknowledge that some listed domain names may be subject to an additional registration fee. For those domain names, the registration fee will be added to the price to form the purchase price. You agree that by completing the transaction, You are responsible for payment of the registration fee. By initiating and sending payments through the Service, You appoint us as Your agent to obtain the funds on Your behalf and transfer them to the recipient You designate. We will obtain the funds first by the Payment Method You have designated. If there are insufficient funds or invalid credit card information, we may obtain the remaining funds by charging any Payment Method You have on file. Once You send payment, we will hold those funds as Your agent for a prescribed period of time based on the type of transaction, at which time we will release the funds to the Seller. At no time will You be able to withdraw those funds or send the funds to another recipient unless the initial transaction is canceled. Should the Seller refuse payment, the funds, minus the administration fee as outlined in the pricing structure, will be returned to You. You agree that we are not responsible for payments refused by Seller.

Transfer of Registration Rights. We are not the registrant of all of the domain names listed on the Site and cannot guarantee immediate transfer. For domain names in which we are the registrant, transfer of registration will begin upon completion of the check out procedure. Further, the transfer by us of any domain name to a buyer is done without warranty and we expressly waive any and all warranties or representations that a domain name does not infringe upon the intellectual property rights of a third party. Any Registration Rights Protection service that is present on the domain will not prevent you from listing the domain name and having the registration rights transferred away from You.

Selling Domain Names. As a Seller, You are obligated to complete the transaction if the Buyer commits to purchase the domain. By receiving payments through the Service, You appoint us as Your Agent to receive and deposit funds on Your behalf. You must, at the time of listing of Your domain name, establish a payee account. Payments for completed domain name sales will be credited to Your payee account. After a fraud

holding period, if no fraud has been detected, your funds will be paid according to the payment method you select in your payee account. Typically, payments are made as follows:

- Electronic (ACH) — Processed the same day as funds are released and remitted within two business days, depending on your financial institution
- PayPal® — Processed the same day funds are released and remitted within one business day
- Good As Gold — Processed the same day funds are released and remitted within one business day
- Check — Processed weekly and mailed to you within 9 business days

If you do not have a payee account, we will process payment by check by default. You will be charged a \$25.00 processing fee for all check payments. You hereby authorize us to initiate and post credit (positive) entries for payments to the payee account. You understand the amount initiated and posted to the payee account will represent payment for domain names sold using the Service, less any applicable fees and/or charge backs. You hereby authorize us to initiate and post debit (negative) entries to the payee account to reverse erroneous payments and/or make adjustments to incorrect payments. The authority granted to us by the payee account owner herein will remain in full force and effect until we have received written notification from the payee account owner that such authority has been revoked, but in any event, such writing shall be provided in such a manner as to afford us a reasonable opportunity to act on such revocation, or until we have sent notice to terminate this Agreement. In the event of a payment charge back, we will deduct the amount of the payment from Seller's payment method on file. In the event that chargeback experience is high, as determined by us, we reserve the right to hold back twenty percent (20%) of all Seller's payments for ninety (90) days from the date the payment was to be paid.

Transfer Validation. The transfer validation service is provided to help You keep Your domain name secure. By choosing to use the service, You are making an explicit and voluntary request to us to deny all attempts to transfer Your domain name to another registrar, or to move Your domain name to another account, unless You verify each request as described herein. You will provide us with a contact name, phone number

and PIN for domain transfer validations. You will be contacted by us when a domain transfer is requested for a domain name in Your account. When we receive a transfer request, we will call You to verify the transfer request. If we cannot reach You with seventy-two (72) hours of receipt of the transfer request, the transfer will be denied. If You do not provide the proper PIN, the transfer will be denied. When we receive a change of account request, we will call You to verify the change request. If we cannot reach You with seventy-two (72) hours of receipt of the change request, the change will be denied. If You do not provide the proper PIN, the change will be denied. Availability of Services are subject to the terms and conditions of this Agreement and each of our policies and procedures. We shall use commercially reasonable efforts to attempt to provide certain portions of the Services on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of this Agreement and other portions of the service, during normal business hours. You acknowledge and agree that from time to time the Services may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that we may undertake from time to time; or (iii) causes beyond the reasonable control of us or that are not reasonably foreseeable by us, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. You acknowledge and agree that we has no control over the availability of the service on a continuous or uninterrupted basis.

Total/Premium DNS. Total DNS is a complete Domain Name System (“DNS”) tool that allows you to manage your DNS and keep your website and web-based applications available and performing reliably. The service is provided “as is”, “as available”, and “with all faults”, and we assume no liability or responsibility regarding the same.

In addition, you specifically acknowledge and agree that we shall have no liability or responsibility for any:

1. Service interruptions caused by periodic maintenance, repairs or replacements of the Global Nameserver Infrastructure (defined below) that we may undertake from time to time;
2. Service interruptions caused by you from custom scripting, coding, programming or configurations;
3. Service interruptions caused by you from the installation of third-party applications;

4. Service interruptions that do not prevent visitors from accessing your website, but merely affect your ability to make changes to your website, including but not limited to, changes via mechanisms such as file transfer protocol ("FTP") and email; or
5. Service interruptions beyond the reasonable control of us or that are not reasonably foreseeable by us, including, but not limited to, power outages, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

Subject to the provisions of Force Majeure below, we offer a service uptime guarantee ("Service Uptime Guarantee") for paid services of 99.999% availability (defined below). You shall receive service credits for any Outage (defined below) of the service covered by the Service Uptime Guarantee. The service credits shall be applied as extensions to the terms of the affected Service. The Service Uptime Guarantee shall become effective fourteen (14) days after your purchase of the Service covered by the Service Uptime Guarantee to allow both parties time to properly configure and test the Service.

Definitions. For the purposes of the Service Uptime Guarantee, the following definitions shall apply:

1. "Global Nameserver Infrastructure": The group of systems (servers, hardware, and associated software) that are responsible for delivering the Services. The Global Nameserver Infrastructure does not include web-based user interfaces, zone transfer mechanisms, update systems, or other customer-accessible data access or manipulation methods.
2. "99.999% availability": A guarantee that the Global Nameserver Infrastructure shall be available to respond to DNS queries 99.999% of the time.
3. "Outage": A period in which the Global Nameserver Infrastructure did not maintain 99.999% availability.

Exclusions. For the purposes of the Service Uptime Guarantee, downtime due to the following events shall not be considered an Outage:

1. Service interruptions caused by “Regularly Scheduled Maintenance”, which shall be defined as any maintenance performed on the Global Nameserver Infrastructure of which customer is notified twenty-four (24) hours in advance. Email notice of Regularly Scheduled Maintenance shall be provided to customer’s designated email address;
2. Service interruptions caused by you from custom scripting, coding, programming or configurations;
3. Service interruptions caused by you from the installation of third-party applications;
4. Service interruptions that do not prevent visitors from accessing your website, but merely affect your ability to make changes to your website, including but not limited to, changes via mechanisms such as file transfer protocol (“FTP”) and email; or
5. Service interruptions beyond the reasonable control of us or that are not reasonably foreseeable by us, including, but not limited to, power outages, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

We, in our sole and absolute discretion, shall determine whether an event shall be considered an Outage.

Remedies. For the purposes of the Service Uptime Guarantee, when the customer becomes aware of an Outage, the customer shall open a ticket with our technical support services within five (5) calendar days of the Outage. If we determine that an Outage did occur, then the customer shall receive a service credit in the amount of two (2) months for any affected Services. The service credit shall be applied as an extension to the term of the affected Services. A customer’s Account shall not be credited more than once per month under the Service Uptime Guarantee.

To qualify for a service credit, you must have a current and valid subscription to the Services affected, and must have an Account in good standing with us. Service credits will not apply to any charges or Services other than the Services for which the Service Uptime Guarantee was not met. Customers with subscriptions for more than one

Service will not receive credits for unaffected Services. The remedies set forth herein shall be the sole and exclusive remedies if we do not meet the Service Uptime Guarantee.

In the event either party is unable to carry out its material obligations under this Agreement by reason of Force Majeure those obligations will be suspended during the continuance of the Force Majeure, provided the cause of the Force Majeure is remedied as quickly as practicable. The term "Force Majeure" means any event caused by occurrences beyond a party's reasonable control, including, but not limited to, acts of God, fire or flood, war, terrorism, governmental regulations, policies or actions enacted or taken subsequent to execution of this Agreement, or any labor, telecommunications or other utility shortage, outage or curtailment.

If your Services include Domain Name System Security Extensions ("DNSSEC"), you will be able to secure your domain names with DNSSEC. DNSSEC is designed to protect you from forged DNS data so "hackers" cannot direct visitors to your website to a forged site.

DNSSEC works by using public key cryptography. You acknowledge and agree that if the keys do not match, a visitor's lookup of your website may fail (and result in a "website not found" error) and we assume no liability or responsibility regarding the same. In addition, DNSSEC responses are authenticated, but not encrypted. You acknowledge and agree that DNSSEC does not provide confidentiality of data, and we assume no liability or responsibility regarding the same.

We prohibit the running of a public recursive DNS service on any server. All recursive DNS servers must be secured to allow only internal network access or a limited set of IP addresses. We actively scan for the presence of public recursive DNS services and reserves the right to remove any servers from the network that violate this restriction.

Privacy Protection. The privacy protection service generally allows You to: (i) replace your personal details in the WHOIS Directory with the details of Domains By Proxy; and (ii) set up a private email address for each domain name that you can forward, filter or block. The privacy protection service features are intended to: prevent domain-related spam; and protect your identity from third-parties. As set forth in Section 2(xi) of this Agreement, You acknowledge and agree that you may not be permitted to purchase private or proxy TLD registrations in certain

markets, countries and territories or for certain TLDs. For a complete list of the markets and countries where privacy protection service **is not available**, please click [here](#). Your purchase and use of Privacy Protection is subject to and governed by the terms of the [Domain Name Proxy Agreement](#).

Full Domain Privacy and Protection. The full domain privacy and protection service generally allows You to: (i) replace your personal details in the WHOIS Directory with the details of Domains By Proxy; (ii) set up a private email address for each domain name that you can forward, filter or block; (iii) prevent accidental loss of a domain name due to an expired credit card; (iv) lock your domain name in your account; (v) receive real-time online reports to track vital domain name information. The full domain privacy and protection service features are intended to: prevent domain-related spam; protect your identity from third-parties; plus add a higher level of security through 2-Step Verification to disallow most accidental or malicious domain name transfers; and provide an online business card in the WHOIS directory that is designed to increase traffic without sacrificing privacy. As set forth in Section 2(xi) of this Agreement, You acknowledge and agree that you may not be permitted to purchase private or proxy TLD registrations in certain markets, countries and territories or for certain TLDs. For a complete list of the markets and countries where privacy protection service **is not available**, please click [here](#). Your purchase and use of Full Domain Privacy and Protection is also subject to and governed by the terms of the [Domain Name Proxy Agreement](#).

Privacy and Business Protection. The privacy and business protection service includes all the features of Privacy Protection, plus the service generally allows You to: (i) prevent accidental loss of a domain name due to an expired credit card; (ii) lock your domain name in your account; (iii) receive real-time online reports to track vital domain name information; and (iv) activate TrustedSite, powered by McAfee SECURE. The privacy and business protection service features are intended to: prevent domain-related spam; protect your identity from third-parties; plus add a higher level of security through 2-Step Verification to disallow most accidental or malicious domain name transfers; provide an online business card in the WHOIS directory that is designed to increase traffic without sacrificing privacy; and provide domain name protection through TrustedSite. Your purchase and use of privacy and business protection service is also governed by terms of the [Domain Name Proxy Agreement](#).

12. PRE-REGISTRATIONS

If you submit an application for pre-registration of a domain name, Domains Priced Right does not guarantee that the name will be secured for you, or that you will have immediate access to the domain name if secured. Domains Priced Right may use third-party service providers for the pre-registration services.

13. PROVISIONS SPECIFIC TO .BIZ REGISTRATIONS

Domain Name Dispute Policy. If you reserved or registered a .BIZ domain name through us, in addition to our Dispute Resolution Policy, you hereby acknowledge that you have read and understood and agree to be bound by the terms and conditions of the [Restrictions Dispute Resolution Policy](#) applicable to the .biz TLD.

The RDRP sets forth the terms under which any allegation that a domain name is not used primarily for business or commercial purposes shall be enforced on a case-by-case basis by an independent ICANN-accredited dispute provider. Registry Operator will not review, monitor, or otherwise verify that any particular domain name is being used primarily for business or commercial purposes or that a domain name is being used in compliance with the SUDRP or UDRP processes.

One Year Registration. If you are registering a .BIZ domain name and you elect to take advantage of special pricing applicable to one-year registrations, we will automatically renew your domain name for an additional one-year period at the end of the first year term by taking payment from the Payment Method you have on file, unless you notify us that you do not wish to renew. You will be notified and given the opportunity to accept or decline the one-year renewal prior to your domain name expiration date. In the event you decide not to renew your one-year .BIZ domain name for a second year, your domain name registration will automatically revert back to us and we will gain full rights of registration to such domain name. You agree that if you delete or transfer your .BIZ domain name during the first year, you will automatically be charged the second year renewal fees.

14. PROVISIONS SPECIFIC TO .INFO REGISTRATIONS

One Year Registration. If you are registering a .INFO domain name and you elect to take advantage of special pricing applicable to one-year registrations, we will automatically renew your domain name for an additional one-year period at the end of the first year term by taking payment from the Payment Method you have on file, unless you notify us that you do not wish to renew. You will be notified and given the opportunity to accept or decline the one-year renewal prior to your domain name expiration date. In the event you decide not to renew your one-year .INFO domain name for a second year, your domain name registration will automatically revert back to us and we will gain full rights of registration to such domain name. You agree that if you delete or transfer your .INFO domain name during the first year, you will automatically be charged the second year renewal fees.

15. PROVISIONS SPECIFIC TO .MOBI REGISTRATIONS

Instant Mobilizer. You are hereby granted a personal, revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable license to use the Instant Mobilizer service ("Service"), provided, however, You abide by the terms and conditions set forth. You shall not alter, modify, adapt or translate the whole or part of the Service in any way whatsoever. You may not create derivative works based on the Service. You may not rent, lease, assign, dispose of, novate, sub-license or otherwise transfer any of its rights to use the Service to any third party. In the event that the volume of traffic to You from Your use of the Service is sufficient so as to jeopardize the provision of Service for other end users, we and our licensors reserve the right to, at its sole discretion, permanently or temporarily, discontinue Your use of the Service. For the avoidance of doubt, the volume of traffic generated by You should not exceed two thousand (2,000) page views per day. You acknowledge and agree the text "Instant Mobilizer from dotMobi" or equivalent, will be inserted at the footer of Your site. In the event a dotMobi domain to which the Service is being provided is transferred to another domain name registrar, the Service will be interrupted on that dotMobi domain, and Service will not be restored if the new registrar does not offer the Service.

16. PROVISIONS SPECIFIC TO .NAME REGISTRATIONS

Defensive Registration. A Defensive Registration is a registration designed for the protection of trademarks and service marks and may be granted to prevent a third party from registering a variation of a trademark or the exact trademark. If the name you wish to register is subject to a Defensive Registration, you have three (3) options: (i) you may register a variation of the name, (ii) you may challenge the Defensive Registration under the [Eligibility Requirements Dispute Resolution Policy](#), or (iii) you may request Consent from the Defensive Registrant. You can request Consent by contacting the Defensive Registrant listed in the GNR Whois database and requesting consent to register the .NAME domain name. If the Defensive Registrant grants consent, they must confirm in writing that they grant consent. If the Defensive Registrant does not grant consent, you may wish to challenge the Defensive Registration under the ERDRP.

Acceptable Use Policy. You agree to be bound by the [.NAME Acceptable Use Policy](#), which is hereby incorporated by reference. Among other limitations, this policy prohibits you from using your .NAME Email to engage in Spamming activities. You will be limited to a maximum of five hundred (500) messages sent from your .NAME at a time.

17. PROVISIONS SPECIFIC TO .REISE REGISTRATIONS

Domain Names registered in .REISE should be used for purposes dedicated to travel topics within six months following initial Registration, e.g. utilized on the Internet or otherwise used to perform a function.

18. PROVISIONS SPECIFIC TO .SEXY REGISTRATIONS

You shall not permit content unsuitable for viewing by a minor to be viewed from the main or top-level directory of a .SEXY domain name. For purposes of clarity, content viewed at the main or top-level directory of a .SEXY domain name is the content

immediately visible if a user navigates to <http://example.sexy> or <http://www.example.sexy>. No restrictions apply to the content at any other page or subdirectory addressed by a .SEXY Registered Name.

19. COUNTRY CODE TOP LEVEL DOMAINS

You represent and warrant that you meet the eligibility requirements of each ccTLD you apply for. You further agree to be bound by any registry rules, policies, and agreements for that particular ccTLD. These may include, but are not limited to, agreeing to indemnify the ccTLD provider, limiting the liability of the ccTLD provider, and requirements that any disputes be resolved under that particular country's laws.

(A) PROVISIONS SPECIFIC TO .AU REGISTRATIONS

.au Registrations (to include com.au, net.au and org.au) are governed by the following additional terms and conditions:

auDA. auDA means .au Domain Administration Limited ACN 079 009 340, the .au domain names administrator. The Registrar acts as agent for auDA for the sole purpose, but only to the extent necessary, to enable auDA to receive the benefit of rights and covenants conferred to it under this Agreement. auDA is an intended third party beneficiary of this agreement.

auDA Published Policy. auDA Published Policies means those specifications and policies established and published by auDA from time to time at <https://www.ada.org.au>. You must comply with all auDA Published Policies, as if they were incorporated into, and form part of, this Agreement. In the event of any inconsistency between any auDA Published Policy and this Agreement, then the auDA Published Policy will prevail to the extent of such inconsistency. You acknowledge that under the auDA Published Policies: (1) there are mandatory terms and conditions that apply to all domain names; (2) licences, and such terms and conditions are incorporated into, and form part of, this Agreement; (3) You are bound by, and must submit to, the .au Dispute Resolution Policy; and (4) auDA may delete or cancel the registration of a .au

domain name.

auDA's Liabilities and Indemnity. To the fullest extent permitted by law, auDA will not be liable to Registrant for any direct, indirect, consequential, special, punitive or exemplary losses or damages of any kind (including, without limitation, loss of use, loss or profit, loss or corruption of data, business interruption or indirect costs) suffered by Registrant arising from, as a result of, or otherwise in connection with, any act or omission whatsoever of auDA, its employees, agents or contractors. Registrant agrees to indemnify, keep indemnified and hold auDA, its employees, agents and contractors harmless from all and any claims or liabilities, arising from, as a result of, or otherwise in connection with, Registrant's registration or use of its .au domain name. Nothing in this document is intended to exclude the operation of Trade Practices Act 1974.

(B) PROVISIONS SPECIFIC TO .CA REGISTRATIONS

You acknowledge and agree that registration of your selected domain name in your first application to CIRA shall not be effective until you have entered into and agreed to be bound by CIRA's Registrant Agreement.

CIRA Certified Registrar. The registrar shall immediately give notice to you in the event that it is no longer a CIRA Certified Registrar, has had its certification as a CIRA Certified Registrar suspended or terminated, or the Registrar Agreement between CIRA and the Registrar is terminated or expires. CIRA may post notice of such suspension, termination, or expiry on its website and may, if CIRA deems appropriate, give notice to the registrants thereof. In the event that the registrar is no longer a CIRA Certified Registrar, has had its certification as a CIRA Certified Registrar suspended or terminated or in the event the Registrar Agreement between CIRA and the Registrar is terminated or expires, you shall be responsible for changing your Registrar of Record to a new CIRA Certified Registrar within thirty (30) days of the earlier of notice thereof being given to you by (i) the Registrar or (ii) CIRA in accordance with CIRA's then current Registry PRP; provided, however, that if any of your domain name registrations are scheduled to expire within thirty (30) days of the giving of such notice, then you shall have thirty (30) days from the anniversary date of the registration(s), to register with a new CIRA certified registrar and to renew such domain name registration(s) in accordance with the Registry PRP.

You acknowledge and agree that should there be insufficient funds prepaid by the registrar in the CIRA Deposit Account to be applied in payment of any fees, CIRA may in its sole discretion stop accepting applications for domain name registrations from the registrar, stop effecting registrations of domain names and transfers, renewals, modifications, and cancellations requested by the registrar and stop performing other billable transactions requested by the registrar not paid in full and CIRA may terminate the Registrar Agreement between CIRA and the Registrar.

.CA ASCII and IDN domain variants are bundled and reserved for a single registrant. Registrants are not required to register all variants in a bundle, but all registered variants must be registered and managed at a single registrar. Each variant registered will incur a registration fee. In addition, when registering multiple .CA domain (ASCII and IDN) variants in a bundle, your registrant information **must be identical**. If variants are registered at other registrars or if registrant information does not match, it may result in an "unavailable" search result, delayed or failed registration. If information does not match, validation is required and may take up to seven business days and delay availability of domain.

(C) PROVISIONS SPECIFIC TO .CN REGISTRATIONS

.CN is a restricted TLD – applications are subject to both a domain name check **and** real name verification as required by the People's Republic of China. Registrations in .CN are therefore subject to the following additional terms:

Verification, Registration and Activation. If a domain name is not permitted to be registered by the Chinese government, as determined by us, the Registry Operator and/or a 3rd party provider utilized for such services and determinations, in either party's discretion, the application for registration will not be successful. In such event, the name will be deleted and you will be eligible for a refund as further described below.

If permitted, then the Registration may proceed, but a .CN domain name may not be activated (i.e., it will not resolve in the Internet) *unless and until* you have submitted (via the process described during registration) valid documents required of us and the Registry to perform real name verification. The following are acceptable forms of documents for the purpose of verification:

- China: Resident ID, temporary resident ID, business license or organization code certificate
- Hong Kong/Macau: Resident ID, driver's license, passport or business license
- Singapore: Driver's license, passport or business license
- Taiwan: Resident ID, driver's license or business license
- Other Countries/Regions: Driver's license or passport

Documents submitted to us are used by us and shared with the Registry solely for the purpose of real name verification, and are otherwise subject to our [Privacy Policy](#). By registering a .CN domain, you expressly agree that your data may be stored on servers in the U.S., or otherwise outside of the People's Republic of China.

Refunds. Refunds for .CN Registrations will only be allowed where (i) registration of the applied for domain name is not permitted by the Chinese government; or (ii) you notify us of your intent to cancel for any reason within the first five (5) days after the Registration (i.e., after it is deemed permissible by the Chinese government). For the avoidance of doubt, refunds will not be permitted under any circumstances after five (5) days from the date of Registration, including, for example, in the event real name verification is not successful or if the Chinese government determines after Registration that the domain name should not have been registered (and directs us to delete).

(D) PROVISIONS SPECIFIC TO .JP REGISTRATIONS

Registration Restrictions. You represent and warrant that you have a local presence in Japan with a home or office address. You agree that certain domain names are reserved and can only be registered by certain parties. These include: (i) TLDs, other than ccTLDs, as determined by ICANN; (ii) geographical-type .JP domain names that are defined as metropolitan, prefectural, and municipal labels; (iii) names of primary and

secondary educational organizations; (iv) names of organizations related to Internet management; (v) names required for .JP domain name operations; and (vi) character strings which may be confused with ASCII-converted Japanese domain names. The complete list of .JP Reserved Domains is available [here](#).

20. ENGLISH LANGUAGE CONTROLS

This Agreement, along with all policies and the applicable product agreements identified above and incorporated herein by reference (collectively, the “Agreement”), is executed in the English language. To the extent any translation is provided to you, it is provided for convenience purposes only, and in the event of any conflict between the English and translated version, where permitted by law, the English version will control and prevail. Where the translated version is required to be provided to you and is to be considered binding by law (i) both language versions shall have equal validity, (ii) each party acknowledges that it has reviewed both language versions and that they are substantially the same in all material respects, and (iii) in the event of any discrepancy between these two versions, the translated version may prevail, provided that the intent of the Parties has been fully taken into consideration.

Revised: 12/18/2018

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[Legal](#)

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Uniform Domain Name (Domain Name) Dispute Resolution Policy

This page is available in:

English |

العربية (<http://www.icann.org/resources/pages/policy-2012-02-25-ar>) |

Deutsch (<http://www.icann.org/resources/pages/policy-2012-02-25-de>) |

Español (<http://www.icann.org/resources/pages/policy-2012-02-25-es>) |

Français (<http://www.icann.org/resources/pages/policy-2012-02-25-fr>) |

Italiano (<http://www.icann.org/resources/pages/policy-2012-02-25-it>) |

日本語 (<http://www.icann.org/resources/pages/policy-2012-02-25-ja>) |

한국어 (<http://www.icann.org/resources/pages/policy-2012-02-25-ko>) |

Português (<http://www.icann.org/resources/pages/policy-2012-02-25-pt>) |

Русский (<http://www.icann.org/resources/pages/policy-2012-02-25-ru>) |

中文 (<http://www.icann.org/resources/pages/policy-2012-02-25-zh>)

Policy Adopted: August 26, 1999

Implementation Documents Approved: October 24, 1999

Notes:

- 1. This policy is now in effect. See www.icann.org/udrp/udrp-schedule.htm ([/udrp/udrp-schedule.htm](http://www.icann.org/udrp/udrp-schedule.htm)) for the implementation schedule.**
- 2. This policy has been adopted by all ICANN (Internet Corporation for Assigned Names and Numbers)-accredited registrars. It has also been adopted by certain managers of country-code top-level domains (e.g., .nu, .tv, .ws).**

3. The policy is between the registrar (or other registration authority in the case of a country-code top-level domain) and its customer (the domain-name holder or registrant). Thus, the policy uses "we" and "our" to refer to the registrar and it uses "you" and "your" to refer to the domain-name holder.

Uniform Domain Name (Domain Name) Dispute Resolution Policy

(As Approved by ICANN (Internet Corporation for Assigned Names and Numbers) on October 24, 1999)

1. Purpose. This Uniform Domain Name (Domain Name) Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN (Internet Corporation for Assigned Names and Numbers)"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name (Domain Name) Dispute Resolution Policy (the "Rules of Procedure"), which are available at <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en> (/resources/pages/udrp-rules-2015-03-11-en), and the selected administrative-dispute-resolution service provider's supplemental rules.

2. Your Representations. By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. Cancellations, Transfers, and Changes. We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN (Internet Corporation for Assigned Names and Numbers). (See Paragraph 4(i) and (k) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. Mandatory Administrative Proceeding.

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at www.icann.org/en/dndr/udrp/approved-providers.htm ([/en/dndr/udrp/approved-providers.htm](http://en/dndr/udrp/approved-providers.htm)) (each, a "Provider").

- a. Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

b. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name (Domain Name) in

Responding to a Complaint. When you receive a complaint, you should refer to [Paragraph 5 \(/resources/pages/udrp-rules-2015-03-11-en#5\)](#) of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of [Paragraph 4\(a\)\(ii\)](#):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

d. Selection of Provider. The complainant shall select the Provider from among those approved by [ICANN \(Internet](#)

Corporation for Assigned Names and Numbers) by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in [Paragraph 4\(f\)](#).

e. Initiation of Proceeding and Process and

Appointment of Administrative Panel. The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

f. Consolidation. In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN (Internet Corporation for Assigned Names and Numbers).

g. Fees. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in [Paragraph 5\(b\)\(iv\) \(/resources/pages/udrp-rules-2015-03-11-en#5biv\)](#) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.

h. Our Involvement in Administrative Proceedings. We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

i. Remedies. The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain

name or the transfer of your domain name registration to the complainant.

j. Notification and Publication. The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in [Paragraph 4](#) shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under [Paragraph 3\(b\)\(xiii\) \(/resources/pages/udrp-rules-2015-03-11-en#3bxiii\)](#) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See [Paragraphs 1 \(/resources/pages/udrp-rules-2015-03-11-en#1mutualjurisdiction\)](#) and [3\(b\)\(xiii\) \(/resources/pages/udrp-rules-2015-03-11-en#3bxiii\)](#) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii)

evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

5. All Other Disputes and Litigation. All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6. Our Involvement in Disputes. We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7. Maintaining the Status Quo. We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. Transfers During a Dispute.

a. Transfers of a Domain Name (Domain Name) to a New Holder. You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name

registration to another holder that is made in violation of this subparagraph.

b. Changing Registrars. You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to [Paragraph 4](#) or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9. Policy Modifications. We reserve the right to modify this Policy at any time with the permission of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#). We will post our revised Policy at [<URL \(Uniform Resource Locator\)>](#) at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration

United States of America

United States Patent and Trademark Office

CONCIERGE AUCTIONS

Reg. No. 5,684,443

Registered Feb. 26, 2019

Int. Cl.: 35

Service Mark

Principal Register

Concierge Auctions LLC (FLORIDA LIMITED LIABILITY COMPANY)
405 Lexington Avenue, 26th Floor
New York, NEW YORK 10174

CLASS 35: On-line auction services; arranging and conducting auctions; auction advertising and marketing services; real estate auctions; arranging and conducting real estate auctions; real estate auction advertising and marketing

FIRST USE 4-30-2008; IN COMMERCE 4-30-2008

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown:
"AUCTIONS"

SER. NO. 88-002,652, FILED 06-15-2018



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

Concierge Auctions Lawsuits



This website was developed to apprise luxury real estate buyers and sellers about our ongoing dispute with Concierge Auctions ("Concierge"), its Chairman Chad Roffers, Boston National Title Agency ("BNTA"), and Concierge's lead counsel, Robert S. Wolf. It also highlights a history of legal entanglements of many of these same parties.

In June 2017, Howard Appel and David Cohen (the "Plaintiffs") were the successful high bidders in a no reserve real estate auction conducted by Concierge. After the auction was concluded, Concierge instructed the Plaintiffs to execute the Purchase and Sale Agreement and deposit the required funds with Concierge's exclusive agent, BNTA.

Subsequently, Concierge's legal counsel told the Plaintiffs that the sellers were refusing to sign the Purchase and Sale Agreement. Concierge provided Plaintiffs with copies of electronic messages dated days prior to the auction between Concierge and the sellers reflecting the seller's hesitation to proceed with the auction. Nevertheless, Concierge went ahead with the auction and the Plaintiffs were the high bidder.

The Plaintiffs demanded the return of their deposit but both Concierge and Boston National ignored their demands and refused to return their deposit despite the fact that the Plaintiffs fully complied with the terms of their agreement with Concierge. Fast forward a year and hundreds of thousands of dollars in legal fees later, the Plaintiffs, Concierge and BNTA remain mired in contentious litigation.













The Plaintiffs alleged in their complaint that 1) Concierge had reason to believe the sellers were reluctant to sell the property at that auction, 2) Concierge concealed this from the Plaintiffs and conducted the auction, and 3) Concierge and BNTA accepted the Plaintiffs deposit. These facts are indisputable.

After the Plaintiffs filed their complaint in US Federal Court, they became aware of additional facts and circumstances related to Concierge's business practices that have raised added concerns that can only be vetted through full and complete discovery. The Plaintiffs fully intend on seeing this through and will update this website as these cases evolve.

All documents contained on this website are available in the public domain.



Legal Documents

-  [Appel and Cohen v Concierge Auctions Complaint](#)
-  [Appel and Cohen v. Concierge Amended Complaint](#)
-  [Appel and Cohen v Boston Nation Title Agency Complaint](#)
-  [Appel v Robert S Wolf Complaint](#)
-  [Declaration of Former Concierge Auctions Employee](#)
-  [United States District Court Order](#)
-  [K&D Construction v Concierge Auctions](#)
-  [Kimberley Granger v Concierge Auctions](#)
-  [Joanne Brown v Concierge Auctions and Chad Roffers](#)
-  [Matsuri Foundation of Canada v Concierge Auctions](#)
-  [Rodger May v Concierge Auctions](#)
-  [United States Bankruptcy Court, Northern District of Illinois, Chad Roffers, various filings](#)



Concierge News

[Concierge Auctions Was Being Sued When It Took on Michael Jordan's House](#)

[Bidder cries foul on \\$19M estate deal](#)

[Concierge Auctions accused of fraud, as court battle between rival housing auction firms heats up](#)

[4 K & D CORP. v. CONCIERGE AUCTIONS, LLC](#)

[Principals of Concierge Auctions Remain Mired in RICO Lawsuit](#)

[Civil Racketeering Allegations Against Concierge Auctions LLC Are Amplified in Latest Filing](#)

[Court Rules on Auction House's Civil RICO Claim](#)

[African-American real estate agent alleges discriminatory treatment from Concierge Auctions](#)

[ONTARIO COURT OF APPEAL SUMMARIES \(NOVEMBER 20 – NOVEMBER, 24 2017\)](#)

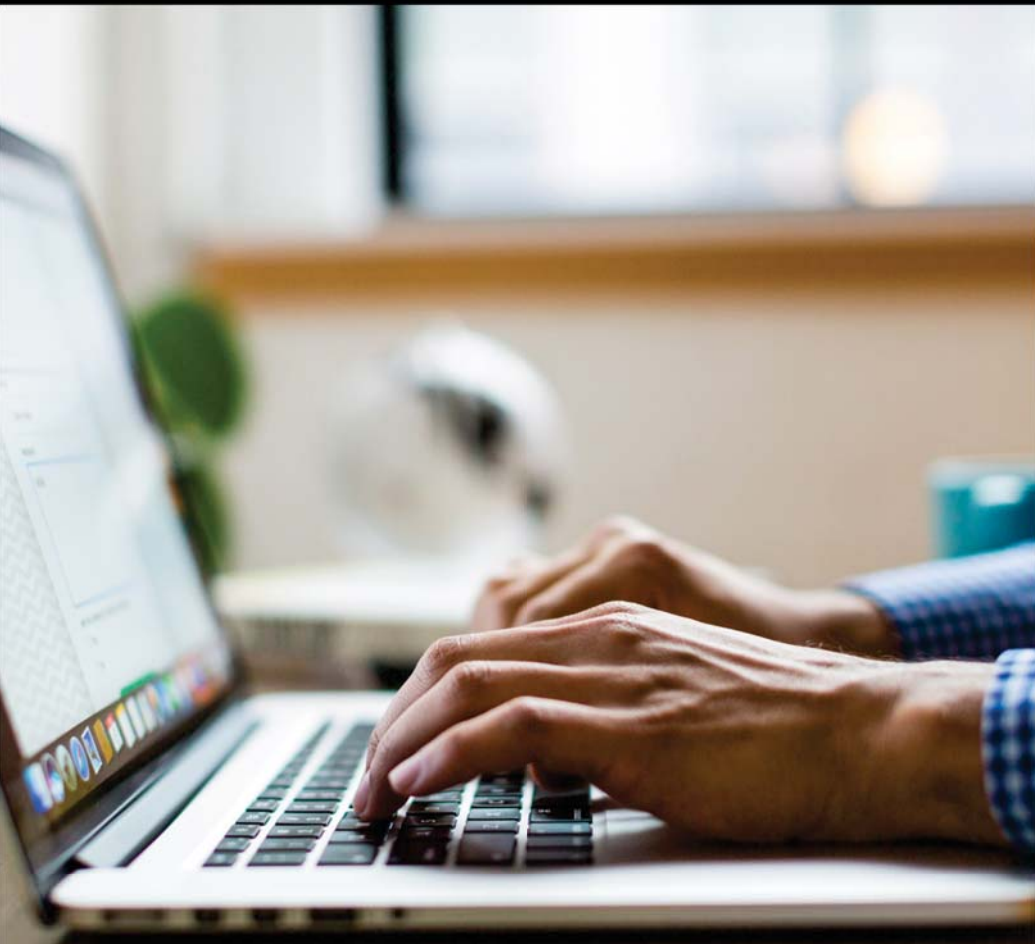
[Suzanne Somers cancels auction of Palm Springs home](#)

[Chad Roffers files for bankruptcy protection](#)

[Real Estate And Entrepreneurial Heavyweight, Barbara Corcoran, Takes Stake In Concierge Auctions As Strategic Advisor](#)

[Concierge Connect // Episode 11 // 05.06.14](#)

[Concierge Auctions accused of fraud, as court battle between rival housing auction firms heats up](#)



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CONCIERGE AUCTION SCAMS

THE TRUTH ABOUT CONCIERGE AUCTIONS

INFORM



WSJ “Luxury Real-Estate Firm Concierge Auctions Fights Allegations of Fraudulent Bids”

Story Highlights:

- “In an audio recording anonymously sent to The Wall Street Journal, Mr. Kivo is heard speaking to Jacqueline Moldawer, a former Concierge employee. “There are some cases where like a seller feels like... five bidders is going to be, like, for whatever reason, the magic number to get the house sold, even though we know we’ve got two or three people that are end users and love the house and are going to bid aggressively,” Ms. Moldawer said in the recording. “If we have to shove a f--- registration in there (just like a f--- peice of paper), the so be it... it gives our sellers peace of mind because it’s a business they don’t understand.”
- Five those [ten] suits accused Concierge of using some form of dummy or fake bidder, either to artificially drive up the price of homes, or make it appear to sellers that there was more interest in their homes than there was in reality.”
- “People are getting hurt,’ said Howard Appel, who with another real-estate investor sued Concierge in 2017 in a federal court in California alleging the company improperly kept their \$285,000 deposit after the seller reneged on selling a Fiji home they won at auction. They accused Concierge of using phony bidders to drive up the price of the home.”
- “Five of the 10 lawsuits filed against Concierge since the start of 2014 alleged that Concierge either failed to disclose registered bidders who had proffered lowball bids, or used some kind of phony or shill bidder to lure clients to entrust their properties to the firm’s auction process.”
- “Seattle businessman Rodger May sued Concierge in 2015, alleging that the company recruited him to act as a stalking-horse bidder in an auction for former Lehman Brothers CEO Dick Fuld’s Sun Valley, Idaho, estate. Having done business with Concierge in the past, Mr. May said Concierge offered him a \$450,000 breakup fee for his bid, meaning he would receive a payment in return for his bid when the property went to another buyer...”
- “Concierge has also attracted something else: litigation. The New York and Austin-based firm was named as a defendant in 10 lawsuits filed by clients since the start of 2014, according to a search of Courthouse News, a nationwide news service for lawyers and the media.”

Concierge Auctions, LLC – which advertises “WE ARE REAL ESTATE” and “THE SMART CHOICE” – Auctioned off a Property to Unsuspecting Bidders Despite the Property Owner’s Pre-Auction Notification to Concierge That They Would Not Sell.

In June of 2017, Luxury home buyers / real estate investors Howard Appel and David Cohen (the “Buyers”) participated in a “no reserve auction” conducted by Concierge Auctions, LLC (“Concierge”) for a multi-million residential property located on the island of Fiji. Concierge told the Buyers that the property, once listed for sale at close to \$20 million, would sell at a substantial discount. And in fact, Concierge was correct. Upon conclusion of the action, Concierge told the Buyers that their bid of \$2,375,000.00 was the winning bid. Concierge then instructed the Buyers to wire funds as an earnest money deposit to Concierge’s escrow services agent, Boston National Title Agency, LLC (“Boston National), which they did. Additionally, Concierge provided the Buyers with a Purchase and Sale Agreement (the “PSA”) and instructed them to execute it immediately, which they did. The sellers refused to sell the property to the Buyers. The Buyers later learned that:

- The owners did not sign the PSA in advance of the auction; a requirement in their written agreement with Concierge.
- The owners informed Concierge days before the auction that the auction should be canceled because they were no longer willing to sell the property.

Concierge KNEW the sellers did not execute PSA in advance, which is a requirement of its own agreement, and KNEW the sellers had no intention of selling the property to the winning bidder of the auction, Nevertheless Concierge refused to return the cash deposit to the Buyers. As a result, the Buyers were no option but to file multiple Federal Lawsuits in the Southern District of California against Concierge (**Case No.: 17-cv-02263-BAS-MDD**), its exclusive escrow services agent Boston National (**Case No.: 18-cv-00873-DMS-BGS**), and even Concierge’s longtime lawyer (by Appel only – **Case No. 18-cv-0814-L-BGS**), concerning the following *alleged* unlawful conduct:

- Federal Lawsuit vs. Concierge (and certain of its agents, employees), **Case No.: 17-cv-02263-BAS-MDD**, alleging Concierge et. al., (1) induced them into signing illegal, unconscionable, void, and unenforceable provisions in the parties’ agreements; (2) fraudulently solicited and induced them into negotiating (bidding for) the purchase of a multi-million dollar residential property; (3) fraudulently used shill bidders to induce them into increasing their bid (the property’s purchase price) at that auction; (4) fraudulently misrepresented that they had “won” the auction despite actual pre-auction knowledge of the property seller’s refusal to sell the property; and (5) thereafter induced the execution of an invalid sales agreement and wire payment of a \$285,000 earnest deposit into a Boston National Title Agency, LLC escrow account, which Concierge failed and refused to return.
- Federal Lawsuit vs. Boston National, **Case No.: 18-cv-00873-DMS-BGS**, alleging Boston National failed to follow valid instructions to return their funds deposited in escrow despite actual knowledge, as early as September 28, 2017, that the underlying real estate transaction had failed and, therefore, could never “close”; (2) refused to provide an accounting of the escrow funds; (3) claimed inexplicably, eleven months after accepting the escrow funds, that it was “not the agent that will be handling the closing of the [non-existent] transaction”; and (4) blatantly misrepresented that Messrs. Appel and Cohen had previously instructed it to retain their escrow funds despite multiple written demands/escrow instructions to the contrary.
- Federal Lawsuit vs. Concierge’s attorney Robert Wolf, **Case No. 18-cv-0814-L-BGS**, alleging he gratuitously defamed Howard Appel (and others) in writing, in after and in response to Messrs. Appel and Cohen’s lawsuit against Concierge, through the following statement: “By the way, I know Howard Appel from when I used to head the litigation side at Gersten Savage, more than 10 years ago. Howard had legal issues (securities fraud) along with Montrose Capital and Jonathan Winston who were also clients at the time. Please send him my regards.” **Of course, the Howard Appel in this matter is not the individual whom Wolf claims to have represented previously (same name different person), and the foregoing statement was obviously made with malice to embarrass/pressure Appel and/or to cause doubt about Appel’s honesty and veracity in the minds of the recipients.** Further, the statement about criminal activity, since it was untrue as to the Howard Appel in these lawsuits, appears to have constituted a gross breach of client confidence and privilege as to some other individual of the same name whom together with “Montrose Capital and Jonathan Winston” Wolf represented at Gersten Savage.

While there are numerous lawsuits against Concierge in the public record which are identified here, including a bankruptcy petition (by its Chairman Chad Roffers) and a declaration by a former employee related to Concierge’s alleged unlawful business practices, most appear to fail after Concierge demands arbitration, thereby removing them from the public record, making them difficult to follow, surely by design. In contrast, this website is intended to keep consumers informed of the current disputes identified above, to shine light on other disputes by sellers, bidders and former employees against Concierge, and to identify its intricate web of ownership as well as its litigation tactics so that anyone who is even considering doing business with Concierge can make an informed decision about doing so.

A sampling of other cases:

- In **May v. Fuld et al, U.S. Dist. Ct. S.D. Idaho 2015, Case No. 1:15-CV-00570**, a Seattle businessman, Rodger May, alleged that Concierge misrepresented the value of opening bids in an auction to induce him to place a \$19,000,000 opening bid on a property. May further alleged that Concierge asked him to place a “shill bid” to set a floor price at the auction, promised to pay him \$450,000 when a higher bidder won the property, induced him to make a \$500,000.00 deposit, and thereafter refused to release that deposit, claiming that it was an earned commission.
- In **4 K & D Corp. v. Concierge Auctions, LLC, (2014) 2 F.Supp.3d 525**, a fellow real estate auctioneer, 4 K & D Corporation (“4 K & D”), alleged that Concierge misrepresented, among other things, the existence of genuine bidders for a property to convince the seller of a property to hold an auction that otherwise would not have occurred. It further alleged that Concierge used shill bidders during auctions violating auction rules and auction laws in many jurisdictions.
- In **Matsuri Foundation of Canada v. Concierge Auctions, ULC, (2017) No. S-178625** (Vancouver B.C., Canada), the Matsuri Foundation of Canada filed suit against Concierge in Vancouver, B.C., on September 14, 2017, alleging that Concierge used shill bidders and misrepresented that Matsuri’s property was available for significantly less than fair market value.
- In **Concierge v. Bloeser, (N.Y. Sup. Ct. 2011), (no. 108121-2011)**, sellers alleged that Concierge attempted to collect a Buyer’s Premium even when there were no bidders at auction, and the defendants separately sold their property at a reduced price several months later
- In **Granger v. Crews, D-1-GN-14-000724 (Travis County Dist. Ct. 2014)** the seller alleged that Concierge attempted to auction her property without reserve, directly contradicting her negotiated terms.
- In **Concierge v. Kivo, D-1-GN-17-001272 (Dist. Ct. Travis Cnty. March 23, 2017)** Concierge filed a lawsuit against its former Director of Video Production, Lawrence “Frank” Kivo in an alleged effort to intimidate and silence him in response to his accusations regarding Concierge’s business practices. In responding, Kivo filed a declaration under penalty of perjury that detailed instances when he, personally, witnessed Concierge’s agents, employees and principals artificially inflate the purchase price of properties during Concierge Auctions. Per his declaration, after he questioned Chad Roffers about the fraudulent practices that he witnessed, Concierge retaliated by, inter alia, changing his employment responsibilities and status, and attacking his personal and professional reputation in the Austin Case.
- In **Robert Troop, et al. v. Concierge Auctions, LLC, et al., Case No. 2011-2018-CV-00174 (Superior Court New Hampshire 2018)**, husband and wife, Rodger and Cynthia Troop, alleged that Concierge misrepresented its ability to sell their property at auction “without reserve” for their desired \$6,000,000.00 asking price, misrepresented the number of qualified bidders interested in their property, and misrepresented the opening bid amount for their auction. The Troops further allege that Concierge auctioned off their property with an appraised value of \$5,700,000.00 for \$2,860,000.00.

Corporate Structure:

- According to recent public filings, Concierge Auctions, LLC is a Delaware limited liability corporation, with its principal place of business in San Antonio, Texas. Its members are Brady Hogan Investments, LLC, a Florida limited liability company whose sole member is Laura Brady, who is a citizen of the State of Texas; Segue LLC, a Colorado limited liability company whose sole member is Michael Russo, who is a citizen of the Commonwealth of Massachusetts; and CA Partners LLC, a Colorado limited liability company whose members are Chad Roffers and Bradlee Roffers, who are citizens of the State of Texas.
- Concierge’s website claims **BARBARA CORCORAN, a successful entrepreneur and star as one of the “Sharks” on ABC’s hit TV show, Shark Tank, is an Advisor to the company.**

Check back often to stay informed!

CONCIERGE AUCTION IN THE NEWS



CURRENT LAWSUIT DOCUMENTS



ADDITIONAL DISPUTES



CHAD ROFFERS PERSONAL BANKRUPTCY DOCUMENTS



Home

Case No.: 18-cv-00873-DMS-BGS

Case No. 18-cv-0814-L-BGS

Case No.: 17-cv-02263-BAS-MDD

Resources

Contact

First Name

Last Name

Phone #

E-Mail

SUBMIT

EXHIBIT H

TABLE H-1: ANALYSIS OF TEXT ON CONCIERGEAUCTIONS.COM WEBSITE

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	[Wall Street Journal] Story Highlights:	Highly selective, redundant, poorly-transcribed excerpts from a Wall Street Journal article.	
1.	<ul style="list-style-type: none"> “In an audio recording anonymously sent to The Wall Street Journal, Mr. Kivo is heard speaking to Jacqueline Moldawer, a former Concierge employee. “There are some cases where like a seller feels like... five bidders is going to be, like, for whatever reason, the magic number to get the house sold, even though we know we’ve got two or three people that are end users and love the house and are going to bid aggressively,” Ms. Moldawer said in the recording. “If we have to shove a f— registration in there (just like a f— peice of paper), the so be it... it gives our sellers peace of mind because it’s a business they don’t understand.” 	These are hearsay allegations by a disgruntled former employee. Concierge Auctions vigorously denies these assertions.	NO THESE ARE UNPROVEN ALLEGATIONS.
2.	<ul style="list-style-type: none"> Five those [ten] suits accused Concierge of using some form of dummy or fake bidder, either to artificially drive up the price of homes, or make it appear to sellers that there was more interest in their homes than there was in reality.” 	Most of these cases have been closed. In each instance, the case was either dismissed by the court, abandoned, or settled with a payment to Concierge Auctions. The substance of this statement is recited twice more, i.e., in 3 out of 6 bullet points.	NO THESE ARE UNPROVEN ALLEGATIONS
3.	<ul style="list-style-type: none"> “People are getting hurt,’ said Howard Appel, who with another real-estate investor sued Concierge in 2017 in a federal court in 	These are unsupported allegations made in a pending litigation brought by Mr. Appel.	NO

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	California alleging the company improperly kept their \$285,000 deposit after the seller reneged on selling a Fiji home they won at auction. They accused Concierge of using phony bidders to drive up the price of the home."	Concierge Auctions vigorously denies these allegations.	THESE ARE UNPROVEN ALLEGATIONS IN A PENDING LITIGATION.
4.	<ul style="list-style-type: none"> "Five of the 10 lawsuits filed against Concierge since the start of 2014 alleged that Concierge either failed to disclose registered bidders who had proffered lowball bids, or used some kind of phony or shill bidder to lure clients to entrust their properties to the firm's auction process." 	This merely repeats the substance of the second quote above.	NO REDUNDANT AND MISLEADING. REPEATS THE SUBSTANCE OF #2.
5.	<ul style="list-style-type: none"> "Seattle businessman Rodger May sued Concierge in 2015, alleging that the company recruited him to act as a stalking-horse bidder in an auction for former Lehman Brothers CEO Dick Fuld's Sun Valley, Idaho, estate. Having done business with Concierge in the past, Mr. May said Concierge offered him a \$450,000 breakup fee for his bid, meaning he would receive a payment in return for his bid when the property went to another buyer..." 	These were unproven allegations in the Complaint filed in a lawsuit. That lawsuit has now been terminated on terms favorable to Concierge Auctions. As such, these have no factual merit.	NO THESE ARE UNPROVEN ALLEGATIONS. THE CASE SETTLED, WITH THE PLAINTIFF PAYING CONCIERGE \$700,000
6.	<ul style="list-style-type: none"> "Concierge has also attracted something else: litigation. The New York and Austin-based firm was named as a defendant in 10 lawsuits filed by clients since the start of 2014, according to a search of Courthouse News, a nationwide news service for lawyers and the media." 	This merely repeats the substance of the second quote above.	NO REDUNDANT AND MISLEADING. REPEATS THE SUBSTANCE OF ROW 2.

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	<p>Concierge Auctions, LLC – which advertises “WE ARE REAL ESTATE” and “THE SMART CHOICE” – Auctioned off a Property to Unsuspecting Bidders Despite the Property Owner’s Pre-Auction Notification to Concierge That They Would Not Sell.</p>	<p>These are unproven and unsupported allegations. Concierge vigorously denies these allegations.</p>	<p>NO THESE ARE UNPROVEN ALLEGATIONS.</p>
7.	<p>In June of 2017, Luxury home buyers / real estate investors Howard Appel and David Cohen (the “Buyers”) participated in a “no reserve auction” conducted by Concierge Auctions, LLC (“Concierge”) for a multi-million residential property located on the island of Fiji. Concierge told the Buyers that the property, once listed for sale at close to \$20 million, would sell at a substantial discount. And in fact, Concierge was correct. Upon conclusion of the action, Concierge told the Buyers that their bid of \$2,375,000.00 was the winning bid. Concierge then instructed the Buyers to wire funds as an earnest money deposit to Concierge’s escrow services agent, Boston National Title Agency, LLC (“Boston National), <u>which they did</u>. Additionally, Concierge provided the Buyers with a Purchase and Sale Agreement (the “PSA”) and instructed them to execute it immediately, <u>which they did</u>. The sellers refused to sell the property to the Buyers. The Buyers later learned that:</p>	<p>These are unproven and unsupported allegations. Although there is a grain of truth in this narrative, Concierge vigorously denies these allegations as stated.</p>	<p>NO THESE ARE UNPROVEN ALLEGATIONS.</p>

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF “SCAMS”?
8.	<ul style="list-style-type: none"> The owners did not sign the PSA in advance of the auction; a requirement in their written agreement with Concierge. 	Unproven allegation made in a pending litigation brought by the party we believe created this website. Concierge Auctions vigorously denies this allegation.	NO; UNPROVEN ALLEGATION.
9.	<ul style="list-style-type: none"> The owners informed Concierge days before the auction that the auction should be canceled because they were no longer willing to sell the property. 	Unproven allegation made in a pending litigation brought by the party we believe created this website. Concierge Auctions vigorously denies this allegation.	NO; UNPROVEN ALLEGATION.
10.	<p>Concierge KNEW the sellers did not execute PSA in advance, which is a requirement of its own agreement, and KNEW the sellers had no intention of selling the property to the winning bidder of the auction, Nevertheless Concierge refused to return the cash deposit to the Buyers. As a result, the Buyers were no option but to file multiple Federal Lawsuits in the Southern District of California against Concierge (Case No.: 17-cv-02263-BAS-MDD), its exclusive escrow services agent Boston National (Case No.: 18-cv-00873-DMS-BGS), and even Concierge’s longtime lawyer (by Appel only – Case No. 18-cv-0814-L-BGS), concerning the following <i>alleged</i> unlawful conduct:</p>	<p>Unproven allegations made in a pending litigation brought by the party we believe created this website. Concierge Auctions vigorously denies these allegations.</p> <p>It is absurd to say that Appel and Cohen were left with “no option but to file multiple Federal Lawsuits.”</p>	NO; UNPROVEN ALLEGATIONS.
11.	<ul style="list-style-type: none"> Federal Lawsuit vs. Concierge (and certain of its agents, employees), Case No.: 17-cv-02263-BAS-MDD, alleging Concierge et. al., (1) induced them into signing illegal, unconscionable, void, and unenforceable provisions in the parties’ agreements; (2) fraudulently solicited and induced them into negotiating (bidding for) the 	Unproven allegations made in a pending litigation brought by Mr. Appel. Concierge Auctions vigorously denies these allegations.	NO; UNPROVEN ALLEGATIONS.

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	<p>purchase of a multi-million dollar residential property; (3) fraudulently used shill bidders to induce them into increasing their bid (the property's purchase price) at that auction; (4) fraudulently misrepresented that they had "won" the auction <u>despite actual pre-auction knowledge of the property seller's refusal to sell the property</u>; and (5) thereafter induced the execution of an invalid sales agreement and wire payment of a \$285,000 earnest deposit into a Boston National Title Agency, LLC escrow account, which Concierge failed and refused to return.</p>		
12.	<ul style="list-style-type: none"> Federal Lawsuit vs. Boston National, Case No.: 18-cv-00873-DMS-BGS, alleging Boston National failed to follow valid instructions to return their funds deposited in escrow despite actual knowledge, as early as September 28, 2017, that the underlying real estate transaction had failed and, therefore, could never "close"; (2) refused to provide an accounting of the escrow funds; (3) claimed inexplicably, eleven months after accepting the escrow funds, that it was "not the agent that will be handling the closing of the [non-existent] transaction"; and (4) blatantly misrepresented that Messrs. Appel and Cohen had previously instructed it to retain their escrow funds despite multiple written demands/escrow instructions to the contrary. 	<p>Unproven allegations made in a pending litigation brought by the party we believe created this website. This suit may have been brought by Appel and Cohen to "punish" Boston National Title.</p>	<p>NO UNPROVEN ALLEGATIONS</p>

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
13.	<ul style="list-style-type: none"> Federal Lawsuit vs. Concierge’s attorney Robert Wolf, Case No. 18-cv-0814-L-BGS, alleging he gratuitously defamed Howard Appel (and others) in writing, in after and in response to Messrs. Appel and Cohen’s lawsuit against Concierge, through the following statement: “By the way, I know Howard Appel from when I used to head the litigation side at Gersten Savage, more than 10 years ago. Howard had legal issues (securities fraud) along with Montrose Capital and Jonathan Winston who were also clients at the time. Please send him my regards.” Of course, the Howard Appel in this matter is not the individual whom Wolf claims to have represented previously (same name different person), and the foregoing statement was obviously made with malice to embarrass/pressure Appel and/or to cause doubt about Appel’s honesty and veracity in the minds of the recipients. Further, the statement about criminal activity, since it was untrue as to the Howard Appel in these lawsuits, appears to have constituted a gross breach of client confidence and privilege as to some other individual of the same name whom together with “Montrose Capital and Jonathan Winston” Wolf represented at Gersten Savage. 	<p>This is a litigation brought against Concierge Auctions’ <u>principal outside counsel</u>, Robert Wolf, apparently in order to harass and bedevil him. The whole litigation is based on a simple case of mistaken identity (between two people named Howard Appel, in a single statement in a single email seen by a total of five people, three of whom were Concierge Auctions employees.</p> <p>Appel has absolutely no support for his allegation that the statement was made “with malice to embarrass/pressure Appel and/or to cause doubt about Appel’s honesty and veracity in the minds of the recipients.” Clearly, the statement was true with regard to a person named Howard Appel, whom Mr. Wolf believed to be the Howard Appel involved in the dispute with Concierge.</p>	<p>NO</p> <p>UNPROVEN ALLEGATIONS.</p>
14.	<p>While there are numerous lawsuits against Concierge in the public record which are identified here, including a bankruptcy petition (by its Chairman Chad Roffers) and a declaration by a</p>	<p>As noted above, most of these cases have been resolved either by being dismissed on a motion from Concierge, abandoned, or settled with a payment being made <u>to</u> Concierge.</p>	<p>NO</p> <p>MISLEADING STATEMENTS</p> <p>FALSE STATEMENTS</p>

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	former employee related to Concierge’s alleged unlawful business practices, most appear to fail after Concierge demands arbitration, thereby removing them from the public record, making them difficult to follow, surely by design. In contrast, this website is intended to keep consumers informed of the current disputes identified above, to shine light on other disputes by sellers, bidders and former employees against Concierge, and to identify its intricate web of ownership as well as its litigation tactics so that anyone who is even considering doing business with Concierge can make an informed decision about doing so.	It is patently false and absurd to say that the bankruptcy petition by Mr. Roffers is a “lawsuit against Concierge.” The declaration by a disgruntled former employee is clearly not a “lawsuit” at all. Concierge vigorously denies these baseless allegations.	
	A sampling of other cases:	The term “sampling” implies that there are many more cases aside from these. In fact, the cases on the Site are a substantial majority of all cases involving Concierge Auctions.	NO
15.	<ul style="list-style-type: none"> In <i>May v. Fuld et al, U.S. Dist. Ct. S.D. Idaho 2015, Case No. 1:15-CV-00570</i>, a Seattle businessman, Rodger May, alleged that Concierge misrepresented the value of opening bids in an auction to induce him to place a \$19,000,000 opening bid on a property. May further alleged that Concierge asked him to place a “shill bid” to set a floor price at the auction, promised to pay him \$450,000 when a higher bidder won the property, induced him to make a \$500,000.00 deposit, and thereafter 	Case settled, with plaintiff paying \$700,000 to Concierge Auctions. These are unproven allegations made in a lawsuit that has now been resolved. As such, these allegations have no factual merit.	NO UNPROVEN ALLEGATIONS. CASE SETTLED, WITH PLAINTIFF PAYING \$700,000 TO CONCIERGE AUCTIONS.

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	refused to release that deposit, claiming that it was an earned commission.		
16.	<ul style="list-style-type: none"> In <u>4 K & D Corp. v. Concierge Auctions, LLC, (2014) 2 F.Supp.3d 525</u>, a fellow real estate auctioneer, 4 K & D Corporation ("4 K & D"), alleged that Concierge misrepresented, among other things, the existence of genuine bidders for a property to convince the seller of a property to hold an auction that otherwise would not have occurred. It further alleged that Concierge used shill bidders during auctions violating auction rules and auction laws in many jurisdictions. 	4 K & D is Grand Estates. The case against Concierge was dismissed in its entirety after Concierge filed a motion to dismiss.	NO UNPROVEN ALLEGATIONS. GRAND ESTATE'S CASE WAS DISMISSED IN ITS ENTIRETY AFTER CONCIERGE FILED A MOTION TO DISMISS.
17.	<ul style="list-style-type: none"> In <u>Matsuri Foundation of Canada v. Concierge Auctions, ULC, (2017) No. S-178625</u> (Vancouver B.C., Canada), the Matsuri Foundation of Canada filed suit against Concierge in Vancouver, B.C., on September 14, 2017, alleging that Concierge used shill bidders and misrepresented that Matsuri's property was available for significantly less than fair market value. 	These are unproven allegations stated in the Complaint of a pending litigation. As such, they have no factual merit. Concierge vigorously denies these allegations.	NO UNPROVEN ALLEGATIONS
18.	<ul style="list-style-type: none"> In <u>Concierge v. Bloeser, (N.Y. Sup. Ct. 2011) (no. 108121-2011)</u> sellers alleged that Concierge attempted to collect a Buyer's Premium even when there were no bidders at auction, and the defendants separately sold their property at a reduced price several months later. 	SETTLED. These are unproven allegations made in the course of a closed litigation. These have no factual merit. The Bloeser were also parties to the Grand Estate litigation, but settled out of both matters.	NO SETTLED ON TERMS FAVORABLE TO CONCIERGE AUCTIONS.
19.	<ul style="list-style-type: none"> In <u>Granger v. Crews, D-1-GN-14-000724 (Travis County Dist. Ct. 2014)</u> the seller alleged that 	SETTLED. These are unproven allegations made in the course of a closed litigation. These have	NO

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	Concierge attempted to auction her property without reserve, directly contradicting her negotiated terms.	no factual merit. Seller (Granger) was the defendant in this action brought by Concierge Auctions, which settled on terms favorable to Concierge Auctions.	SETTLED ON TERMS FAVORABLE TO CONCIERGE AUCTIONS.
20.	<ul style="list-style-type: none"> In <i>Concierge v. Kivo, D-1-GN-17-001272 (Dist. Ct. Travis Cnty. March 23, 2017)</i> Concierge filed a lawsuit against its former Director of Video Production, Lawrence "Frank" Kivo in an alleged effort to intimidate and silence him in response to his accusations regarding Concierge's business practices. In responding, Kivo filed a declaration under penalty of perjury that detailed instances when he, personally, witnessed Concierge's agents, employees and principals artificially inflate the purchase price of properties during Concierge Auctions. Per his declaration, after he questioned Chad Roffers about the fraudulent practices that he witnessed, Concierge retaliated by, inter alia, changing his employment responsibilities and status, and attacking his personal and professional reputation in the Austin Case. 	SETTLED. These are unproven allegations made in the course of a closed litigation. These have no factual merit. The description contains an unproven allegation that Concierge filed this case to "intimidate and silence" an ex-employee.	NO; SETTLED ON TERMS FAVORABLE TO CONCIERGE AUCTIONS.
21.	<ul style="list-style-type: none"> In <i>Robert Troop, et al. v. Concierge Auctions, LLC, et al., Case No. 2011-2018-CV-00174 (Superior Court New Hampshire 2018)</i>, husband and wife, Rodger and Cynthia Troop, alleged that Concierge misrepresented its ability to sell their property at auction "without reserve" for their desired \$6,000,000.00 asking price, misrepresented the number of qualified bidders interested in their property, and misrepresented 	This case was settled, with a payment to Concierge. These are unproven allegations, which have no credibility once the underlying case has been resolved.	NO UNPROVEN ALLEGATIONS.

	TEXT OF CONCIERGEAUCTIONS.COM	ANALYSIS OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	the opening bid amount for their auction. The Troops further allege that Concierge auctioned off their property with an appraised value of \$5,700,000.00 for \$2,860,000.00.		
22.	<ul style="list-style-type: none"> • Corporate Structure: • According to recent public filings, Concierge Auctions, LLC is a Delaware limited liability corporation, with its principal place of business in San Antonio, Texas. Its members are Brady Hogan Investments, LLC, a Florida limited liability company whose sole member is Laura Brady, who is a citizen of the State of Texas; Segue LLC, a Colorado limited liability company whose sole member is Michael Russo, who is a citizen of the Commonwealth of Massachusetts; and CA Partners LLC, a Colorado limited liability company whose members are Chad Roffers and Bradlee Roffers, who are citizens of the State of Texas. 	This is reported as if there was something "shady" about this corporate structure. However, there is not.	NO POINT UNCLEAR.
23.	<ul style="list-style-type: none"> • Concierge's website claims BARBARA CORCORAN, a successful entrepreneur and star as one of the "Sharks" on ABC's hit TV show, Shark Tank, is an Advisor to the company. 	By using "claims," the website makes it appear as if Concierge Auctions was lying about Ms. Corcoran's association with Concierge. It is a true statement.	NO MISLEADING STATEMENT.

CLAIM RE: CONCIERGEAUCTIONS.COM

EXHIBIT H-2: DOCUMENTS, ARTICLES & PRESS RELEASES APPEARING ON OR LINKED TO CONCIERGEAUCTIONS.COM

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	Concierge Auctions In The News		
1.	Luxury real estate auction company comes to Kansas City The Missouri Times June 19, 2019	"Page Not Found"	NO
2.	With Technological Innovations in Real Estate, Trust But Verify Observer.com June 9, 2019	Article about various technology advances in real estate. Short discussion of luxury real estate auctions generally, and two brief quotes from the WSJ article on Concierge Auctions, with link to article (as updated March 1, 2019).	NO MERELY RECYCLES QUOTES FROM WSJ ARTICLE
3.	Real Estate And Entrepreneurial Heavyweight, Barbara Corcoran, Takes Stake In Concierge Auctions As Strategic Advisor PR Newswire, submitted by Concierge Auctions, April 29, 2014	Concierge Auctions press release announcing of Ms. Corcoran's then-new affiliation with Concierge. Ms. Corcoran remains a Strategic Advisor to Corcoran.	NO IRRELEVANT
4.	Barbara Corcoran Joins Concierge Concierge Auctions website: Concierge Connect podcast, Episode 11, May 6, 2014	Straightforward report of Ms. Corcoran's then-new affiliation with Concierge. Ms. Corcoran remains a Strategic Advisor to Corcoran.	NO IRRELEVANT
5.	Suzanne Somers cancels auction of Palm Springs home The Desert Sun (part of USA Today Network), January 31, 2018	Reports that Somers cancelled upcoming auction. Mentions that there were five bidders for the property. Only reason given was that: "They decided they wanted to wait. The seller canceled the auction."	NO IRRELEVANT
6.	Concierge Auctions accused of fraud The Real Deal, April 23, 2013 (Note that the full title is: "Concierge Auctions accused of fraud, as court battle between rival housing auction firms heats up")	Note on top of The Real Deal article states: "UPDATE: The below case was dismissed in 2014." 2013 article reporting on a complaint filed by business competitor Grand Estates in 2013 litigation, "accusing Concierge Auctions ... of using sham bidders and other fraudulent tactics," such as "using sham bidders," publishing auction results for sales that never went through or involved shell buyers. Suit asks for \$20 million in damages on each count and \$1 million in punitive damages. Counsel	NO This is the first of EIGHT entries on the Site that report on or relates to the GRAND ESTATES litigation. Each of these entries is highlighted on this chart to show the misleading use of repetition.. UNPROVEN ALLEGATIONS FROM 2013 COMPLAINT. CASE

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
		<p>for Concierge is quoted as saying this was "vindictive and baseless."</p> <p>The case was dismissed as a result of Concierge's motion.</p>	<p>WAS DISMISSED ON CONCIERGE'S MOTION IN 2014. NO FACTUAL DETERMINATION WAS MADE IN THIS CASE.</p> <p>The Jarols (and the Bloesers) were "straw plaintiffs" added to this case by Grand Estates, who were then left standing alone after the Court granted Concierge's Motion to Dismiss all of Grand Estate's claims (RICO) and let stand only the Jarols' claims against the individual defendants (because the claims were sufficiently pled in complaint).. The Jarols then settled with Concierge, and Concierge kept more than half of their down-payment.</p>
7.	<p>Concierge Auctions Was Being Sued When It Took on Michael Jordan's House, Chicago Real Estate, January 22, 2014</p>	<p>Reports on 2013 suit brought by Grand Estates and Deborah & Sherwin Jarol, reciting allegations that Concierge "exaggerated its track record of selling megapriced homes at auction," made the Jarols look "financially desperate," and that Concierge had "pressured" them to sell without a reserve.</p> <p>No accusations are made regarding Michael Jordan house; that auction is reported favorably, even though it did not result in a sale. Article mentions that Grand Estates was feeding information to the author. The Jarols were "straw plaintiffs" added to the case by Grand Estates.</p>	<p>NO UNPROVEN ALLEGATIONS FROM 2013 COMPLAINT IN THE GRAND ESTATES CASE AGAINST CONCIERGE DISMISSED ON CONCIERGE'S MOTION IN 2014.</p>

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
		<p>The article states: "It's a lawsuit on which the judge hasn't yet announced a decision, and of course people can claim anything they want to claim in a lawsuit. [Attorney Robert] Wolf notes that "we have filed a motion to dismiss the case and are confident it will be granted." Wolf was correct. The case against Concierge was dismissed a two months later.</p>	
8.	<p>Principles of Concierge Auctions Remain Mired in RICO Lawsuit, EIN Presswire, March 22, 2014</p>	<p>Press release issued by Grand Estates litigation, stating that the case is moving forward: Pointedly refers to Concierge's counsel as "preeminent criminal attorney, Moses & Singer White Collar Criminal Defense Practice Group Chair Robert Wolf," even though this is a civil case.</p> <p>Press release claims that "Concierge Auctions' controlling members Laura Brady and Mike Russo face allegations of deception, wire fraud, and other racketeering activity as alleged by the plaintiffs. The judge upheld those allegations and the case is moving forward." (The press release misrepresents the single remaining claim and fails to mention that all claims by Grand Estates, and all claims against Concierge Auctions, were dismissed.)</p> <p>"It is inexplicable that Concierge Auctions has issued a press release claiming that the RICO suit was dismissed when, in fact, the case is moving forward," stated Valaria DeVine, CEO of Grand Estates Auction Company. "However, we are not surprised as such intentional dissemination of false information is par for the course with Concierge Auctions and its directors."</p>	<p>NO UNPROVEN ALLEGATIONS IN A GRAND ESTATES PRESS RELEASE, REFERRING TO 2013 COMPLAINT. CASE DISMISSED ON CONCIERGE'S MOTION IN 2014.</p> <p>THE PRESS RELEASE FAILS TO MENTION THAT ALL CLAIMS AGAINST CONCIERGE AUCTIONS, AND ALL CLAIMS BY GRAND ESTATES, WERE DISMISSED. PRESS RELEASE FALSELY CLAIMS THAT "THE JUDGE UPHELD THOSE ALLEGATIONS." IN FACT, ONLY ONE CLAIM SURVIVED, NOT MULTIPLE ALLEGATIONS. NOTHING WAS "UPHELD"; THE JUDGE MERELY DECLINED TO DISMISS THAT SINGLE CLAIM.</p>
9.	<p>Civil Racketeering Allegations Against Concierge Auctions LLC Are Amplified in Latest Filing,</p>	<p>Grand Estates press release stating that Amended Complaint was filed in the Grand Estates litigation. Restates</p>	<p>NO</p>

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
	Digital Journal, July 1, 2013, republishing a Press Release issued by Grand Estates	various allegations by Grand Estates "pursuant to the United States Racketeering Influenced and Corrupt Organization (RICO) Act and related claims for false advertising and deceptive business practices based on alleged various fraudulent acts and practices committed by Concierge Auctions and its controlling parties."	UNPROVEN ALLEGATIONS IN A GRAND ESTATES PRESS RELEASE, REFERRING TO 2013 COMPLAINT. CASE DISMISSED ON CONCIERGE'S MOTION IN 2014.
10.	African-American real estate agent alleges discriminatory treatment from Concierge Auctions , Southeast Texas Record, November 2, 2017	Short article reporting on newly filed case, Rhonda Hicks v. Concierge Auctions, LLC, 4:17-CV-02867 (filed September 25, 2017). "Rhonda Hicks filed a complaint on Sept. 25 in the Houston Division of the Southern District of Texas against Concierge Auctions LLC alleging discrimination," specifically that they "refused to renew her contract because of her race, attempted to use her proprietary information for its own benefit and refused to pay her full commissions." Concierge Auctions answered on November 11, 2017, denying the allegations. The case was settled and dismissed with prejudice January 15, 2019.	NO NOTHING RELEVANT. REPORTS A PLAINTIFF'S UNPROVEN ALLEGATIONS IN COMPLAINT.
11.	Bidder cries foul on \$19M estate deal Idaho Mountain Express, Nov. 25, 2015	Reports filing of 2015 case by Rodger May (a "Seattle businessman") against Concierge Auctions, filed in response to a case brought against May by Concierge, for May's breach of contract in refusing to purchase the "Big Wood River Estate" property after being the winning bidder at auction. May alleged that "Concierge made false statements about having bids of at least \$20 million and that multiple people had submitted qualified bids."	NO. REPORTS A PLAINTIFF'S UNPROVEN ALLEGATIONS IN COMPLAINT. CASE SETTLED, WITH PLAINTIFF PAYING \$700,000 TO CONCIERGE AUCTIONS
12.	Court Rules on Auction House's Civil RICO Claim Report on website of Price Benowitz LLP, White Collar Attorneys, based on PR Newswire press release that is no longer on the PR Newswire website.	Report of decision in the Grand Estates case (referred to here as 4K & D Corp. v. Concierge Auctions, LLC), where the plaintiffs had alleged that the defendants fraudulently induced sellers of luxury real estate to enter into auction contracts with Concierge by making false promises and various misrepresentations about Concierge's auction results, sales statistics, and track records, and that the	NO ARTICLE BASED ON RULING IN GRAND ESTATES CASES, IN WHICH ALL CLAIMS AGAINST CONCIERGE AUCTIONS WERE DISMISSED.

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
		<p>defendants engaged in other fraudulent conduct such as using shill bidders, allowing bids from unregistered bidders, and adding a reserve at the last minute. As a result, Grand Estates was allegedly harmed because sellers chose Concierge instead of Grand Estates or other auction houses due to the defendants' misrepresentations to the sellers. "[T]he court ruled that the defendants' motion to dismiss was granted, except with respect to the claim under Section 1962(c) by two of the plaintiffs (Deborah Jarol and Sherwin Jarol) against two defendants, Brady and Russo, as to which the motion to dismiss was denied. The court dismissed all claims made by Grand Estates,</p>	
13.	<p>Chad Roffers files for bankruptcy protection Sarasota Herald Tribune, Inside Real Estate, August 13, 2012</p>	<p>2012 article reporting Roffers' bankruptcy filing, mentions that his prior company (Sky Sotheby's) collapsed in 2008.</p>	<p>NO NOTHING RELEVANT.</p>
14.	<p>ONTARIO COURT OF APPEAL SUMMARIES (NOVEMBER 20 – NOVEMBER, 24 2017)</p>	<p>Fenwick v. Concierge Auctions, ULC, 2017 ONCA 889. Seller refused to close; buyer and seller then contracted directly and made the sale. Concierge sued to collect its commission on the sale. The buyer argued that the sale was not covered by the Concierge contract, and buyer counterclaimed for return of their down-payment. Concierge sued for their commission and won below. This was reversed on appeal, based on contractual interpretation. Both parties then abandoned their claims.</p>	<p>NO APPEAL OF CASE BROUGHT BY CONCIERGE AUCTIONS TO COLLECT COMMISSION ON SALE</p>
15.	<p>4 K & D CORP. v. CONCIERGE AUCTIONS, LLC 2 F. Supp. 3d 525 (March 10, 2014), decision on motions for summary judgment. Case settled on May 30, 2014</p>	<p>The plaintiffs, 4 K & D Corporation d/b/a Grand Estates Auction Company ("Grand Estates"), Deborah Jarol, and Sherwin Jarol bring this action alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961 et seq., and New York General Business Law §§ 349 and 350. The plaintiffs also bring a claim for tortious interference with contractual and business relationships. Judge dismissed all claims by Grand Estates</p>	<p>NO DECISION IN <u>GRAND ESTATES</u> CASE DISMISSING ALL CLAIMS AGAINST CONCIERGE AUCTIONS, AND ALL CLAIMS MADE BY GRAND ESTATES. ONLY A SINGLE CLAIM</p>

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
		and all but one claim by the Jarols and only against defendants Russo and Brady, finding that Jarols sufficiently alleged an injury allowing them to proceed with a Section 1962(c) claim for being victims of an "alleged fraud."	SURVIVED SUMMARY JUDGMENT. CASE SETTLED MAY 30, 2014.
16.	Pensacola wharf home relisted, auction halted Pensacola News Journal, October 19, 2016	Article reports that the owner pulled out and decided not to auction the home. Concierge stated: "Concierge Auctions was scheduled to auction 19 Wharf Drive without reserve on Oct. 5. Nine bidders were registered. However, the seller elected to withdraw the property from going to auction."	NO NOTHING RELEVANT.
17.	Roffers lawsuits reveal high-end auction-house rivalry Sarasota Herald-Tribune, January 30, 2013	Article about planned lawsuit by Grand Estates against Concierge and Roffers. "The planned action appears to be a reprisal for a lawsuit Concierge filed in October against Grand Estates, based in Charlotte, N.C., and its owner, Valaria DeVine of Naples. That suit contends that Grand Estates and DeVine conspired to discourage home sellers and real estate brokers from working with Roffers' firm to auction properties." Article was prompted by bankruptcy court filing seeking leave to file case against Roffers (ultimately, the <u>Jarol Case</u> was filed but did not name Roffers).	NO 2013 REPORT OF UNPROVEN ALLEGATIONS MADE BY GRAND ESTATES WHEN DISCUSSING ITS PLANNED LITIGATION.
	CURRENT LAWSUIT DOCUMENTS	These are all court documents from cases filed by the same plaintiff, Howard Appel (and his business partner, David Cohen, in all but one case).	
	Complaint and related filings against Concierge Auctions		
18.	Concierge Auctions Complaint	These are all from Appel v. Concierge Auctions (filed November 17, 2017) . Appel and business partner David Cohen sued Concierge Auctions claiming they were fraudulently induced to submit the high bid in a no-reserve auction for a multi-million dollar residential property in Fiji, and also complain of fraudulent concealment of the owner's refusal to sell, fraudulent misrepresentation that	NO COMPLAINT CONTAINS UNPROVEN ALLEGATIONS. THE COURT HAS MADE NO DECISION ON THE MERITS OF THESE ALLEGATIONS.
19.	Concierge's MTC Arbitration		
20.	First Amended Complaint		
21.	Opposition to Concierge's Ex Parte		
22.	Opposition to Concierge's Motion to Compel		
23.	Concierge's Reply		
24.	Declaration of Lawrence Kivo		

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
25.	Ex Parte App to File Sur-Reply	they won the auction, and inducement to enter into an invalid sales agreement along with a \$285,000 deposit.	
26.	Order Granting Arbitration		
27.	Plaintiff's Ex Parte to Lift Stay		
28.	Plaintiff's Supp Brief ISO Ex Parte		
29.	Order Clarifying Previous Order		
30.	Plaintiff's Oppo to Motion For Reconsideration		
31.	Plaintiff's Case Status Reports		
	<u>Complaint and related filings against Boston National Title Agency</u>		
32.	Complaint	Appel v. Boston National Title , filed May 4, 2018 (S.D. Cal.), Suit by Howard Appel against the Boston National Title (BNT), holder of escrowed funds provided by Appel in connection with the auction. Suit claims that BNT negligently failed to return the escrow, refused to provide an accounting of the funds, and claiming breach of fiduciary duty as well.	NO THIS IS A SUIT BY APPEL AGAINST A TITLE COMPANY CLAIMING NEGLIGENT FAILURE TO RETURN PLAINTIFFS' ESCROWED FUNDS
33.	Answer to complaint		
34.	Scheduling Order		
	<u>Complaint and related filings against Robert Wolf, ESQ.</u>		
35.	Concierge Auction's Attorney Robert Wolf Complaint	Appel v. Wolf (S.D. Cal. Filed April 27, 2018): Suit for libel filed on behalf of Howard Appel against Robert Wolf, outside counsel for Concierge Auctions, based on a single email sent by Mr. Wolf to only five people and a case of mistaken identity. The email read: "By the way, I know Howard Appel from when I used to head the litigation side at Gersten Savage, more than 10 years ago. Howard had legal issues (securities fraud) along with Montrose Capital and Jonathan Winston who were also clients at the time. Please send him my regards." Unknown to Mr. Wolf, the Howard Appel mentioned in Mr. Wolf's email is not the same Howard Appel as the plaintiff.	NO THIS IS A SUIT AGAINST CONCIERGE AUCTIONS' ATTORNEY, ROBERT WOLF, ALLEGING THAT MR. WOLF DEFAMED MR. APPEL BY CONFUSING HIM WITH ANOTHER HOWARD APPEL.
36.	Appel Wolf Dec		
37.	Appel Wolf Mtn to Strike Complaint		
38.	Appel Capobianco Dec		

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
39.	Appel Chad Roffer Dec		
40.	Appel P&As ISO Mtn Strike Complaint		
41.	Appel Dec of Steven Brower ISO Ex Parte to Continue		
42.	Appel Ex Parte App to Cont Hrg on Mtn to Strike and to Order Disc		
43.	Appel Dec of Anthony Capobianco ISO Wolf's Opp to Plaintiff's		
44.	Appel Wolf's Opp to Plaintiff's Ex Parte App to Cont Hrg		
45.	Appel Order Referring Ex Parte Mtn to Mag Judge and Stay		
	Additional Disputes	These are various cases in which Concierge Auctions was a party, some going back over 5 years.	
46.	May v. Fuld et al, U.S. Dist. Ct. S.D. Idaho 2015, Case No. 1:15-CV-00570	Rodger May alleged that Concierge misrepresented the value of opening bids in an auction to induce him to place a \$19,000,000 opening bid on a property. May further alleged that Concierge asked him to place a "shill bid" to set a floor price at the auction, promised to pay him \$450,000 when a higher bidder won the property, induced him to make a \$500,000.00 deposit, and thereafter refused to release that deposit, claiming that it was an earned commission.	NO CASE SETTLED, WITH MAY PAYING \$700,000 TO CONCIERGE AUCTIONS
47.	4 K & D Corp. v. Concierge Auctions, LLC, (2014) 2 F.Supp.3d 525	This is the opinion in the Grand Estates litigation. This is redundant as the opinion appears earlier on the website.	NO DECISION IN CASE DISMISSING ALL CLAIMS AGAINST CONCIERGE AUCTIONS, AND ALL CLAIMS MADE BY GRAND ESTATES. ONLY A SINGLE CLAIM BETWEEN THE INDIVIDUAL PARTIES REMAINED AFTER THE

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
			DISMISSAL. SUMMARY JUDGMENT. CASE SETTLED MAY 30, 2014
48.	Matsuri Foundation of Canada v. Concierge Auctions, ULC, (2017) No. S-178625	COMPLAINT filed against Concierge Auctions.	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS OF PLAINTIFF
49.	Concierge v. Bloeser, (N.Y. Sup. Ct. 2011) (no. 108121-2011)	COMPLAINT filed by Concierge Auctions against the Bloesers, due to their failure to pay the Buyer Premium due Concierge Auction. CASE WAS DISMISSED.	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS OF PLAINTIFF
50.	Granger v. Crews, D-1-GN-14-000724 (Travis County Dist. Ct. 2014)	Complaint filed by Granger, the seller, against her broker and Concierge Auctions, which settled on terms favorable to Concierge Auctions.	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS OF PLAINTIFF. CASE SETTLED ON TERMS FAVORABLE TO CONCIERGE.
51.	Joanne-Brown-v.-Chad-Roffers-et-al-Complaint	Complaint filed by potential seller, who then voluntarily dismissed her own case 30 days later. Concierge then sued Brown for Breach of Contract. The case settled, with a payment by Brown to Concierge.	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS OF PLAINTIFF. CASE DISMISSED. SUIT BY CONCIERGE SETTLED ON TERMS FAVORABLE TO CONCIERGE
52.	Robert Troop, et al. v. Concierge Auctions, LLC Case No. 2011-2018-CV-00174 (Superior Court New Hampshire 2018)	Amended Complaint brought by Troop, alleging that Concierge misrepresented its ability to sell their property at auction "without reserve" for their desired \$6,000,000.00 asking price, misrepresented the number of qualified bidders interested in their property, and misrepresented the opening bid amount for their auction. The Troops further allege that Concierge auctioned off their property	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS OF PLAINTIFF SETTLED ON TERMS FAVORABLE TO CONCIERGE

	DOCUMENTS, ARTICLES & PRESS RELEASES	DESCRIPTION OF CONTENT	DOES THIS PROVIDE FACTUAL EVIDENCE OF "SCAMS"?
		with an appraised value of \$5,700,000.00 for \$2,860,000.00.	
53.	Theodore Brois v. Concierge Auctions S. Ct. New York, 654544/2018 (September 13, 2018) Note: Brois is the defendant (respondent) in this dispute. Without more information, the caption of the case is misleading. Brois appears first in the name of the case because they are petitioning the court, not because they were a plaintiff in this or any other matter.	Concierge filed arbitration against Brois for breach of contract. Brois then filed this Petition to stay the arbitration claiming that a court should decide whether Concierge's agreement was enforceable. The Court denied the Petition and Concierge's arbitration against Brois went forward..	NO PETITION TO STAY ARBITRATION CONTAINS NO RELEVANT ALLEGATIONS. PETITION WAS DENIED.
54.	Bisson v. George F. Scantland, III, et al Mass. Super. Ct. 18-1509 (2018)	Complaint by a disgruntled buyer in case against Concierge Auctions and several others, alleging that Concierge misrepresented the condition of the property and the number of bedrooms and alleging that the escrow agent, Boston Title, failed to return his deposit..	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS
55.	Marterie, et al. v Concierge Auctions, LLC, et al. Super Ct. Cal., SCV 263403 (January 22, 2019)	Complaint filed by disgruntled sellers, alleging various misrepresentations by Concierge.	NO COMPLAINT CONTAINS ONLY UNPROVEN ALLEGATIONS
	Chad Roffers Personal Bankruptcy Documents		
56.	Grand Estates Auction Company v. Chad Roffers	Item 56 is an affidavit relating to a petition to the bankruptcy court to allow Grand Estates to sue Roffers in the Grand Estates litigation discussed above. Item 57 is the schedule of creditors from the bankruptcy matter.	NO ITEM 56 (GRAND ESTATES AUCTION COMPANY V. CHAD ROFFERS) IS MISLEADING. This is only a petition to the bankruptcy court to allow Grand Estates to sue Roffers in the Grand Estates litigation discussed above. The petition was DENIED.
57.	Amended Schedule		

CLAIM RE: CONCIERGEAUCTIONS.COM

EXHIBIT H-3: TABLE OF CASES ON CONCIERGEAUCTIONS.COM

	Name	Court	Status	Year Resolved
1.	May v. Fuld, et al.	S.D. Idaho	Settled , as described in the Feb. 7, 2019 <i>Wall Street Journal</i> article: "Mr. Wolf, Concierge's lawyer, sent a redacted copy of a settlement agreement with Mr. May, showing that Mr. May had paid Concierge \$700,000 to settle the suit."	2015
2.	4 K & D Corp. [Grand Estates], Jarols and Bloeser v. Concierge Auctions, LLC	S.D.N.Y.	Closed: All charges against Concierge dismissed. All claims made by Grand Estates dismissed.	2014
	Concierge Auctions v. Bloeser (related to case above)	N.Y. Sup. Ct.	Voluntarily discontinued and dismissed by Bloeser, with prejudice.	2013
3.	<i>Matsuri Foundation of Canada v. Concierge Auctions</i>	Vancouver, B.C., Canada	<i>Pending. Claims filed to avoid paying Concierge \$75,000 breakup fee after canceling the auction.</i>	(Filed 2017)
4.	Kimberly Granger v. Crews	Dist. Ct. Travis Cty	Settled favorably for Concierge	2014
5.	Concierge Auctions v. Kivo	Dist. Ct. Travis Cty	Settled with a payment to Concierge	2017
6.	<i>Appel v. Concierge Auctions</i>	S.D. Cal.	<i>Pending</i>	(Filed 2017)
7.	<i>Appel v. Boston National Title</i>	S.D. Cal.	<i>Pending</i>	(Filed 2018)
8.	<i>Appel v. Robert Wolf</i>	S.D. Cal.	<i>Pending</i>	(Filed 2018)
9.	Rhonda Hicks v. Concierge Auctions	Houston Div., S.D. Tx.	Closed: Case withdrawn by Plaintiff	2018
10.	Fenwick v. Concierge Auctions (Appeal of successful case to collect fees from Fenwick)	ULC, 2017 ONCA 889, Canada	Closed: Both parties abandoned their claims.	2017
11.	Joanne Brown v. Chad Roffers, et al.	N.Y. S.Ct.	Confidential Settlement of employment case	2017
12.	Robert Troop, et al. v. Concierge Auctions, LLC, et al.	Superior Court, Belknap County, NH	Stayed: Failed attempt by Troop to avoid arbitration commenced by Concierge. Court compelled Troop to join existing arbitration (below).	2018
	<i>Concierge Auctions v. Robert Troop</i>	<i>Arbitration</i>	<i>Pending Arbitration</i>	(Filed 2018)
13.	<i>Concierge Auctions v. Theodore and Helene Brois</i>	<i>Arbitration</i>	<i>Pending Arbitration</i>	(Filed 2018)
	Theodore Brois v. Concierge Auctions (related to matter above)	S. Ct. New York	Closed: Failed attempt by Brois to avoid arbitration commenced by Concierge. Court compelled Brois to join existing arbitration (above).	2018
14.	Bisson v. George F. Scantland, III, et al	Mass. Super. Ct.	Settled favorably to Concierge with Bisson paying \$304,000 to Concierge	2019
15.	<i>Marterie, et al. v Concierge Auctions, LLC, et al.</i>	<i>Super. Ct. Cal.</i>	<i>Pending. Buyer sued seller (Marterie) to enforce real estate sale and purchase agreement; Seller then countersued and added a frivolous defensive third party claim against Concierge.</i>	(Filed 2019)
16.	In the Matter of Chad Roffers [Concierge Founder]	U.S. Bkrptcy Ct. N.D.III.	Closed: Dismissed	2013

	Name	Court	Status	Year Resolved
	Grand Estates Auction Company v. Chad Roffers	U.S. Bkrptcy Ct. N.D.Ill.	Closed: Petition to lift stay of litigation against Roffers denied	2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4 K & D Corporation, ET AL.,

Plaintiffs,

13 Civ. 2527 (JGK)

- v. -

OPINION AND ORDER

Concierge Auctions, LLC, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The plaintiffs, 4 K & D Corporation d/b/a Grand Estates Auction Company ("Grand Estates"), Deborah Jarol, and Sherwin Jarol¹ bring this action alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961 et seq., and New York General Business Law §§ 349 and 350. The plaintiffs also bring a claim for tortious interference with contractual and business relationships.

All of the claims arise out of the alleged fraudulent business conduct of defendants Concierge Auctions, LLC ("Concierge"), Laura Brady, George Graham, Michael Russo, CA Partners, LLC ("CA Partners"), Segue LLC ("Segue"), and Brady Hogan Investments, LLC ("BHI"). The action alleges that Concierge engaged in various false and deceptive practices to obtain customers for its business of conducting auctions for

¹ Two of the original plaintiffs in this action, John Bloeser and Nancy Bloeser, voluntarily discontinued all of their claims against the defendants and are no longer parties to this action.

luxury homes, and that their practices damaged Grand Estates, which conducted a rival auction business. Also included as defendants are ten unnamed John/Jane Doe individuals and ten unnamed ABC Corporations. The current lawsuit also concerns actions of non-party Chad Roffers.

Because several claims arise under the RICO Act, and the state law claims are based on the same operative facts, jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1367. The defendants now move to dismiss the Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The motion is **granted in part** and **denied in part**.

I.

In deciding a motion to dismiss pursuant to Rule 12(b)(6), the allegations in the complaint are accepted as true, and all reasonable inferences must be drawn in the plaintiff's favor. McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). The Court's function on a motion to dismiss is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." Goldman v. Belden, 754 F.2d 1059, 1067 (2d Cir. 1985). The Court should not dismiss the complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550

U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). While the Court should construe the factual allegations in the light most favorable to the plaintiff, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." Id. When presented with a motion to dismiss pursuant to Rule 12(b)(6), the Court may consider documents that are referenced in the complaint, documents that the plaintiff relied on in bringing suit and that are either in the plaintiff's possession or that the plaintiff knew of when bringing suit, or matters of which judicial notice may be taken. See Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002).

II.

The Court accepts the plaintiff's allegations in the Amended Complaint as true for purposes of this motion to dismiss. Plaintiff Grand Estates and defendant Concierge are two auction houses directly competing against each other in the national market for luxury home auctions. (Am. Compl. ¶¶ 48-50.) Grand Estates is a North Carolina corporation in business since 1999 with its principal place of business in North

Carolina, while Concierge is a Florida limited liability company formed in 2008 with its principal place of business in New York, New York. (Am. Compl. ¶¶ 16-17, 20-21). The alleged fraudulent conduct of Concierge involved actions of the other defendants named in the Amended Complaint and non-party Roffers.

Roffers was an original managing member of Concierge at its founding in 2008 and continues to be employed by and act as an officer of Concierge. (Am. Compl. ¶¶ 21, 27.) Roffers's wife and mother-in-law own 95% and 5% of CA Partners, respectively, and CA Partners owns 40% of Concierge. (Am. Compl. ¶¶ 23, 26.)² From the formation of Concierge in 2008 until March 2012, Roffers was employed by CA Partners and worked for Concierge as an "independent contractor" with the title of "Head of Client Services." (Am. Compl. ¶¶ 24, 25.)

Defendant Brady is the president of Concierge. (Am. Compl. ¶ 29.) Brady previously worked for Roffers as a real estate broker and served as vice president of marketing at Concierge. (Am. Compl. ¶¶ 30, 56.) Brady also owns defendant BHI, a Florida limited liability company; BHI replaced Brady as a member of Concierge as of January 2012. (Am. Compl. ¶¶ 32, 45, 46.)

² CA Partners was also named a managing member of Concierge in the April 2010 filing with the Florida Secretary of State, but was removed in a subsequent filing in May 2010. (Am. Compl. ¶¶ 42, 43.)

Defendant Russo is the chief operating officer of Concierge. (Am. Compl. ¶ 35.) Russo also owns defendant Segue, a limited liability company that became a member of Concierge as of January 2012. (Am. Compl. ¶¶ 37, 45, 46.)

Defendant Graham was the chief executive officer of Concierge until 2012 and was a member of Concierge as of April 2010, April 2011, and January 2012. (Am. Compl. ¶¶ 34, 42-44.) Graham's interest in Concierge was subsequently bought out, and Graham is no longer employed by Concierge. (Am. Compl. ¶¶ 34, 47.)

The plaintiffs allege that the defendants fraudulently induced sellers of luxury real estate to enter into auction contracts with Concierge by making false promises and various misrepresentations about Concierge's auction results, sales statistics, and track records, and that the defendants engaged in other fraudulent conduct such as using shill bidders, allowing bids from unregistered bidders, and adding a reserve at the last minute. (E.g. Am. Compl. ¶¶ 82-85, 87, 95-97, 114, 291-332.) As a result, Grand Estates was allegedly harmed because sellers chose Concierge instead of Grand Estates or other auction houses due to the defendants' misrepresentations to the sellers. (Am. Compl. ¶ 83.)

In addition, the plaintiffs allege that the defendants used the income from their fraudulent business practice to pay

Realogy Services Group, LLC ("Realogy") to promote Concierge's services through Realogy's subsidiary, Sotheby's International Realty ("SIR"). (Am. Compl. ¶¶ 55, 64, 66, 75, 381.) Prior to the formation of Concierge, Roffers owned Sky Sotheby, an SIR franchisee, which allegedly experienced difficulty in the market downturn in 2008, causing Roffers to be indebted to SIR. (Am. Compl. ¶¶ 53, 60.) During the same year, Concierge was formed. (Am. Compl. ¶ 21.) After Realogy terminated Sky Sotheby as a franchisee, Realogy entered into a Strategic Alliance Agreement with Concierge which named Concierge as Realogy's "preferred" auctioneer so that Concierge could perform auctions to pay back Roffers's debt to SIR. (Am. Compl. ¶¶ 61-63.) As a result of the agreement, SIR franchisees were instructed to refer their clients to Concierge for auction services. (Am. Compl. ¶¶ 66, 72.)

With respect to plaintiffs Sherwin Jarol and Deborah Jarol ("the Jarols"), the plaintiffs allege that the defendants made various misrepresentations through personal and wire communications, including statements about Concierge's experience and success rates as well as prospects for a successful sale. (Am. Compl. ¶¶ 155, 158, 161, 162, 164.) The Jarols then contracted with Concierge to auction their property. (Am. Compl. ¶ 166.) In addition, the agreement between the Jarols and Concierge required that a \$100,000 "break-up fee" be

placed into an escrow account to be released to Concierge if the Jarols chose to cancel the auction. (Am. Compl. ¶ 170.) After the defendants misrepresented to the Jarols the number of bidders, the auction did occur but no bids were received. (Am. Compl. ¶¶ 189-90, 192.) However, the defendants still caused the break-up fee to be released to Concierge. (Am. Compl. ¶ 203.) In addition, the plaintiffs allege that, contrary to the express direction of the Jarols, Concierge marketed the Jarols' property as a no-reserve auction and misled potential buyers that the Jarols were in financial distress and were motivated to sell. (Am. Compl. ¶¶ 173-74, 177, 207.) As a result, the Jarols allegedly suffered damages including loss of the \$100,000 break-up fee and increased difficulty in subsequent attempts at selling their property. (Am. Compl. ¶¶ 116-50, 208-09.)

The plaintiffs allege that the defendants acted similarly in their handling of at least five other properties, including the property of former parties John Bloeser and Nancy Bloeser. The defendants allegedly made false representations to the owners of these properties regarding Concierge's past success and sales in order to be hired; the defendants also allegedly engaged in other fraudulent conduct such as supplying false bidder information. (Am. Compl. ¶¶ 116-50, 210-79.) In addition, the plaintiffs allege seven other instances in which

sellers were in touch with Grand Estates but eventually contracted with Concierge because of the false representations by the defendants. (Am. Compl. ¶¶ 335-66.)

III.

The plaintiffs bring four claims under the RICO Act, 18 U.S.C. §§ 1962(a)-(d), 1964(c). Section 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefor in any appropriate United States district court." 18 U.S.C. § 1964(c). The claim for violation of § 1962(c) is asserted against defendants Graham, Russo, Brady, and CA Partners. Under § 1962(c),

[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Id. § 1962(c). In order to state a claim under § 1962(c), a plaintiff must allege "(1) conduct (2) of an enterprise (3) though a pattern (4) of racketeering activity." DeFalco v. Bernas, 244 F.3d 286, 306 (2d Cir. 2001) (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985)). "Racketeering activity" encompasses, among other things, any act indictable

for crimes enumerated under 18 U.S.C. § 1961(1)(B), which include, for purposes relevant to the present case, acts of wire fraud (18 U.S.C. § 1343). To establish a "pattern" of racketeering activity, a plaintiff must plead "at least two predicate acts, [and] show that the predicate acts are related, and that they amount to, or pose a threat of, continuing criminal activity." Schlaifer Nance & Co. v. Estate of Warhol, 119 F.3d 91, 97 (2d Cir. 1997) (citing H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989)). "Predicate acts are 'related' for RICO purposes when they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'" Id. (quoting H.J. Inc., 492 U.S. at 240).

A.

The defendants first argue that the § 1962(c) claim fails because the plaintiffs have failed to allege that the RICO "enterprise" was different from the "persons" alleged to have violated § 1962(c). A plaintiff asserting a RICO claim arising under § 1962(c) "must allege and prove the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name," Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158,

161 (2001), because the statute applies only to “‘person[s]’ who are ‘employed by or associated with’ the ‘enterprise.’” Id. (citing and quoting 18 U.S.C. § 1962(c)) (alteration in original). Under such a “distinctness” requirement, “a corporate entity may not be both the RICO person and the RICO enterprise under section 1962(c).” Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339, 344 (2d Cir. 1994). A corporation may be held liable as a RICO “person” only if “it associates with others to form an enterprise that is sufficiently distinct from itself.” Id.

Courts have repeatedly dismissed § 1962(c) claims alleging that a corporation was simultaneously a RICO “person” and a RICO “enterprise” (or part of a RICO “enterprise” from which the corporation is not distinct). See, e.g. Cruz v. FXDirectDealer, LLC, 720 F.3d 115 (2d Cir. 2013); Anatian v. Coutts Bank (Switzerland) Ltd., 193 F.3d 85, 89 (2d Cir. 1999); Riverwoods, 30 F.3d at 344. In Riverwoods, the Second Circuit Court of Appeals held that a complaint failed to state a claim under § 1962(c) because the plaintiffs alleged that the corporation was a RICO “person” and that the corporation plus all its employees and agents was the RICO “enterprise,”³ from which the

³ Indeed, in Cedric Kushner, the Supreme Court called this “enterprise” in Riverwoods an “oddly constructed entity,” and noted that “[i]t is less natural to speak of a corporation as ‘employed by’ or ‘associated with’” such an entity. 533 U.S. at

corporation can hardly be considered distinct. 30 F.3d at 344. Similarly, in Cruz, a recent decision on which the defendants in this case rely, the Court of Appeals held that the complaint's allegations failed to satisfy the distinctness requirement in a case in which a corporation was alleged to be a RICO "person" conducting the deceptive practices of a RICO "enterprise" not distinct from the corporation. Cruz, 720 F.3d at 120-21. After disregarding various alleged members of the "enterprise" because they lacked a "common purpose to engage in a particular fraudulent cause of conduct," the Court of Appeals was left with an "enterprise" that was alleged to consist of the corporation itself, its parent company, its chief operating officer, and its corporate counsel. Id. (internal citations omitted). Therefore, cases like Cruz and Riverwoods make it clear that, if a plaintiff alleges a corporation to be a RICO "person" and seeks to hold it liable for § 1962(c) violations, the RICO "enterprise" cannot consist solely of the corporation plus its owners and/or employees.

On the other hand, the distinctness requirement may be satisfied if a complaint alleges a corporation itself to be the RICO "enterprise," with its owners or employees being the RICO "persons" conducting the affairs of the corporation through a

164 (citing Riverwoods, 30 F.3d at 344).

pattern of racketeering activities.⁴ Cedric Kushner, 533 U.S. at 163. In Cedric Kushner, a unanimous Supreme Court found a complaint to have satisfied the distinctness requirement even though the alleged RICO "person" was the president and sole shareholder of the corporation which was the alleged RICO "enterprise." Id. The Supreme Court reasoned that "[t]he corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities . . . ," id., and that § 1962(c) does not require any more distinctness than such a legal separation between the person and the corporate entity, id. at 165. Subsequent cases have followed this distinction.⁵ See, e.g., Kalimantano GmbH v. Motion in Time, Inc., 939 F. Supp. 2d

⁴ The RICO statute imposes liability on a "person" who is employed by or associated with an "enterprise" and conducts or participates in the conduct of the affairs of the enterprise in a prohibited way. 18 U.S.C. § 1962(c). The statute does not impose liability on the enterprise itself. The plaintiff could not allege a claim against a corporation as a defendant "person" while also claiming that the corporation was the "enterprise." That would violate the distinctness requirement. See Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258, 268 (3d Cir. 1995); Eldred v. Comforce Corp., No. 08 Civ. 1171, 2010 WL 812698, at *12 (N.D.N.Y. Mar. 2, 2010).

⁵ Indeed, in City of New York v. Smokes-Spirits.com, Inc., 541 F.3d 425 (2d Cir. 2008), rev'd and remanded on other grounds sub nom. Hemi Grp., LLC v. City of New York, 559 U.S. 1 (2010), the Second Circuit Court of Appeals held that even a sole proprietorship could be a RICO "enterprise" and satisfy the distinctness requirement, so long as the sole proprietorship is not "strictly a one-man show." Id. at 448-49 (quoting and citing McCullough v. Suter, 757 F.2d 142, 144 (7th Cir. 1985)) (internal quotation marks omitted).

392, 405 (S.D.N.Y. 2013); U1IT4less, Inc. v. FedEx Corp., 896 F. Supp. 2d 275, 287-88 (S.D.N.Y. 2012) (finding sufficient distinctness "where a parent corporation and its subsidiary are alleged to be the RICO 'person,' and a separately incorporated subsidiary is alleged to be the RICO 'enterprise'").

In this case, the plaintiffs allege Concierge to be the RICO "enterprise," (Am. Compl. ¶ 12), and allege that defendants Brady, Russo, Graham, and CA Partners were RICO "persons" who "operated or otherwise managed Concierge through a pattern of racketeering activity." (Am. Compl. ¶ 411; Pls.' Mem. in Opp. to Defs.' Mot. Dismiss ("Pls.' Mem.") at 14-15.)⁶ The claim under § 1962(c) is brought against these RICO persons only and not against Concierge. Therefore, it is clear that the plaintiffs do not seek to hold Concierge liable for the § 1962(c) claim as a RICO "person" but only allege that Concierge was the "enterprise." This plainly satisfies the distinctness requirement under Cedric Kushner. 533 U.S. at 163; see also Kalimantano, 939 F. Supp. 2d at 405; U1IT4less, 896 F. Supp. 2d at 287-88.

⁶ The plaintiffs allege in the alternative that there was a RICO "enterprise-in-fact consisting of all of the Defendants" including Concierge, (Am. Compl. ¶ 413), but do not rely on that theory in their Memorandum of Law and abandoned that theory at the oral argument of the pending motion. (Tr. of Oral Argument on Oct. 31, 2013 ("Tr.") at 31-32.)

B.

To state a RICO claim, the plaintiff must allege two or more related "predicate acts" that constitute a "pattern" of racketeering activity. Schlaifer Nance & Co., 119 F.3d at 97. A plaintiff must allege, at a minimum, that "a defendant personally committed or aided and abetted the commission of two predicate acts." McLaughlin v. Anderson, 962 F.2d 187, 192 (2d Cir. 1992) (citing H.J. Inc., 492 U.S. at 237; Sedima, 473 U.S. at 496 n.14). The defendants argue that the plaintiffs' allegations of predicate acts fail to satisfy the particularity requirement of Federal Rule of Civil Procedure 9(b). The RICO predicate acts in this case consist of alleged instances of wire fraud.⁷ Rule 9(b) provides that, "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "The particularity requirement of Rule 9(b) serves to 'provide a defendant with fair notice of a plaintiff's claim, to safeguard a defendant's reputation from improvident charges of wrongdoing, and to protect a defendant against the institution of a strike suit.'" Rombach v. Chang, 355 F.3d 164, 171 (2d Cir. 2004) (quoting O'Brien v. Nat'l Property Analysts Partners, 936 F.2d 674, 676 (2d Cir. 1991)). In cases in which a plaintiff makes

⁷ The plaintiffs also alleged an instance of bank fraud under 18 U.S.C. § 1344 as an additional predicate act, but have withdrawn that allegation. (Tr. at 30-31.)

specific averments of fraud as predicate acts for RICO claims, "Rule 9(b) calls for the complaint to 'specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiffs contend the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements.'" Moore v. PaineWebber, Inc., 189 F.3d 165, 173 (2d Cir. 1999) (citing and quoting McLaughlin, 962 F.2d at 191).

The defendants argue that the plaintiffs' allegations fail to satisfy the particularity requirement because they do not provide the exact time and location of the statements or the identity of the speaker. However, the particularity requirement is not a mechanical formula demanding exacting precision but must instead be applied in view of its express purposes and the facts of each case. See Gelles v. TDA Indus., Inc., No. 90 Civ. 5133, 1991 WL 39673, at *6 (S.D.N.Y. Mar. 18, 1991) ("Rule 9(b) does not require that a complaint plead fraud with the detail of a desk calendar or a street map."); see also The Limited, Inc. v. McCrory Corp., 683 F. Supp. 387, 393 (S.D.N.Y. 1988) ("The nature and extent of the detail required will vary with the circumstances of each case. In general, however, defendants must be apprised of the nature of the allegedly false statements, by whom they were made and when, in what manner the statements were false, how they misled plaintiff, and what

defendants obtained as a result of the alleged fraud.”

(citations omitted)).

Indeed, some of the plaintiffs’ allegations fall short of the particularity requirement under Rule 9(b) because they fail to provide any information as to the specific circumstances constituting wire fraud. (E.g. Am. Compl. ¶¶ 95-103.) However, certain other allegations have satisfied the particularity requirement. In particular, the plaintiffs allege material misrepresentations in the marketing materials transmitted over the internet in which Concierge provided false statistics and track records regarding its past sales and history; multiple property sellers allegedly relied on these misrepresentations in entering into contracts with Concierge. (E.g. Am. Compl. ¶¶ 116-29 (November 2010 pitch to sellers of 60 Round Hill Road), 136-37 (same), 151-55 (spring 2009 pitch to the Jarols), 189-91 (same), 244 (June 2012 pitch to the property in Mooresville, North Carolina).) Therefore, with respect to each of these sellers, the plaintiffs’ allegations have provided sufficient information regarding the approximate time and the context of each of these statements to state the circumstances constituting wire fraud.

The defendants also argue that the alleged false statements attributed to “Concierge” do not satisfy the particularity requirement because no specific speaker is identified. However,

many of these statements appear in the marketing or pitching materials disseminated in the name of Concierge, which can properly be attributed to the business. (E.g. Am. Compl. ¶¶ 86, 89, 112-13, 116, 121, 155, 212, 259, 269, 342.) The plaintiffs allege that defendant Brady, as vice president of marketing and as president for Concierge, "controlled Concierge's marketing and public relations." (Am. Compl. ¶¶ 30-31, 267.) The plaintiffs also allege that Russo, as the chief operating officer of Concierge, "directed or otherwise knowingly caused the misrepresentations in the marketing materials to be issued by Concierge." (Am. Compl. ¶¶ 35, 38, 267, 369.) "[T]o constitute a [mail or wire fraud] violation . . . it is not necessary to show that [defendants] actually mailed [or wired] . . . anything themselves; it is sufficient if they caused it to be done." Smokes-Spirits.com, 541 F.3d at 446 (alterations in original) (quoting Pereira v. United States, 347 U.S. 1, 8 (1954)). Therefore, by alleging that Russo and Brady controlled marketing and caused false statements to be made in the name of Concierge, the plaintiffs have provided sufficient allegations regarding the persons responsible for the statements.

In addition, the plaintiffs have alleged specific instances in which defendant Russo personally made misrepresentations to the sellers over telephone, emails, and through the internet, such as the misrepresentations in connection with the auctions

of the property of former plaintiffs John and Nancy Bloeser around November 2011 and another property in Edwards, Colorado in 2011, (Am. Compl. ¶¶ 116, 126, 210-12). These sellers allegedly relied on Russo's misrepresentation in contracting with Concierge. (Am. Compl. ¶¶ 127, 211-12.)

Hence, the plaintiffs have sufficiently alleged that defendants Russo and Brady directed, caused, or at least aided and abetted multiple false statements to be made to specific sellers by use of the wires. Therefore, the plaintiffs' allegations have satisfied the particularity requirement for pleading fraud.

The defendants have not otherwise challenged the sufficiency of the pleading of wire fraud as the pattern of RICO predicate acts.⁸ "Where a plaintiff in a RICO claim alleges racketeering activity based on the predicate acts of violating the mail or wire fraud statutes, he or she must prove three elements: (1) scheme to defraud, including proof of intent; (2) money or property as object of scheme; (3) use of mails or wires to further the scheme." City of New York v. Cyco.Net, Inc., 383

⁸ The defendants do argue that the individual Jarol plaintiffs were not injured by a "pattern" of racketeering activity but only by isolated transactions. (Defs.' Mem. at 19.) This issue concerns the adequacy of the pleading of injury and will be addressed in Part III.C of this Opinion. However, the defendants have not argued that the alleged fraudulent acts with respect to all of the sellers as a whole, including those who are not involved in this action, did not constitute a "pattern" of wire fraud.

F. Supp. 2d 526, 552 (S.D.N.Y. 2005) (citing United States v. Autuori, 212 F.3d 105, 115 (2d Cir. 2000); United States v. Dinome, 86 F.3d 277, 283 (2d Cir. 1996)). The plaintiffs have stated a facially plausible claim in which defendants Russo and Brady, through wire communications, allegedly made multiple false representations with the intention to obtain money from multiple property sellers in a deceptive manner; and their acts allegedly spanned approximately three years, from 2009 to 2012. (Am. Compl. ¶¶ 116, 151, 244); see Kalimantano, 939 F. Supp. 2d at 404, 405 (fraudulent email advertisements sufficient for wire fraud as RICO predicate acts); see also GICC Capital Corp. v. Tech. Fin. Grp., Inc., 67 F.3d 463, 466-68 (2d Cir. 1995) (discussing standard for determining whether there was a "pattern" of racketeering activity).⁹ Therefore, the Amended Complaint has made facially plausible allegations of wire fraud as RICO predicate acts and a pattern of racketeering activity by defendants Russo and Brady.

By contrast, the allegations against defendants Graham and CA Partners are insufficient to support the assertion that each of these defendants committed or aided and abetted at least two

⁹ As discussed above, the defendants have not specifically challenged the sufficiency of the plaintiffs' pleading of a "pattern" of racketeering activity. Supra note 8. Therefore, the Court need not decide whether the alleged acts of Brady and Russo are an "open-ended" or "closed-ended" pattern of racketeering activity. See GICC Capital Corp., 67 F.3d at 466-67.

predicate acts. With respect to defendant Graham, the plaintiffs allege only that Graham made certain false representations in a Fortune Magazine article and a Forbes.com interview.¹⁰ (Am. Compl. ¶¶ 300-01, 324.) The plaintiffs have not alleged facts to show specifically that the statements were materially false or that they were intended to induce potential purchasers to use Concierge. Therefore, the plaintiffs have failed to state a claim under § 1962(c) against defendant Graham.

With respect to defendant CA Partners, the plaintiffs seek to hold CA Partners responsible for the acts of non-party Roffers, who cannot currently be sued due to a pending bankruptcy proceeding. (Am. Compl. ¶ 2 n.2.) CA Partners is owned by Roffers's wife (95%) and mother-in-law (5%) and employed Roffers while he worked for Concierge as an "independent contractor." (Am. Compl. ¶¶ 23-26.) However, for the § 1962(c) claim, there is only a single conclusory

¹⁰ The plaintiffs also allege that Concierge obtained the business of the seller of a property in Cornwall-on-Hudson with Graham's misrepresentation that a recent auction by Concierge was successful. (Am. Compl. ¶¶ 142-43.) However, there is no allegation as to the approximate time and manner of communication, or that wire communications were used to transmit these misrepresentations in furtherance of the plan to defraud the Cornwall-on-Hudson property owner. Therefore, these allegations are insufficient to show an instance of wire fraud. Similarly insufficient is the bare allegation that Graham asked others to submit "stalking horse" bids, (Am. Compl. ¶ 230), which alone does not satisfy the elements of wire fraud.

allegation that "Brady, Russo, Graham, and CA Partners operated or otherwise managed Concierge through a pattern of racketeering activity." (Am. Compl. ¶ 411.) The plaintiffs have failed to identify any specific act of CA Partners committing wire fraud, let alone establishing the commission of two or more predicate acts. Therefore, the plaintiffs have failed to state a § 1962(c) claim against CA Partners.

C.

Finally, plaintiffs bringing civil RICO claims must demonstrate that they each suffered an injury proximately caused by the defendants' violation of § 1962. 18 U.S.C. § 1964(c); Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268 (1992). In particular, "[w]here a RICO violation is predicated on acts sounding in fraud, a plaintiff must allege that the defendant's acts were not only the 'but for' cause of plaintiff's injury, but the proximate cause as well, necessitating 'some direct relation between the injury asserted and the injurious conduct alleged'; '[a] link that is too remote, purely contingent, or indirect is insufficient.'" Petrosurance, Inc. v. Nat'l Ass'n of Ins. Comm'rs, 888 F. Supp. 2d 491, 503-04 (S.D.N.Y. 2012) (quoting and citing Hemi Grp., LLC v. City of New York, 559 U.S. 1, 9 (2010)), aff'd, 514 F. App'x 51 (2d Cir. 2013).

Section 1964(c) provides a civil remedy only to those who

are injured "by reason of" violations of § 1962. 18 U.S.C. § 1964(c). In Holmes, the Supreme Court explicitly rejected the proposition that mere "but-for" causation would satisfy the statutory requirement for recovery and held that the "by reason of" language requires that the violation of § 1962 be the "proximate cause" of the plaintiff's injury. Holmes, 503 U.S. at 265-68. The Holmes Court identified three policy considerations in evaluating whether a plaintiff's alleged harm satisfies the "proximate cause" requirement for purposes of civil RICO claims: (1) whether recognizing the plaintiffs' claims would lead to a difficult task of "ascertain[ing] the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors"; (2) whether recognizing such claims "would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries"; and (3) whether the "directly injured victims" can "vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." Holmes, 503 U.S. at 269-70 (citations omitted); see also Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc., 271 F.3d 374, 381-82 (2d Cir. 2001).

In this case, the plaintiffs argue that Grand Estates was injured because the defendants' fraudulent acts gave Concierge

an unfair advantage in the competition for auction business. (Pls.' Mem. at 18.) The plaintiffs rely on the decision of the Second Circuit Court of Appeals in Commercial Cleaning, 271 F.3d 374. In that case, the court considered the three Holmes factors discussed above to evaluate whether a competitor's RICO claim satisfied the "proximate cause" requirement. Id. at 381-82 (citing Holmes, 503 U.S. at 269, 273). The plaintiff and the defendant were direct competitors in the laundry business, and the defendant allegedly obtained an unfair advantage from hiring hundreds of undocumented aliens at low wages. Id. at 378-79. The court reasoned that, because the plaintiff and the defendant were direct competitors, damages were readily discoverable and such damages did not apply to plaintiffs outside the category of direct competitors, involving no complicated task of ascertaining and apportioning damages. Id. at 383. Moreover, actions by other parties, namely, governmental authorities seeking to recover lost taxes and fees, would not address the same type of harm that the defendant caused by hiring undocumented aliens at low wages. Id. at 385. The Court of Appeals noted: "There is no class of potential plaintiffs who have been more directly injured by the alleged RICO conspiracy than the defendant's business competitors" Id. Therefore, the court found that the plaintiff's claim satisfied the "proximate cause" requirement. Id. at 378.

This case presents a different scenario. The plaintiffs have conceded that Grand Estates could be injured only as the result of the injury to the property sellers who were allegedly defrauded. (Tr. of Oral Argument on Oct. 31, 2013 ("Tr.") at 26-27). In other words, Grand Estates suffered only indirect injury that was derivative of the injury to the property sellers. Grand Estates was injured only because the property owners were allegedly deceived into using Concierge's auction services. In addition, Grand Estates was not the sole competitor of Concierge, even though the number of auction houses in the business of luxury estate auctions may not be large. (Am. Compl. ¶ 48.) Moreover, although the plaintiffs in this case name multiple instances in which property sellers were in touch with Grand Estates but eventually contracted with Concierge, there could be many reasons for which those property sellers did not choose Grand Estates, and there was no guarantee that those who contracted with Concierge would otherwise have chosen Grand Estates. All of these factual distinctions make the present case distinguishable from Commercial Cleaning.

The Supreme Court's more recent decision in Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006), involved a factual scenario more analogous to the present case. In Anza, the plaintiff alleged that the defendant defrauded the New York State tax authority and thus gained an unfair advantage over the

plaintiff from being able to lower its prices. Id. at 454. The Supreme Court, again applying the Holmes factors, found that the plaintiff did not suffer an injury proximately caused by the defendant's acts. Id. at 458-61. The Court reasoned that "[b]usinesses lose and gain customers for many reasons, and it would require a complex assessment to establish what portion of [the plaintiff's] lost sales were the product of [the defendant's] decreased prices." Id. at 459. Similarly, in this case, because there was no assurance that property sellers would have chosen Grand Estates had they not been allegedly defrauded by the defendants, it is difficult to ascertain and apportion the damage that Concierge's allegedly unfair advantage caused specifically to Grand Estates. See Proven Methods Seminars, LLC v. Am. Grants & Affordable Hous. Inst., LLC, No. Civ. S-07-01588, 2008 WL 269080, at *6 (E.D. Cal. Jan. 29, 2008) (dismissing the defendants' RICO counterclaim for failure to satisfy proximate cause requirement because "[t]here is simply no basis upon which to assume that prospective consumers, absent plaintiffs' alleged scheme [of publishing false advertisements], would have chosen defendants' products and services as opposed to one of the many alternatives").

In addition, the third Holmes factor, that is, whether the direct victims can be expected to sue, Holmes, 503 U.S. at 269-70, also weighs against granting standing to Grand Estates. In

Commercial Cleaning, the immediate victims of the depressed wages that also allegedly injured the plaintiff were the undocumented aliens hired by the defendant; however, it was not realistic to expect these immediate victims to bring suit against the defendant in order to remedy the harm caused by the depressed wages. See also Commercial Cleaning, 271 F.3d at 385 (noting that actions by governmental authorities recovering lost taxes and fees would not redress the type of harm that caused the plaintiff to lose profits). By contrast, in Anza, the harm to the plaintiff-competitor was derived from New York State's loss of tax revenues, and the State was the "immediate victim" capable of vindicating the laws against the tax fraud by pursuing the State's own claim. Anza, 547 U.S. at 460. In the present case, the plaintiffs concede that any injury to Grand Estates was derived from the injuries to the property sellers allegedly defrauded by the defendants. (Tr. at 26-27.) Any defrauded seller is presumably capable of bringing suit on his or her own: indeed, the individual plaintiffs in this case, the Jarols, are property sellers bringing their own RICO claims against the defendants. The Bloesers also brought claims against the defendants but have discontinued those claims. Thus, it is unnecessary to find standing for Grand Estates in order to redress the injuries caused by the defendants' alleged scheme of fraud.

Therefore, Grand Estates has failed to show that the alleged RICO violations by the defendants were the proximate cause of injury to Grand Estates or that standing for Grand Estates is necessary to vindicate any sellers' claims against the defendants for the alleged fraudulent conduct. Accordingly, Grand Estates lacks standing to bring the § 1962(c) claim.

On the other hand, the Jarols' claim plainly satisfies the "proximate injury" requirement because the Jarols were direct victims of the alleged fraud and have alleged direct injuries for which the defendants' alleged violations of § 1962(c) were the proximate cause. The Jarols' claim also would not involve any complicated determination and apportionment of damages: the alleged damages to the Jarols were allegedly the loss of the \$100,000 break-up fee and the increased difficulty in selling their house. (Am. Compl. ¶¶ 208-09.)

The defendants argue that the Jarols have failed to allege injury "by reason of a pattern of racketeering activity," because their claims involved only "isolated" transactions. The defendants also argue that the plaintiffs have failed to allege the necessary continuity in the predicate acts directed at the Jarols. These arguments have no merit. So long as a plaintiff has adequately pleaded a "pattern of racketeering activity," for purposes of damages, the plaintiff need only allege that it has suffered an injury from at least one or more of the predicate

acts comprising the RICO violation. See Town of Kearny v. Hudson Meadows Urban Renewal Corp., 829 F.2d 1263, 1268 (3d Cir. 1987); Marshall & Ilsley Trust Co. v. Pate, 819 F.2d 806, 809-10 (7th Cir. 1987); Chevron Corp. v. Donziger, 871 F. Supp. 2d 229, 253 (S.D.N.Y. 2012); see also Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1347 (2d Cir. 1994) (stating that Kearny and Marshall & Ilsley appear to be correct, but not so holding). Hence, the Jarols have sufficiently alleged injury to proceed with their § 1962(c) claim.

Because the plaintiffs have stated a claim arising under § 1962(c) against defendants Russo and Brady but failed to state the claim against defendants Graham and CA Partners, the defendants' motion to dismiss Count III (RICO claim under § 1962(c)) is **granted** with respect to defendants Graham and CA Partners, but is **denied** with respect to defendants Russo and Brady. In addition, because Grand Estates did not suffer an injury proximately caused by a violation of § 1962(c), the defendants' motion to dismiss Count III is **granted** with respect to the claim of plaintiff Grand Estates. The sole remaining claim under Count III is the § 1962(c) claim by the Jarols against defendants Brady and Russo.

IV.

The plaintiffs also bring RICO claims arising under 18

U.S.C §§ 1962(a), (b), and (d) against all defendants. Section 1962(a) provides that

[i]t shall be unlawful for any person who has received any income . . . from a pattern of racketeering activity . . . in which such person has participated as a principal . . . , to use or invest . . . any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(a). To state a claim under § 1962(a), a plaintiff must allege "(1) that the defendants used or invested racketeering income to acquire or maintain an interest in the alleged enterprise; and (2) that the plaintiffs suffered injury as a result of that investment by the defendants." R.C.M. Exec. Gallery Corp. v. Rols Capital Co., 901 F. Supp. 630, 642 (S.D.N.Y. 1995) (citation omitted). Thus, there must be "injury from the defendants' investment of racketeering income in an enterprise; it is not sufficient to allege injury only from the predicate acts of racketeering." Id. (citing Ouaknine v. MacFarlane, 897 F.2d 75, 82-83 (2d Cir. 1990)).

Similarly, § 1962(b) makes it "unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(b).

Stating a claim under § 1962(b) requires an allegation of “an ‘acquisition’ injury, analogous to the ‘use or investment injury’ required under § 1962(a)” Discon, Inc. v. NYNEX Corp., 93 F.3d 1055, 1063 (2d Cir. 1996) (quoting Danielsen v. Burnside-Ott Aviation Training Ctr., Inc., 941 F.2d 1220, 1231 (D.C. Cir. 1991)), vacated and remanded on other grounds, 525 U.S. 128 (1998). The “enterprise” in §§ 1962(a) and (b) is not necessarily the racketeering enterprise in § 1962(c), but refers to an “entity purchased through moneys raised through racketeering.” USA Certified Merchants, LLC v. Koebel, 262 F. Supp. 2d 319, 330-31 (S.D.N.Y. 2003).¹¹

In this case, the plaintiffs allege that the defendants used the income from their racketeering activity to pay Realogy and SIR so that Realogy’s subsidiary, SIR, would continue to refer business to Concierge under the Strategic Alliance Agreement. (Am. Compl. ¶¶ 381, 398.) The plaintiffs also allege that the defendants used their proceeds “to provide gifts including vacations to real estate brokers with whom they were seeking to do business.” (Am. Compl. ¶¶ 382, 399.) The plaintiffs further allege that the defendants used the income to

¹¹ It is unclear from the face of the Amended Complaint what the alleged “enterprises” were--that is, enterprises in which the defendants acquired or maintained an interest or control--for purposes of the plaintiffs’ §§ 1962(a) and (b) claims. In any event, as explained below, both claims fail because the plaintiffs have failed to allege any injuries separate and distinct from those caused by the RICO predicate acts.

pay CA Partners to employ Roffers. (Am. Compl. ¶¶ 379, 396.) However, none of the alleged injuries to the Jarols, the other property sellers, or to Grand Estates¹² were caused specifically by the referral of Concierge by SIR or the real estate brokers, or by the mere fact that Roffers was employed by CA Partners. Instead, as the Amended Complaint indicates, these injuries were all caused by the alleged misrepresentations by the defendants, that is, the predicate acts of wire fraud. (E.g. Am. Compl. ¶¶ 150, 206, 272, 352.) Such allegations of injuries caused by the predicate acts themselves are insufficient to state a claim under §§ 1962(a) and (b). See, e.g., Moses v. Martin, 360 F. Supp. 2d 533, 544 (S.D.N.Y. 2004); Dornberger v. Metro. Life Ins. Co., 961 F. Supp. 506, 527 (S.D.N.Y. 1997).

The plaintiffs further allege that defendants CA Partners, Segue, and BHI used the racketeering income "to purchase the interests in Concierge from Graham and Mattison." (Am. Compl. ¶¶ 380, 397.) But the plaintiffs have failed to allege any injury that was caused by this purchase of interests in

¹² The defendants have argued that Grand Estates's alleged injury failed to satisfy the "proximate cause" requirement only in the context of the § 1962(c) claim. (Defs.' Mem. at 15-18.) However, the "proximate cause" requirement is not specific to § 1962(c) but is rooted in the language of § 1964(c), which creates the cause of action for all civil RICO claims. Holmes, 503 U.S. at 268. Therefore, Grand Estates's §§ 1962(a) and (b) claims should be dismissed because these claims, like Grand Estates's § 1962(c) claim, fail to satisfy the "proximate cause" requirement. Supra Part III.C.

Concierge. If the defendants simply invested the income derived from a fraudulent scheme "in the same enterprise alleged to have been the vehicle through which Defendants engaged in the unlawful predicate act[s]," Koebel, 262 F. Supp. 2d at 331, the acquisition or maintenance of interest in or control of the enterprise could not have caused any injury that was separate and distinct from the injury caused by the predicate acts; under such circumstances, the plaintiff has no cause of action under §§ 1962(a) and § 1962(b). Koebel, 262 F. Supp. 2d at 331; see also United States Fire Ins. Co. v. United Limousine Serv., Inc., 303 F. Supp. 2d 432, 449-50 (S.D.N.Y. 2004). In this case, because Concierge was allegedly the vehicle of the defendants' alleged racketeering activity, any purchase of interest in Concierge, such as the purchase from Graham and Mattison, could not have caused any harm that was separate and distinct from the injury caused by the predicate acts.

Therefore, because the plaintiffs have not alleged any injury separate and apart from the injury caused by these predicate acts, the plaintiffs have failed to state a claim under §§ 1962(a) and (b), and the defendants' motion to dismiss Counts I and II is **granted**.

Finally, § 1962(d) prohibits any conspiracy to violate §§ 1962(a)-(c). 18 U.S.C. § 1962(d). Other than one conclusory

allegation that the defendants "agreed" to commit the violations, (Am. Compl. ¶ 418), the plaintiffs have alleged no facts to show specifically that the defendants had any "meeting of the minds" in the alleged violations. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a claim. Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555); see also United States Fire Ins. Co., 303 F. Supp. 2d at 453-54; Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Young, No. 91 Civ. 2923, 1994 WL 88129, at *30 (S.D.N.Y. Mar. 15, 1994) ("[N]umerous district courts within this circuit have dismissed conclusory allegations of agreement as insufficient to state a RICO conspiracy claim.") (citing cases); FD Prop. Holding, Inc. v. U.S. Traffic Corp., 206 F. Supp. 2d 362, 373-74 (E.D.N.Y. 2002) (finding a general allegation that "each of these defendants agreed to commit each of the two or more predicate acts" insufficient to state a claim for RICO conspiracy under § 1962(d)).

Nor can the plaintiffs establish conspiracy based on the lone allegation that, "[a]s Concierge is a small company, the [individual defendants] work interchangeably, with each of them taking part in the control and direction of Concierge." (Am. Compl. ¶ 369; Pls.' Mem at 23.) Such a general allegation about the structure of the business is not sufficient to establish

that each defendant consciously agreed to commit the specific predicate acts. See Black Radio Network, Inc. v. NYNEX Corp., 44 F. Supp. 2d 565, 581 (S.D.N.Y. 1999) ("To state a claim under § 1962(d) plaintiffs must allege facts that support a conclusion that defendants consciously agreed to commit predicate acts."). Accordingly, the plaintiffs have failed to state a claim under § 1962(d), and the defendants' motion to dismiss Count IV is **granted**.

v.

The plaintiffs also bring claims under New York State law. Although Grand Estates is dismissed as a plaintiff from the only remaining federal law claim arising under 18 U.S.C. § 1962(c), Grand Estates's state law claims have a close relationship to the § 1962(c) claim because they are based on the same alleged acts constituting wire fraud. Therefore, Grand Estates's state law claims "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a); see also Brazinski v. Amoco Petroleum Additives Co., 6 F.3d 1176, 1181-82 (7th Cir. 1993) (upholding supplemental jurisdiction in a case in which one of the plaintiffs had only a state law claim that was closely related to the other plaintiffs' federal law claim). None of the circumstances listed under 28 U.S.C. § 1367(c) apply in this case to weigh

against the Court's exercising supplemental jurisdiction. Accordingly, the Court retains supplemental party jurisdiction over the state law claims of Grand Estates.

VI.

The plaintiffs bring a claim for tortious interference under New York State law, alleging both interference with contract and interference with business relationships. (Am. Compl. ¶ 433.) However, the plaintiffs' Memorandum of Law fails to address the argument of tortious interference with contract, and that aspect of the claim is therefore abandoned, see, e.g., Price v. Cushman & Wakefield, Inc., 808 F. Supp. 2d 670, 704 n.19 (S.D.N.Y. 2011); Katz v. Image Innovations Holdings, Inc., 542 F. Supp. 2d 269, 275 (S.D.N.Y. 2008), leaving only the claim for tortious interference with business relationships.

Under New York law, to establish a claim for tortious interference with a business relationship, "a party must prove 1) that it had a business relationship with a third party; 2) that the defendant knew of that relationship and intentionally interfered with it; 3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and 4) that the defendant's interference caused injury to the relationship with the third party." Amaranth LLC v. J.P. Morgan Chase & Co., 888

N.Y.S.2d 489, 494 (App. Div. 2009).

In this case, the plaintiffs point to several instances in which potential sellers had a contact with Grand Estates but eventually contracted with Concierge after being offered false information by Concierge. (Pls.' Mem. at 25-27.) However, even if those allegations were sufficient to show the existence of business relationships, the plaintiffs have not alleged any fact showing that the defendants knew of the sellers' relationships with Grand Estates--much less that the defendants intentionally interfered with such relationships.

The plaintiffs argue that the defendants' knowledge of these relationships can be "inferred," (Tr. at 35), because the defendants were aware that they were in competition with other auction houses including Grand Estates, and that "in misrepresenting their success[, the defendants] would deprive [Grand Estates] and other legitimate auction companies of business." (Pls.' Mem. at 26.) However, it is clear that, in order to state a claim for tortious interference, there must be a particular business relationship between the plaintiff and the third party, that defendants must have actual knowledge of that specific relationship, and that the interference must be intentional, not negligent. See Balance Point Divorce Funding, LLC v. Scrantom, --- F. Supp. 2d ---, No. 13 Civ. 1049, 2013 WL 5718456, at *7 (S.D.N.Y. Oct. 21, 2013), as corrected (Oct. 31,

2013) ("To bring a claim of tortious interference with business relations, . . . [t]he allegation that the defendant had actual knowledge of the relationship in issue is an essential element of the claim." (Citations omitted)); see also 800America, Inc. v. Control Commerce, Inc., 202 F. Supp. 2d 288, 290 (S.D.N.Y. 2002); Yong Ki Hong v. KBS Am., Inc., --- F. Supp. 2d ---, No. 05 Civ. 1177, 2013 WL 5366388, at *15 (E.D.N.Y. Sept. 24, 2013) ("A generalized allegation . . . will not pass muster; plaintiffs must show that defendants had actual knowledge of the specific business relationships with which they allegedly interfered."). Therefore, because the Amended Complaint fails to provide any factual allegations that the defendants had actual knowledge of any specific business relationships between Grand Estates and a potential seller or that the defendants intentionally interfered with that business relationship, the plaintiffs have failed to state a claim for tortious interference with a business relationship. See Sedona Corp. v. Ladenburg Thalmann & Co., No. 03 Civ. 3120, 2009 WL 1492196, at *9 (S.D.N.Y. May 27, 2009) (dismissing the tortious interference claim because the complaint failed to "allege that Defendants knew about the specific business relationships identified in the [complaint]"). Accordingly, the defendants' motion to dismiss Count VI is **granted**.

VII.

The plaintiffs bring two claims under New York General Business Law §§ 349 and 350. Section 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” N.Y. Gen. Bus. Law § 349(a). Section 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” Id. § 350. For a claim under Section 349 or Section 350, “a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice.” City of New York v. Smokes-Spirits.Com, Inc., 911 N.E.2d 834, 838 (N.Y. 2009); see also Koch v. Acker, Merrall & Condit Co., 967 N.E.2d 675, 675 (N.Y. 2012).

In addition, Sections 349 and 350 contain a “territoriality” requirement: to state a claim under either provision, the deception of consumers must occur in New York. Goshen v. Mut. Life Ins. Co. of N.Y., 774 N.E.2d 1190, 1194-96 (N.Y. 2002); Cruz, 720 F.3d at 124 (applying the territoriality requirement to both § 349 and § 350). The New York Court of Appeals explained in Goshen that “[t]he reference in section 349(a) to deceptive practices in ‘the conduct of any business, trade or commerce or in the furnishing of any service in this

state' (emphasis added) unambiguously evinces a legislative intent to address commercial misconduct occurring within New York." Id. Similarly, Section 350 contains a parallel language prohibiting "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state," N.Y. Gen. Bus. Law § 350 (emphasis added), and "[t]he standard for recovery under . . . § 350, while specific to false advertising, is otherwise identical to section 349," Goshen, 774 N.E.2d at 1195 n.1. Therefore, Section 350 has the same territorial requirement as Section 349, requiring deception in New York. See id. at 1196; Berkman v. Robert's Am. Gourmet Food, Inc., 841 N.Y.S.2d 825, 2007 WL 1815990, at *5 (Sup. Ct. 2007); see also Cruz, 720 F.3d at 124; Leider v. Ralfe, 387 F. Supp. 2d 283, 292 (S.D.N.Y. 2005). Thus, to state a claim under either Section 349 or Section 350, the plaintiffs must show, at the very least, that the deceptive transaction occurred in New York in order to satisfy the territorial requirement. Cruz, 720 F.3d at 123-24.

With respect to the Jarols' claims, the plaintiffs argue that the territorial requirement is satisfied based on the fact that Concierge's contract with the Jarols contains a choice-of-law provision and a forum-selection clause requiring that any dispute relating to the contract be resolved in courts located in New York and under New York law. (Wolf Decl. Ex. C ¶ 17.)

However, even though choice-of-law and forum-selection provisions may be indicative of a transaction in New York when other factors are present, see Cruz, 720 F.3d at 123-24, the mere fact that parties agreed to be bound by New York law and to resolve their disputes in courts in New York does not, in itself, provide any indication as to where a transaction occurred. There are no allegations in the Amended Complaint showing that the underlying transaction between Concierge and the Jarols occurred in New York. Indeed, the plaintiffs themselves have conceded that the Jarols were not injured in New York. (Tr. at 33.)

Nevertheless, the plaintiffs argue that the Jarols, who were selling a property in Illinois, were "injured as a result of dissemination of information from New York." (Tr. at 33; Pls.' Mem. at 24.) In Goshen, the New York Court of Appeals rejected precisely this type of allegation as insufficient to satisfy the territoriality requirement, holding that "'hatching a scheme' or originating a marketing campaign in New York in and of itself" does not constitute an actionable deceptive act in New York State, Goshen, 774 N.E.2d at 1195; instead, "the transaction in which the consumer is deceived must occur in New York." Id. Therefore, the GBL §§ 349 and 350 claims of the Jarols must be dismissed.

Moreover, the GBL claims of both the Jarols and Grand

Estates fail because the plaintiffs have not alleged facts to show that Concierge's conduct was "consumer-oriented," which is a required element of the GBL claims.¹³ Koch, 967 N.E.2d at 675. Courts in New York have held repeatedly that a "'single shot transaction' involving complex arrangements, knowledgeable and experienced parties and large sums of money" is not a "consumer-oriented" transaction for purposes of GBL claims. Genesco Entm't v. Koch, 593 F. Supp. 743, 752 (S.D.N.Y. 1984) (Weinfeld, J.); accord Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 647 N.E.2d 741, 744-45 (N.Y. 1995); 904

¹³ The defendants argue that Grand Estates cannot bring claims under Sections 349 and 350 because it did not suffer any direct injury. (Defs.' Mem. at 25.) However, New York law permits a competitor to sue under Sections 349 and 350 if the alleged deceptive acts result in consumer injury and affect the public interest in New York. N. State Autobahn, Inc. v. Progressive Ins. Grp. Co., 953 N.Y.S.2d 96, 106 (App. Div. 2012) (affirming a competitor's standing under Sections 349 and 350); see also Securitron Magnalock Corp. v. Schnabolk, 65 F.3d 256, 264 (2d Cir. 1995). Nevertheless, courts routinely reject a competitor's Sections 349 and 350 claims if "the gravamen of the complaint is . . . harm to plaintiff's business" rather than harm to the public interest in New York at large. Emergency Enclosures, Inc. v. Nat'l Fire Adjustment Co., 893 N.Y.S.2d 414, 417-18 (App. Div. 2009) (citations omitted); see also Gucci Am., Inc. v. Duty Free Apparel, Ltd., 277 F. Supp. 2d 269, 273-74 (S.D.N.Y. 2003) (collecting cases). The gravamen of Grand Estates's GBL claims in this case is precisely limited to the alleged damage to Grand Estates's business: Grand Estates claims injury by Concierge's alleged false advertisements and deceptive trade practices because these tactics allegedly gave Concierge an unfair advantage in its competition with Grand Estates. (Am. Compl. ¶¶ 427, 443.) In any event, as explained below, the GBL claims of Grand Estates fail in the absence of allegations that Concierge engaged in "consumer-oriented" conduct that affected public interest at large.

Tower Apartment LLC v. Mark Hotel LLC, 853 F. Supp. 2d 386, 399 (S.D.N.Y. 2012); Exxonmobil Inter-Am., Inc. v. Advanced Info. Eng'g Servs., Inc., 328 F. Supp. 2d 443, 449 (S.D.N.Y. 2004). Courts evaluating whether a conduct is "consumer-oriented" have generally focused on several factors, namely, "(i) the amounts at stake, (ii) the nature of the contracts at issue, and (iii) the sophistication of the parties." Fleisher v. Phoenix Life Ins. Co., 858 F. Supp. 2d 290, 304 (S.D.N.Y. 2012) (citations omitted). "None of these factors alone is dispositive. Rather, these considerations as a whole are intended to ascertain whether the disputed acts or practices have a broader impact on consumers at large." Id. (internal citations and quotation marks omitted).

In particular, "contracts that are not 'standard-issue,' but are instead designed to provide services 'tailored to meet the [plaintiff's] wishes and requirements' are not consumer-oriented for § 349 purposes." Exxonmobil, 328 F. Supp. 2d at 449 (alteration in original) (quoting N.Y. Univ. v. Continental Ins. Co., 662 N.E.2d 763, 770 (N.Y. 1995)). Instead, "[t]he typical violation contemplated by the statute involves an individual consumer who falls victim to misrepresentations made by a seller of consumer goods usually by way of false and misleading advertising." Genesco, 593 F. Supp. at 751; accord Teller v. Bill Hayes, Ltd., 630 N.Y.S.2d 769, 773 (App. Div.

1995).

In this case, auctions of luxury real properties, which were valued at millions of dollars, involved complex arrangements between sophisticated parties and with tens of thousands of dollars in marketing costs alone. As alleged in the Amended Complaint, each contract was entered into only after an elaborate process of pitching by the auctioneer and individualized negotiations between the auctioneer and the seller, which are wholly unlike the unsophisticated, day-to-day consumer transactions in the sales of consumer products and services. (See, e.g., Am. Compl. ¶¶ 77-82, 116-31, 151-88). Therefore, because of the large amounts of money involved in these complex transactions, and because these transactions provided services "tailored" to meet the sellers' individualized requirements, Exxonmobil, 328 F. Supp. 2d at 449, these contracts cannot be deemed as "consumer-oriented." See 904 Tower Apartment, 853 F. Supp. 2d at 390, 399-400 (granting motion to dismiss and holding that a \$ 10 million transaction involving the sale of two luxury apartments "is too unlike a typical consumer violation to be covered under the statute").¹⁴

¹⁴ The fact that the plaintiffs alleged multiple instances of similar transactions is of no consequence. It is the nature of the underlying transactions that matters in the determination of whether a type of transactions is "consumer-oriented." A transaction does not become "consumer-oriented" simply because the same defendant has done a similar type of business with

Therefore, the plaintiffs have failed to allege facts to show that the luxury real estate transactions in this case are the type of "consumer-oriented" transactions affecting consumers at large and thus cannot state a claim under Sections 349 and 350. Additionally, the GBL claims of the Jarols fail because the claims failed to satisfy the territoriality requirement. Accordingly, the defendants' motion to dismiss Counts V and VII is **granted**.¹⁵

multiple clients; otherwise, any business transaction could become "consumer-oriented," including those that have been held not to be so, such as selling luxury real estate. See 904 Tower Apartment, 853 F. Supp. 2d at 390.

¹⁵ The defendants dispute personal jurisdiction over defendants CA Partners, Segue, and BHI. Because no claim remains against these defendants, it is unnecessary to reach that issue.

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REAL ESTATE | HOMES

Luxury Real-Estate Firm Concierge Auctions Fights Allegations of Fraudulent Bids

A fast-growing force in the business of selling pricey properties, the company is accused of drumming up fake bidders.



PHOTO: JON KRAUSE

By *Katherine Clarke*

Updated Feb. 7, 2019 2:54 p.m. ET

In the competitive world of luxury real estate, Concierge Auctions is the dominant force in the rapidly growing business of selling pricey properties to the highest bidder. Billing itself as the leading marketplace for the world's most distinguished properties, Concierge in just 10 years has attracted clients like former basketball star Michael Jordan, advisers like real estate maven Barbara Corcoran and partnerships with Sotheby's International Realty and Engel & Völkers, two of the world's most prestigious real-estate brokerage firms.

Over that same period, Concierge has also attracted something else: litigation. The New York and Austin-based firm was named as a defendant in 10 lawsuits filed by clients since the start of 2014, according to a search of Courthouse News, a nationwide news service for lawyers and the media. Five of those suits accused Concierge of using some form of dummy or fake bidder, either to artificially drive up the price of homes, or to make it appear to sellers that there was more interest in their homes than there was in reality.

Concierge denied the allegations in all of the lawsuits and said many of them were dismissed after the clients agreed to settle out of court. It added that four of the lawsuits resulted in payments to Concierge. None of the shill-bidding allegations have ever been decided by a judge. Four of the lawsuits are ongoing.

The company strongly denies it drummed up fake bids. Concierge attorney Robert S. Wolf described the allegations generally as "bad-faith efforts to avoid meeting financial obligations to Concierge." He added that some of the cases against the firm were filed after Concierge already commenced an arbitration against the same client. Ms. Corcoran, who serves Concierge in an advisory capacity, said she doesn't believe the allegations.

"Concierge Auctions does not and has never used shill or fake bidders. Any accusation to the contrary is false," said Laura Brady, president of Concierge. "The bidding for our auctions can be viewed online in real time, and our software maintains records of every bid placed and by whom."

She continued: "Every buyer and seller who participates in our auctions is required to honor their contract obligations, and it is our policy to take legal action against any party who fails to perform. From time to time, such actions have caused the party at fault to retaliate with false allegations in attempt to push blame for their nonperformance."

While lawsuits are nothing new in the rough-and-tumble real-estate business, real-estate attorneys said the quantity of lawsuits faced by Concierge, and the nature of their allegations, are a departure in terms of volume from those usually faced by nationally known real-estate sales firms. Rivals DeCaro Auctions International and Paramount Realty USA were each sued once by clients since the beginning of 2014, according to Courthouse News. Both are significantly smaller companies in terms of volume of sales. Concierge disputes the notion it is sued more often.

The fracas clouds broader efforts by Concierge to rebrand the auction business—traditionally viewed as a last-ditch refuge for homeowners in distress—as an alternative means of selling luxury properties.

“People are getting hurt,” said Howard Appel, who with another real-estate investor sued Concierge in 2017 in a federal court in California alleging the company improperly kept their \$285,000 deposit after the seller reneged on selling a Fiji home they won at auction. They accused Concierge of using phony bidders to drive up the price of the home. The suit is ongoing. Concierge has denied its claims but declined to comment further, citing pending litigation.



Last August, Concierge sold a Lake Tahoe property for its asking price of \$17.5 million at auction. PHOTO: CONCIERGE AUCTIONS

Five of the 10 lawsuits filed against Concierge since the start of 2014 alleged that Concierge either failed to disclose registered bidders who had proffered lowball bids, or used some kind of phony or shill bidder to lure clients to entrust their properties to the firm’s auction process. The suits define shill bidders in different ways. In some, they are defined as a nonexistent buyer allegedly fabricated by Concierge. Others allegedly were buyers who didn’t intend to buy the home but agreed to bid.

In 2017, Joanne Brown alleged in a New York state court that she had agreed to let Concierge auction her apartment in Telluride, Colo., and was advised by executives from the company that it would likely trade for between \$10 million and \$14 million. A buyer ultimately won the auction at roughly \$7 million, though the deal never closed.

Ms. Brown alleged that Concierge failed to inform her of the two lowest registered bids, which were in the \$2 million to \$3 million range, thereby giving her a false impression of the average price buyers were willing to pay. She also alleged that Concierge Chairman Chad Roffers told her there was a \$7 million bid from a buyer named Chris Shelton; Ms. Brown accused Mr. Shelton of being a “shill bidder” enlisted to drive up the price of homes at Concierge’s auctions without intending to actually buy.

Mr. Shelton, a real-estate investor based in Nevada, said his bid on Ms. Brown’s property was legitimate. “Any asset that I bid on, I have intention to buy,” he said.

An attorney for Concierge denied the allegations in the suit, and said the suit was dismissed after Ms. Brown paid to settle the case. Neither party would comment further on the terms of the settlement.

Seattle businessman Rodger May sued Concierge in 2015, alleging that the company recruited him to act as a stalking-horse bidder in an auction for former Lehman Brothers CEO Dick Fuld’s Sun Valley, Idaho, estate.

Having done business with Concierge in the past, Mr. May said Concierge offered him a \$450,000 breakup fee for his bid, meaning he would receive a payment in return for his bid when the property went to another buyer. In the lawsuit, he alleged he was given repeated assurances by Concierge executives that he would not actually win the auction, since at least six other bidders were willing to pay more than the \$19 million bid he registered. However, on the day of the auction, those bidders didn’t materialize, Mr. May alleged, and he was on the hook for the purchase of a property he didn’t actually want. Mr. Fuld’s estate had originally been on the market for \$59 million.

In response to questions about the lawsuit, Mr. Wolf, Concierge’s lawyer, sent a redacted copy of a settlement agreement with Mr. May, showing that Mr. May had paid Concierge \$700,000 to settle the suit. He added that the suit was filed in response to an arbitration started by Concierge. The suit was dismissed. Mr. May declined to comment through his attorney.

In 2017, a Texas state court granted the company a temporary restraining order against recently fired employee Frank Kivo. Concierge alleged he was seeking to extort it with claims the company had engaged in fraudulent bidding activity.

In response, Mr. Kivo, who worked in the company's video department, sought to have the case dismissed on the basis that it was intended to censor him. He alleged he had witnessed Concierge employees placing false bids and pretending to represent phony bidders on the phone to drive up the price of homes.

Mr. Kivo also alleged he had attended a company dinner during which Concierge's executives openly discussed the practice. Rob Hourmont, a former real-estate investor who said he was in negotiations to take a job at Concierge at the time, said he attended the same dinner, during which he observed Concierge executives, including Mr. Roffers, "joking and laughing" about fabricating bidders during an auction. Concierge said there was no such dinner conversation, adding that Mr. Hourmont didn't get the job at Concierge.

In an audio recording anonymously sent to The Wall Street Journal, Mr. Kivo is heard speaking to Jacqueline Moldawer, a former Concierge employee. "There are some cases where like a seller feels like...five bidders is going to be, like, for whatever reason, the magic number to get the house sold, even though we know we've got two or three people that are end users and love the house and are going to bid aggressively," Ms. Moldawer said in the recording. "If we have to shove a f— registration in there (just like a f— piece of paper), then so be it... It gives our sellers peace of mind because it's a business they don't understand."

Ms. Moldawer didn't respond to requests for comment. Concierge didn't dispute the legitimacy of the recording, but said Ms. Moldawer's comments were part of a longer conversation that was selectively edited. Concierge provided a lengthier version of the tape in which Ms. Moldawer said one particular bidder was legitimate. Mr. Kivo also appears to be seeking negative information about the company.



Concierge denies Mr. Kivo's allegations. Court papers show that the case was settled out of court. Mr. Kivo paid Concierge \$5,500 in costs, and Concierge agreed to say that Mr. Kivo had resigned rather than being terminated, according to the settlement agreement.

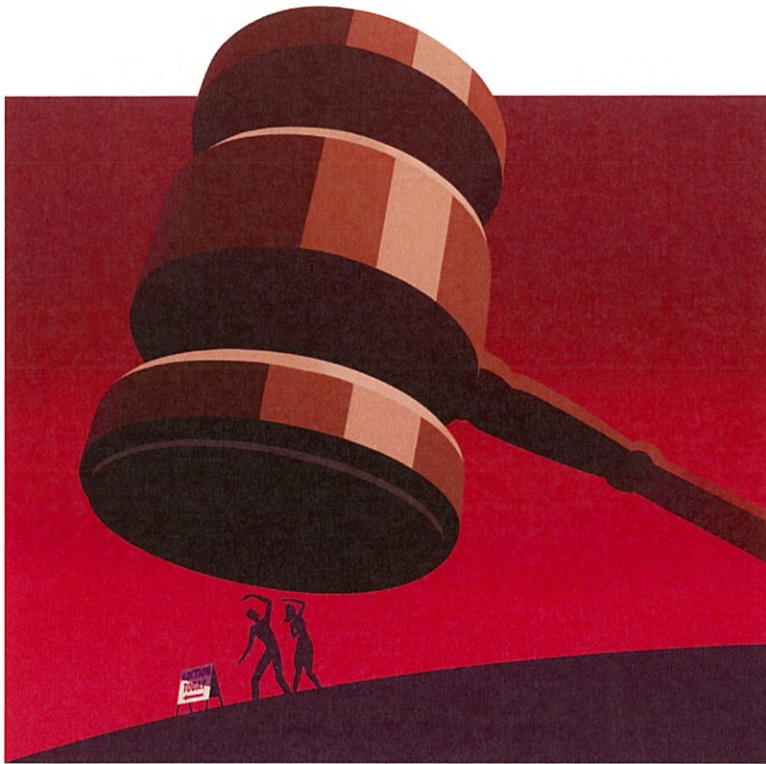


PHOTO: JON KRAUSE

In court papers, the company described Mr. Kivo as a “rogue” employee who played fast and loose with budget

s and scared his colleagues at a company party, leading the company to put him in a performance-review program as a disciplinary action. In a statement, Mr. Kivo said the case’s dismissal didn’t negate the merits of his allegations. He said he has since gone on to run his own successful production company.

No one disputes that Concierge’s business has ballooned in recent years. Ms. Brady said the company closed \$390 million worth of deals from 96 sales in 2018, up from \$340 million across 81 sales in 2017. She said the company processed more than \$8 billion in bids through its online platform last year. Concierge is paid by the buyer in the form of a 12% fee on top of their high bid, which is customary in high-end asset auctions, Ms. Brady said. Concierge Auctions has a business sponsorship arrangement with Dow Jones, the parent company of the The Wall Street Journal.

A number of high-profile properties have produced less-than-spectacular auction results.

In December 2017, billionaire banker Andy Beal's sprawling Dallas estate—once listed by a prior owner for as much as \$135 million—sold for \$36.2 million through the auction house to Texas developer Mehrdad Moayed. Last year, Mr. Moayed also purchased via Concierge the Woody Creek ranch of one-time billionaire Sam Wyly for slightly more than \$14 million, or 75% off its original \$60 million asking price. Last month, Hall of Fame pitcher Randy Johnson got \$7.3 million for his Paradise Valley, Ariz. home, far short of its original \$25 million price tag.

In January, Concierge set a record, selling the most expensive U.S. home ever sold at auction—a massive Versailles-themed estate in Hillsboro Beach, Fla.—to Teavana creators Andrew and Nancy Mack. The home sold for \$42.5 million; it was originally on the market for \$159 million, according to Concierge, which said that the home was still the priciest ever sold in Broward County.

Ms. Brady said many of the properties Concierge represents have spent a long period on the market and experienced several price cuts. In other words, the properties could be considered stale, or overpriced. She said that the Wyly property had endured several price cuts and had been on the market for around eight years before it was auctioned, for instance. She also noted that the Beal property had been listed for as low as \$48.9 million before the auction.

Appraiser Jonathan Miller noted that auctions can sometimes produce disappointing results, since the sellers are trying to condense a marketing process that can take years into just six or eight weeks.

“One thing that we do pride ourselves on is providing as much data and statistics around our past sales, and making the client aware of all the data driven decisions that are being made,” Ms. Brady said. “Ultimately, it's not worth what we think its worth or what they think it's worth. It's worth what the buyers are willing to pay.”

She pointed to several Concierge success stories, including a Lake Tahoe mansion that sold for its asking price of \$17.5 million at auction last August, and an Austin, Texas, property that sold for \$4.8 million, more than its \$4.5 million asking price, in 2017.

In 2015, after trying unsuccessfully to sell a Deer Valley, Utah home, real-estate agent Steve Jury advised his client to try Concierge, which said it would deliver a snazzy global marketing campaign, Mr. Jury said. Concierge executives convinced Mr. Jury and his client, an executive at a large technology company, not to place a reserve—or minimum sales price—on the property, he said, arguing that doing so would attract a wider audience of potential buyers.



Concierge sold the most expensive U.S. home ever sold at auction—this Versailles-themed estate in Hillsboro Beach, Fla. The home sold for \$42.5 million; it was originally on the market for \$159 million. PHOTO: CONCIERGE AUCTIONS

Yet, despite repeated reassurances from Concierge executives in the hours leading up to the auction—including an email vowing that the seller was “in one of the best positions” the company had seen for a coming auction—just a few people showed up to the event, Mr. Jury said. (In some cases, the online portion culminates in an in-person auction.) On Nov. 28, 2015, the property, which had been on the market for almost \$13 million, sold for roughly \$6.5 million.

“The gavel came down with a thud, and I was in total shock at what had transpired,” Mr. Jury said. “I couldn’t believe it. There were literally more people from Concierge there that day than there were bidders.”

Concierge’s Ms. Brady defended the practice of “no-reserve” auctions, saying they attract a wider pool of prospective buyers. Sellers can typically cancel the auction 24 hours before the bidding opens if they’re not confident that the interest generated will produce an acceptable market price, Ms. Brady said. In 2013, for instance, an auction of Mr. Jordan’s palatial Chicago mansion didn’t result in a sale after no bidder offered above his reserve price of \$13 million.

Concierge was founded a decade ago by Ms. Brady and Mr. Roffers. Mr. Roffers previously owned a franchise office of Sotheby’s in Sarasota, Fla., where Ms. Brady ran a team of real-estate agents. Together, they cut their teeth in the auction business by selling large groups of homes in the run up to the last real-estate crash. The company has a satellite office in New York, but is mainly based in Austin, Texas, where it has more than 60 employees. The company doesn’t disclose revenue and profits.

Mr. Roffers said he and Ms. Brady identified auctions as a growing category. They believed that auctions, traditionally used to quickly dispense with distressed properties, could also be used as an attractive tool to sell luxury properties, which with their high price tags can often take longer to sell. “We’re no longer purely a last resort,” Ms. Brady said in an interview. “Today, the vast majority of our sellers are not in any type of financial distress.”

Concierge grew quickly off the bat. Homeowners were looking to unload challenging listings amid a tough economic climate. Also boosting business was a partnership with Sotheby’s, which recommended Concierge’s service to agents. Mr. Roffers said the company has grown at an average rate of about 38% each year, as measured by the total dollar value of its transactions, regardless of market conditions. A spokeswoman for Sotheby’s declined to comment for this article.

“The price transparency we bring to expensive properties combined with the speed in which we do so can be jarring, but often the results we deliver are record-setting,” Mr. Roffers said.

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**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

-----X
CONCIERGE AUCTIONS, LLC,

CLAIMANT,

AAA Case No. 01-17-0006-0004

-vs-

VIOLA S. HANSEN,

RESPONDENT,
-----X

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties, dated July 19, 2017, and having been duly sworn, and having duly heard the proofs and allegations of the Claimant, Concierge Auctions, LLC, (hereafter "Concierge"), represented by Robert S. Wolf, Esq. and Daniel A. Hoffman, Esq., and the Respondent, Viola S. Hansen, (hereafter "Hansen"), represented by Frank J. Blangiardo, Jr., Esq., hereby FIND and AWARD as follows:

Viola S. Hansen hired Concierge Auctions LLC to market, generate interest for, and ultimately conduct and auction off her residential property located at 403 Peconic Bay Boulevard, Riverhead, New York 11901 (the "Property"). The parties' agreement, the Auction Marketing Agreement ("AMA" or the "Agreement"), dated July 19, 2017 provided that the auction ("Auction") would be conducted "without reserve",

and that Hansen could cancel the Auction, but would have to pay a \$55,000.00 fee (the "Cancellation Fee"), if Concierge obtained 5 pre-auction registrations with at least one bid equal to or above \$1,500,000.00. In order to give Concierge the opportunity to fulfill these conditions, Hansen's right to cancel could only be exercised on "the day of the Auction", on August 31, 2017 expiring at 12:00 p.m. On the morning of the Auction, Hansen cancelled the Auction at the so-called "green light meeting."

Concierge contends that at the time Hansen cancelled the Auction, it had obtained six pre-auction registrations with at least one bid equal to or above \$1,500,000.00 Ex. C29. Therefore, according to the AMA, Hansen owes the Cancellation Fee. Hansen contends that Concierge failed to satisfy the condition of having the required five bidders registered prior to the deadline of August 29, 2017 by 5:00 p.m. Therefore, there is no cancellation fee due and owing by Hansen. As stated above, the AMA provides that "[t]he Auction shall be conducted without reserve. [Hansen] shall be obligated to sell the Property to the highest bidder, regardless of price." Ex. C1, AMA, p.1. If [Hansen] elects to cancel the Auction where five or more bidders have registered to participate in the Auction, with at least one opening bid equal to or above \$1,500,000.00, (i) [Hansen] shall promptly pay the Engagement Fee to [Concierge].

The AMA also states:

"This Agreement and the related Exhibits/Addendum contain the complete and final obligation and understanding between the parties relating to the subject matter hereof..."

Hansen attempted to cancel the auction two days prior to the Auction, on August 29, 2017. She was advised that under the agreement she did not have the right to cancel until the morning of the auction. Whereupon Hansen requested that the cancellation deadline be extended from 12:00 p.m. to 2:00 p.m. on the auction day. Her request was granted.

At approximately 11:00 a.m. on the morning of the auction August 31, 2017, and after being shown the bidders sheet which included the six bidders registered for the auction and one pre-auction opening bid of \$1,500,000.00, Hansen informed Concierge that because she doesn't have a guaranteed number she would be canceling the auction. Immediately following Hansen's cancellation, Concierge requested payment of the cancellation fee.

To prevail on a breach of contract claim, a claimant must establish "the existence of a contract, plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." *Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 (1st Dep't 2010). It is well

settled under New York law that "a contract must be interpreted according to the parties' intent." In re Lehman Bros. Inc., 478 B.R. 570, 585-86 (S.D.N.Y. 2012), aff'd sub nom. In re Lehman Bros. Holdings Inc., 761 F.3d 303 (2d Cir. 2014), and aff'd sub nom. That intent is derived from the plain meaning of the language employed in the agreement, when the agreement is read as a whole. Id. Generally, "[a] contract should be construed so as to give full meaning and effect to all of its provisions." Am. Express Bank Ltd. v. AT & T Corp., 607 F.3d 60, 64 (2d Cir. 2010).

Here, in order to properly construe the AMA, the Agreement must be read as a whole and it should not be read so that provisions are deemed meaningless or superfluous.

With respect to the Cancellation Fee, a clear reading of the AMA requires payment of the Cancellation Fee "where five or more bidders have registered to participate in the Auction with at least one opening bid equal to or above \$1,500,000." Ex, C1, p.1 (emphasis added).

While the Agreement does not define "registered to participate", the AMA makes absolutely no mention of payment of a wire or a Bidder Deposit as a condition precedent to receiving the Cancellation Fee. The only requirement for the Cancellation Fee is that five or more

bidders "have registered to participate in the Auction." Ex. C1, p.1. Registration forms requiring a wire, Bidder Deposit, or bank letter as a condition precedent to "registering to participate" would be ignoring the plain language of the AMA and would be asking to improperly insert language into the Agreement that doesn't exist.

As of the morning of the Auction - August 31, 2017 - six bidders had registered to participate in the Auction. As bidder registrations and pre-auction opening bids were received, Hansen was advised of the prospective bidders. The registered bidders were: (1) Stanley Lomangino (Ex. C7) (Tr. 69:19-70:2); (2) Alain Kodsi (Ex. C3) (Tr. 68:7-10); (3) Chris Shelton (Exs. C2, C57) (Tr. 67:19-6); (4) Robert Caires (Ex. C4) (Tr. 68:18-25); (5) Tedaldi At Tidemark, Inc. (Ex. C6) (Tr. 69:2-8); and (6) QMCM Inc. (Ex. C5) (Tr. 68:11-17).

QMCM Inc. placed a pre-auction opening bid of \$400,000.00. Ex. C5; Tr. 78:12-14. Kodsi placed a pre-auction opening bid of \$800,000.00. Ex. C3; Tr. 76:14-18. Lomangino placed a pre-auction opening bid of \$1,400,000.00. Ex. C7; Tr. 80:8-10. Shelton placed a pre-auction opening bid of \$1,500,000.00. Ex. C2. Accordingly, when Hansen exercised her right to cancel, she was obligated to pay the Cancellation Fee.

The AMA - the governing document between Concierge and Hansen -

makes absolutely no mention of any August 29, 2017 5:00 p.m. deadline. That is because the deadline is simply an arbitrary target set by Concierge to prospective bidders to give them incentive to register early. Concierge may extend this deadline in its discretion. Concierge conducted significant successful marketing efforts over the course of six weeks, and Hansen undoubtedly benefited from the marketing and promotions efforts her Property received. Ex. C19. The parties clearly intended to be bound by the AMA, and the AMA is enforceable.

I find that Respondent breached the AMA and is liable to Concierge for the \$55,000.00 (Fifty-Five Thousand Dollars and Zero Cents) Cancellation Fee, plus prejudgment statutory interest at (9% per annum) from August 31, 2017, in the sum of \$8,069.18 (Eight Thousand, Sixty-Nine Dollars and Eighteen Cents).

The AMA also contains an arbitration provision which provides, *inter alia*, that

"i]n the event of any such arbitration or any permitted court action, the prevailing party shall be entitled to reimbursement from the non-prevailing party of all reasonable attorney's fees and costs/expenses of the prevailing party and any award of the arbitrator(s) or court will include costs and reasonable attorneys' fees to the prevailing party."

Based on the amount of the claim, the number of hours reasonably expended on the litigation, and the hourly rates of Concierge counsel, I find that Concierge is entitled to be reimbursed from Hansen reasonable attorney fees in the sum of \$35,000.00 (Thirty-Five Thousand Dollars and Zero Cents) plus costs and disbursements of \$1,392.32. (One Thousand Three Hundred Ninety-Two Dollars and Thirty-Two Cents)

The administrative fees of the American Arbitration Association totaling \$1,550.00, and the compensation and expenses of the arbitrator totaling \$8,057.50 shall be borne by Hansen. Therefore, Hansen shall reimburse Concierge the sum of \$9,007.50, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred and paid by Hansen.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

May 7, 2019

Date

Alfred J. Weiner

Hon. Alfred J. Weiner (Ret.)

I, Hon. Alfred J. Weiner (Ret.), do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

May 7, 2019

Date

Alfred J. Weiner

Hon. Alfred J. Weiner (Ret.)

AMERICAN ARBITRATION ASSOCIATION

CONCIERGE AUCTIONS, LLC,

Claimant,

- against -

JOANNE BROWN,

Respondent.

Case No. 01-17-0001-2812

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

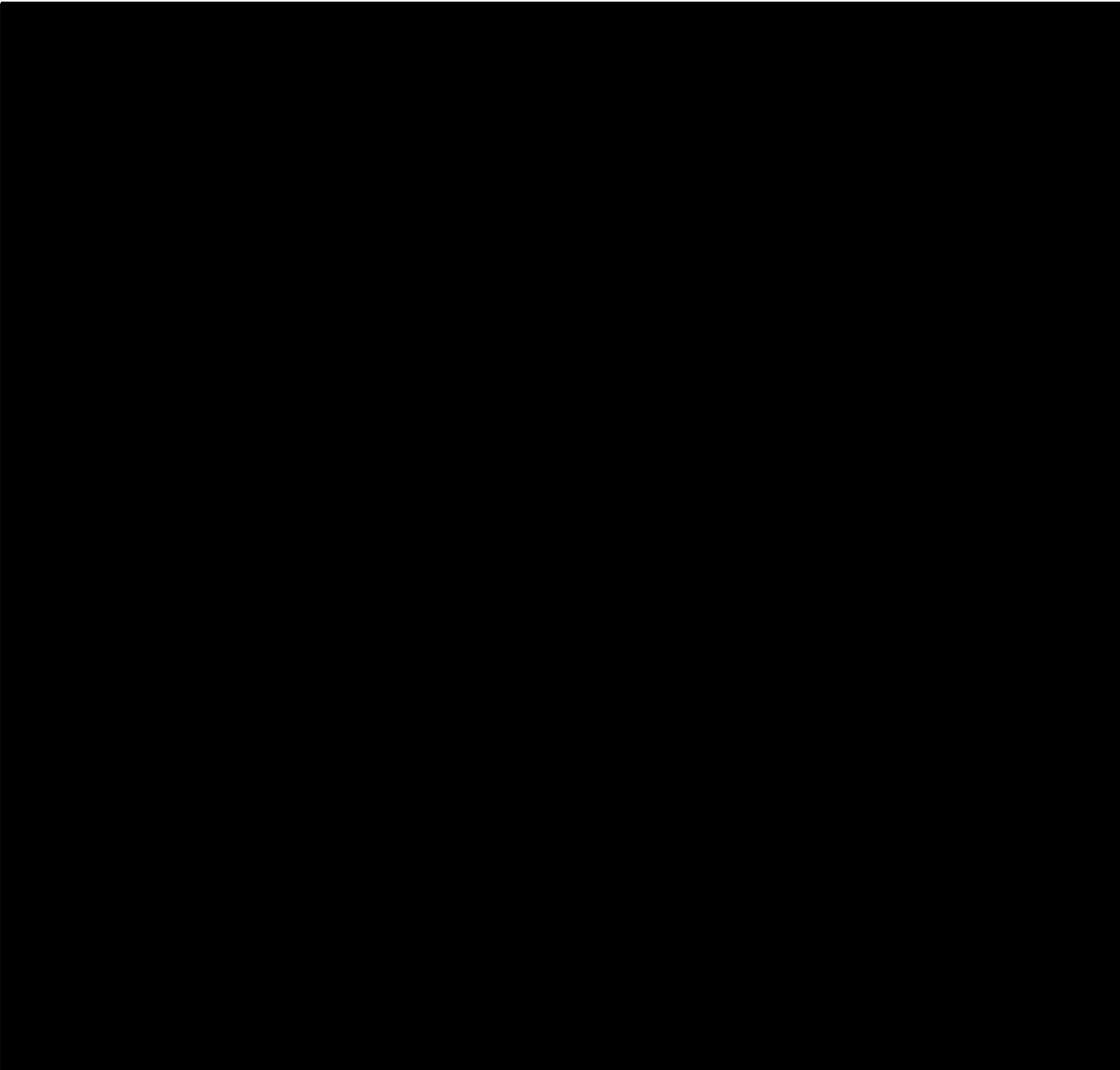
This Settlement Agreement (the "Agreement") is made and entered into this 20th day of December, 2017, by and between, on the one hand, Joanne Brown ("Brown") with an address at [REDACTED] and, on the other, Concierge Auctions, LLC ("Concierge") with an address at 405 Lexington Ave., 26th Floor, New York, New York 10174 (Brown and Concierge each a "Party" and, collectively, the "Parties").

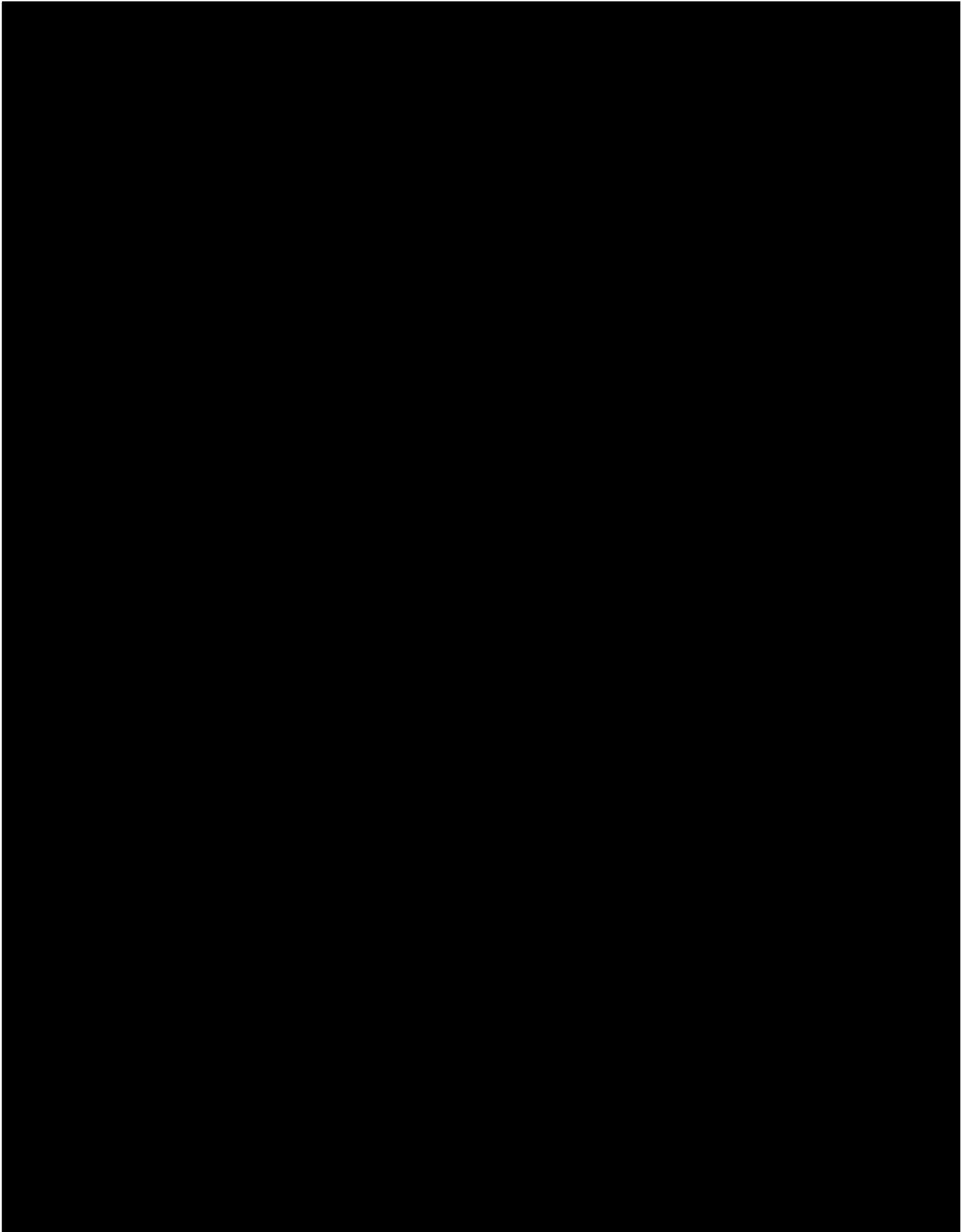
WHEREAS, certain claims, issues and disputes have arisen between Concierge and Brown relating to the auction of Brown's property located at 300 West Colorado Avenue, Unit 3, Telluride, Colorado 81435 (the "Dispute"); and

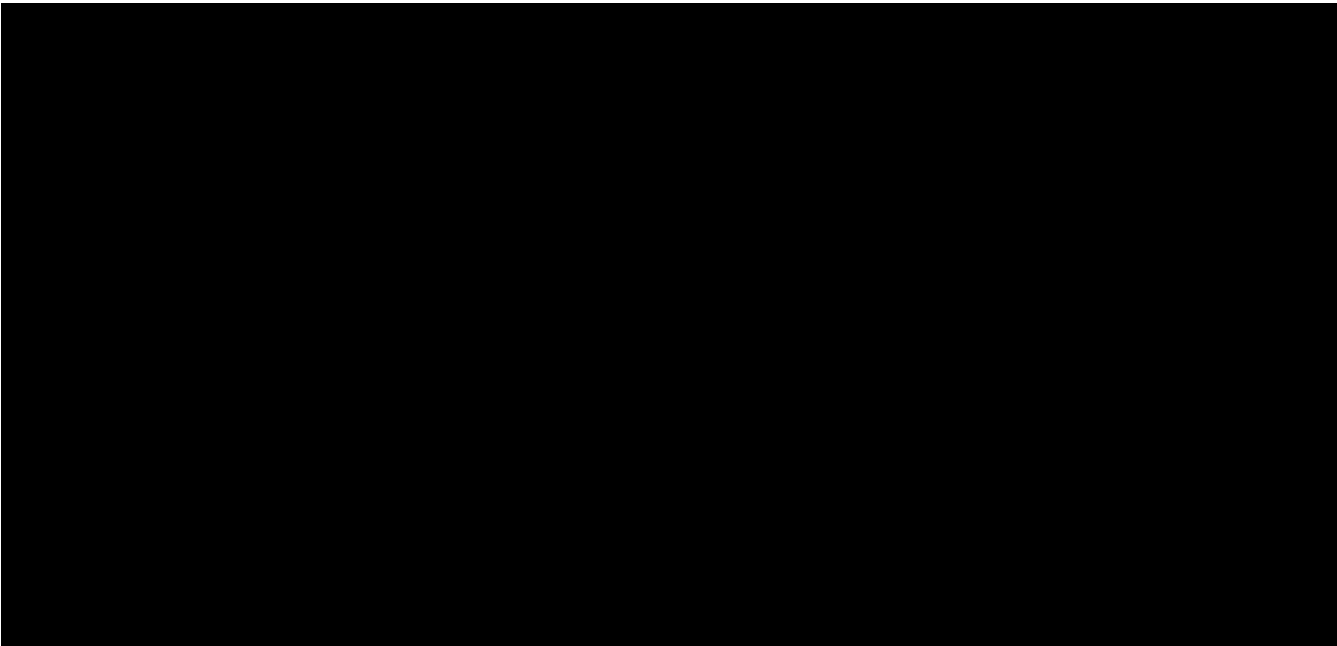
WHEREAS, Concierge commenced this arbitration against Brown before the American Arbitration Association ("AAA") entitled Concierge Auctions, LLC v. Joanne Brown, Case No. 01-17-0001-2812 (the "Arbitration"); and


WHEREAS, Brown commenced an action against Chad Roffers and Concierge and others in the Supreme Court of the State of New York, County of New York on January 18, 2017 (the "Action");

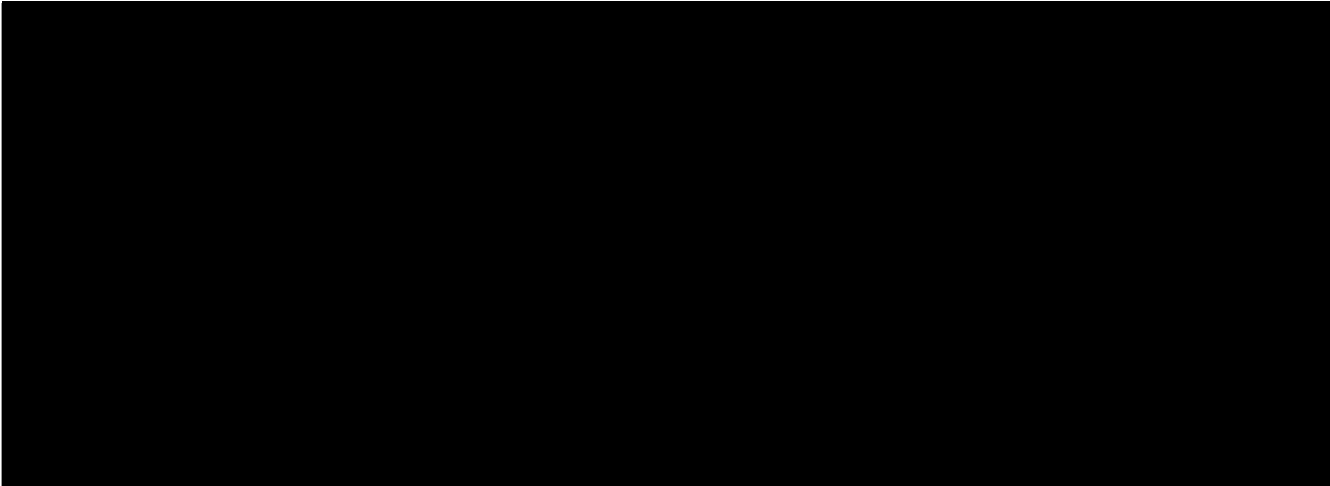
WHEREAS, the Parties hereto desire to settle all claims and counterclaims that have been or could have been asserted relating to the Dispute on the terms set forth herein, and each being fully advised by competent counsel and deeming such settlement to be in their respective best interests in order to avoid the expense, inconvenience and distraction of further arbitration or litigation;




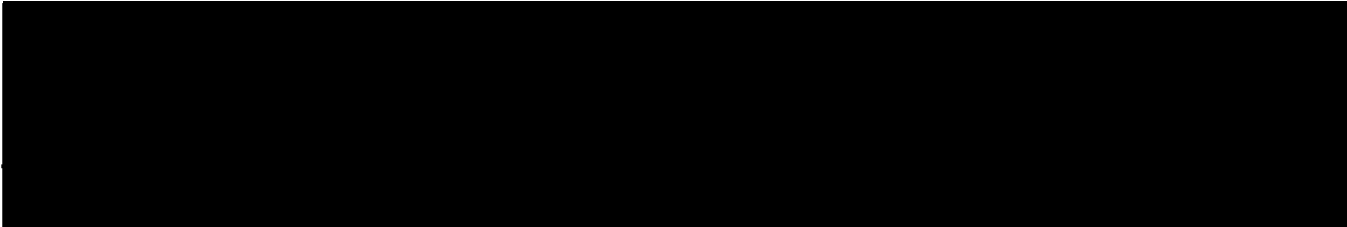


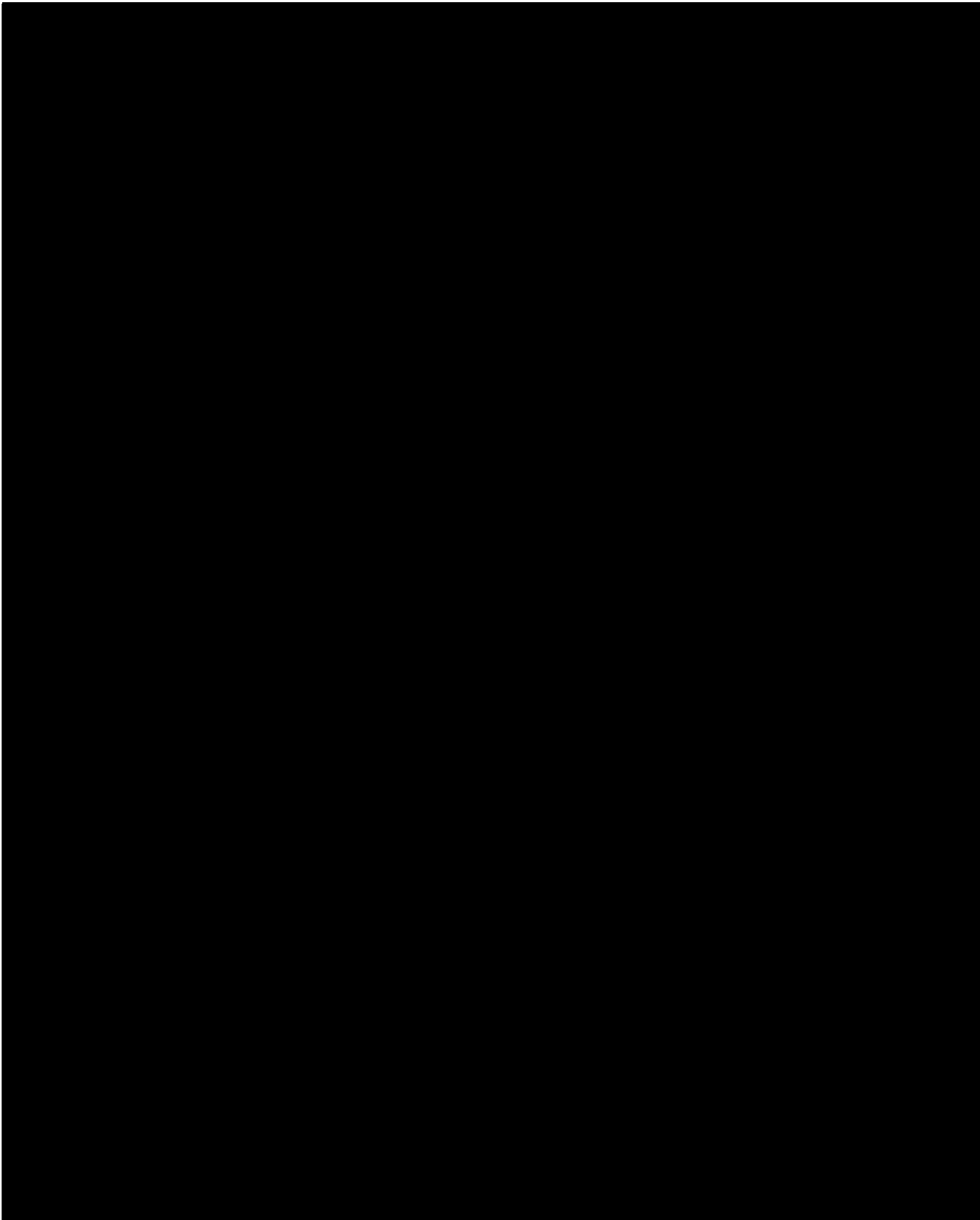


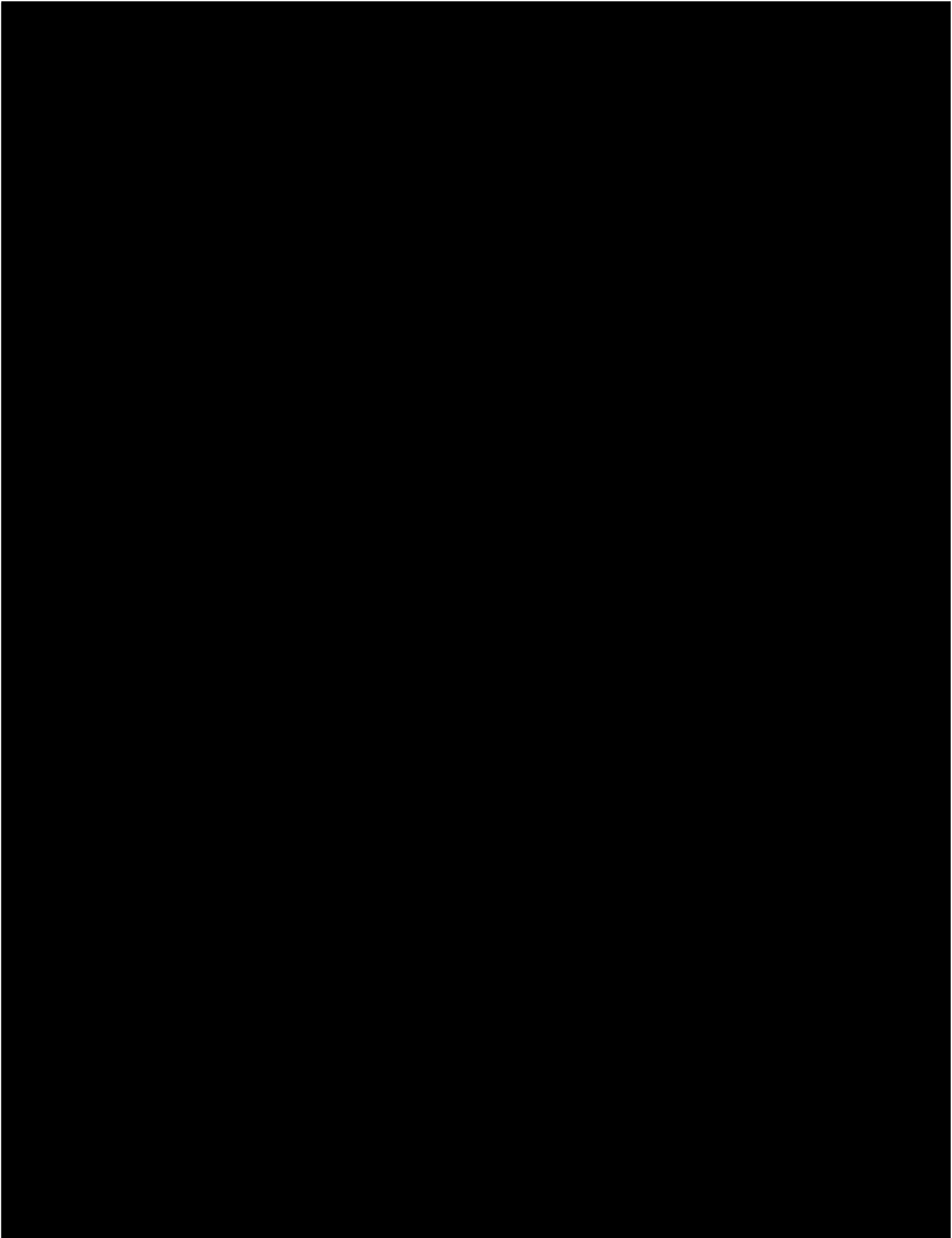
4. Confidentiality/Non-Disparagement. 

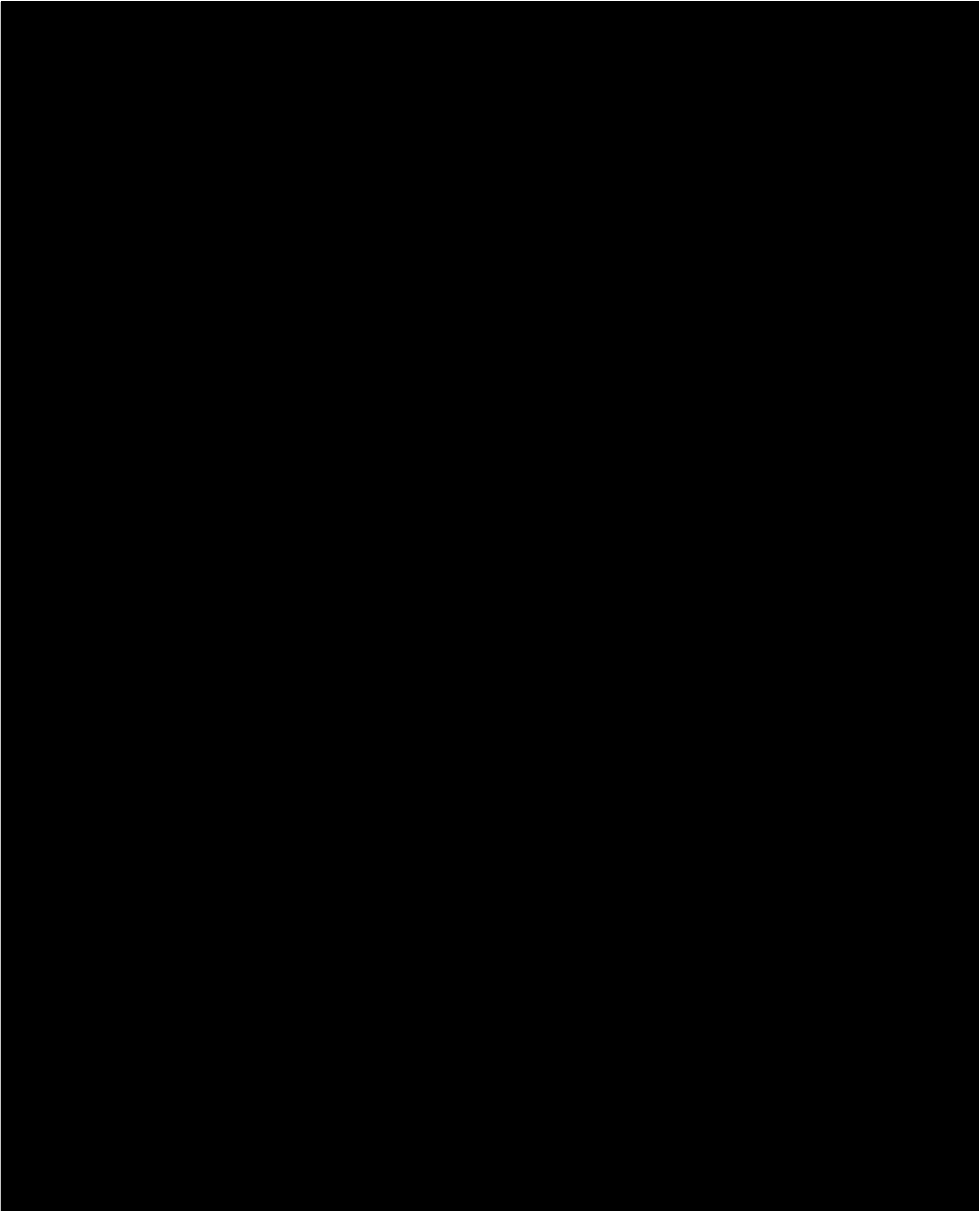


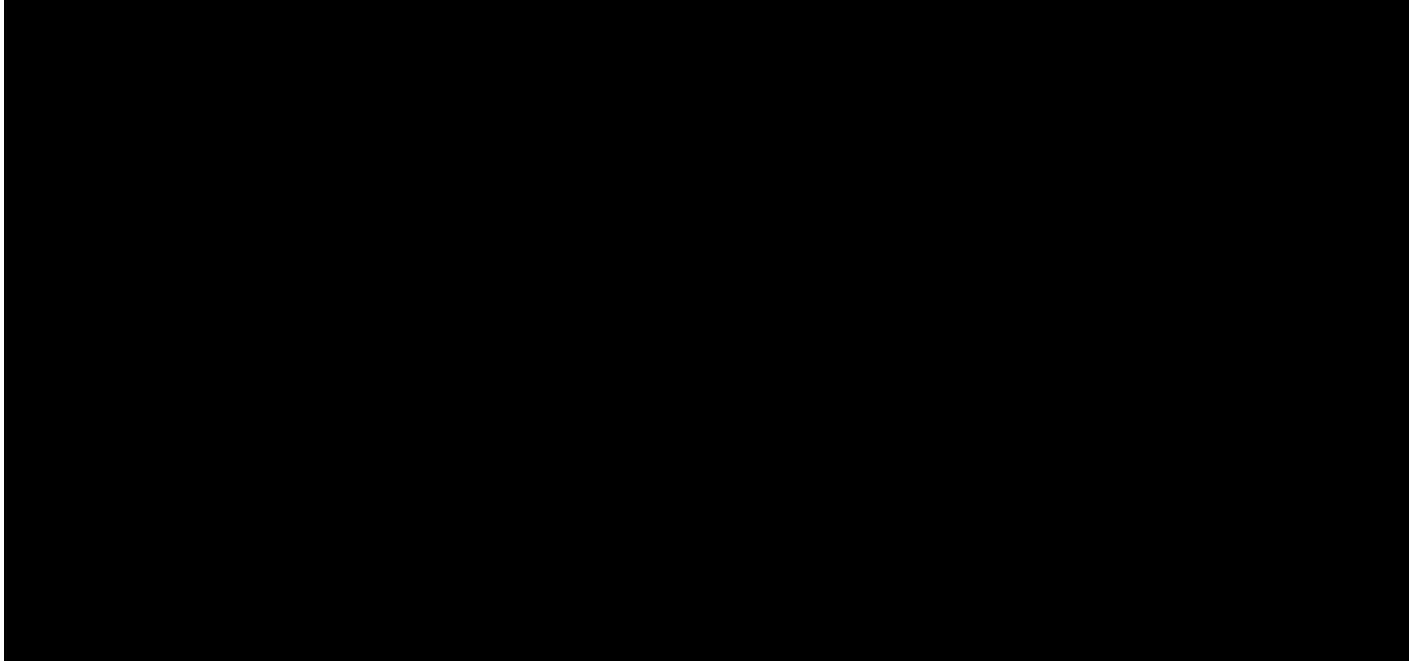
(a) Notwithstanding the foregoing, nothing in this Agreement shall prohibit any Party from: (i) disclosing the fact that the matter has been resolved on terms satisfactory to the Parties, with the payment by Brown to Concierge of an undisclosed sum of money, 











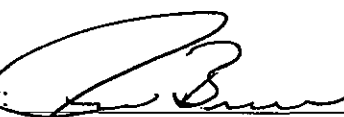
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this 20th day of December, 2017.

CONCIERGE AUCTIONS, LLC

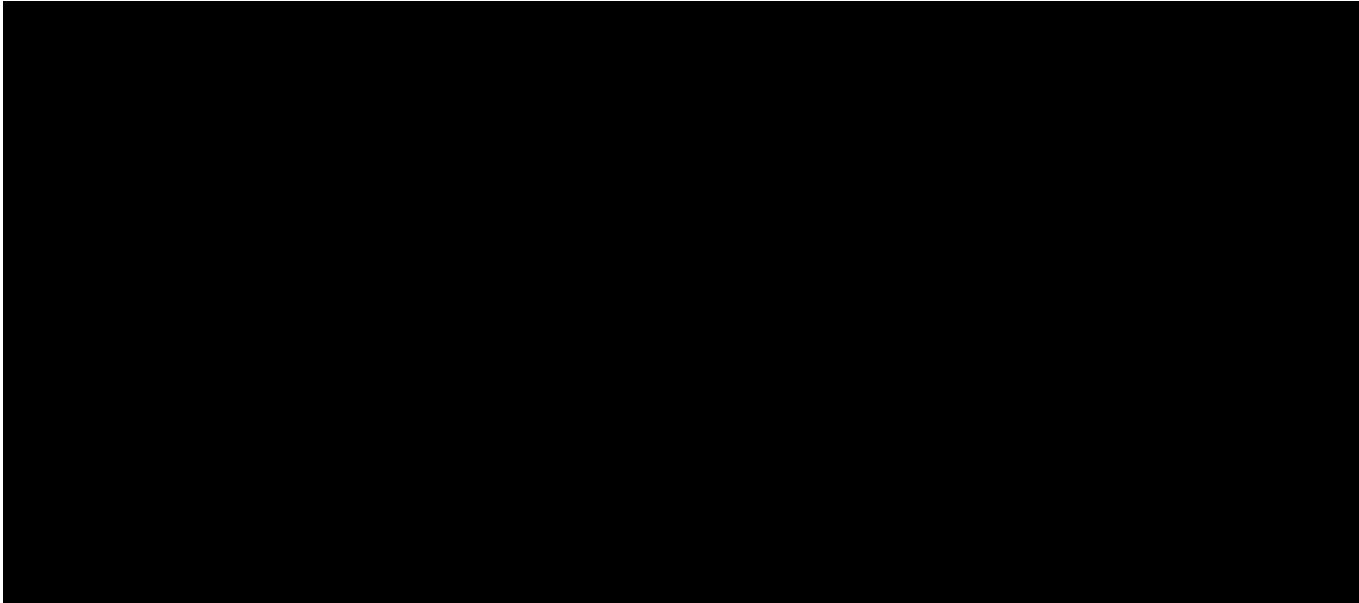
By: _____

Title: _____

JOANNE BROWN

By: 

Title: _____



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this 12/19/2017 day of December, 2017.

CONCIERGE AUCTIONS, LLC

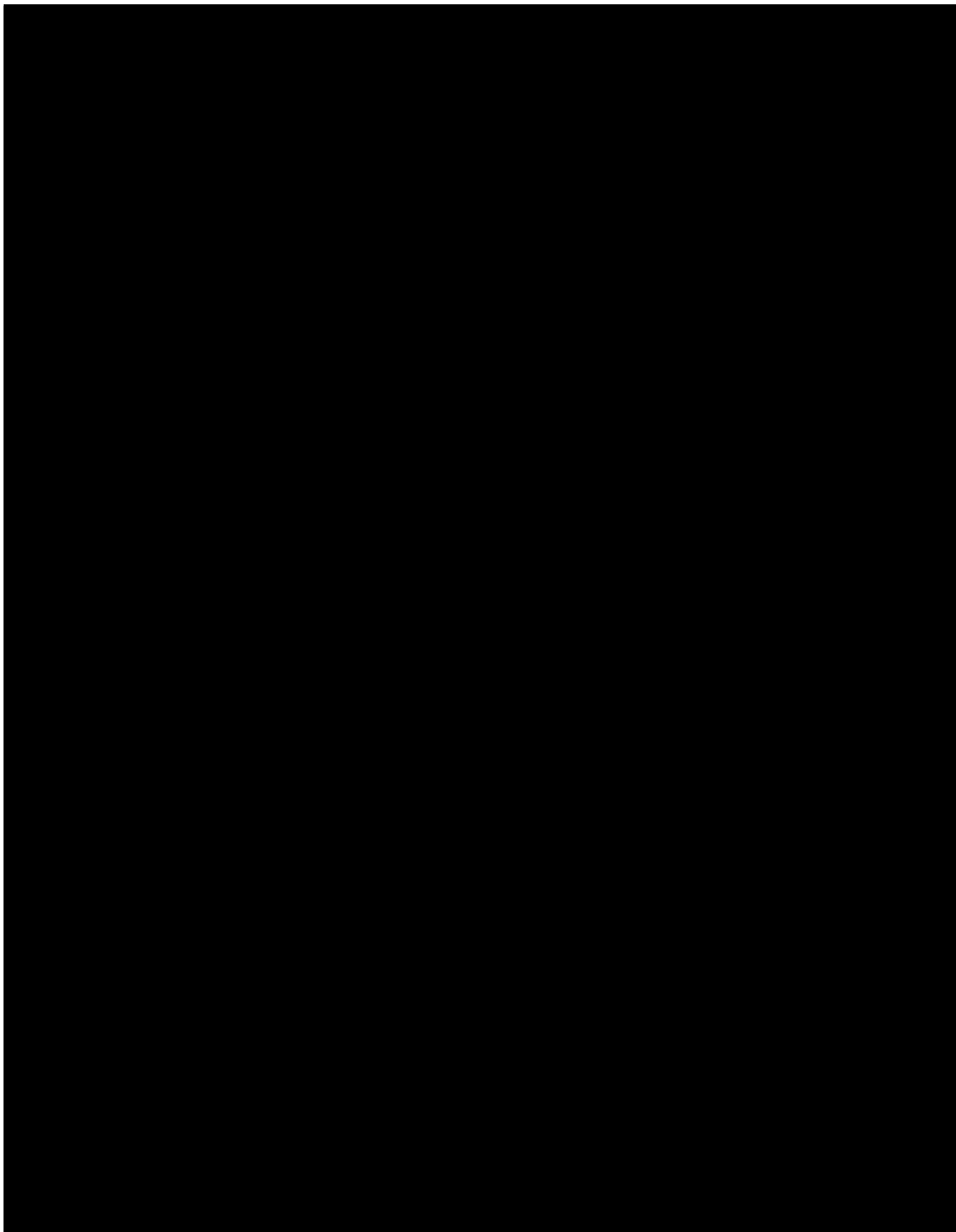
By: DocuSigned by:
Laura Brady
03898ED1A41E45D..._____

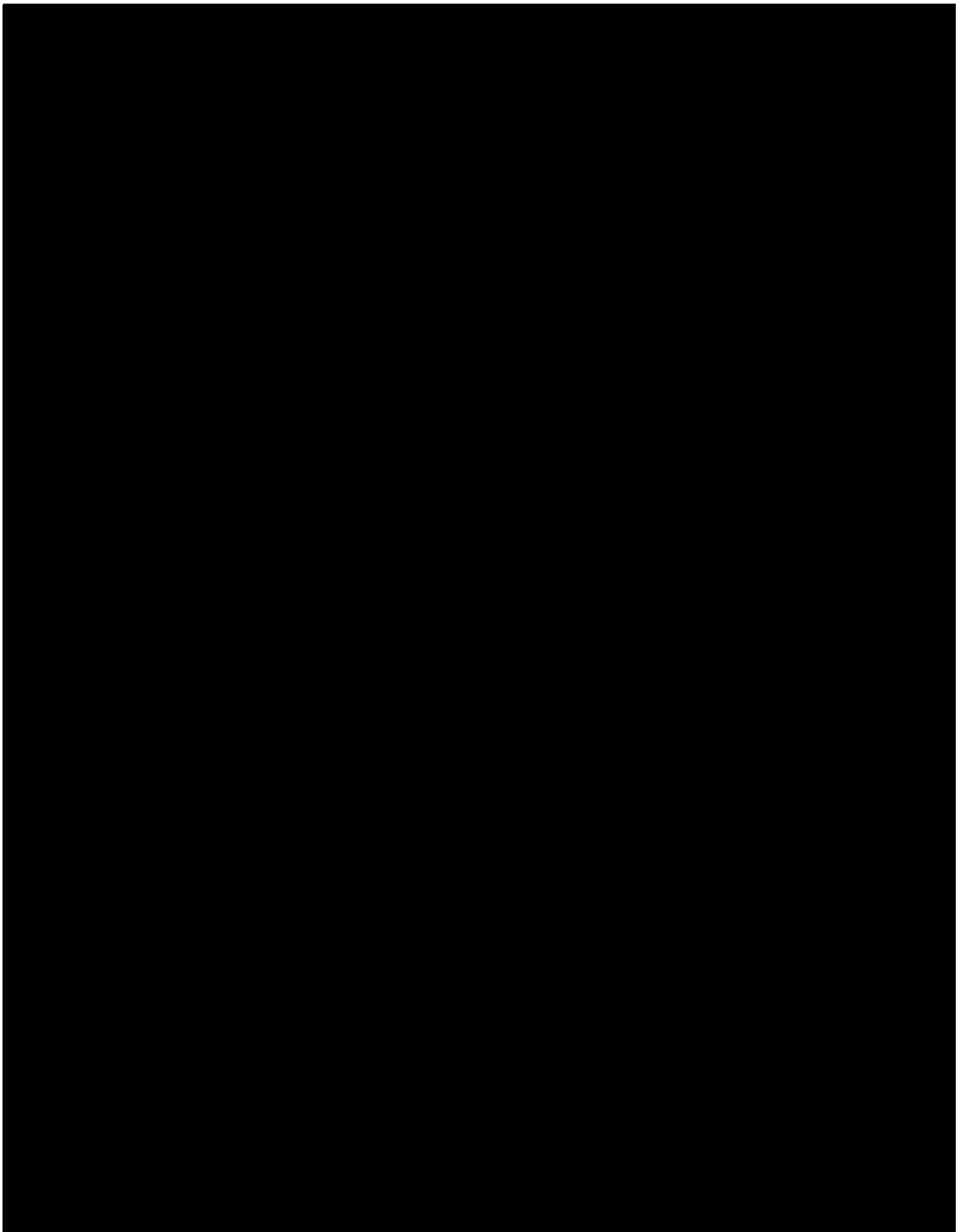
Title: President

JOANNE BROWN

By: _____

Title: _____





SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made and entered into as of this ~~14th~~ day of December 2018 by and among Stephen W. Bisson ("Bisson"), Concierge Auctions, LLC ("Concierge"), and Boston National Title Agency, LLC ("BNTA") (collectively, the "Parties");

WHEREAS, Bisson placed deposits totaling \$504,000.00 on a prospective purchase of real property located at 1492 Casey Key Road, Nokomis, Florida (the "Deposits");

WHEREAS, the Deposits are being held in escrow by BNTA;

WHEREAS, Bisson and Concierge have each claimed a right to the Deposits;

WHEREAS, Bisson commenced an action in the Norfolk Superior Court of Massachusetts, Case No. 1882 CV 00509 (the "Litigation"), in which Bisson made certain allegations against Concierge and BNTA (as well as other defendants who are not parties to this Agreement) concerning the Deposits;

WHEREAS, Concierge and BNTA have denied the material allegations asserted against them in the Litigation, except insofar as BNTA admits that it continues to hold the Deposits in escrow;

WHEREAS, Bisson, Concierge and BNTA, by this Agreement, now desire to resolve and finally settle any and all rights, disputes, controversies, claims, and counterclaims between them reflected in, relating in any way to, and/or arising in any way from the Deposits and/or the Litigation;

NOW, THEREFORE, in exchange of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Release of Deposit to Bisson. BNTA shall release from escrow and deliver to Bisson \$200,000.00 by wire to Bisson's counsel, Posternak Blankstein & Lund LLP, within seven (7) days of the execution of this Agreement (the "Bisson Payment").
2. Release of Deposit to Concierge. BNTA shall release from escrow and deliver to Concierge \$304,000.00 by wire to Concierge's counsel, Nystrom Beckman & Paris LLP, within seven (7) days of the execution of this Agreement (the "Concierge Payment").
3. Stipulation of Dismissal of Concierge and BNTA. Upon execution of this Agreement, Bisson, through counsel, shall file a Stipulation of Dismissal in the form attached hereto as Exhibit A with respect to the Litigation as to Concierge and BNTA only, stating that all claims against Concierge and BNTA are dismissed with prejudice, without assignment of attorneys' fees, interests or costs, and waiving any rights of appeal. In the event another party to

to this Litigation fails to execute the Stipulation of Dismissal, Bisson, Concierge, and BNTA immediately shall file a motion with the court requesting such dismissal.

4. Release of Claims. Upon the satisfaction of Paragraphs 1 through 3 herein, the following terms shall become immediately effective without further notice:

a. Bisson releases, acquits, forever discharges, and covenants not to sue Concierge and BNTA and each of their officers, shareholders, members, subsidiaries, parent companies, affiliates, attorneys, agents, employees, sureties, successors and assigns from: (1) any and all claims asserted or that could have been asserted in the Litigation; and (2) any and all other claims for payment, credits due, damages, multiple damages, attorney's fees, debts, contribution, indemnity, suits, judgments, obligations, demands or other rights whatsoever, in law, equity, or otherwise, whether known or unknown, whether or not yet accrued, whether now existing or that might arise hereafter, arising from or relating in any way to (i) the Deposits; and/or (ii) facts alleged or that could have been alleged in the Litigation, provided that this release does not affect any right to enforce the terms of this Agreement.

b. Concierge releases, acquits, forever discharges, and covenants not to sue Bisson and BNTA and each of their officers, shareholders, members, subsidiaries, parent companies, affiliates, attorneys, agents, employees, sureties, successors and assigns from: (1) any and all claims asserted or that could have been asserted in the Litigation; and (2) any and all other claims for payment, credits due, damages, multiple damages, attorney's fees, debts, contribution, indemnity, suits, judgments, obligations, demands or other rights whatsoever, in law, equity, or otherwise, whether known or unknown, whether or not yet accrued, whether now existing or that might arise hereafter, arising from or relating in any way to (i) the Deposits; and/or (ii) facts alleged or that could have been alleged in the Litigation, provided that this release does not affect any right to enforce the terms of this Agreement.

c. BNTA releases, acquits, forever discharges, and covenants not to sue Bisson and Concierge and each of their officers, shareholders, members, subsidiaries, parent companies, affiliates, attorneys, agents, employees, sureties, successors and assigns from: (1) any and all claims asserted or that could have been asserted in the Litigation; and (2) any and all other claims for payment, credits due, damages, multiple damages, attorney's fees, debts, contribution, indemnity, suits, judgments, obligations, demands or other rights whatsoever, in law, equity, or otherwise, whether known or unknown, whether or not yet accrued, whether now existing or that might arise hereafter, arising from or relating in any way to (i) the Deposits; and/or (ii) facts alleged or that could have been alleged in the Litigation, provided that this release does not affect any right to enforce the terms of this Agreement.

4. Non-admission. The entering into of this Agreement is not intended to be, nor should it be construed as, an admission of wrongdoing or liability on the part of Bisson, Concierge, or BNTA.

5. Non-assignment. Each of the Parties to this Agreement warrants that it has not assigned or transferred or purported to Assign or transfer any of the demands, claims, or causes of action released or dismissed by this Agreement.

6. Counterparts. This Agreement may be executed in multiple counterparts, which shall be construed as one document.

7. Authority. Each of the Parties to this Agreement, and the individuals signing this Agreement, represent and warrant that they possess the power and authority to execute, deliver and perform this Agreement, and that this Agreement has been duly authorized, executed and delivered.

8. Choice of law. This Settlement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws rules and principles.

9. Non-Waiver. A failure by any party to this Agreement at any time to require performance of any provision of this Agreement shall not waive, affect, diminish, obviate or void in any way such party's full right or ability to require performance of the same, or any provisions of this Agreement, at any time thereafter.

10. Notice. All notices required to be given under this Agreement shall be given by registered or certified mail. Electronic mail shall also be a permissible substitute, provided there is confirmation of receipt by the recipient. Notice shall be made to the following persons:

To Concierge: Joel G. Beckman, Esq.
Nystrom Beckman & Paris LLP
1 Marina Park Drive
Boston, MA 02210
jbeckman@nbparis.com

To BNTA: Maura K. McKelvey, Esq.
Hinshaw & Culbertson LLP
53 State Street
Boston, MA 02109
mmckelvey@hinshawlaw.com

To Bisson: Nicholas J. Nesgos, Esq.
Posternak Blankstein & Lund LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-8004
nnesgos@pbl.com

11. Modification. This Agreement may not be amended or modified except by a signed writing executed by all of the Parties hereto (or their lawful assigns).

12. Entire Agreement. This Agreement constitutes an integrated agreement, containing the entire understanding between the parties hereto with respect to the matters addressed herein, including but not limited to the settlement of the Litigation with respect to Concierge and BNTA. This Agreement supersedes all inconsistent prior and contemporaneous, oral or written, communications, agreements and/or discussions between the parties hereto and their representative relative to the matters addressed herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Signed under seal by the parties hereto as of the first date appearing above.

STEPHEN W. BISSON


Stephen W. Bisson

CONCIERGE AUCTIONS, LLC

By: _____
its _____
and duly authorized representative.

BOSTON NATIONAL TITLE AGENCY, LLC

By: _____
its _____
and duly authorized representative

11. Modification. This Agreement may not be amended or modified except by a signed writing executed by all of the Parties hereto (or their lawful assigns).

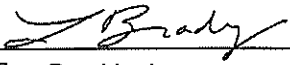
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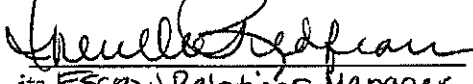
STEPHEN W. BISSON

Stephen W. Bisson

CONCIERGE AUCTIONS, LLC

By: 
its President
and duly authorized representative.

BOSTON NATIONAL TITLE AGENCY, LLC

By: 
its Escrow Relations Manager
and duly authorized representative