

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**BRIAN C. WILLIAMS,
MARICOL YUNAIRA TINEO DE
LEON, JAIRO VENSRIQUE
LEON DA COSTA, MIKE
GUSTAFSON, and others
similarly situated,**

PLAINTIFFS,

v.

**THE ESTATES LLC, THE
ESTATES (UT), LLC, TIMBRA
OF NORTH CAROLINA, LLC,
THE ESTATES REAL ESTATE
GROUP, LLC, TONYA
NEWELL, LYNN PINDER,
CAROLYN SOUTHER, LA
ROCHELLE, LLC, CRAIG
ORSON BROOKSBY, AVIRTA,
LLC, KING FAMILY
ENTERPRISES, LLC, GG
IRREVOCABLE TRUST,
ADKEN LLC, BENDERWOOD
LLC, BLUE ROCK HOMES
LLC, BLUEBOTTLE LLC,
BUTAN LLC, CANNON FIRE,
LLC, CARLIANO LLC,
CASTLETON LLC, CHAZAG
LLC, CHERNESS, LLC,
CHINSIA LLC, CHRISWERN
LLC, CREER, LLC, CWBRIDGE
LLC, CWCASTLEWOOD, LLC,
CWDANTE LLC, DARAFIN**

Case No.: 1:19-cv-01076-CCE-JLW

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF THE
FEDERAL ANTITRUST LAWS**

Fed. R. Civ. P. 23

JURY TRIAL DEMANDED

CLASS ACTION

LLC, DEXTRON LLC, DOUBLE
D ENTERPRISES OF
DURHAM, LLC, DRAKESHIRE
LLC, DUNKIRK LLC,
DUNSMURE LLC, EDEN
SERVICES LLC, EL
PROPERTY HOLDINGS, LLC,
EMBARCADERO LLC, ERNESS
LLC, ESTAN LLC, FONTANAY
LLC, FORBES LLC, GAVOS
LLC, GIDEER LLC, HALLIARD
LLC, HANTELL LLC, HEVEA
LLC, HISHAM LLC, HOUSE
HUNTER INVESTING LLC,
IMEON LLC, INDELL LLC,
INURE LLC, ITALY LLC,
JANSS LLC, JAUNT LLC, JON
LLC – KNOTTING HILL
SERIES, JULIUS HILL
PROPERTIES LLC, KARUNA
LLC, KELSON LLC, KINTEL
LLC, MALDIVES, LLC,
MANTICA LLC, MIWOK LLC,
MOON HOLDINGS, LLC,
MOSHON LLC, NC ALAMANCE
RE ASSET I LLC, NC BIDDING-
2, LLC, NIDGE BROOK, LLC,
NOSORA LLC, NUALL LLC,
NUNMONT LLC, OBIVA LLC,
OPAZ LLC, ORADEA LLC,
OSTIA LLC, PARACOSE LLC,
PASTURE HOLDINGS, LLC,
PERISSUO PARTNERS, LLC,
PEROGA LLC, PORTLICK
DRIVE, LLC (TX), PROPRIO
LLC, QUI LLC, QUINTON LLC,
QUOVIA LLC, RE RESULTS,

LLC, ROYANAH LLC, SANORA
LLC, SHILLINGTON LLC,
SULAR LLC, TESIAS LLC,
TICOTY SERIES LLC, TILDEN
LLC, TREE HOLDINGS, LLC,
VALENSEN LLC(UT), VERSA
PROPERTIES, LLC,
WADESTONE, LLC (UT),
WESTBROOK HOLDINGS,
LLC, WINSOME LLC,
WOLCOTT PARK LLC,
YANGTZE LLC, YEOMAN LLC,
YUKON LLC, ZAPA LLC, 2 AND
5 FISH, LLC, ALOSA REALTY,
LLC, BANNISTER ROCK, LLC,
BERMUDA HOLDINGS LLC,
CARILL, LLC, CASTEDNET
LLC, CEDAR HOUSE
PROPERTIES, LLC, CHADASH
REALTY GROUP, LLC,
CHANDLER PROPERTY
HOLDINGS, LLC, CHANTRY
HOLDINGS, LLC, CLOCK
ACADEMY LLC, EVERGREEN
PROPERTY HOLDINGS, LLC,
FIELD VIEW, LLC,
GRANDAPPLE, LLC,
GSBOREALIS, LLC, HEART
ASPEN PROPERTIES, LLC,
HUNTER FE, LLC, JURAS LLC,
JUROS LLC, KEZIAH
HOLDINGS, LLC, LAND
DEVELOPMENT AND
ACQUISITION LLC, MILL
PROPERTIES LLC, NEWFORT
LLC(UT), NLTSUCCESS LLC,
RAPHA, LLC, RED TREE

**HOLDINGS, LLC, RP ASSETS
LLC, RUCKSACK HOLDINGS,
LLC, SAFIRE LLC, SORGHUM,
LLC, SUNSPRING LLC,
THUNDERBIRD PROPERTIES
OF NORTH CAROLINA LLC,
TIMBER REFUGE, WEHAB
HOMES, LLC (NV), HAPPY
DOGS ONE TRUST LLC,
ACRONOLIS LLC, CRATER
LLC, CWFORTRESS LLC,
DOLOROCK LLC, KONRADD
LLC, MESSINA LLC,
PINEMORE LLC, SHALYN
LLC, STUDIO AVE LLC,
THISTLE LLC, and WENDELL
LLC.**

DEFENDANTS.

Plaintiffs Brian C. Williams, Maricol Yunaira Tineo De Leon, Jairo Vensrique Leon Da Costa, and Mike Gustafson (“Plaintiffs”) for their Complaint against the Defendants allege as follows:

SUMMARY

1. The Estates is a cartel that has engaged, and continues to engage, in a bid-rigging scheme in violation of Section 1 of the Sherman Antitrust Act (the “Sherman Act”). Individuals become members of the Estates. As members, they gain access to a database of properties facing foreclosure across the country. Members agree that only one member may bid through the Estates on any given property at any particular foreclosure sale and that no member may out-bid another. The amount that each member intends to bid is shared with the Estates through entries in an electronic database. “Acquisition Assistants” form “Bidding LLCs” for the purpose of placing a bid on behalf of the member who won the internal auction. The Estates, through founder Craig O. Brooksby or others, retains some control of the Bidding LLC.

2. The Estates is paid a “finders fee” for every property that a member bids on at a foreclosure sale, and bids are placed on the members’ behalf by the Estates. The Estates is also paid additional fees and shares the profits in simple transactions. In more complex transactions, an “Equity-Share

LLC” is established with the bidder, Brooksby and a “funder” sharing the profits from the transactions.

3. The Plaintiffs, and other similarly situated homeowners and property owners, lost their homes and properties through the Estates’ illegal bidding practices or otherwise were deprived of proceeds in excess of the foreclosed debt because when properties are sold at foreclosure auctions, the proceeds are used to pay off the mortgage and other debt attached to the property, with any remaining proceeds paid to the homeowner.

4. The entire structure of the Estates is based on a bid-rigging scheme in which members stake out their positions at foreclosure and share that information with Brooksby and the Estates. When multiple people bid, only one is “awarded” the chance to bid at the foreclosure through the Estates and to use the “techniques” that Brooksby devised to leverage the position in which the foreclosure placed the bidder. Each instance of bid rigging engaged in by the Estates, its employees, contractors, and members constitutes a felony, and is a *per se* violation of the Sherman Act. The members’ acts constitute a conspiracy under the Act. Homeowners such as the Plaintiffs suffered serious harm, losing valuable equity in their homes if not their homes themselves, because of Defendants’ anti-competitive behavior, which distorted the process

in North Carolina foreclosure sales. Defendants unfairly and unjustly profited from their wrongdoing.

5. Defendants are liable to Plaintiffs for violations of Section 1 of the Sherman Act, as well as unjust enrichment, and unfair and deceptive trade practices under North Carolina law.

PARTIES

1. Plaintiffs

6. Plaintiff Brian C. Williams (“Williams”) is a citizen and resident of Durham County, North Carolina.

7. Plaintiff Maricol Yunaira Tineo De Leon (“De Leon”) is a citizen and resident of Wake County, North Carolina.

8. Plaintiff Jairo Vensrique Leon Da Costa (“Da Costa”) is a citizen and resident of Wake County, North Carolina.

9. Plaintiff Mike Gustafson (“Gustafson”) is a citizen and resident of Mecklenberg County, North Carolina.

2. Defendants

10. The Estates Cartel: The Estates is a cartel that was formed by Craig O. Brooksby, who deliberately fragmented the enterprise into a large number of individual entities, upon information and belief doing so to avoid liability in an action such as this that is brought against the entire enterprise.

Although there are numerous limited liability companies involved, the Estates Cartel is in fact a single entity devised by Brooksby as an “asset protection structure.” Brooksby Depo at 83:5-6.¹ While there are over 100 individual entities involved in hundreds foreclosure sales of properties, Brooksby has testified that there were only 58 distinct individuals involved in the buying of homes. *Id.* at 52:3-4. This Complaint divides the Estates Cartel Defendants into four groups: (1) the Brooksby Defendants, (2) the Estates Defendants, (3) the Bidding LLC Defendants, and (4) the Equity Share LLC Defendants. All are collectively referred to as the “Estates Cartel.” A chart that details the structure of the cartel is attached as **Exhibit 1**.

11. The Estates Defendants: The Estates Defendants are a series of companies and individuals who are directly associated with the management of the Estates Cartel and the database through which the Estates operates. Information regarding the Estates Defendants is attached as **Exhibit 2**.

12. The Brooksby Defendants: The Estates Cartel was founded by Defendant Craig O. Brooksby. Brooksby has an ownership interest in the Estates Defendants and the Equity Share Defendants through a series of LLCs, principally Avirta, LLC. A list of the Brooksby Defendants is attached as **Exhibit 4**.

¹ Copies of relevant pages of the 30(b)(6) Deposition of The Estates, LLC, at which Craig Brooksby was the designated deponent are attached as **Exhibit 3**.

13. The Bidding LLCs: Members of the Estates are required to establish separate companies to participate in each foreclosure sale. These LLCs, which are established for the sole purpose of placing a bid and purchasing the property are Bidding LLCs. An Acquisition Assistant and sometimes another Estate representative, as well as the winning bidder, serve as managers. A list of the Bidding LLC Defendants is attached as **Exhibit 5**.

14. The Equity Share LLCs: In the case of “complex” transactions separate LLCs are established, all of which are owned and controlled by the Brooksby Defendants, which are Equity Share LLCs. The Estates Cartel derives profits through the Equity Share LLCs through the sale of the underlying properties. A list of the Equity Share LLC Defendants is attached as **Exhibit 6**.

JURISDICTION AND VENUE

15. Plaintiffs institute this action under the private enforcement provisions of the Clayton Act, 15 U.S.C. §§ 15 and 16, for damages and to secure injunctive relief against Defendants for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

16. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. §§ 15 and 16.

17. Plaintiffs further assert supplemental jurisdiction of this Court over the causes of action that arise under the laws of the State of North Carolina, particularly Unfair and Deceptive Trade Practices under Chapter 75 of the North Carolina General Statutes.

18. Venue is proper in this Court pursuant to 15 U.S.C. §§ 22 and 26 and 28 U.S.C. § 1391(b) – (d) because the unlawful practices are alleged to have been committed in this District, Defendants regularly conduct business in this District, at least one Defendant has its principal office in this District, and at least one Plaintiff resides in this District.

FACTS

A. The Estates and Bid-Rigging

19. The Estates Cartel solicits investments from individuals and businesses across North Carolina to take part in a “system” that coordinates bidding on foreclosures in North Carolina, South Carolina and Texas and teaches techniques that allow members to leverage the state law foreclosure process to convince homeowners to deed their homes to Estates members.

20. The Estates Defendants maintain an online database of properties facing foreclosure nationwide (the “Estates Database”). According to the Timbra, LLC Wholesale Buyer Licensing Agreement (the “Timbra Agreement”), Defendant Timbra provides access to the Estates Database

through an arrangement with Estates NC and/or Estates UT. The three LLCs appear to be treated interchangeably, or at most there is an oral agreement between them to share this information. A copy of the Timbra Agreement is attached as **Exhibit 7**.

21. Upon information and belief, the Estates Database provides a broad range of real estate and related information that is compiled from public information. The Estates Database includes real estate data along with the Estates Defendants' opinions on the properties.

22. Pursuant to the Timbra Agreement, the Estates Defendants receive the following different types of fees or compensation involved with the acquisition of any property through the Estates Database:

- a. Monthly User Fee – a monthly user fee of \$99.97 for the first county and \$50.00 per month for each additional county (since changed to a \$99.97 per month fee for unlimited access);
- b. Acquisition Fee to Timbra – Timbra receives an acquisition fee for any properties acquired from the Estates Database;
- c. Profit Splits – There are several profit-sharing arrangements between the Estates Cartel and the members, with “simple” transactions – defined as a simple bid with no strategy and simple

offer – having a profit split of 2/3 to the Member and 1/3 to the Estates Defendants.

23. In addition to the profits derived by the cartel through fees paid directly to the Estates Defendants, in the case of “complex” transactions separate LLCs are established, all of which are owned and controlled by the Brooksby Defendants, which are Equity Share LLCs. The Estates Cartel derives profits through the Equity Share LLCs through the sale of the underlying properties.

24. Persons who have contracted with the Estates to obtain information about properties being sold at foreclosure and who agree to bid on those properties through the Estates are referred to in this Complaint as “Members” of the Estates.

25. Members relinquish control over their ability to freely bid on foreclosure properties in exchange for placing bids through the cartel as part of this scheme. Brooksby and other participants “coach” all of the Members through the bidding and acquisition process.

26. Upon information and belief, Members are required to use The Estates Real Estate Group LLC, a brokerage selected by the Estates and owned by Avirta, one of the Brooksby Defendants. If Members want to use another agent and/or brokerage, then Brooksby or the Estates must approve it.

27. Upon information and belief, Members are required to use closing attorneys selected by the Estates or seek the approval of the Estates and/or Brooksby to select an alternative attorney.

28. Members of the Estates are required to establish separate companies to participate in each foreclosure sale.

29. Some LLCs are established for the sole purpose of placing a bid and purchasing the property (“Bidding LLCs”)

30. Other LLCs, all of which are partially owned by the Brooksby Defendants and controlled by them, are Equity Share LLCs that receive profits through the sale of the acquired properties.

31. Brooksby described this fragmented structure as an “asset protection structure.” Upon information and belief this excessively fragmented structure is designed both to mask the involvement of Brooksby and the Estates Cartel in the transactions and to make it difficult to discover the coordinated nature of the bidding at numerous foreclosures. *See Exhibit 1.*

32. Through the Estates Database, the Members are given access to multiple properties facing foreclosure.

33. However, under its agreement with its Members, the Estates prohibits more than one Member from bidding on a given foreclosure.

34. Carolyn Souther, a Member, has testified under oath in another proceeding that all Members enter into a non-compete agreement.²

35. Christian Werness, a former Estates member, described this in a declaration filed in this matter:

The Estates maintains a database of foreclosures in North Carolina as well as other states. The database is compiled from public information, but also includes assessments of the various properties. Members who are interested in bidding on properties indicate that interest in the database. **As members of the Estates we expressly agreed that only one member of the Estates could bid on any one property, and that we would coordinate our bidding through the Estates' database.** This was a standard practice of the Estates, and I am aware of this coordination of bidding happening in dozens of foreclosures. Craig Brooksby was the founder of the Estates, and personally told me that only one Estates member could bid at any given foreclosure.

Werness Declaration at ¶¶ 4-5 (ECF No. 65) (emphasis added).

36. In her deposition, Souther described the bid-rigging process in some detail:

Q. Is there any requirement if you get information on a property from The Estates database, that you tell The Estates that this is where you learned about it?

A. Yeah, if I find a property through The Estates, then I am going to pay a finders fee for that, that's part of my commitment to them.

Q. And part of your commitment is that you're not going to bid on a property with another Estates member, against another member?

² Copies of relevant portions of Carolyn Souther's deposition are attached as **Exhibit 8**.

A. Right.

...

A. I will not bid against someone else bidding on The Estates. If somebody else finds the property, I will not go in and bid against them.

Q. Is that something that you're prohibited from doing?

A. It's an agreement that we make within The Estates.

...

A. If I did want to bid on it, I would call that person, and I have, to say are you still interested in this particular property, in which case they might say, no, I'm not, and go for it. And I'll say okay. Or they'll say, I am. And I'll say, let me know if you decide against it.

Souther Deposition 59:6-16, 102:12-18, 102: 21-103:2 (emphasis added).

37. She also testified:

Q. Do[es] [The Estates] have to approve, saying yes, no, you can go bid on this property because they cleared it in terms of the other investors?

A. Again, we don't cross bids. If someone is interested in a property, I'm not going to bid against them, or will they bid against me. That's probably within the organization.

Souther Deposition at 99:16-23 (emphasis added).

38. There is constant communication about who is bidding on what property:

A. Again, we talk a lot, so we know who is working on what properties. That's one of the reasons for having our meetings. ***We talk about what properties, so if someone brings up a specific property, we understand that's the one they are pursuing.***

...

Q. Does The Estates itself offer advice; in other words, in our opinion, a good price to bid on this property would be X?

A. Sure, we all offer advice.

Souther Deposition 58:25 – 59:5, 60:7 – 10 (emphasis added).

39. Founder Brooksby described how bidders coordinated with him and with the Acquisition Assistants through the Estates Database:

If -- if Client A wanted to buy a property
]and they clicked "buy it" and they inserted the amount
they were willing to pay and what they wanted to bid
and all of the things they wanted to do with that
property, then that would come to us on the backside
so that we knew they were interested in that property.
And then they could come in and talk to us and say,
okay, well, what's the best way to buy this property,
how much money.

Brooksby Depo. at 59:12-20.

40. He went on to say:

Q. All right. So what would happen when two people clicked "buy it"?

A. It would go to the acquisition assistant,
and the acquisition assistant would have -- when they
filled out the buy-it button, it would say how much
they were willing to buy the property for. It would
say -- it would say, here is your comp value, and here
is -- it would ask how much are you willing to bid,

and it would say we are going to bid this amount. So the acquisition assistant would know how much that individual was willing to bid to buy that property, and so she may be able to see, okay, Susie was willing to pay 102,000, where Johnny was willing to pay 110,000.

Id. at 63:18 - 64:6

41. Once it is determined which Member of the Estates will be the winning bidder on a particular piece of property, the bid deposit is paid to the Estates.

42. The Estates member who is chosen to bid on a particular property sets up a Bidding LLC for the purpose of making the bid. *See id.* at 118:5-7.

43. The Acquisition Assistants choose the winning internal bid and serve as a manager of the Bidding LLC for the winning bidder. *Id.* at 235:15-16.

44. Bid funds are then paid to La Rochelle LLC – another Brooksby controlled entity. The Acquisition Assistants then use the funds deposited in the La Rochelle account to place a bid on behalf of the winner of the internal auction.

45. Upon information and belief, there are currently two “Acquisition Assistants” – Tonya Newell, and Lynn Pinder.

46. Defendant Tonya Newell is an “Acquisition Assistant.” Newell’s job is to serve as a manager of Bidding LLCs, attend foreclosure sales and place

the sole bid for the Member who was chosen as the bidder for that particular property.

47. Defendant Lynn Pinder is another “Acquisition Assistant.” Pinder’s job is to serve as a manager of Bidding LLCs, attend foreclosure sales and place the sole bid for the Member who was chosen as the bidder for that particular property.

48. By having Newell and Pinder place bids through the Bidding LLCs, the Estates ensures that its bid-rigging arrangement will be successful and that only one bidder may bid through the Estates.

49. Upon information and belief, both Newell and Pinder receive commissions if the bid placed by Newell is successful.

50. Brooksby confirms this, noting that the only way an Estates member who did not bid through the Estates Database could purchase property was to “go around the acquisition assistant and go to the county themselves and bid at the county.” *Id.* at 65:14-16. However, Brooksby could not recall any time that this ever happened. *Id.* at 74:15 – 75:1.

B. The Nature of the Conspiracy

51. All of the Defendants have participated as co-conspirators of the Estates Cartel and have performed acts in furtherance of the conspiracy. All

Defendants are jointly and severally liable for the acts of their co-conspirators whether or not they have been named in this Complaint.

52. The Defendants entered into a contract or contracts and engaged in a combination in restraint of trade including, but not limited to, purchasing membership in the Estates Cartel, paying fees to the Timbra website/database, paying profits to the cartel through the Equity Shares and/or working in concert to bid (or refrain from bidding) on foreclosure properties.

C. The Foreclosures and Bidding

53. The Plaintiffs owned homes in North Carolina that were sold in foreclosure proceedings to a member, or to an entity created by a member, using the services provided by the Estates Defendants.

i. The Williams Foreclosure

54. Plaintiff Brian Williams owned a townhome located at 344 Red Elm Drive, Durham, North Carolina (the “Williams Home”).

55. The townhome went into foreclosure after he failed to pay money owed to his homeowners’ association, and the Williams Home was sold at foreclosure on May 23, 2019.

56. The Williams Home was listed in the Estates Database.

57. Upon information and belief five estates members submitted competing “Buy it” requests on the Williams Home:

- a. First Position: Keith Fiskum
- b. Second Position: Randy Mews
- c. Third Position: Tatsiana Shtal
- d. Fourth Position: Jason Spencer
- e. Fifth Position: Mbeja Lomotey

58. Upon information and belief Defendant Versa Properties, LLC (“Versa”) the Bidding LLC formed by Mbeja Lomotey, was designated to bid at foreclosure.

59. Versa was the high bidder at the foreclosure sale of the Williams Home.

60. Acquisition Assistant Tonya Newell placed the bid and paid a deposit on the Williams Home on behalf of Versa.

61. On or about August 2, 2019 Versa purported to assign its bid to Red Tree Holdings LLC (“Red Tree”).

62. Upon information and belief, Red Tree is an “Equity Share LLC” in which one of the Brooksby Defendants has an ownership interest.

63. Upon information and belief, the purchase of the Williams Home by Versa, the bid placed by Newell, and the assignment to Red Tree were all acts taken pursuant to a bid-rigging scheme propounded by the Estates Cartel.

ii. The DeLeon Foreclosure

64. Plaintiffs De Leon and Da Costa own a townhome located at 3435 Archdale Dr. Raleigh, North Carolina (the “DeLeon Home”).

65. The townhome went into foreclosure after they failed to pay money owed to their homeowners’ association, and the De Leon Home was sold at foreclosure on May 23, 2019.

66. The De Leon Home was listed in the Estates Database.

67. Upon information and belief Defendant Maldives, LLC (“Maldives”) the Bidding LLC formed by Estates member Mbeja Lomotey, was designated to bid at foreclosure.

68. Maldives was the high bidder at the foreclosure sale of the De Leon Home.

69. Acquisition Assistant Newell placed the bid and paid a deposit on the De Leon Home on behalf of Maldives.

70. Upon information and belief, the purchase of the De Leon Home by Maldives and the bid placed by Newell were all acts taken pursuant to a bid-rigging scheme propounded by the Estates.

iii. The Gustafson Foreclosure

71. Plaintiff Mike Gustafson owns a home located at 12722 Vantage Point Lane, Huntersville, North Carolina (the “Gustafson Home”).

72. The home went into foreclosure after he failed to pay money owed to his homeowners' association, and the Gustafson Home was sold at foreclosure on June 25, 2020.

73. Upon information and belief, the Gustafson Home was listed in the Estates Database.

74. NC-Bidding 2, LLC ("NC-Bidding") the Bidding LLC formed, upon information and belief, by Estates member Michael Tripp, was designated to bid at foreclosure.

75. NC-Bidding was the high bidder at the foreclosure sale of the Gustafson Home.

76. Acquisition Assistant Lynn Pinder placed the bid and paid a deposit on the Gustafson Home on behalf of NC-Bidding.

77. Upon information and belief, the purchase of the De Leon Property by NC-Bidding and the bid placed by Pinder were all acts taken pursuant to a bid-rigging scheme propounded by the Estates.

iv. Carolyn Souther

78. Defendant Carolyn Souther plays a unique role within the cartel. Because of the excessively fragmented structure, she is not an employee of the Estates LLC. Rather, upon information and belief she is hired by individual members and LLCs on a case-by-case basis.

79. In addition, upon information and belief, she serves as a manager of some of the Bidding LLCs, filling a role similar to that of an Acquisition Assistant.

80. Souther serves as an agent of the cartel and is often the first contact that a homeowner has.

81. For example, first notice Mr. Williams received of the sale was an official-looking document, dated June 26, 2019, called “Notice to Respond,” tacked to his door by Carolyn Souther, who, upon information and belief, was working on behalf of the Estates. The document recites a series of supposed obligations, obligations that the Plaintiff does not have to the high bidder at a foreclosure sale. A copy of the Notice to Respond is attached as **Exhibit 9**.

82. Souther added a hand-written note to the bottom: “I represent the investor who recently won your home in the HOA foreclosure action. I may be able to help you stay in your home. *Please call me ASAP to avoid legal proceedings.*”

83. Likewise, the first notice Ms. De Leon and Mr. Da Costa received was an identical notice, dated June 26, 2019, with a nearly identical handwritten note.

84. In her deposition, Souther testified that she had presented similar notices to other owners of homes that Estates Members had bid on, and that

she had written “something similar” on each notice. Souther Depo. 77:23 – 81:20.

85. Although in both cases she claimed to “represent” the “investor,” Carolyn Souther is neither a North Carolina licensed real estate broker nor a North Carolina licensed attorney.

86. In both the Williams and De Leon cases, Carolyn Souther made several attempts by both phone calls and text messages to demand a five-figure amount in exchange for the Bidding LLC walking away from its foreclosure bid.

87. In both cases, the “Notices”, which were drafted by attorney Stephanie Cooper Roberts, misstated the law, claiming that, even though the Bidding LLC had never paid its bid, the owners were nonetheless required to “vacate the property within 10 days.” But, at the time this “Notice” was sent to the owners of the property, they had every right to live there.

88. In the case of Mr. Gustafson, over a year later, Ms. Souther did not use the Cooper notice but instead communicated similar deceptive information in person and through text messages.

89. In all of these cases, Souther used this false threat of eviction in an effort to extract money from the homeowners.

90. This is apparently a “technique” taught through the Estates, and upon information and belief the “services” performed by Souther are supervised by Brooksby and are a “benefit” provided to Estates members.

91. In the Gustafson case, Souther went further. According to pleadings filed by Diana Coad, the trustee in Mr. Gustafson’s foreclosure, Ms. Souther convinced Mr. Gustafson’s ex-wife to deed her half interest in Gustafson’s \$250,000 home to Carissa, LLC, which is upon information and belief a Bidding LLC, for a \$10,000 payment.

92. Ms. Coad asserts that Ms. Souther (at a time when no Estates member had any interest in the Gustafson Home) falsely represented to Mr. Gustafson’s ex-wife that Souther was going to evict Mr. Gustafson and their children in three days unless she received a half interest in the property.

93. Mr. Gustafson’s ex-wife deeded her interest to Carissa LLC. A copy of Ms. Coad’s motion to set aside the foreclosure sale to the Bidding LLC, NC-Bidding-2 LLC, is attached as **Exhibit 10**.

CLASS ALLEGATIONS

94. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

95. Plaintiffs seek certification of both a National Sherman Act Class and a North Carolina sub-class on behalf of themselves and others similarly situated, defined as follows:

a. The National Sherman Act Class: A class of all persons and entities whose properties were sold through foreclosure proceedings at which a Member of the Estates was the high bidder and at which the Estates placed the bid deposit on their behalf (the "Proposed Sherman Act Class").

b. The North Carolina Unjust Enrichment Sub-Class: A subclass of North Carolina Plaintiffs consisting of all persons and entities whose properties were sold through foreclosure proceedings in North Carolina at which a Member of the Estates was the high bidder and at which the Estates placed the bid deposit on their behalf who have standing to bring North Carolina state law claims. (the "Proposed North Carolina Subclass").

96. Excluded from the class are Defendants and their officers and employees and the judicial officer(s) presiding over this action as well as the members of their families and staffs.

97. Plaintiffs meet the prerequisites of Rule 23(a) to bring this action on behalf of the Classes because:

a. *Numerosity* – While information regarding the exact size of the Class or the identities of the Class members is in the exclusive control of

Defendants, through the Defendants' discovery responses (incomplete as they are), Plaintiffs have identified at least 137 class members. While the vast majority of the class members are located in North Carolina, the remainder are in South Carolina and Texas. Plaintiffs believe that there are potentially up to another 100 class members. Therefore, the Class is so numerous that joinder of all members is impracticable.

b. *Commonality* – Plaintiffs' claims are based on an agreement among the Defendants to engage in bid rigging, and all of the Plaintiffs have suffered loss because of that conspiracy, which is reflected in Defendants' records. Questions of law and fact are common to the Class and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to:

- i. Whether Defendants engaged in the bid-rigging scheme alleged in this Complaint;
- ii. The identity of the co-conspirators;
- iii. The duration of the conspiracy alleged in this Complaint;
- iv. The geographic scope of the conspiracy alleged in this Complaint;
- v. Whether the alleged conspiracy violated section 1 of the Sherman Act;

- vi. Whether the conspirators engaged in unfair or deceptive trade practices;
- vii. Whether the conspiracy was unjustly enriched by its acts; and
- viii. The appropriate injunctive relief.

c. *Typicality* – The claims of the named Plaintiffs are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both the Plaintiffs and the other members of the Class were subject to the same conduct and suffered the same antitrust injuries.

d. *Adequacy* – The named Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs are committed to the vigorous prosecution of the Class claims and have retained attorneys who are experienced and qualified to pursue this litigation.

98. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problem of manageability.

99. This putative class action meets both the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3).

100. The Defendants have acted or refused to act on grounds that apply generally to the Class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

101. The cartel unjustly profited from its anti-competitive practices by (1) charging fees in connection with transactions that the Bidding LLCs paid through to the Estates, and (2) through unjust profits made by the Equity Share LLCs.

102. Based on the potential size of the class, initial discovery, and Plaintiffs' own assessment of damages based on value of the properties lost and improper profits received, Plaintiffs believe that the amount in controversy exceeds \$5 million.

FIRST CLAIM FOR RELIEF
(Violation of Section 1 of the Sherman Act)

103. Plaintiffs incorporate all preceding paragraphs by reference.

104. Beginning at a time that is not yet known to Plaintiffs, but in any case, before the events described in this Complaint, Defendants entered into a continuing agreement, combination, and conspiracy to engage in bid rigging in connection with foreclosures in North Carolina.

105. Such agreement, combination, and conspiracy to engage in bid rigging constitutes a *per se* violation of 15 U.S.C. § 1 and is an unreasonable restraint of trade.

106. The Defendants' contract, combination, agreement, understanding, or concerted action occurred in or affected interstate commerce. Defendants employed the interstate banking system in order to place the bids. The Estates Database was hosted on the internet and information was sent across state lines. Defendants Estates UT and Estates RE are Utah limited liability companies that have engaged with the co-defendants in anticompetitive conduct in North Carolina. The Defendants' unlawful conduct was through mutual understandings, combinations, or agreements by, between and among the Defendants.

107. As a direct and proximate result of the Defendants' conspiracy, Plaintiffs lost their properties in improper "rigged" foreclosure sales.

108. All members of the Class have been injured by Defendants' conspiracy in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(North Carolina Unfair and Deceptive Trade Practices)

109. Plaintiffs incorporate all preceding paragraphs by reference.

110. N.C. Gen. Stat. § 75-1 mirrors the language of the Sherman Act, and provides, "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal."

111. N.C. Gen. Stat. § 75-16 provides that if *any person* shall be injured by reason of any act or thing done by any other person, firm, or corporation in violation of the provisions of this Chapter, such person so injured shall have a right of action.

112. Plaintiffs have been injured by Defendants' bid-rigging and therefore have standing to bring this claim.

113. All Defendants were engaged in a conspiracy scheme to promote bid-rigging.

114. All Defendants actions as described in this complaint constituted unfair and deceptive trade practices pursuant to N.C. Gen. Stat. § 75-1.1.

115. As a direct and proximate result of the Defendants bid rigging activities and unfair and deceptive trade practices, Plaintiffs and others similarly situated have been damaged in an amount to be proved at trial.

116. As a matter of law, Defendants are liable for treble damages pursuant to N.C. Gen. Stat. § 75-16.

THIRD CLAIM FOR RELIEF
(North Carolina Unjust Enrichment)

117. Plaintiffs incorporate all preceding paragraphs by reference.

118. By obtaining Plaintiffs' properties at foreclosure sales pursuant to their bid rigging conspiracy, Defendants received a benefit.

119. The benefit was not given by Plaintiffs to Defendants gratuitously.

120. Because of their illegal conduct, Defendants have received Plaintiffs' properties under circumstances under which they should not have equitably received them.

121. While the Court has dismissed the unjust enrichment claim as to the Estates Real Estate Group, the claim remains against the other Defendants (including the Brooksby Defendants who own the Estates Real Estate Group).

122. Defendants have been unjustly enriched by their improper conduct in an amount to be determined at trial.

INDIVIDUAL LIABILITY – DISREGARD BUSINESS ENTITY

123. Plaintiffs incorporate all preceding paragraphs by reference.

124. Upon information and belief, Brooksby deliberately designed the Estates Cartel to be excessively fragmented into a large number of individual LLCs, some of which are Bidding LLCs and some Equity-Share LLCs. By doing that, it becomes difficult to track individual foreclosures and to identify Estates transactions.

125. Brooksby treats all three of the Estates Entities (The Estates, LLC, the Estates (UT), LLC and Timbra of NC, LLC as interchangeable, with any one of them receiving the benefits or obligations of the others.

126. Brooksby described the excessively fragmented structure of the Estates as an “asset protection structure.” It protects assets through a shell game that moves them from one entity to another.

127. Upon information and belief, the Brooksby Defendants knew that this constant moving of resources to various entities risked leaving particular entities inadequately capitalized. *See* Brooksby Depo. 207:25-23, 209:04-15, 221:12-222:07.

128. Moreover, upon information and belief, the Brooksby Defendants secured for themselves an improper personal benefit by requiring that a Brooksby-associated entity become a member of any Equity Share LLC and that Brooksby control the management of any Bidding LLC, and by requiring that the real estate broker hired in any transaction be owned by Brooksby.

129. The Brooksby Defendants completely dominate the Estates Cartel, not merely its finances but its policies and business practices such that the Estates Cartel has no separate mind, will or existence of its own.

130. The Brooksby Defendants’ control is essential for the bid-rigging scheme to have worked, and for the Estates to perpetrate the other wrongs it routinely commits.

131. As a result, the Brooksby Defendants are, individually and collectively, liable for the damages caused by the Estates Cartel’s bid rigging, unjust enrichment, and unfair and deceptive trade practices.

132. The Estates Cartel's actions as alleged in the Complaint caused the injuries to Plaintiffs alleged herein. Upon information and belief, the Brooksby Defendants' conduct has resulted in the siphoning off of the Estates Cartel's assets for their own benefit.

133. Therefore, the LLC form of the Estates Entities, the Bidding LLCs and the Equity-Share LLCs should be disregarded to permit the Plaintiffs to reach the assets, property, or proceeds distributed between them and to the Brooksby Defendants.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Determine that the contract, combination, or conspiracy and the acts done in furtherance of it are in violation of the Sherman Act, 15 U.S.C. § 1 and Chapter 75 of the North Carolina General Statutes;
2. Pursuant to 15 U.S.C. § 26, preliminarily and permanently enjoin Defendants and their co-conspirators, including their directors, officers, employees, agents, and all other persons acting or claiming to act on their behalf, from selling any property purchased at a foreclosure sale in North Carolina, from bidding at any foreclosure sale in North Carolina, and from engaging in any other contract, combination, or conspiracy having a similar purpose or effect;

3. Determine that this action is a proper class action, certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and designating this Complaint as the operable complaint for class purposes;

4. Award Plaintiffs and the class damages pursuant to 15 U.S.C. § 15 and interest as required by law;

5. Award Plaintiffs and the class compensatory damages;

6. Award Plaintiffs and the class treble damages under the Sherman Act and Chapter 75 of the North Carolina General Statutes;

7. Award Plaintiffs and the class the cost of this suit and their reasonable attorneys' fees; and

8. Grant to Plaintiffs and the class such other and further relief as the Court may deem just and proper.

**PLAINTIFFS DEMAND A JURY TRIAL ON
ALL ISSUES SO TRIABLE.**

Dated: December 10, 2020

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMENDED COMPLAINT** has been served electronically via CM ECF on the following:

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Dated: December 10, 2020

/s/ James C. White
James C. White