

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Case No. 24-cv-20805-KMM**

YA MON EXPEDITIONS, LLC, BLUEBERRY ENTERPRISES, LLC, MAGNA CHARTA, LLC, PRIDE CONTRACTING, INC., KIP LAMAR SNELL, and JUAN GALAN, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ALLIED MARINE, INC., GALATI YACHT SALES, LLC, HMY YACHT SALES, INC., MARINEMAX, INC., NORTHROP & JOHNSON YACHTS-SHIPS, LLC, FRASER YACHTS FLORIDA, INC., FRASER YACHTS CALIFORNIA CORPORATION, MARINEMAX EAST, INC., ONEWATER MARINE INC., DENISON YACHTS INTERNATIONAL, LLC, YACHTING ASSETS AND OPERATIONS LLC, UNITED YACHT SALES, LLC, INTERNATIONAL YACHT BROKERS ASSOCIATION, INC., YACHT BROKERS ASSOCIATION OF AMERICA, INC., CALIFORNIA YACHT BROKERS ASSOCIATION, INC., NORTHWEST YACHT BROKERS ASSOCIATION, BOATS GROUP, LLC, and YATCO, LLC

Defendants.

**DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED  
CLASS ACTION COMPLAINT AND MEMORANDUM OF LAW**

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Defendants, *see* nn. 2-4 *infra*, by and through their respective undersigned counsel and pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6), hereby jointly move to dismiss Plaintiff’s Consolidated Class Action Complaint, *see* [ECF No. 140] (the “Complaint”), as it fails to state a cause of action. In support of this Motion, the Defendants set forth the following:

### **INTRODUCTION**

Plaintiffs’ Complaint is the proverbial attempt to fit a square peg in a round hole. Throughout the Complaint, Plaintiffs strain to analogize the yacht industry to the real estate industry, seeking to piggyback off lawsuits against the National Association of Realtors (“NAR”) and real estate brokers that alleged conspiracies to inflate real estate commission rates. *See, e.g.*, ¶¶ 9, 67, 164, 167. These efforts fail given the fundamental differences between the allegations in the real estate cases and those put forward here.

In the real estate cases, a single entity, NAR, was both the dominant association *and* the operator of the dominant listing platform. It could unilaterally impose and enforce the challenged restraint. An agreement to join NAR, according to plaintiffs there, itself constituted an agreement to use the platform for anticompetitive ends. Use of the platform, moreover, was limited to NAR members. Alleging and proving a single overarching agreement was, accordingly, straightforward. There is nothing similar here. No dominant yacht broker-trade association can set rules for all yacht brokers, and no single platform is essential to competition.

Instead, as Plaintiffs acknowledge, there are at least four different and distinct yacht broker associations, each with its own members and guidelines. Critically, yacht brokers need not even be a member of any of the Association Defendants (or any association at all) to list and sell yachts on the Marketplace Defendants’ online marketplaces. Some marketplaces—including some operated by certain Marketplace Defendants—even allow listings by non-brokers.

Instead of the real estate multi-listing service (“MLS”)—which is governed by the realtors



who all must be members of a realtor association following the rules of a single national trade organization, *see, e.g., Sitzer v. Nat'l Ass'n of Realtors*, 420 F. Supp. 3d 903, 910, 914, 917 (W.D. Mo. 2019)—the various yacht “MLSs” are operated primarily by independent parties, who (1) are unaffiliated with yacht brokers or associations, (2) provide independent online marketplaces to yacht buyers and sellers, and (3) have no economic stake at all in yacht broker compensation. This is fatal to Plaintiffs’ claims. Without a connection between, and common interests among, Defendant Brokers, Defendant Associations, and online marketplaces to advertise listings operated by Defendant Marketplaces, Plaintiffs cannot plausibly allege a conspiracy among all 18 Defendants. Thus, Plaintiffs cannot plausibly allege that Defendants all consciously committed to a common scheme designed to achieve an unlawful objective—as the antitrust laws require.

In their attempt to track the allegations in the real estate cases, Plaintiffs put forward a Complaint riddled with contradictions, false accusations at odds with material the Complaint incorporates by reference, and impermissible group pleading. But this Court is “not required to credit conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts.” *Warren Tech., Inc. v. UL LLC*, 962 F.3d 1324, 1328 (11th Cir. 2020); *see also QSGI, Inc. v. IBM Glob. Fin.*, 2012 WL 13019046, at \*4 (S.D. Fla. July 31, 2012) (court need “not accept facts that are internally inconsistent, facts that run counter to facts which the court may take judicial notice of, conclusory allegations, unwarranted deductions, or mere legal conclusions”).

Fundamentally, Plaintiffs fail to allege direct or indirect evidence that Defendants entered into a conspiracy regarding brokerage fees. They also fail to allege cognizable facts in support of their second claim, that Defendants conspired to refuse to deal with yacht sellers or buyers not represented by brokers. The Complaint does not allege any parallel conduct on the part of all Defendants—a heterogenous group of industry participants that includes independent website marketplaces, broker associations, and brokers. Instead, the Complaint acknowledges that: (1) each

Association Defendant has different guidelines, (2) some Marketplace Defendants' websites do not require co-brokerage arrangements and others allow sales by owners directly, and (3) Broker Defendants can use a variety of Marketplace Defendants' online marketplaces, and a variety of other various channels to market and list yachts. Nor does the Complaint adequately plead any plus factors tending to show the existence of a conspiracy. Rather, Plaintiffs' allegations are wholly consistent with the various Defendants' independent business interests.

Even assuming that Plaintiffs had sufficiently alleged an agreement regarding brokerage commissions, a refusal to deal with yacht sellers or buyers who do not have brokers, or the prohibition of For Sale by Owner ("FSBO") listings (despite the fact that they implicitly acknowledge the rules they cite unequivocally demonstrate that some of Marketplace Defendants' online marketplaces allow FSBO listings), any such agreements extend across multiple levels of the alleged market, making application of the *per se* rule to Plaintiffs' claims inappropriate. All of Plaintiffs' claims based on such alleged agreements are thus still subject to the demanding rule of reason standard. This is fatal because the Complaint fails to allege two independent pleading requirements for rule-of-reason claims: *First*, it fails to allege plausible antitrust markets by putting forward a gerrymandered market definition that ignores the commercial realities of the yachting industry and the wide range of options buyers and sellers have at their disposal. *Second*, it fails to plausibly allege any actual or potential anticompetitive harm stemming from the alleged conduct. Plaintiffs allege no facts whatsoever showing that any of the Defendants or Defendant groups, individually or collectively, operating at any level of the market, have market power. It is well-settled that defendants without market power are incapable of causing harm to competition.

In short, under every possible theory of harm, the Complaint fails to state any claim under the antitrust laws, and it should be dismissed with prejudice.

## STATEMENT OF ALLEGED FACTS<sup>1</sup>

Plaintiffs are purported yacht sellers who allege that a wide-ranging group of differently situated defendants—yacht brokerages<sup>2</sup>, yacht broker trade associations<sup>3</sup>, and independently-owned and operated online boat sales marketplaces<sup>4</sup> (together, “Defendants”)—conspired to inflate the commissions that yacht brokers are paid for their services. ¶¶ 32-61.<sup>5</sup> The Complaint alleges that this conduct has artificially raised commissions in the alleged product market for “yacht brokerage services provided to yacht sellers and buyers by yacht brokers with access to the multiple listing services” (“MLSs”). ¶ 168. Plaintiffs also claim that the Marketplace Defendants and Broker Defendants have “refused to deal with potential buyers or sellers who are not represented by a licensed broker.” ¶¶ 208-09.

### **1. Brokers**

Owners can choose to sell their yachts themselves or to use the services of a broker. ¶ 5. Brokers advertise yacht listings in a variety of different channels, not limited to the websites of Marketplace Defendants, including “on Google, social media, email, YouTube, in yachting magazines, MLS[s], blogs, digital ads and more.”<sup>6</sup> If a yacht owner chooses to engage a broker to

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<sup>1</sup> Defendants adopt Plaintiffs’ allegations solely for this motion and do not concede their accuracy.

<sup>2</sup> Allied Marine, Inc., Galati Yacht Sales, LLC, HMY Yacht Sales, Inc., MarineMax, Inc., Northrop & Johnson Yacht Ships, LLC, Fraser Yachts Florida, Inc., Fraser Yachts California Corp., MarineMax East, Inc., OneWater Marine Inc., Denison Yachts International, LLC, Yachting Assets and Operations LLC, and United Yacht Sales, LLC (collectively “Broker Defendants”).

<sup>3</sup> International Yacht Brokers Association, Inc. (IYBA), Yacht Broker’s Association of America, Inc. (YBAA), California Yacht Brokers Association, Inc. (CYBA), and Northwest Yacht Brokers Association (NYBA) (collectively “Association Defendants”). CYBA does not join this motion.

<sup>4</sup> Boats Group, LLC and Yatco, LLC (collectively “Marketplace Defendants”). “Marketplaces” refer to the platforms operated by these Defendants—boats.com, Yacht Broker, YachtWorld, and Yatco—as well as the association-owned marketplace, Yachtr.com.

<sup>5</sup>“¶” and “¶¶” citations refer to corresponding numbered paragraphs in Plaintiffs’ Complaint.

<sup>6</sup> See **Ex. A, Market Your Yacht**, HMY Yachts, <https://www.hmy.com/about-hmy/market-your-yacht/>. The “incorporation by reference” doctrine allows courts to consider documents and materials referenced in a complaint at the motion to dismiss stage where the materials are (1) referenced in the complaint and (2) the contents are undisputed. *Setai Hotel Acquisition, LLC v.*

help them sell their yacht, the seller and the broker may decide that, upon a successful sale, the seller will pay that broker a commission, which varies and depends on the specific terms of the agreement between the seller and the broker. ¶¶ 5, 72, 87, 90, 93, 126-27. And if the buyer who actually purchases the seller's yacht is also represented by a broker, the seller's broker may agree to share some of his commission with that buyer's broker in what is known as a "co-brokerage." ¶¶ 19, 127. The amount of any such division of a commission varies. ¶¶ 93, 96, 101.

Other types of arrangements are also frequently used, in which either the buyer or the seller (or both) is not represented by a broker, or through a dual-agency agreement where one broker represents both the buyer and the seller. *See* ¶ 126 (alleging that only "70-percent of all brokerage sales [on YachtWorld] are co-brokered"); ¶¶ 137, 142 (alleging the use of dual agency agreements); *infra* at 7, n.7 (discussing the availability of "for sale by owner" listings).

There are no allegations that Broker Defendants require their brokers or affiliated agents to join any broker trade association, including those organized by the Association Defendants, or to participate in any specific online marketplaces, including those operated by certain Defendants, or to adhere to any marketplace's (certain Defendants' or otherwise) listing rules or policies.

## **2. Associations**

The Complaint does not identify any rule promulgated by a Broker Defendant, Association Defendant, or Marketplace Defendant that sets commissions for buyer's brokers or mandates co-brokerage (i.e., sharing of any commission among brokers), and many Association Defendants'

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*Miami Beach Luxury Rentals, Inc.*, 2017 WL 11630386, at \*1 n.1 (S.D. Fla. Mar. 24, 2017) (finding a website "printout" to be incorporated by reference where plaintiff "does not dispute the text from the webpage"). Plaintiffs incorporate the above-referenced webpage in the Complaint. *See* ¶ 76 n.12. This webpage and those cited below are also subject to judicial notice. *See Cosgrove v. Oregon Chai, Inc.*, 520 F. Supp. 3d 562, 581 n.5 (S.D.N.Y. 2021) ("A court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it is capable of accurate and ready determination.").

rules expressly permit brokerage fees to be negotiated on a per-sale basis. ¶¶ 87, 90, 96, 101. Plaintiffs do not point to any provision set forth by any Defendant that limits negotiations. Instead, Plaintiffs only allege that there is a “norm” of a 10% broker commission, ¶ 5, but concede that the commission “is typically not *more* than 10 percent.” ¶ 72 (emphasis added). Plaintiffs allege that this commission is “typically” shared 60/40 or 50/50 by the buyer’s broker and seller’s broker. ¶ 5.

The Complaint does not specifically allege that there are any enforcement or punishment mechanisms for brokers who do not charge a 10% or any specific commission to the seller, or who do not agree to share in any way a commission with the buyer’s broker. Instead, Plaintiffs only point to generic discipline provisions for general ethical violations of Association Defendant membership rules. ¶¶ 97, 121-125. Plaintiffs also do not allege that these general discipline rules have ever been used to discipline a seller’s broker who did not charge 10% or any specific commission on a sale or who did not agree to share any commission that seller’s broker received.

### **3. Online Marketplaces**

Plaintiffs allege that yacht owners, dealers, and brokers can and do use a wide range of competing marketplaces to list yachts for sale, including independent marketplaces like boats.com, Boat Trader, YachtWorld (each operated by Defendant Boats Group) and Defendant Yatco, none of which are affiliated with any Defendant Association or any Defendant Broker. *See* ¶¶ 4, 54, 59. Plaintiffs allege only one online marketplace owned by yacht broker associations—yachtbroker.org (now, Yachtr.com). ¶ 47. Prospective buyers can research yachts for sale on any or all of these online marketplaces (or elsewhere), either by themselves or with the assistance of brokers. ¶ 69. These online marketplaces are alleged to have “facilitate[d] information sharing among prospective buyers, sellers, and brokers,” and “have greatly reduced the time and effort required for buyers to shop for boats.” ¶ 4.

Defendant Boats Group operates several online marketplaces. ¶ 54. Two of its

marketplaces alleged in the Complaint—boats.com and Boat Trader—accept FSBO listings, allowing yacht sellers to advertise and sell their yachts online without using a broker.<sup>7</sup>

As for the only association-owned marketplace, Plaintiffs allege that the “public-facing, lead-generating advertising site, called Yachtr.com,” ¶ 48, “allows yacht brokers to see one another’s listings with the goal of connecting buyers to sellers through a yacht sales professional.” ¶ 81. Aside from brokers, buyers and sellers can also access Yachtr.com to “locate and research vessels for sale.” ¶¶ 48, 69. The Complaint is devoid of nonconclusory allegations that membership in any of the four Defendant Associations is mandatory to receive access to Yachtr.com or any other marketplace where yachts are advertised online.

Likewise, there are no nonconclusory allegations that participation in the marketplaces is conditioned on adherence to any Association Defendant’s guidelines. No marketplace has any requirement that brokers must agree to charge a yacht seller any commission—never mind specifically a 10% commission—or must share any commission with a buyer’s broker in order to list yachts. And there certainly is no requirement that a seller broker must include an offered commission to a buyer’s broker in order to list a yacht for sale on any of the marketplaces. For example, with respect to Yatco and Yachtr.com, Plaintiffs simply point to a requirement that listings be made by a broker, ¶ 110, with membership in “a professional association.” ¶ 123. In

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<sup>7</sup> See **Ex. B**, “For Sale By Owner Terms and Conditions,” Boats Group, <https://www.boatsgroup.com/advertising-policy>. This website is quoted in the Complaint (¶ 130 n.42) and thus incorporated by reference. Prominently displayed on the home page of boats.com is a link that reads “Sell my Boat”: anyone can follow it to list their boat “[r]egardless of selling price, type or size” across “a wide variety of boat types and price ranges.” **Ex. C**, “Sell your boat fast today on boats.com,” Boats, <https://www.boats.com/sell-my-boat/> (last accessed July 18, 2024); **Ex. D**, “Sell Your Boat Fast,” Boat Trader, <https://www.boattrader.com/sell/> (“Enter your boat information, upload photos, and you’re ready to sell.”). The contents of these websites are also subject to judicial notice because the Marketplace Defendants’ websites *are* the MLS platforms complained about, such that the contents of the websites go to the heart of Plaintiffs’ claims and “the complaint necessarily relies on the website[s].” *Langer v. Music City Hotel LP*, 2021 WL 5919825, at \*4 (N.D. Cal. Dec. 15, 2021).

other words, there is no allegation that any seller has to be a member of one of the Association Defendants in order to list a yacht on any of the marketplaces.

Plaintiffs allege that Boats Group requires that *some* (but not all) yachts listed on YachtWorld—only *one* of Boats Groups’ marketplace websites—be offered for co-brokerage, but points to nothing to support the requirement of a particular commission or commission-sharing between buyer and seller brokers. ¶ 119 (“The *vast majority* of yachts sold through YachtWorld are sold through a co-brokerage agreement with the selling and buying broker sharing in the brokerage commission”) (emphasis added). While Plaintiffs allege that “the commission split on a given boat . . . is accessible on the MLS only to brokers,” ¶ 119, they do not identify “the MLS” or allege that the commission split is actually posted on the online marketplaces at issue.

Plaintiffs allege that “if the independently owned MLS want to obtain listings from brokers, they must conform to industry practice at the insistence of boat brokers, who are also members of the yacht broker associations.” ¶ 10. But the Complaint contains no factual allegations about any enforcement mechanism over the marketplaces, by either the Defendant Brokers or the Defendant Associations. Nor are there any factual allegations of any punishment mechanism by any of the Defendants over a supposedly non-compliant co-conspirator. And there are no nonconclusory allegations of any economic incentive for the Marketplace Defendants or the Associations Defendants to participate in the purported “conspiracy.”

## ARGUMENT

### 1. PLAINTIFFS FAIL TO SUFFICIENTLY PLEAD THAT DEFENDANTS AGREED TO INFLATE COMMISSIONS

To allege a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, plaintiffs must plead a “(1) conspirac[y] that (2) unreasonably (3) restrain[s] interstate or foreign trade.” *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019). For

the first element, the Court must determine whether the Complaint “contains ‘allegations plausibly suggesting (not merely consistent with) a conspiracy or agreement’”—that is, “whether the complaint ‘possesses enough heft to show that the pleader is entitled to relief.’” *Jacobs v. Tempur-Pedic Int’l, Inc.*, 626 F.3d 1327, 1332-33 (11th Cir. 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)) (punctuation altered). Indeed, “conspiracy [allegations] must tend to rule out the possibility that the defendants were acting independently.” *Twombly*, at 554.

“The first inquiry in any” claim brought under Section 1 “is to locate the agreement that restrains trade.” *In re Jan. 2021 Short Squeeze Trading Litig.*, 2021 WL 5359731, at \*14 (S.D. Fla. Nov. 17, 2021) (citation omitted). To plead the existence of such an agreement, Plaintiffs must allege “direct or circumstantial evidence that reasonably tends to prove that the [defendants] had a conscious commitment to a common scheme designed to achieve an unlawful objective.” *Id.* (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984) (internal quotation marks and citations omitted)). Here, Plaintiffs have failed to plead factual allegations that plausibly suggest that Defendants entered into an agreement to “*require[]* pre-owned yacht sellers to pay a supracompetitive total aggregate commission fee that includes an inflated brokerage fee for the buyer’s broker.” ¶ 1 (emphasis added).

**a. Plaintiffs Fail to Allege Any Direct Evidence of an Agreement**

Direct evidence of a conspiratorial agreement “is *explicit* and requires no inferences to establish the proposition or conclusion being asserted.” *In re Farm-Raised Salmon & Salmon Prods. Antitrust Litig.*, 2021 WL 1109128, at \*10 (S.D. Fla. Mar. 23, 2021) (emphasis added). Plaintiffs have not alleged any such direct evidence. The Complaint does not allege a single document or recording that *explicitly*—and “without inference”—shows that Defendants entered into *any* agreement to set yacht broker commission rates. Plaintiffs do not allege any recorded meeting, document, transcribed phone call, text-message exchange, or email thread showing an



agreement on commission rates between *any* Defendants or any subgroup of Defendants.

**b. Plaintiffs Fail to Allege Adequately Circumstantial Evidence of an Agreement**

Having failed to plead direct evidence of any unlawful agreement among Defendants, Plaintiffs “may present circumstantial facts supporting the inference that a conspiracy existed.” *In re Jan. 2021*, 2021 WL 5359731, at \*17 (quoting *Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 465 (2d Cir. 2019) (internal quotation marks omitted).

Circumstantial evidence of an antitrust conspiracy must be supported by facts of *both* (1) parallel conduct *and* (2) “plus factors” that tend to show that any such parallel conduct was not the product of independent action, but rather a collusive agreement. *Quality Auto*, 917 F.3d at 1262; *see also Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 726 (11th Cir. 2020) (parallel conduct is “insufficient standing alone to raise an inference of conspiracy”). Allegations of parallel conduct could be, for example, “competitors adopting similar policies around the same time in response to similar market conditions[.]” *Run it First, LLC v. CVS Pharmacy, Inc.*, 2022 WL 484862, at \*4 (S.D. Fla. Feb. 16, 2022) (quoting *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1193 (9th Cir. 2015)).

“Plus factors” are “economic actions and outcomes that are largely inconsistent with unilateral conduct but largely consistent with explicitly coordinated action,” including actions against a defendant’s self-interest. *Run it First*, 2022 WL 484862, at \*4 (quoting *In re Musical Instruments*, 798 F.3d at 1194); *see also Quality Auto*, 817 F.3d at 1270. Examples of plus factors include a concentration of sellers, uniformity of tactics, and opportunity to exchange information. *Id.* at 1270; *Williamson Oil Co. v. Philip Morris USA*, 346 F.3d 1287, 1317 (11th Cir. 2003). Well-pled plus factors are required to comport with *Twombly*’s mandate that, when relying on circumstantial evidence, a complaint’s “conspiracy [allegations] must tend to rule out the possibility that the defendants were acting independently.” *Twombly*, at 554. Stated another way,

because parallel conduct is as consistent with unilateral action as it is with conspiracy, “plus factors” are needed to “remove a plaintiff’s evidence from the realm of equipoise and render that evidence more probative of conspiracy than of conscious parallelism.” *Quality Auto*, 817 F.3d at 1262. Dismissal is proper where a plaintiff fails to allege “any facts supporting plus factors that would tip the scale from equipoise towards conspiracy.” *Id.* at 1271; *see United Am. Corp. v. Bitmain, Inc.*, 530 F. Supp. 3d 1241, 1259 (S.D. Fla. 2021) (dismissing plaintiff’s claim where “alleged plus factors [fell] far short of its pleading obligation.”).

i. Plaintiffs Fail to Allege Parallel Conduct

Plaintiffs do not plead that Defendants engaged in parallel conduct. Plaintiffs not only fail to allege that the different groups of Defendants have behaved similarly—which they would have to do to state a claim in the absence of direct evidence—but also fail to plausibly allege any similar conduct among the members of *any* group of Defendants.

**Marketplace Defendants:** The Complaint does not allege that *all* Marketplace Defendants (1) refuse FSBO listings; (2) require that all listings be subject to a co-brokerage agreement with a commission shared between the seller’s broker and the buyer’s broker; or (3) require membership in one of the Association Defendants to be able to list a yacht for sale. *See* ¶¶ 67-82, 110-20.<sup>8</sup> Plaintiffs would have to allege such conduct across all Marketplace Defendants to establish the kind of parallel conduct within the Marketplace Defendant group necessary for the Court to find an agreement. They have not done so, and cannot consistent with their obligations under Rule 11.

As noted, two of Boats Groups’ alleged online marketplaces—boats.com and Boat Trader—*do* allow FSBO listings. *See supra* at 7, n.7; *see also* ¶ 200 (alleging that Defendants have

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<sup>8</sup> The limited nature of Plaintiffs’ allegations is evidenced by the fact that the Complaint only addresses the alleged conduct of two online marketplaces—Yatco and YachtWorld—though it purports to challenge the conduct of at least five different “MLSs.” *See, e.g.*, ¶¶ 54, 60, 200.

engaged in anticompetitive conduct by enforcing the alleged “rules of YATCO and YachtWorld,” conspicuously omitting boats.com and Boat Trader). This means yacht sellers can—and do—list yachts for sale on these marketplaces without using a broker at all. Similarly, while Plaintiffs allege that Yatco requires that listings be made by a broker with membership in “a professional association,” ¶¶ 110, 123, they allege no such membership requirement for listing on Boats Group websites. Even for Yatco, Plaintiffs do not allege that it requires brokers to be a member of one of the Association Defendants. This means that Marketplace Defendants are not actually alleged to have engaged in any conduct underlying Plaintiffs’ alleged conspiracy, never mind the key parallel conduct upon which they apparently rely. At most, Plaintiffs allege that YachtWorld and Yatco’s websites rules *encourage* co-brokerage agreements. ¶¶ 111, 119. But Plaintiffs *concede* that many yachts on those platforms are sold without any kind of co-brokerage agreement whatsoever. *See* ¶ 75 (alleging that “about 70 percent of all brokerage sales are co-brokered”).

**Broker Defendants:** The Complaint’s allegations as to the parallel conduct of all Broker Defendants are similarly limited. Plaintiffs’ core allegation regarding the Broker Defendants’ conduct is limited to a single paragraph (¶ 131) that lumps them all together and generally alleges that they all engaged in the same conduct. Such a conclusory allegation falls short of providing “*enough factual matter . . . to suggest that an agreement was made.*” *Twombly*, 550 U.S. at 556 (emphasis added); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009) (“the complaint must contain *facts* plausibly showing” the existence of an alleged agreement) (emphasis added); *infra* at § 1.d. The Complaint’s allegations demonstrate a lack of parallel conduct:

- Certain (but not all) employees or agents of certain (but not all) Broker Defendants serve on certain (but not all) Boards of certain (but not all) Association Defendants, ¶¶ 132-46;
- Certain (but not all) employees of certain (but not all) Broker Defendants have publicly stated that they support the Association Defendants’ goal of promoting professionalism in the industry, ¶ 147;
- Certain (but not all) Broker Defendants have brokers with professional certifications,

¶¶ 149-50;

- Certain (but not all) Broker Defendants are “affiliated” with or are members of certain (but not all) Association Defendants, ¶¶ 152, 154, 158;
- Certain (but not all) Broker Defendants market to customers the message that buyers do not pay brokerage fees, ¶¶ 155-57; and
- Certain (but not all) Broker Defendants have listed yachts for sale on various websites operated by certain (but not all) Marketplace Defendants, ¶ 159.

None of these allegations plausibly alleges the existence of an anticompetitive conspiracy.

Indeed, there are no allegations that *any* Broker Defendant (1) requires all sellers to pay 10% or any particular commission on the sale of a yacht, (2) will only list yachts for sale on marketplaces that refuse FSBO listings, or (3) will only use listing contracts that require a co-broker agreement with split commissions. Indeed, Plaintiffs tellingly hedge their allegations that a “typical”—*but not every*—“co-brokerage listing agreement . . . provides for a pre-owned yacht commission equal to 10% of the purchase price of the yacht.” ¶ 64; *see also* ¶ 5 (the “[a]ggregate broker commission on the sale [of a pre-owned yacht] is frequently”—*but not always*—“10% of the sales price.”).

**Association Defendants:** Similarly, the Complaint does not allege that all Association Defendants require their member brokers to (1) use form contracts that require a certain percentage of the yacht sales price to be charged to sellers as commission; or (2) split any commission on the sale of a yacht with a broker representing the buyer. *See* ¶¶ 83-108. Instead, it points to various non-mandatory provisions contemplating that brokers representing a seller may cooperate with a broker representing a buyer in selling their client’s yacht whenever that cooperation would be “in the interest of the client,” and may negotiate a sharing of fees as appropriate. *See, e.g.*, ¶ 90 (IYBA: “Members should cooperate with other members on vessels listed whenever it is in the interest of the client . . . All shared commission agreements should be negotiated prior to the submission of any Offer to Purchase.”); ¶10 (NYBA: “Member should cooperate with other Members on vessels listed with them whenever it is in the interest of the client. . . . All shared commission agreements

should be negotiated prior to the submission of an Offer to Purchase.”); ¶ 87 (YBAA: “The Broker will cooperate with other Brokers on vessels listed by him/her on a Central Listing basis whenever it is in the interest of the Seller, sharing commissions on a previously agreed basis.”).

It is well-settled that non-mandatory trade association rules do not give rise to antitrust liability. *See Consolidated Metal Prods., Inc. v. Am. Petroleum Institute*, 846 F.2d 284, 292 (5th Cir. 1988) (trade association, “without constraining others to follow its recommendations,” did not violate *per se* or rule of reason standard by offering recommendations); *see also Schachar v. Am. Acad. of Ophthalmology, Inc.*, 870 F.2d 397, 398–99 (7th Cir. 1989) (Easterbrook, J.) (same). In an attempt to overcome the plainly non-mandatory nature of these provisions, Plaintiffs cite and selectively quote provisions in bylaws and ethics codes of various Association Defendants that reference broker *cooperation* and commission practices generally, but say nothing of the sharing of commissions or an amount thereof. This sleight of hand cannot mask Plaintiffs’ failure to identify any common rules regarding the conduct *actually at issue in this case*—i.e., an alleged agreement to inflate commissions.

Plaintiffs mischaracterize even these irrelevant Association Defendant provisions, however, because they do not support Plaintiffs’ contention that there is a standard industry rule imposing and enforcing the challenged anticompetitive behavior. Indeed, many of the cited provisions are prefaced with the auxiliary verb “should” as opposed to “must,” and are conditioned on the client’s best interests, expressly belying Plaintiffs’ characterization as unconditional rules or mandates. None contain a requirement regarding the amount of commissions to be charged to sellers, nor a commission sharing mandate, much less establishes a common requirement adopted, enforced, and implemented by all Defendants.

This patchwork of qualified and inconsistent allegations does not allege “parallel conduct” between eighteen Defendants, many of whom participate at different levels in the industry. *See*

*Bitmain*, 530 F. Supp. 3d at 1272-73 (rejecting similarly “qualifie[d]” and “hedge[d]” claims and allegations). Plaintiffs’ allegations do not establish that any “competitors act similarly or follow the same course of action—for example, adopting similar policies at or around the same time in response to similar market conditions.” *In re Salmon*, 2021 WL 1109128, at \*11 (citations omitted). Accordingly, the Complaint “imparts no information from which the Court could conceivably, never mind plausibly, discern concerted, cooperative action among the Defendants.” *Run it First*, 2022 WL 484862, at \*5, 6 (noting that “even though all the defendants supported a particular course of action, . . . without more, the allegations were insufficient to imply even parallel conduct”) (citing *Bitmain*, 530 F. Supp. 3d at 1259).

ii. Plaintiffs Also Fail to Allege Plus Factors

Even if Plaintiffs had sufficiently alleged parallel conduct, the Complaint remains deficient because Plaintiffs fail to plead any “plus factors” that would make any parallel conduct “more probative of conspiracy than of conscious parallelism.” *Williamson Oil*, 346 F.3d at 1301. Plaintiffs have alleged no facts showing that any such parallel conduct “would probably not result from chance, coincidence, independent responses to common stimuli, or mere *interdependence unaided by an advance understanding among the parties*.” *Twombly*, 550 U.S. at 556 n.4 (emphasis added).

*First*, there are no allegations that Defendants acted against their own individual economic self-interests. See *In re Jan. 2021 Short Squeeze Trading Litig.*, 2022 WL 1522054, at \*9 (S.D. Fla. May 13, 2022). Such allegations are typically required because they cut against a defense that defendants were acting in their unilateral self-interest. Here, Plaintiffs do not allege that any of the practices complained of make sense only in the presence of an agreement; *i.e.*, that such practices would be contrary to each Defendant’s own interest but for an agreement. Instead, if the practice is profitable, such a practice would be expected by all industry members irrespective of an

agreement. *Quality Auto*, 917 F.3d at 1267 (“All of these purported ‘highly uniform’ tactics are easily explained by the most common of corporate stimuli: a desire to increase profits.”). For example, commission sharing—which, by Plaintiffs’ own admission, was not always employed—makes independent economic sense to each Broker Defendant because offering such payments increases demand for yachts, thus facilitating their clients’ ability to buy and sell their yachts.<sup>9</sup>

*Second*, to the extent that Plaintiffs do allege similar commission pricing practices, they have not alleged the requisite existence of any “variables that would ordinarily result in divergent pricing,” thereby rendering any similar pricing practices suspect absent an anticompetitive agreement. *Quality Auto*, 917 F.3d at 1263. There are no allegations that the average commission rate in the industry is a secret, or that the quality of the services provided in the relatively rarefied world of yacht sales and purchases vary so greatly by broker that divergent prices should be expected, or that costs vary significantly from broker to broker. And there are no allegations that Defendants engaged in “uniform tactics.” *Id.* at 1267. Instead, Plaintiffs allege a wide range of distinct rules and practices, and ask the Court to infer a single agreement from them. *See supra* at 6-8 (discussing the diversity of marketplace and association guidelines Plaintiffs rely upon).

*Finally*, there are no allegations of high-level inter-Defendant communications, *see Jan. 2021*, 2022 WL 1522054, at \*9; nor are there allegations of a government investigation of the yacht selling industry. *Cf. In re Salmon*, 2021 WL 1109128, at \*17.

Simply put, the Complaint’s factual allegations “fall[] well short of alleging any plus

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<sup>9</sup> Relatedly, there are “plausible, procompetitive explanation[s]” for commission sharing. *Seagood Trading Corp. v. Jerrico, Inc.*, 924 F.2d 1555, 1574 (11th Cir. 1991). Plaintiffs attempt to paint Marketplace and Association Defendants’ alleged encouragement of commission sharing as evidence of a conspiracy to set competitor broker commissions. But elsewhere, Plaintiffs allege that “dual-agency clauses” that permit listing brokers to represent both the buyer and seller are themselves “anticompetitive.” ¶ 100; *see also* ¶¶ 137, 142. Encouraging the sharing of commissions—resulting in buyers and sellers being represented by different agents—is a way of preventing the dual agency arrangement Plaintiffs describe as anticompetitive.

factors from which the Court could plausibly infer an actual conspiracy among the Defendants . . . of [any] variety.” *Run it First*, 2022 WL 484862, at \*5. Instead, the allegations are either “supported only by conclusory allegations,” or “appear to simply be complaints about the way Defendants operate, divorced from any explanation as to how these allegedly questionable business practices might imply something more than parallel conduct.” *Id.* at \*6, 7. In sum, a complaint that merely “alleg[es] several common and obvious industry practices should not proceed directly past a motion to dismiss and into the expensive and settlement-inducing quagmire of antitrust discovery.” *Quality Auto*, 917 F.3d at 1267.

**c. Plaintiffs’ Attempt to Analogize to the Real Estate Industry Is Inapt, and Fails on its Own Terms**

Plaintiffs’ claims represent a strained effort to analogize the decentralized yacht-sales industry to the real estate industry. The Complaint lumps two independent Marketplace Defendants—each with no connection to any of the Association Defendants or Broker Defendants and with different listing policies and services—into a vaguely-defined “MLS” to try to make a superficial comparison to recent cases involving the real estate industry and its single trade association, NAR, that governed the single MLS operating in each relevant geographic market. *See* ¶¶ 9, 164, 167. These contorted comparisons fail.

*First*, claims against NAR were predicated on allegations of *mandatory* common rules that bound *all* real estate industry defendants together in a single agreement that all of the defendants allegedly adopted, implemented, and enforced. Specifically, NAR was alleged to have a common set of broker commission rules that required an offer of compensation be made to buyer brokers. Each defendant allegedly supported those rules, and compliance was a precondition to listing a property on the sole real estate MLS operating in the relevant region. As the court explained in denying the motion to dismiss in *Moehrl v. National Association of Realtors*:



The purported anticompetitive restraints here are a product of *written rules* issued by the NAR **that each Corporate Defendant expressly imposes upon their franchisees and realtors**. That suggests that each Corporate Defendant has reviewed, understood, **and ultimately agreed to the NAR’s rules, including the Buyer-Broker Commission Rules**.

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**Perhaps most importantly**, Plaintiffs point to the allegation that each of the Corporate Defendants **requires** its franchisees, affiliates, and realtors to comply with the NAR’s allegedly anticompetitive restraints to secure the benefits of their brands, infrastructure and resources. [Citation omitted] They do this by **requiring their franchisees and realtors to join the NAR and follow the NAR’s Handbook and Code of Ethics, including the Buyer-Broker Commission Rules**. (*Id.*) In addition, Plaintiffs allege that the Corporate Defendants **require their franchisees and realtors join a local realtor association and MLS, which themselves require compliance with the NAR’s rules**.

492 F. Supp. 3d 768, 778 (N.D. Ill. 2020) (emphases added); *see also Sitzer*, 420 F. Supp. 3d at 912 (denying the motion to dismiss and describing how mandatory rules issued by NAR formed the basis of the alleged conspiracy).

Needless to say, the yacht-sales industry is not the real estate industry. As demonstrated above, *supra* at 13-15, § 1.c, Plaintiffs cannot allege facts establishing the existence of common rules or requirements that all Defendants agreed to follow. Any custom of sharing fees is not enforced by listing rules or requirements of the five “MLSs” identified in the Complaint. *See* ¶¶ 54, 60.

*Second*, the marketplaces at issue here are different in critical ways from the MLS in the real estate cases. First, the local MLSs in the real estate cases was “owned by a local NAR association” and was required to adhere to NAR’s single set of mandatory rules applicable to all MLS and NAR members. *Sitzer*, 420 F. Supp. 3d at 914. Here, four of the online marketplaces—Yacht World, boats.com, Boat Trade, and Yatco—are *independent*: they are not operated by brokers, do not require membership in any brokerage organization, and are not alleged to benefit in any way from brokerage fees. Given their independence and financial incentives, it is implausible to infer that they would be part of the alleged conspiracy.

Competition *between and among* the marketplaces in this case also makes it distinct. In the real estate cases, only one MLS operated in each geographic region, so the rules of that MLS (which were mandated by NAR) allegedly pertained to the listing of all properties for sale within that MLS's territory, and neither buyers nor sellers had any alternative MLS to facilitate the purchase or sale of a home. *See Sitzer*, 420 F. Supp. 3d at 910. But here, the alleged online marketplaces are not limited in geographic scope, and serve sellers and buyers throughout the United States and the world. ¶¶ 71, 170. While Plaintiffs attempt to obfuscate this difference by collectively referring to the multiple marketplaces as a singular "MLS," the Complaint identifies no fewer than five online marketplaces alleged to have participated in the supposed conspiracy. But these marketplaces are alleged to have different rules, none of which resemble the mandatory rules challenged in the NAR real estate cases. And, as noted above, boats.com and Boat Trader neither require sellers to be represented by brokers to list yachts, nor to be members of any Defendant Association. *Supra* at 7, n.7 and 12.

A recent real estate case addressing non-mandatory rules of an MLS not governed by NAR rules is instructive. In *Grace v. RE/MAX Holdings, Inc.*, plaintiffs were sellers of real estate who claimed they were unlawfully forced to offer and pay buyer's broker commissions due to MLS rules requiring such payment as a condition of listing. 2024 WL 2761188 (N.D. Cal. May 29, 2024). The *Grace* court examined non-NAR MLS rules at issue and dismissed the claims because the "[r]ules simply do not on their face *require*" offers of compensation by the seller's broker to the buyer's broker. *Id.* at \*4 (emphasis added). The *Grace* court's dismissal makes sense because, absent rules *mandating* conduct, there were neither (1) facts connecting the defendants to a common, overarching agreement, nor (2) an enforcement mechanism in place to police compliance

with the alleged agreement, further demonstrating the alleged agreement’s implausibility. *Id.*<sup>10</sup>

The same is true here. Plaintiffs claim a common set of rules and requirements impose a commission sharing mandate, but the plain language of the cited Association Defendant bylaws and ethics codes show that there is no common set of rules, and no sharing mandate. *See supra* at 13. And as to the alleged “MLSs,” boats.com, Boat Trader, and Yachtr.com are not alleged to have any commission-sharing rule, and YachtWorld’s co-brokerage requirement that Plaintiffs rely upon applies to only a portion of listings. *See supra* at 12. Accordingly, this Court should follow the reasoning of *Grace* and dismiss the Complaint.

**d. Plaintiffs Rely on Improper “Group Pleading,” Requiring Dismissal**

Plaintiffs are obligated to allege *each* Defendant’s distinct unlawful conduct, including how each joined the alleged conspiracy and what each did in furtherance of the illegal anticompetitive agreement. Federal Rule of Civil Procedure 8 cannot be satisfied with “group pleading” that lumps all Defendants together without alleging facts specific to each Defendant. *See, e.g., Pierson v. Orlando Reg’l Healthcare Sys., Inc.*, 619 F. Supp. 2d 1260, 1274 (M.D. Fla. 2009) (dismissing antitrust claim because of complaint “grouping together of the[] Defendants without differentiation.”); *see also In re Auto Body Shop Antitrust Litig.*, 2015 WL 4887882, at \*6 (M.D. Fla. June 3, 2015) (dismissing antitrust claims based on “improper group pleading.”).

But Plaintiffs rely on group pleading—between and among each group of Defendants—for each of their claims. For example, Plaintiffs group all of the Broker Defendants—OneWater,

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<sup>10</sup> *See also Petruzzi’s IGA Supermarkets, Inc. v. Darling–Delaware Co.*, 998 F.2d 1224, 1233 (3d Cir. 1993) (citing Richard A. Posner, *Economic Analysis of Law* 265–66 (3d ed. 1986)) (“Game theory teaches us that a cartel cannot survive absent some enforcement mechanism because otherwise the incentives to cheat are too great.”); *Kleen Prod. LLC v. Int’l Paper*, 276 F. Supp. 3d 811, 842 (N.D. Ill. 2017), *aff’d sub nom. Kleen Prod. LLC v. Georgia-Pac. LLC*, 910 F.3d 927 (7th Cir. 2018) (“A punishment mechanism is crucial for another reason as well: it helps to distinguish illicit express collusion from lawful tacit collusion.”).

Denison, Allied Marine, United Yacht Sales, HMY, Galati, Northrop & Johnson, MarineMax East, and the Fraser Defendants—together (along with other defendant groups), making undifferentiated allegations that “Defendants,” “Broker Defendants,” “brokers,” or “Brokerage Defendants” engaged in alleged misconduct. ¶¶ 13, 83, 131, 208, 209. For example:

- Plaintiffs make no specific allegations whatsoever against OneWater and MarineMax East;
- The only allegations about Denison are that “most [of its] brokers are licensed and bonded” and that one of its brokers is “the current director of NYBA.” ¶¶ 103, 151.
- The only allegations about Allied Marine are that one of its brokers is on the Board of Defendant IYBA, and that its brokers adhere to the IYBA code of ethics. ¶¶ 133, 150.
- The two allegations as to United Yacht Sales regarding its recruitment of brokers and the buyer’s cost to hire a broker to “find the right vessel” do not demonstrate distinct unlawful conduct. ¶¶ 153, 156.
- The only substantive allegations against Galati are that its brokers are certified professional yacht brokers and that one of its employees serves on the IYBA Board. ¶¶ 133, 149.
- Plaintiffs fail to allege any specific facts against Northrop & Johnson, save for the fact that its website says it is affiliated with yacht broker associations and that one of its former employees served on the YBAA Board of Directors. ¶¶ 152, 132.
- The two allegations as to HMY state the unremarkable proposition that HMY lists yachts for sale on MLSs, and that an employee of HMY is also a member of the IYBA Board of Directors. ¶¶ 76, 133.

Without more—and nothing more is plead—these facts do not demonstrate conspiracy. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1048 (9th Cir. 2008) (“[e]ven participation on the association’s board of directors is not enough by itself” to create liability) (citing *Twombly*, 550 U.S. at 556-57).<sup>11</sup> Because Plaintiffs’ group-pleaded claims fail to articulate necessary facts as to

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<sup>11</sup> Nor can Plaintiffs implicate OneWater in a conspiracy simply because it acquired Denison Yachting in 2022. The antitrust laws do not suspend the “general principal of corporate law . . . that a parent corporation . . . is not liable for the acts of its subsidiaries.” *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). Thus, a parent company is not a proper defendant absent some allegation that the parent is involved in the challenged conduct. *See In re Fla. Cement & Concrete Antitrust Litig.*, 746 F. Supp. 2d 1291, 1324 (S.D. Fla. 2010) (parent not liable for conduct of subsidiary where there is no evidence that both were involved in the challenged conduct) (quotation omitted); *Spanish Broad. Sys., Inc. v. Clear Channel Comm’ns, Inc.*, 242 F. Supp. 2d 1350, 1363 (S.D. Fla. 2003), *aff’d*, 376 F.3d 1065 (11th Cir. 2004) (recognizing that “before one corporate entity can be held liable for the alleged federal antitrust wrongs of another corporate entity, the plaintiff must satisfy the state law standard for piercing the corporate veil”).

specific Defendants, Plaintiffs' claims must be dismissed as to these Defendants.

**2. PLAINTIFFS FAIL TO PLEAD THE REMAINING ELEMENTS OF A SECTION 1 CLAIM**

**a. Plaintiffs' Allegations Do Not Qualify For *Per Se* Treatment Under the Antitrust Laws**

The "presumption" in an antitrust case "is that the rule-of-reason standard applies." *Seagood Trading Corp. v. Jerrico, Inc.*, 924 F.2d 1555, 1567 (11th Cir. 1991). Nothing in the Complaint suggests that this presumption does not apply here.

While Plaintiffs invoke the *per se* standard, ¶ 204, that standard is "limited to a very small class of antitrust practices whose character is well understood and that almost always harm competition." *Jacobs*, 626 F.3d at 1334 (citing *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006)). The *per se* rule is reserved for agreements for which "history and analysis have shown that in sufficiently similar circumstances the rule of reason unequivocally results in a finding of liability." *Consultants & Designers, Inc. v. Butler Serv. Group, Inc.*, 720 F.2d 1553, 1562 (11th Cir. 1983).

"History and analysis" cut in precisely the opposite direction in this case. The Supreme Court has made clear that trade association rules that do not directly restrain prices must be evaluated under the rule of reason, because trade associations are generally procompetitive. *See, e.g., Broad. Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1, 24 (1979) (agreements among associations of musicians and publishers to collectively set prices reviewed under rule of reason); *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 297 (1985) (trade association action facilitating horizontal refusal to deal reviewed under rule of reason).

This case is no exception. The *per se* rule is reserved for horizontal restraints with "immediately obvious" anticompetitive effects. *See FTC v. Indiana Fed'n of Dentists*, 476 U.S.

447, 458-59 (1986). “Horizontal” restraints are “imposed by agreement *between* competitors,” whereas “vertical” restraints are “imposed by agreement between firms at *different* levels of distribution.” *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018) (emphasis added). This distinction is critical because “virtually all vertical agreements now receive a traditional rule-of-reason analysis rather than straightforward *per se* condemnation.” *In re Jan. 2021, 2022* WL 1522054, at \*13 (internal marks and citations omitted). The rule of reason also applies to mixed horizontal and vertical agreements, sometimes called “hybrid” agreements. *See, e.g., Winn-Dixie Stores, Inc. v. E. Mushroom Mktg. Coop., Inc.*, 89 F.4th 430, 435 (3d Cir. 2023) (application of rule of reason to “hybrid scheme” involving “myriad organizational structures with varying degrees of vertical integration” and that “required cooperation at multiple levels to succeed”).

Here, Plaintiffs do not and cannot allege a horizontal conspiracy among four Association Defendants; two Marketplace Defendants (in addition to an Association Defendant alleged to operate an online marketplace); and twelve Broker Defendants. These entities do not compete with one another across categories. Yet Plaintiffs’ theory of harm is predicated on a single agreement among all of Defendants. “Where predominantly vertical firms enter into a vertical restraint of trade, rule of reason analysis is appropriate ‘even though in some ways the companies may have operated in similar lines of business.’” *In re Jan. 2021, 2022* WL 1522054, at \*14 (quoting *Generac Corp. v. Caterpillar, Inc.*, 172 F.3d 971, 977 (7th Cir. 1999)).

The challenged practices, moreover, do not directly restrain prices and, as is evident from Plaintiffs’ allegations, have plausible—even obvious—procompetitive effects. Plaintiffs allege that by offering a commission, a seller’s broker incentivizes buyer brokers to show their clients the listed yacht. ¶ 11. More showings mean greater demand, which means higher sales prices, making Plaintiffs better off, not worse. A practice that, as here, enhances overall market efficiency cannot be deemed *per se* illegal. *See Nat’l Bancard Corp. (NaBanco) v. VISA U.S.A., Inc.*, 779

F.2d 592, 603 (11th Cir. 1986) (affirming district court’s refusal to apply *per se* standard). As such, the *per se* rule does not apply, and the Complaint must be assessed under the rule of reason.

**b. Plaintiffs Fail to State a Claim Under the Rule of Reason**

Under the rule of reason, a plaintiff is required to show that the alleged restraint had an anticompetitive effect on the relevant market. *Procaps S.A. v. Patheon, Inc.*, 845 F.3d 1072, 1084 (11th Cir. 2016) (citing *Levine v. Cent. Fla. Med. Affiliates, Inc.*, 72 F.3d 1538, 1551 (11th Cir. 1996)). Application of the rule of reason is fatal to Plaintiffs’ claims because they fail to plead both (1) a plausible relevant market and (2) anticompetitive impact on the alleged market – bedrock requirements in a rule of reason case.

A plaintiff must plausibly allege the relevant market because otherwise “there is no way to measure the defendant’s ability to lessen or destroy competition” in that market. *Am. Express*, 585 U.S. at 543 (2018) (alterations omitted); *see also Q Club Resort & Residences Condo. Ass’n, Inc v. Q Club Hotel, LLC*, 2010 WL 11454483, at \*2 (S.D. Fla. Jan. 6, 2010) (relevant market is “a threshold requirement” at the pleading stage) (citing *Spectrofuge Corp. v. Beckman Instr., Inc.*, 575 F.2d 256, 276 (5th Cir. 1978)). The Eleventh Circuit recently reaffirmed the impracticality of applying the rule of reason without an accurate definition of the relevant market in *In re Jan. 2021 Short Squeeze Trading Litigation*, 105 F.4th 1346 (11th Cir. 2024). Relying on the Supreme Court’s decision in *American Express*, the Court upheld the dismissal of plaintiffs’ Section 1 claims where, like here, the plaintiffs failed plausibly to allege “anticompetitive effects *in a relevant market defined by their Amended Complaint.*” *Id.* at 1357 (emphasis in original).

A relevant antitrust market has two components: a product market and a geographic market. *See, e.g., Duty Free Ams., Inc. v. Estée Lauder Cos.*, 797 F.3d 1248, 1263 (11th Cir. 2015). As explained in greater detail below, the Complaint should be dismissed because it fails to allege either a plausible product market *or* a plausible geographic market. *Jacobs*, 626 F.3d at 1336

("[B]oth the geographic and product market allegations are necessary for a plaintiff suing under § 1 of the Sherman Act to succeed.").

Plaintiffs allege that the relevant product market is "yacht brokerage services provided to yacht sellers and buyers by yacht brokers with access to the MLS," ¶ 168, and allege the geographic market is "the United States," ¶ 170. Yet they fail to allege plausibly, as they must, that other means of selling and buying yachts, excluded from the relevant market definition—whether through sellers' FSBO efforts through listings on Defendant marketplaces, through listings on other websites, or through other dealers or marketplaces other than those alleged to be part of "the MLS"—are not reasonable substitutes. Nor have they provided any reason to exclude brokerage services facilitating yacht purchases and sales outside the United States from the relevant market.

i. Plaintiffs Fail to Allege a Plausible Relevant Product Market

A plaintiff must "properly plead the boundaries of the alleged relevant product market," *L.H. Equity Invs. LLC v. Wade*, 2010 WL 11505176, at \*3 (S.D. Fla. Mar. 29, 2010). To do so, Plaintiffs must plead factual allegations regarding cross-elasticity of demand or other indications of why consumers treat products in the alleged relevant market differently than they treat products outside of the alleged market. *See Jacobs*, 626 F.3d at 1339 (dismissing complaint for failure to plead relevant market).<sup>12</sup> Where a plaintiff "alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, [the] relevant market is legally insufficient." *Lockheed Martin Corp. v. Boeing Co.*, 314 F. Supp. 2d 1198, 1225 (M.D. Fla. 2004) (citation omitted). That is the case here: the Complaint alleges facts that are irreconcilable with Plaintiffs' purported market.

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<sup>12</sup> Cross elasticity of demand is an economic concept that measures the responsiveness in the quantity demanded of one good when the price for another one changes. The higher the cross elasticity between two products, the more likely they are in the same market. *See United States v E.I. du Pont de Nemours & Co*, 351 US 377, 404 (1956).



Plaintiffs allege that the relevant product market is “yacht brokerage services provided to yacht sellers and buyers by yacht brokers with access to the MLS,” ¶ 168, but fail to include any allegations to address the “cross-elasticity of demand” or “reasonable substitutability” (or lack thereof) of any alternative services provided to yacht sellers and buyers, including services provided by websites like Facebook Marketplace or Craigslist, industry magazines, sales from dealerships or manufacturers, or FSBO sales. *See Jacobs*, 626 F.3d at 1337-38 (identifying “cross-elasticity of demand” and “reasonable substitutability” of products or services as key factors to “pay particular attention to” in assessing product markets). Plaintiffs only allege, in a conclusory way, that “[a]ccess to the MLS is critical for brokers and agents to assist sellers and buyers” ¶ 174, and that “there is not a listing service that meaningfully competes with the MLS [*sic*].” ¶ 180.

These conclusory assertions should not be credited. The Complaint itself shows that there are means of selling and buying yachts through channels other than “the MLS[s]” and without brokerage services at all. For example, the Complaint cites materials that illustrate that brokers utilize an “omni-channel” approach that involves marketing beyond the Marketplace Defendants’ websites, including “at major boat shows, on Google, social media, email, YouTube, in yachting magazines, [], blogs, digital ads and more.” *See Ex. A, Market Your Yacht*, HMY Yachts, <https://www.hmy.com/about-hmy/market-your-yacht/> (last visited August 9, 2024). Similarly, Plaintiffs acknowledge the existence of FSBO yacht sales (*see, e.g.*, ¶ 6) but fail to allege any facts as to why any yacht buyers would not consider FSBO yachts (whether sold on a Defendant’s marketplace or not) as substitutes for yachts sold by brokers, including by the Defendant Brokers. And, as described above, online marketplaces like Boats.com and Boat Trader that Plaintiffs have alleged are part of “the MLS” allow FSBO listings, demonstrating that sellers need not use brokers in order to list boats on the marketplaces. *See supra* at 7, n.7.

Further, with respect to yacht buyers, the Complaint focuses exclusively on “pre-owned”

yachts. *See, e.g.*, ¶ 181 (defining alleged class as persons or entities who “sold a *pre-owned* boat or yacht . . . .”) (emphasis added); *see also* ¶¶ 1, 3, 5, 8, 10, 13, 14, 17, 42, 52, 64, 66, 67, 79, 83, 159, 162 n.57, 192 (qualifying the yachts at issue as “pre-owned”). Plaintiffs include no allegations to establish why yacht buyers would not consider new yachts to be substitutes for used yachts. This failure is fatal, warranting dismissal. *See, e.g., First Priority Emergency Vehicles, Inc. v. REV Ambulance Grp. Orlando, Inc.*, 2020 WL 2029344, at \*4 (D.N.J. Apr. 28, 2020) (dismissing second amended complaint and explaining that while amended allegations “distinguish between the role of new and used ambulances,” such allegations are “insufficient to demonstrate [new and] used ambulances are not reasonably interchangeable substitutes” in the relevant market).

ii. Plaintiffs Fail to Allege a Plausible Relevant Geographic Market

Plaintiffs have also not plausibly alleged a geographic market limited to the United States because they have not alleged facts showing that buyers and sellers cannot look outside the United States for brokerage services to assist them in buying and selling yachts.

The geographic market is “the area of effective competition in which a product or its reasonably interchangeable substitutes are traded.” *Duty Free*, 797 F.3d at 1263. As such, it must encompass both “the area in which [defendants] effectively compete[.]” and “where buyers can turn for alternate sources of supply.” *McArthur Dairy, LLC v. McCowtree Bros. Dairy, Inc.*, 2011 WL 2118701, at \*4 (S.D. Fla. May 27, 2011).

Plaintiffs must plead facts “plausibly suggesting” the composition of the purported geographic market, *Twombly*, 550 U.S. at 545, and may not employ “pleading maneuvers” to “artificially narrow a broader economic market.” *Q Club Resort*, 2010 WL 11454483, at \*2 (citation omitted). A complaint must be dismissed where, as here, it presents “inconsistent allegations related to competitive harm in the relevant [geographic] market,” *QSGI, Inc. v. IBM Glob. Fin.*, 2012 WL 13019046, at \*4 (S.D. Fla. July 31, 2012), or alleges an “artificially narrow”

geographic market that fails to “correspond to the commercial realities of the industry,” *Q Club Resort*, 2010 WL 11454483, at \*2 (citation omitted). Further, an “internally inconsistent” geographic market both “hinder[s] the Court’s ability to determine whether Plaintiff’s allegations of harm to the relevant market can withstand a motion to dismiss” and “fails to provide adequate notice of the allegations to Defendants,” requiring dismissal. *Location 24, LLC v. Drs. Same Day Surgery Ctr., Inc.*, 2023 WL 2931458, at \*6-8 (M.D. Fla. Jan. 18, 2023).

Plaintiffs allege that the relevant geographic market encompasses only “the United States,” excluding the rest of North America and the rest of the world. ¶ 170. This alleged geographic market makes no sense. As a threshold matter, Plaintiffs fail to explain how this interacts with the alleged product market. Does the geographic market encompass only “yacht brokerage services” offered in the United States? *See* ¶ 168. Or does the market encompass only “services provided to yacht sellers and buyers” in the United States? *See id.* The Complaint simply does not say. Instead, the Complaint makes clear that brokerages operate internationally, that yachts themselves are listed internationally, that buyers may buy internationally, and that sellers may sell internationally.<sup>13</sup> The Complaint flatly contradicts the artificial geographic boundaries asserted by Plaintiffs.

For example, Plaintiffs acknowledge that “MLS[s] are available on the internet worldwide,” ¶ 170, concede that Defendants cater to a worldwide consumer base, and repeatedly invoke Defendants’ U.S. *and* non-U.S. operations, marketing, and sales. *See, e.g.*, ¶¶ 33, 35, 37, 38, 44-45 (describing the *international* operations of Galati Yacht Sales, MarineMax, Inc., Fraser

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<sup>13</sup> In fact, the publicly available U.S. Coastguard records for the yachts that Plaintiffs Magna Charta, LLC and Juan Galan sold, ¶¶ 28, 31, were registered internationally for a period of time. *See Ex. E*, (Magna Charta Abstract of Title, 1227342) (registered under Republic of South Africa in 2010); *Ex. F*, (Juan Galan Abstract of Title, 1038690) (registered in the Bahamas in 2021); *see also Ellison v. Postmaster Gen., U.S. Postal Serv.*, 2022 WL 4726121, at \*7 (11th Cir. Oct. 3, 2022) (“It is clear a district court, at the motion to dismiss stage, may take judicial notice of relevant public documents” and finding district court did not abuse its discretion when taking judicial notice of relevant public documents from a federal agency administrative record).

Yachts, and United Yacht Sales); ¶ 47 (describing defendant *International Yacht Brokers Association, Inc.*); ¶ 71 (Yachtworld is a “worldwide” database of brokerage boats for sale); *see supra* at 4, n.6 Ex. A (describing HMY Yachts’ services as “putting your yacht in front of boaters *all over the world*,” including on “top European websites”) (emphasis added).

Plaintiffs’ proposed geographic market “clearly excludes relevant geographic areas, purchasers, or suppliers,” *Lockheed Martin*, 314 F. Supp. 2d at 1225, is contradicted by Plaintiffs’ own allegations, and fails to reflect commercial realities, rendering it insufficient as a matter of law and requiring dismissal of Plaintiffs’ claims.

iii. Plaintiffs Fail to Allege an Anticompetitive Effect on the Purported Market

Even if Plaintiffs had alleged a cognizable relevant market, dismissal is still mandated because Plaintiffs fail to allege plausibly any anticompetitive effect on the purported market. *See Jacobs*, 626 F.3d at 1336 (“[r]ule of reason analysis requires the plaintiff to prove . . . an anticompetitive effect . . . on the relevant market.”). Under the rule of reason, a plaintiff bears “the initial burden to prove that the challenged restraint has a *substantial anticompetitive effect* that harms consumers *in the relevant market*.” *Am. Express*, 585 U.S. at 541 (emphases added).

A plaintiff may establish an anticompetitive effect in one of two ways: (1) showing that the defendants’ behavior had “an actual detrimental effect” on competition or (2) by demonstrating that the behavior had “the potential for genuine adverse effects on competition.” *Levine*, 72 F.3d at 1551 (citation omitted). Plaintiffs have failed to allege either.

1. *Plaintiffs Fail to Plead Actual Harm*

Plaintiffs bears the burden of demonstrating actual harm with “specific factual allegations[;]” broad allegations of damage to “competition in general” will not suffice. *Spanish Broad. Sys.*, 376 F.3d at 1072-73. “Actual” harm is “indicated by a factual connection between the alleged harmful conduct and its impact on competition in the market.” *Jacobs*, 626 F.3d at 1339

(citing *Spanish Broad. Sys.*, 376 F.3d at 1072). Actual harm can be supported by allegations that “include, but are not limited to, reduction of output, increase in price, or deterioration in quality” relative to the competitive level. *In re Jan. 2021*, 105 F.4th at 1355 (citation omitted). The Complaint fails to meet this standard. Plaintiffs declare, without elaboration, that “boat sellers pay hundreds of millions of dollars more in commissions every year than they would in a competitive market.” ¶ 17. This conclusory allegation is not enough. Plaintiffs do not plead what “the competitive level” would have been absent Defendants’ alleged anticompetitive conduct, nor do Plaintiffs assert allegations of reduced output or deterioration in quality.

## 2. *Plaintiffs Fail to Plead Potential Harm*

Where a plaintiff fails to “provide allegations plausibly suggesting actual harm to competition,” the “only avenue of relief” is “to sufficiently allege potential harm.” *Jacobs*, 626 F.3d at 1339. To establish potential harm to competition, a plaintiff must plead that defendants possessed market power in a cognizable relevant market, and make “specific allegations linking market power to harm to competition in that market.” *Spanish Broad. Sys.*, 376 F.3d at 1073. Before a plaintiff can demonstrate potential detrimental effects on competition, the plaintiff must first “establish that the defendants had sufficient market power to affect competition.” *Levine*, 72 F.3d at 1554 (citation omitted). Thus, well-pled factual allegations of market power in a cognizable relevant market are required to show potential harm.<sup>14</sup>

“The Eleventh Circuit has defined market power narrowly as: the ability to raise price significantly above the competitive level without losing all of one’s business.” *Spanish Broad. Sys.*, 242 F. Supp. 2d at 1359 (citations omitted). It is well-established that “the principal judicial device for measuring actual or potential market power [is] market share, typically measured in

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<sup>14</sup>Because Plaintiffs have not pleaded market power in their purported U.S. geographic market, it follows that they have not pleaded market power in any cognizable *international* market either.

terms of a percentage of total market sales.” *U.S. Anchor Mfg., Inc. v. Rule Indus., Inc.*, 7 F.3d 986, 994 (11th Cir. 1993); *see also, e.g., Jacobs*, 626 F.3d at 1339-40 (market share is “used in litigation as a surrogate for market power”).

The Complaint does not contain *any* allegations relating to any of Defendants’ market shares in any market (never mind the purported relevant market). Nor does it allege facts sufficient to suggest what “percentage of total market sales” Defendants possess, either individually or collectively, in the alleged relevant market. Although “exact percentages” are not required to establish market power, *Thompson v. Metro. Multi-List, Inc.*, 934 F.2d 1566, 1580 (11th Cir. 1991), a plaintiff must at least present allegations from which this Court could plausibly infer the requisite market power component of a Defendant. *Levine*, 72 F.3d at 1553 (affirming dismissal where plaintiff presented “no evidence to prove the defendants’ market power”).

Nor do Plaintiffs allege anything else to establish market power. In *Jacobs v. Tempur-Pedic International Inc.*, the Court considered whether a plaintiff who alleged that the defendant had 80-90% market share in the alleged market had established market power for purposes of a Section 1 claim. 626 F.3d at 1340. The Eleventh Circuit explained that even a high market share, without additional allegations showing the “injurious exercise of market power such as evidence of restricted output and supracompetitive prices,” was not sufficient to establish market power. *Id.* (citation omitted). Here, Plaintiffs have failed to allege either market share *or* other supporting evidence of market power. This deficiency is a “fatal blow” to Plaintiffs’ case. *Id.*

Plaintiffs do not allege facts (market share or otherwise) to support a finding that any of the Defendants individually or collectively possess either market power in the alleged relevant market for “yacht brokerage services provided to yacht sellers and buyers by yacht brokers with

access to the MLS” in the United States,<sup>15</sup> or market shares that could allow for an inference of market power in that supposed relevant market. Instead, Plaintiffs rest on the conclusory and unsupported allegation that “Defendants and their co-conspirators collectively have market power through their control of the MLS, YBAA, IYBA, and their dominant share of the market,” ¶ 173, without providing any plausible explanation for how the Broker and Association Defendants might “control” the independent Marketplace Defendants.<sup>16</sup> Plaintiffs further assert that “[a]s a result of collusive, anticompetitive conduct among boating MLS[s], yacht broker associations and boat broker firms, boat sellers pay hundreds of millions of dollars more<sup>17</sup> in commissions every year than they would in a competitive market.” ¶ 17. But there is no support for this allegation either.

In an effort to prop up their singular conclusory market power allegation (*see* ¶ 173), Plaintiffs summarily allege that there are “substantial barriers to entry,” but fail to articulate what these barriers are. *See* ¶ 180; *see also* ¶ 175 (asserting that brokers competing outside of the alleged agreement face “insurmountable barriers”). Plaintiffs also allege, without any explanation, that “[t]he fact that there is not a listing service that meaningfully competes with the MLS is indicative of the substantial barriers to entry.” ¶ 180.<sup>18</sup> These conclusory allegations especially ring hollow given that both Boats.com and Boat Trader accept FSBO listings. *See supra* at 7, n.7.

These allegations fail to establish market power. The Complaint alleges no facts to support the bald assertion of market power, and provides *no* allegations about the unnamed co-conspirators

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<sup>15</sup>Notably, the Marketplace Defendants and Association Defendants do not provide yacht brokerage services at all, so it is not clear how they can be alleged to have any market power in such a market.

<sup>16</sup>The Complaint mentions “market power” only twice—once in the subheading “Relevant Markets and Defendants’ Market Power” on page 44, and again at paragraph 173.

<sup>17</sup>As discussed above, “more” than what is not defined or alleged anywhere in the Complaint. *See supra* at § 2.b.iii.1.

<sup>18</sup> Moreover, Plaintiffs’ conclusory reference to five distinct website marketplaces at issue (boats.com, Yacht Broker, YachtWorld, Yatco, and Yachtr.com) as a single “MLS” conveniently ignores that these marketplaces themselves compete with each other.

or their conduct, which is critical given the allegation that Defendants and the unnamed co-conspirators *collectively* have market power. ¶ 173; *see also* ¶ 62 .<sup>19</sup> Plaintiffs’ allegations therefore provide no basis whatsoever to evaluate the market shares or market power of the allegedly conspiring entities, including *the Defendants in this case*, let alone meet their burden of alleging that Defendants have market power. Here, Defendants lack market power because, if the Broker Defendants raised the price of their services, yacht sellers would simply sell their yachts themselves—as many already do—or they would use the services of *other* non-Defendant brokers. *See Spanish Broad. Sys.*, 242 F. Supp. 2d at 1359.

Plaintiffs’ allegations regarding “the MLS” also fail to show that Defendants have market power. Again, there is no *single* MLS operated by Defendants, but instead a variety of *competitor* marketplaces, each with separate ownership, memberships, and rules. *See supra* at 6-8 and § 2.b.i. As described above, some online marketplaces—including Boats.com and Boat Trader—accept listings from yacht sellers who are not represented by brokers, undercutting any argument that they are part of a conspiracy to inflate broker’s commissions. *See id.* Furthermore, there is competition both among the alleged Marketplace Defendants, and between the Marketplace Defendants and other online marketplaces where yachts are advertised. Just as new brokers can enter the market and sell yachts through whatever means suit them and their clients—including on whatever platform they like— new marketplaces (which would also belong to the Plaintiffs’ definition of “MLSs”) can enter and compete, just as the Marketplace Defendants in this case have done.

In the absence of factual allegations that Defendants “had sufficient market power to affect

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<sup>19</sup> The aggregation of Defendants’ alleged market power is also improper because Plaintiffs have not plausibly alleged the participation of all Defendants in the alleged conspiracy. *See Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 302 F.3d 1207, 1218 (11th Cir. 2002) (“aggregation is inappropriate”); *Dickson v. Microsoft Corp.*, 309 F.3d 193, 210-11 (4th Cir. 2002) (rejecting aggregation of individual market shares where overarching conspiracy implausible).



competition,” Plaintiffs’ “section 1 claim must fail.” *Levine*, 72 F.3d at 1553. Because Plaintiffs have not alleged that Defendants individually or collectively have market power in the alleged relevant market, they cannot plausibly allege potential harm, requiring dismissal of the Complaint.

**3. PLAINTIFFS ALLEGE NO AGREEMENT SUPPORTING A CONCERTED REFUSAL TO DEAL CLAIM**

Count II of the Complaint purports to assert a concerted refusal to deal claim in violation of Section 1 of the Sherman Act. Plaintiffs posit two supporting theories: (1) “Marketplace Defendants, in conspiracy with and at the behest of Broker Defendants, have refused to deal with sellers who are not represented by a licensed broker by refusing to accept FSBO listings”; and (2) “Broker Defendants, when acting in the capacity of a seller’s broker, have refused to deal with potential buyers unless the potential buyer is also represented by a licensed broker[.]” ¶¶ 208-09. In addition to the deficiencies explained above, Count II should also be dismissed because Plaintiffs fail to allege plausibly an agreement concerning either of these theories.

A party “has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently.” *Monsanto*, 465 U.S. at 761. The antitrust laws “do[ ] not restrict the long recognized right of [a party] engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal; and, of course, he may announce in advance the circumstances under which he will refuse to sell.” *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

Accordingly, as with Plaintiffs’ commission-based claim, for a concerted refusal to deal claim, Plaintiffs must plead “facts that plausibly suggest an agreement or conspiracy[.]” *Auto. Alignment*, 953 F.3d at 726; *see also Constr. Aggregate Transp., Inc. v. Fla. Rock Indus., Inc.*, 710 F.2d 752, 774 (11th Cir. 1983) (“the touchstone of an illegal group boycott or concerted refusal to deal is the agreement between two or more merchants not to deal with another merchant when, in

the absence of such an agreement, the conspiring merchants would normally have been free to deal with that merchant”).<sup>20</sup> “Conclusory allegations of agreement or conspiracy are insufficient. . . . ‘[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice.’” *Quality Auto*, 917 F.3d at 1262 (quoting *Twombly*, 550 U.S. at 556-57).

**a. Plaintiffs’ FSBO Theory Fails to Allege an Anticompetitive Agreement**

Plaintiffs’ first theory requires Plaintiffs to plead three levels of agreement: (1) Marketplace Defendants *agreed* amongst themselves to refuse to allow FSBO listings on their websites; (2) Broker Defendants *agreed* among themselves to cause Marketplace Defendants to refuse to allow FSBO listings on their websites; and (3) Marketplace Defendants *agreed* with Broker Defendants to refuse to allow FSBO listings on their websites. Plaintiffs plead no such agreements, and their allegations are not remotely plausible on their face.

At the first level, there are *no* allegations that the Marketplace Defendants agreed among themselves not to accept FSBO listings. Indeed, Plaintiffs allege “Boats Group, LLC owns and operates several large yachting MLS[s], including Boat Trader, YachtWorld, and Boats.com[,]” ¶ 54, but Plaintiffs make no allegation (nor can they) that either Boat Trader or Boats.com do not accept FSBOs. In fact, both Boat Trader and Boats.com *do allow* FSBO listings, as demonstrated by their websites. *See supra* at 7, n.7. Given that such “large yachting MLS[s]” (¶ 54) are available to FSBO yacht sellers/listers, Plaintiffs’ conclusory allegation of an agreement among all of the Marketplace Defendants to refuse to accept FSBO listings cannot stand.

At the second level, nowhere do Plaintiffs allege that Broker Defendants reached a horizontal agreement to refuse to deal with Marketplace Defendants unless they refused to accept

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<sup>20</sup> Plaintiffs’ group boycott claim is also inconsistent with the alleged market. They define the relevant market as “yacht brokerage services provided to yacht sellers and buyers by yacht brokers with access to the MLS.” ¶ 168. But the FSBO group boycott claim is predicated on the fact that FSBO sales are a reasonable alternative to sales using broker services.

FSBO listings. There is no allegation, for example, that any individual Broker Defendant refuses to list yachts for sale on Boat Trader or Boats.com (or any other marketplace that accepts FSBO listings, *e.g.*, Facebook Marketplace or Craigslist) because they accept FSBO listings, much less that the Broker Defendants collectively agreed not to do so. Nor do Plaintiffs allege facts as to any plus factors that would tend to show such an agreement. *See Auto. Alignment*, 953 F.3d at 726 (“Where a conspiracy claim rests on allegations of parallel conduct, a plaintiff must allege sufficient ‘plus factors’ to make the parallel conduct ‘more probative of conspiracy than of conscious parallelism.’”) (quoting *Quality Auto*, 917 F.3d at 1262).<sup>21</sup> Whether an individual Broker Defendant decides unilaterally to list yachts on marketplaces that host FSBO listings would be supported by that Broker’s individual economic interests based on its client base and go-to-market strategy, among other considerations.

At the third level, Plaintiffs fail to allege an anticompetitive agreement between or among any Broker Defendant and any Marketplace Defendant, let alone *all* such parties. For example, nowhere do Plaintiffs allege (nor could they consistent with Rule 11) that Broker Defendants posted their listings to Marketplace Defendants’ platforms *on the condition that* the platforms not accept FSBO listings. All that Plaintiffs allege is that when “independently owned MLS[s] want to obtain listings from brokers, they must conform to industry practice at the insistence of boat brokers, who are also members of the yacht broker associations.” ¶ 10. Such an allegation is not only improperly conclusory under *Twombly*, but Plaintiffs nowhere allege or explain that such “industry practice” means refusing to accept FSBO listings. Furthermore, given that the independent marketplaces are just that – independent – whether anyone who includes yacht listings

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<sup>21</sup>Clearly, there is also no punishment mechanism among the Broker Defendants vis a vis the Marketplace Defendants to deter them from allowing FSBO listings, since several of their marketplaces openly allow for such listings and provide for them in their rules. *See supra* at 7, n.7.

on their marketplaces are members (or not) of any Defendant Association is irrelevant. As for the one non-independently owned marketplace—*i.e.*, Yachtr.com—its alleged refusal to accept such FSBO listings is also explained by its owners’ own independent and economically sound commercially differentiating strategy to make available a competing marketplace maintained for the benefit of its broker members, including but not limited to the Broker Defendants and not by any agreement.<sup>22</sup> See ¶ 47 (“YBA, in conjunction with other yacht broker associations. . . founded yachtbroker.org (now, Yachtr.com), as an industry-wide association-owned MLS platform to serve the yacht brokerage community.”); ¶ 48 (noting Yachtr.com “effectively replaces yachtbroker.org as the yacht-broker-association-owned MLS”); *see also* ¶¶ 49, 80-81 (similar). Again, independent conduct explains why an Association-owned marketplace would not want to list FSBOs—*i.e.*, listings not posted by brokers, who are their key customers. Moreover, Marketplace Defendants are not otherwise required to deal with FSBO listers. *See Verizon Commc'ns., Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407-08 (2004) (“Compelling . . . firms to share the source of their advantage is in . . . tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities.”).

**b. Plaintiffs’ Buyer Broker Theory Fails to Allege an Anticompetitive Agreement**

Plaintiffs’ second theory requires Plaintiffs to plead a horizontal agreement by and among Broker Defendants to refuse to deal with potential yacht buyers who lack their own brokers. Plaintiffs fail to plead even in conclusory fashion that there was an agreement to do so, and their allegations otherwise concede the opposite.

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<sup>22</sup>There are no allegations (and there can be none consistent with Rule 11) that Brokers who list yachts for sale on Yachtr.com are precluded from also posting listings for yachts for sale on other marketplaces.

For example, Plaintiffs allege that “pre-owned boat and yacht buyers increasingly look for and find yachts themselves on yachting MLS[s] on the internet.” ¶ 14; *see also* ¶ 4 (“more and more prospective yacht buyers utilize MLS[s] to locate boats and yachts to purchase.”); ¶ 69. Plaintiffs further allege that “Defendants are *aware* of th[e] trend” of “buyers increasingly retain[ing] a buyer broker after the buyer has already found the vessel the buyer wishes to buy.” ¶ 15 (emphasis added). But nowhere do Plaintiffs allege that the Broker Defendants are the reason why buyers choose to retain their own brokers even after finding yachts to purchase by themselves. Nor do Plaintiffs allege that Broker Defendants otherwise caused buyers to retain their own brokers. For example, beyond a conclusory fashion, nowhere do Plaintiffs allege facts supporting the notion that Broker Defendants refused to deal with buyers who—without using a licensed broker—contacted Broker Defendants directly. Because Plaintiffs nowhere tie back Broker Defendants’ purported knowledge of this alleged “trend” to any agreement or conspiracy not to deal with buyers lacking their own brokers, such knowledge is immaterial.<sup>23</sup>

Rather, Plaintiffs’ allegations that certain listing broker “standardized agreements and forms” include dual-agency clauses, which permit the listing broker to represent both the buyer and seller, acknowledge that listing brokers *do* work with buyers that are not represented by their own broker. ¶ 100; *see also* ¶ 137 (“a ‘Yacht Broker may also represent both the Seller and the Buyer, as a ‘Dual Agent,’ with responsibilities to both parties.”); ¶ 142 (“Fraser Yachts’ brokers

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<sup>23</sup> If anything, Broker Defendants’ alleged knowledge of this trend undermines Plaintiffs’ unsupported steering conclusions. *See, e.g.*, ¶ 161 (“yacht sellers have been compelled to set a high buyer broker commission to induce buyer brokers to show their yachts to the buyer brokers’ clients;” and “yacht sellers who do not offer a sufficiently high commission to buyer’s brokers risk having buyer brokers direct or steer their clients to sellers who offer a higher buyer broker commission”). Where buyers themselves are selecting the boats they wish to view and/or buy rather than having brokers research and identify potential yachts to purchase—and Broker Defendants are aware of such a trend, Plaintiffs allege—Broker Defendants no longer have an incentive to “induce buyer brokers to show their yachts” through the use of “sufficiently high commissions” as the buyer brokers are removed from the selection and/or purchase process.

use a dual agency”). In such cases, there would be no need for a separate buyer’s agent, nor would a listing agent seek to split her commission unnecessarily. If a qualified buyer approached a listing broker directly to seek to purchase the seller’s yacht, the seller’s broker would have no incentive to co-broker the deal and perhaps have to share her own commission with another broker representing the buyer. Instead, the seller’s broker has every incentive to work directly with the buyer without getting another broker involved. The buyer, however, may wish to have his own broker to best represent the his interests alone, educate him on the market, assist him in finding and negotiating any deal, and any other idiosyncratic reasons an individual buyer may have. This explains why a buyer may choose to retain a separate broker even “after the buyer has already found the vessel the buyer wishes to buy[,]” ¶¶ 14-15—a phenomenon the Complaint ignores.

Plaintiffs’ own allegations concede that at least 30% of yachts sold on the YachtWorld marketplace are sold without brokers separately representing the buyer and the seller. *See* ¶ 75 (“About 70-percent of all brokerage sales are co-brokered.”); ¶ 119 (noting that about 70% sales on YachtWorld are co-brokered); ¶ 126 (same).<sup>24</sup> The clear implication is at least 30% of deals are closed using only one broker (or no brokers at all), undermining any notion of a refusal to deal, let alone a *concerted* refusal to deal.

**4. DEFENDANTS EXPRESSLY RESERVE THE RIGHT TO COMPEL ARBITRATION AGAINST YACHT SELLERS WHO HAVE AGREED TO ARBITRATE THEIR CLAIMS**

Mandatory arbitration clauses are commonly included in yacht broker agreements, including in the agreements used by many Defendants and referenced by Plaintiffs in the Complaint. Defendants do not waive their rights to require arbitration of the claims of both named

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<sup>24</sup> Given the Complaint’s silence regarding the other online marketplaces, the Court can draw no inferences in favor of Plaintiffs about the percentage of co-brokered versus non-co-brokered transactions facilitated by those other website platforms.

and unnamed Plaintiffs. Specifically, Defendants are currently investigating whether and to what extent any named Plaintiffs are subject to mandatory arbitration agreements. Because Plaintiffs did not name as a Defendant each yacht broker associated with each named Plaintiff's yacht sale, Defendants lack access to some of the listing agreements to determine whether arbitration should be compelled as to any of the named Plaintiffs. Defendants reserve all rights to move to compel arbitration upon further investigation and discovery as to the any of the named Plaintiffs.

Whether unnamed class members are required to arbitrate their claims is not ripe for this Court's consideration. *Gutierrez v. Wells Fargo Bank, N.A.*, 889 F.3d 1230, 1237-39 (11th Cir. 2018) (district court lacks jurisdiction over motions to compel arbitration against unnamed class members until a class is certified). To avoid any later assertion of waiver by Plaintiffs, Defendants reserve all rights to oppose class certification based on issues including adequacy and predominance under Rule 23 based on the requirement that some percentage of class members may be compelled to arbitrate the claims advanced in this lawsuit. Defendants further reserve their rights to seek to compel arbitration against absent class members in the event that a class is certified that includes yacht sellers subject to arbitration agreements.

### **CONCLUSION**

For the foregoing reasons, Defendants are entitled to an Order: (1) granting their Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint, and (2) granting any and all other additional relief this Court may deem just and proper.

Dated: August 9, 2024

Respectfully submitted,

/s/ Christina M. Paul

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing on this 9th day of August, 2024.

*/s/ Christina M. Paul*

**EXHIBIT A**

🔍 Start Your Yacht Sea

7734  
YACHTS

VIEW RESULTS

Home > about hmy > market your yacht

# MARKET YOUR YACHT WITH HMY



HMY's marketing plan is designed to attract buyers. It's our job to position, price, market and sell your yacht, and we take that seriously. When marketing and advertising get activated and reach the masses, it attracts the right people and communicates a powerful message about your yacht. HMY has a 24x7 omni-channel marketing approach that never stops. You'll see us in full force at major boat shows, on Google, social media, email, YouTube, in yachting magazines, MLS, blogs, digital ads and more. HMY captures vital market and user data as well as digital insights to help effectively market and sell your yacht as quickly as possible.

### **It takes more than great marketing to sell a yacht.**

Our marketing team is also aligned with HMY's world-class brokerage teams. Together, they fuel our highly collaborative strategy from the first customer connect opportunities to customer nurture and outreach campaigns, to final close, and every step in between. HMY sales and marketing is a finely tuned engine designed to sell yachts. That's what we do best.





## UNPRECEDENTED LEVEL OF VISIBILITY



HMY Yachts is a marketing machine simply because we can be. We differentiate ourselves simply with our multi-million dollar marketing budget. No one advertises as much and as frequently as HMY. For our customers, this means an unprecedented level of visibility by putting your yacht in front of boaters all over the world.



## OUR YACHT BROKERS



All yacht brokers at HMY are entrepreneurs, go-getters, self-starters, and driven for success. Our network of more than 45 professional, tenured brokers are seasoned at marketing themselves. You can also expect the highest quality yachting expertise, customer service and yacht representation with every listing, so your vessel is showcased in the best possible way.





## OUR PRINT/MAGAZINE STRATEGY



HM Yacht Sales is proud to advertise our brand, our services, and your yacht within the industry's top publications. Open up an issue of Yachting or Power and Motor Yacht, and take note of who appears first in the brokerage section of each issue. As the largest advertiser in leading industry magazines, HM Y not only stays in front of prospective buyers, we pass our exposure on to you —ensuring your valuable listing is one of the first listings readers see.



## OUR NETWORK OF WEBSITES



Every yacht broker is on YachtWorld.com, but not every brokerage has the ability to advertise the way we do. Every HM Y brokerage listing on YachtWorld is a "premier listing" which means that it gets larger photos, a larger placement on the search results page, and exponentially more people clicking on your ad.

HM Y has an unprecedented level of exposure on the world's top yacht brokerage website. Every boat listed with HM Y goes into the YachtWorld MLS system, which means your vessel

will not only display on YachtWorld, but every other major brokerage company website in America.

- Yatco.com
- Boats.com
- BoatTrader.com
- MarineSource.com
- top European websites
- YachtWorld



## COMING TO AN INBOX OR MAILBOX NEAR YOU



HMY regularly sends email and direct mail to customers and prospects to promote our yachts. Our brokers send letters, postcards, flyers, email, and other creative mailers to stand out, and to stay top-of-mind.

When a customer receives a handwritten letter in the mail, sees our ads in the magazines, opens an HMY email on their phone, and then sees us online or at a boat show, there is a far greater opportunity for HMY to earn their business and list their yacht.

### CUSTOMER TESTIMONIALS

My wife and I recently closed on a used custom sport fishing boat listed by HMY Yacht Sales in Stuart , Florida. I can't begin to say enough about the staff and the excellent professional service we



received from them. The yacht broker Scott Levin is an expert with boats like this and was knowledgeable on every topic. He was very patient with us as we inspected the boat several times over many months before we made our decision to buy and worked through the all the phases from negotiations to closing. Scott went above and beyond what any seller or buyer should expect from a yacht broker, even at the end delivering the boat to my home when I could not travel due to the Covid-19 travel restrictions.

We also want to acknowledge Marybeth Probst whose organization of the buying and closing process was second to none. She made it all clear and the process simple to follow.

You should be proud these individuals who represent HMY. We will always look to HMY in the future for our boat buying/selling needs.

Mike Yelverton, Used Custom Sportfish

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Thank you for all of your hard work, Brian! Truly was the best boat buying experience we have ever had.

Mom wanted me to tell you thank you very much for all of the gifts and her pink visor! Great experience working with you!

Bob, Hope, and Rob, Cabo Yachts 35' Flybridge

## GET STARTED WITH HMY

First Name \*

Last Name \*

Email \*

Phone

Current Boat

I am interested in...



SUBMIT

[Privacy Policy](#)

**EXHIBIT B**

BOATS GROUP



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# For Sale By Owner Terms and Conditions

This agreement (the "Agreement") is made by and between Boats Group, LLC, with its principal offices located at 1221 Brickell Avenue, Suite 2300 Miami, FL 33131 ("Boats Group"), and the individual advertiser listing a boat for sale ("Customer").

Boats Group is the operator of websites that advertise recreational marine vessels for sale around the world. As long as all Eligibility and Usage Policies conditions are met, Boats Group grants Customer permission to enter, update, and display a single boat listing, subject to limitations determined by the advertising package selected by the Customer, on Boat Trader, boats.com, one of Boats Group's third-party partner sites, and/or any future Boats Group property ("Boats Group Sites") for a fee determined by the advertising package selected by the Customer ("Services").

To the extent of any conflict between any other For Sale by Owner contracts or agreements between Boats Group and Customer and this Agreement, this Agreement will supersede the terms of those contracts or agreements.

**Term, Termination and Payment:** The term of this Agreement will commence on the date full payment is processed and will continue for the advertising period (in weeks) set out in package selections. Once the service has commenced no refunds are payable. Customer will pay all fees associated with the Service according to Boats Group's current pricing information.

The customer may terminate the service at anytime in either of the following ways: (i) Contacting customer service via email for boats.com at [customersupport@boats.com](mailto:customersupport@boats.com) or Boat Trader [customerservice@boatrader.com](mailto:customerservice@boatrader.com) or telephone for boats.com at [1-866-365-1369](tel:1-866-365-1369) or Boat Trader [1-866-373-5602](tel:1-866-373-5602) (ii) the customer deactivates the advert in their online control panel, where available.

Customer agrees and acknowledges that Customer will remain responsible for all use of the Service and all fees associated with the Service in the event a notice to terminate is not received by Boats Group.

If Customer selects the auto-renewal by credit card option, all payments will be charged to Customer's credit card in advance of the the expiry of the current active product, to provide a continuous service. By selecting

the auto-renewal by credit card option, Customer authorizes Boats Group to charge all Services fees to the credit card held securely for the Customer. The customer may terminate the service auto-renewal service at anytime by contacting customer service via email for boats.com at [customersupport@boats.com](mailto:customersupport@boats.com) or Boat Trader [customerservice@boattrader.com](mailto:customerservice@boattrader.com) or telephone for boats.com at [1-866-365-1369](tel:1-866-365-1369) or Boat Trader [1-866-373-5602](tel:1-866-373-5602). Once the service has commenced no refunds are payable.

**Termination by Boats Group:** Notwithstanding any other provision of this Agreement, Boats Group reserves the right to interrupt or terminate the Services, in full or in part, and to cancel this Agreement, in full or in part, at any time. Unless Customer is in breach of this Agreement, upon termination by Boats Group, Boats Group will refund to Customer any prepaid fees for which Customer has not received corresponding Services. The amount of the refund will be prorated based upon the number of days of Services Customer has already received. Other than as set forth in the previous sentence, in the event of a termination by Boats Group, Boats Group will have no liability to Customer. In an event of a breach of this Agreement by Customer, Boats Group may, at its option, immediately terminate this Agreement and retain any prepaid fees that Customer has paid to Boats Group as of that date; furthermore, Boats Group may seek any and all legal remedies available to Boats Group as a result of damages from Customer's breach. Upon Boats Group's termination of this Agreement for Customer's breach, all unpaid charges, if any, will become immediately due and payable.

**Terms of Use:** Customer hereby represents and warrants that it has read and agrees to be bound by the Terms of Use as posted and amended from time to time on the Boats Group Sites at <https://www.boatsgroup.com/terms-of-use/>. In the event of any conflict between the Terms of Use and any of the terms and conditions of this Agreement, both parties agree that the terms and conditions of this Agreement will have precedence.

**Eligibility:** Boats Group's acceptance of this Agreement is conditioned upon a satisfactory verification of Customer's eligibility, which will be determined by Boats Group in its sole discretion. The eligibility criteria includes, but is not limited to (a) Customer must be 18 years of age or older, (b) Customer must properly and accurately identify themselves, (c) The boat must be available to buy from the person placing the listing.

**Passwords/Security/Customer Information:** Customer agrees to keep Customer's usernames and passwords to the Boats Group Service confidential. Customer is responsible for all activities that occur under all usernames and passwords assigned to the account (including, without limitation, for any communications sent via the Service). Except as expressly authorized by this Agreement, Customer hereby agrees not to sell, transfer, loan or assign Customer's membership or any membership rights, including, without limitation, username and password. Customer is responsible for maintaining the confidentiality of all usernames and passwords assigned to the account and for restricting access to computers used to access Customer's account(s) so that others may not access the password protected portions of the Service using Customer's usernames and passwords. Customer agrees to notify Boats Group if it becomes aware of any loss, theft or unauthorized use of Customer's usernames or passwords. Customer agrees not to interfere with or disrupt the Service or servers or networks connected to the Service and to comply with all then-current requirements, procedures, policies and regulations of Boats Group and any networks connected to the Service.

Customer further agrees not to use the Services for any unlawful purpose and agrees to comply with reasonable requests by Boats Group to protect the rights of Boats Group or Boats Group's customers. It is Customer's responsibility to keep its contact and other listing information (including, without limitation, e-mail address, mailing address and telephone number) current on the listing.

**Usage Policies:**

- All advertisements must be for boats. These boats must exist and currently be for sale.
- Only boats located in the United States to be advertised in BoatTrader.com.
- All listings must be properly identified, including, without limitation, location, price, and its current availability status. Any information that is misleading, ambiguous, invalidated or unsubstantiated will be considered improperly identified. The information entered into a data field must reflect a value that corresponds to that field label. The advertised price must be the price for which the boat may be purchased; it may not be an auction or bid price, or suggested minimum value price.

- An individual advertisement may only be used to sell only one boat. Once accepted for publication, the content of an advertisement may not be altered or modified to display present a different boat to that initially submitted for publication.
- Auction boats are prohibited.
- Listings may only promote boat-related information, not employment, business, real estate or other opportunities.
- **The boat must be available to buy from the person placing the listing.**
- Unauthorized use of images or text from another customer's listing or website is prohibited.
- Members cannot re-sell Boats Group advertising service. Members cannot utilize a Boats Group service for the purpose of soliciting advertising fees from owner/sellers.
- Third party advertising or links are not allowed on listings.
- Customer is responsible for the integrity, accuracy and updates to their listing as it appears on all Boats Group Sites. Boats Group will not be held responsible monetarily or legally for any errors displayed on internal or external sites, regardless of how it was submitted.
- Listings from sanctioned countries as identified by The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury may not be entered into, or displayed on any website hosted by Boats Group. Reference to delivery, location, origin, manufacturing, ownership or any other affiliation with or in an OFAC sanctioned country is prohibited.
- Listings may not include boats or other vessels located in any country or region that is the subject or target of U.S. or EU comprehensive economic sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine) or that involve any individual or entity designated on any restricted party list administered under any U.S., EU, or other applicable laws related to economic or trade sanctions ("Sanctions Laws") or under any export control laws of the United States, EU, or any relevant EU Member State ("Export Control Laws"), including without limitation, the U.S. Department of the Treasury, Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List and the EU Consolidated List, or with any individual or entity that is in the aggregate, 50 percent or greater, owned or controlled by any such



person, in each case, to the extent such dealings or transactions are in violation of Sanctions Laws or Export Control Laws. Any violative listing may be removed by Boats Group.

*Reporting:*

- To report usage violations email customer service @ boats.com: [customersupport@boats.com](mailto:customersupport@boats.com) or Boat Trader: [customerservice@boattrader.com](mailto:customerservice@boattrader.com)
- Reporting an untrue violation may result in action against Customer.
- General or vague complaints will not be investigated until more detailed information can be provided.

*Consequences:*

Boats Group reserves the right to take any disciplinary action including removal of the listing and termination of service.

**Intellectual Property:**

*Customer Representations and Boats Group Rights:*

Customer represents that it owns all right, title, and interest (including the right to assign) in and to any text, photographs, data or other works provided by Customer to Boats Group (collectively, "Materials"). Customer hereby grants Boats Group a non-exclusive, perpetual, irrevocable license (with the right to sublicense) to reproduce, distribute, display, perform, copy and prepare derivative works of, the Materials throughout the universe. As a condition of Boats Group's acceptance of the Materials, Customer hereby represents and warrants that Customer has the right to grant the licenses and rights to the Materials as set forth above and that the exercise of those rights by Boats Group will not infringe the rights of any third party or violate any law. In addition, upon the request of Boats Group, Customer will assist and cooperate with Boats Group in pursuing legal or other actions related to the Services, including, without limitation, with respect to the unauthorized use of the Materials. Customer agrees that as between Customer and Boats Group that Boats Group owns all right, title and interest in and to each of its web sites (including, without limitation, BoatTrader.com and boats.com) and the content of each of its web sites (other than the Materials), including, without limitation, copyrights, patents, trademarks, service marks, trade names, trade secrets, compilations, collective works, software (object code and source code), site designs, look and feel, formats, order, coordination, and arrangements of

Materials, graphics, and all other intellectual property and proprietary content used to provide the Service (collectively, "Site Content").

*Customer's Use of Service and Site Content:*

Boats Group hereby grants to Customer a limited, revocable, non-exclusive temporary license to reproduce and distribute boat listings contained in Site Content to third parties, but only through the Services offered by Boats Group. Boats Group does not grant Customer permission to and Customer hereby agrees not to allow the display of any non-Customer boat listings contained in Site Content on a website of a competitor. Boat Listings contained in Site Content cannot be linked to or from a web site of a competitor or to a website that contains obscene, pornographic, vulgar, defamatory or otherwise objectionable material. Customer hereby grants to Boats Group a non-exclusive license to use Customer's name for the purpose of promoting the Site Content and Services. Following any termination of Service, all Site Content will remain the property of Boats Group and Customer will promptly destroy any copies of or references to any Site Content and remove any links established between the Customer and any Site Content. Except as explicitly permitted in this Agreement or in writing by Boats Group, Customer agrees not to reproduce, sublicense, distribute, modify, translate, decompile, reverse engineer, create derivative works of, or circumvent any mechanism or technology implemented to protect the Site Content. Customer will not remove any of the copyright or other proprietary notices of Boats Group in or affixed to Site Content. Customer hereby agrees that it will not: (i) reproduce, distribute, perform, copy or display the Materials if those Materials were obtained from any Boats Group Site through the use of a data-harvesting method (including, without limitation, robots or spiders) or through any other method or mechanism not offered or authorized as a service offered on a Boats Group Site; or (ii) permit a third party to reproduce, distribute, perform, copy or display the Materials if those Materials were or will be obtained from any Boats Group website by using a data-harvesting method (including, without limitation, robots or spiders) or through any other method or mechanism not offered or authorized as a service offered on a Boats Group Site. Customer is strictly prohibited from allowing third parties, including their authorized agents who have not obtained express written permission from Boats Group, to access Customer's account for any purpose.

**Indemnification:** Customer agrees to indemnify, defend and hold Boats Group, its officers, directors, employees, agents, consultants and any third parties harmless from and against any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, related to or arising from the use of Materials provided to Boats Group by Customer or from any breach or alleged breach by Customer of any of its obligations, representations, limitations or warranties contained in this Agreement.

**LIMITS OF LIABILITY:** THE SERVICE AND SITE CONTENT ARE PROVIDED "AS IS" AND Boats Group MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, CONCERNING THE SERVICE AND THE SITE CONTENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Customer acknowledges that (i) the Service may be temporarily interrupted, curtailed, or degraded due to Internet capacity or equipment limitations, equipment modifications, upgrades, relocations or repairs, and (ii) Internet data is capable of being intercepted by third parties. Boats Group has no control over and is not liable or responsible for actions of Internet systems operators and service providers or acts of God that create a delay or interruption of Service. Boats Group makes no warranties regarding the purpose or value of e-mail or other online methods of communication inherent in or added to the Service.

### **Secure Payments Platform**

You acknowledge that the Secure Payments platform is a service offered by FundsFlo, Inc. ("FundsFlo"), a third party provider that is not affiliated with and not an agent or representative of Boats Group. You acknowledge and agree that Boats Group does not warrant or guarantee the services of FundsFlo nor does Boats Group assume any responsibility or liability of any kind for any act or omission of FundsFlo, for any product or services offered by FundsFlo, or for the content of FundsFlo's website. You should carefully review Funds Flo's terms of use which shall contain your exclusive remedies arising out your access or use of, or inability to use, the Secure Payments service.

**Boats Group'S LIABILITY HEREUNDER, IF ANY, WILL NOT EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO THE SERVICE FEE PAID BY THE CUSTOMER FOR THE MONTH IN WHICH THE DEFECT OR BREACH OCCURRED. IN NO EVENT WILL Boats Group, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, OR THIRD PARTIES IDENTIFIED IN ANY DULY EXECUTED ADDENDA HERETO BE LIABLE FOR ANY INDIRECT,**

**SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS AND FEES) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT. THESE LIMITATIONS WILL APPLY WHETHER OR NOT Boats Group HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THE FEES WERE DETERMINED BASED UPON THE FOREGOING LIMITATION OF LIABILITY.**

**Special TCPA Provisions:** In addition to and not in limitation of the other representations, warranties, covenants and agreements of Customer contained in this Agreement, Customer represents, warrants and covenants that it is complying, and shall comply, with all requirements of the Telephone Consumer Protection Act ("TCPA"), as amended from time to time and including the accompanying federal regulations related thereto, as well as any other applicable federal or state laws and regulations governing consumer contacts and notifications.

Customer shall indemnify, defend and hold harmless Boats Group and its affiliates, and its and their respective officers, directors, employees, agents and representatives, from and against any and all claims, proceedings and demands asserted or alleged by third parties, including but not limited to any governmental authority, agency or commission, against Boats Group (collectively, "Claims"), and from and against any damages, costs, fines, penalties, expenses and other liabilities of any kind whatsoever (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with any such Claims, arising out of or in any way related to (1) any breach by Customer of any of the foregoing representations, warranties and covenants or other terms and conditions set forth in this Agreement or (2) Customer's violation of or failure to comply with the terms and provisions of the TCPA and/or any other applicable law, rule or regulation.

**Miscellaneous:** This Agreement does not create a joint venture, partnership, employee, agency, franchise, or representative relationship between or among Customer, Boats Group, and any third parties. Customer may not assign this Agreement without the prior written consent of Boats Group. The Terms of Use and this Agreement constitute the entire agreement and supersedes any and all prior and contemporaneous agreements between Boats Group and Customer. If any provision of this

Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

**Additional Legal Matters:** This Agreement will be governed by and construed in accordance with the law of the State of Florida, U.S.A. without regard to its conflict of laws provisions. The federal and state courts within the State of Florida will have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Customer hereby expressly consents to (i) the personal jurisdiction of the federal and state courts within Miami-Dade County, Florida and (ii) service of process being effected upon it by registered mail sent to the address set forth at the end of this Agreement. The undersigned warrants that he or she is authorized to execute and deliver this Agreement on behalf of Customer. The parties to this Agreement will be entitled to rely upon signatures on copies of this Agreement transmitted by facsimile or by an online acceptance of its terms.

*This Agreement was last revised 10 October 2018.*



Boats Group's brands - Boat Trader, YachtWorld, boats.com, iNautia, Cosas De Barcos, Botentekoop, Annonces du Bateau, Boats and Outboards, and Boatshop24 - are the world's leading online boating marketplaces, connecting the largest global audience of serious boat buyers with top sellers and manufacturers... [read more](#)



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## Types

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# Sell your boat fast today on boats.com

BEST DEAL

### Premium

\$149

Select

- 🕒 12 weeks
- 📷 Unlimited Photos
- - ✔️ Video Upload
  - ✔️ Appear higher in the search results
  - ✔️ Listing Enhancement (25% more clicks)
  - ✔️ Optional - Auto Renew discount - 15% (if selected)

View MoreLess

### Enhanced

\$129

Select

- 🕒 6 weeks
- 📷 Unlimited Photos
- - ✔️ Video Upload
  - ✔️ Listing Enhancement (25% more clicks)
  - ✔️ Optional - Auto Renew discount - 10% (if selected)

View MoreLess

### Basic

\$59

Select

- 🕒 2 weeks
- 📷 1 Photo
- 

View MoreLess

## 3 easy steps

- 1

### Choose Your Package

- 2

### Build Your Listing

- 3

### Sell Your Boat

## This is what our customers say about us



I was able to sell my Lund quickly using your website - and before I bought my new boat! Thanks, boats.com.

Bob C. - Lund Explorer 1650 SS



I was trying to get my boat sold fast, and within the first few days of listing my boat I received 3 emails from interested buyers. Sold my boat soon after.

Clay M. - Mastercraft X23



Most of the specs for our boat were able to be pre-populated during the checkout process, so it made listing the boat fast. We've already received 2 quality leads within the first 24 hours.

Mariana N. - Sea Ray 310 Sundancer



The process of uploading my boat listing to boats.com was super easy. And my boat sold for the asking price!

Scott J. - Boston Whaler Ventura 18

## Sell Your Boat Online Fast

Are you looking to cash out of your investment? Or are you considering an upgrade to a bigger boat? boats.com is here to help you sell your used boat online fast. Did you know that our paid classified boat listings deliver up to 10 times the exposure of free ads? We also offer more options for marketing your boat - including guaranteed exposure to a large audience of boat buyers, the ability to upload high resolution photos, as well as featured videos. Choose your boat listing package and start reaching boat buyers near you today!

### Premium Package Boat Listings

The Premium Package is our best deal for your dollar. With Premium, your boat is featured as a sponsored listing - and will be featured higher on search results pages. In addition, with Premium, your listing will appear larger than other ads - an enhancement that generates 25% more activity. Premium also grants you the ability to add unlimited photos and a video to provide potential buyers plenty of information up front.

Select Premium Package

### Enhanced Package Boat Listings

The Enhanced Package is a popular option, offering a 6-week duration and include unlimited photos and a video to show off your boat's best features and equipment.

Select Enhanced Package

### Basic Package Boat Listings

The Basic Package is perfect if your boat is priced competitively. These listings run for 2 weeks and include 1 photos and a basic description - designed to move your boat quickly!

Select Basic Package

## Looking for more answers? Here are some frequently asked questions

### What's the most effective way to sell my boat online?

If you want to feature your boat prominently in boats.com search results, the

Premium Package

is the best choice. Premium comes with a full set of features and optional add-ons, plus a 15% up-front discount if you choose to auto-renew. If you're confident your boat will get enough attention based on high-quality photos and detailed descriptions, the 6-week

Enhanced Package

is a popular choice - plus it comes with a 10% discount if you choose to auto-renew. If you've priced your boat to sell fast or want to test the waters, the

Basic Package

may be best for you. Whichever you choose, all of our packages will help you reach a large audience of boat buyers near you.

### What important details should I include in my boat listing?

When it comes to creating your boat listing, you should try to be as specific as possible. Try to use the boat builder's specifications. Be sure to include exact dimensions, on-board equipment, number of engines and engine hours, tank capacities, accessories, outfittings and brand names. Get high-quality photos and videos of your clean boat from all angles - bow to stern - both in and out of the water. A video showing the boat running is always appreciated by potential buyers.

### Why should I pay for a listing with boats.com when other sites offer free classified ads?

When selling a high-value item like a boat, it's important that you are reaching the most qualified audience - in this case, boat shoppers that are currently in the market to buy. Research shows that boats.com paid classified ads generally deliver 10 times the exposure of free ads because they offer more options for marketing your boat - including guaranteed exposure to potential boat buyers, longer run times, larger ads and photos and videos. Further, paid classifieds make it clear to potential buyers that the seller is serious about selling their boat, and as a result, boat buyers feel more confident in their shopping experience.

### How do I price my boat?

Pricing your boat is very important since the starting price can easily make or break the sale of your boat. Asking too much may dissuade potential buyers from requesting more information, while asking too little may make many buyers suspicious and wary of making an offer. If you find yourself asking "how much is my boat worth?" - it's important to research blue-book type boat pricing data that banks, government agencies and finance and insurance companies will use for valuing your vessel.

### What is a bill of sale for a boat?

A boat bill of sale is a contract used to transfer ownership of a vessel from a seller to a buyer. The agreement must be signed by both parties and may also require a witness signature, boat financing lender

approval/signature, and in some cases a notary to notarize. The bill of sale should typically only be filled out and signed once the seller has delivered the watercraft to the buyer, and the buyer has remitted payment to the seller.

### **Is my boat too big or expensive to list on boats.com?**

No. Regardless of selling price, type or size, boats.com will help you reach a significant audience of local boat buyers. This includes all types of boat buyers interested in a wide variety of boat types and price ranges.


### **What do yacht brokers do and do I need one?**

Yacht brokers work like real estate agents but specialize in the sale or purchase of a new or used yacht or boat. Selling brokers represent the buyer while listing brokers represent the seller and vessel. Traditionally, the seller pays the commission a yacht broker earns – not the buyer. However, in every transaction brokers have a duty to both the buyer and seller. Brokers can help you understand the laws, negotiate your sale, find the right loan, insurance provider and set up escrow. If it's your first time buying or selling a boat, it is often wise to work with a certified yacht broker.

[Choose my package](#)

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**EXHIBIT D**



## SELL YOUR BOAT FAST

Sell your boat on the #1 marketplace in the US.

- **The largest network of boat buyers.** Millions of potential buyers at your fingertips.
- **List for only an up-front fee.** No hidden fees, plus all of the cash is yours after the sale.
- **It's easy to sell on Boat Trader.** Enter your boat information, upload photos, and you're ready to sell.

Let's Get Started!

Year  Make  Model

Email  Zip

By clicking the button to proceed, You agree to the [Privacy Policy](#), [Cookie Policy](#) & [Terms of Use](#).

### 3 Easy Steps—in Under 3 Minutes!

Boat Trader offers the most simple solution to sell your boat in one place—with a straightforward process that involves only an initial listing fee. First, easily build your listing. Next, select a package that fits your budget and meets your needs. Then, add your photos and videos. That's it - start advertising to local boat buyers right away on the largest boating marketplace in America.

- 1 Build Your Listing
- 2 Choose Your Package
- 3 Checkout—Get Ready to Sell Your Boat

### Testimonials for Selling with Boat Trader



Great experience. Plenty of inquiries and my boat sold for asking price.

Keith L. - Grady-White 33 Express



Easy to get our boat listed and you did your part in providing the audience. Now we're on the hunt for a new one!

Terry S. - 2016 Bennington 2250



Your service was excellent!! I'm not that great with computers, and the process was easy for me. Within 24 hours, I received 3 emails from interested buyers. I'd definitely recommend Boat Trader.

Cameron D. - Carolina Skiff DLV





I sold our cruiser faster than I expected to on Boat Trader. I chose the top package and it was cool to see my boat on the homepage of Boat Trader. It must have worked because our boat sold in less than a month!

Tommy R. - 2007 Sea Ray 480 Sundancer

## **Still have questions? Here are some answers**

### **What is the best way to sell my boat on Boat Trader?**

If you want to feature your boat prominently in search results and on the homepage, our is the right choice. It comes with a full set of features and optional add-ons. If you're confident your boat will get enough attention based on high-quality photos and detailed descriptions, the is a popular choice. If you've priced your boat to sell fast, the may be the best fit for you. Whichever you choose, all of our packages will help you reach the largest audience of boat buyers in the U.S.

### **What details should I include in my boat listing?**

When it comes to writing your boat listing - be as specific as possible. Try to use the boat builder's specs, minimum draft, exact dimensions, on-board equipment, engine hours, tank capacities, accessories, outfittings and brand names. Get high-quality photos and videos of your clean boat from all angles - bow to stern - both in and out of the water.

### **Why should I pay for a listing when other sites offer free classified ads?**

When selling a high-value item like a boat, it's important that you are reaching the most qualified audience. Research shows that paid classified ads generally deliver 10 times the exposure of free ads because they offer more options for marketing your boat - including guaranteed exposure, longer run times, larger ads and photos and videos. Further, paid classifieds make it clear to potential buyers that the seller is serious about selling their boat, and as a result, consumers feel more confident in their shopping experience.

### **How much does it cost to list on Boat Trader?**

At Boat Trader, we provide a pricing system that is fair and adjustable based on dynamic factors such as the location of your boat listing and the selling price. Our Basic package offers two weeks of run-time on Boat Trader, while our Enhanced and Premium packages include additional benefits and longer run-time. Regardless of the package you choose, you only need to pay the up-front listing fee to advertise and sell your used boat on our platform. Unlike other platforms, we do not collect any other seller fees or commissions when you sell your boat, ensuring that you keep the full profit from your sale.

### **How much does it cost to sell a boat?**

It depends on where you list your boat for sale. If you list on Boat Trader, you will only incur an up-front listing cost and all of the cash from your sale is yours at the end of the transaction.

Other websites like eBay and OfferUp ask for a percentage of the sale price, or "service fee." The service fee will increase as your sale price increases. Sites like YachtWorld include broker listings, where brokers typically collect a commission after the sale.

### **What is the best website to sell a boat?**

Listing your boat on an online boating marketplace is the best way to get your boat in front of potential buyers fast. Did you know that you can list your boat on Boat Trader's website in less than 3 minutes? Sites like Boat Trader

and boats.com have thousands of local buyers browsing for their next boat each day. Websites such as YachtWorld do not offer a for sale by owner section, and typically need broker representation to have your boat listed there. Other marketplaces like Facebook and Craigslist are worth exploring, but remember that there are other categories that you are competing with other than boating on those sites, so you may not sell your boat as quickly.

## **Does Boat Trader offer any upgrades to make my listing stand out?**

The best way to make your boat listing stand out is to clean and detail your boat before listing it, and gather all information, like accessories, engine hours, electronics and even maintenance records if you have them. Next, you should take plenty of photos of your listing. We recommend more than 20 photos to make your boat stand out. Think up-close, detail shots of important parts of your boat, and also take images at every angle, including photos of the engine. As you add information to Boat Trader's listing builder, you will have the ability to include add-ons that will make your listing shine. Those add-ons include placing your listing on boats.com, as well as adding additional photos if you choose the enhanced or basic packages.

## **Should I sell my boat to a dealer?**

Sellers will typically not make as much money on a dealer trade or sale as compared to if you were to sell your boat privately. In many cases, the difference in selling to a dealer versus selling privately can be thousands of dollars. It is always best to try to sell your boat privately first before handing it over to a dealer.

## **How do I price my boat?**

Pricing your boat is very important since the starting price can easily make or break the sale of your boat. Asking too much may dissuade potential buyers from requesting more information, while asking too little may make many buyers suspicious and wary of making an offer. If you find yourself asking “how much is my boat worth?” - it’s important to do your own research to determine your boat’s value. The Boat Trader Price Checker Tool is a great way to learn the range of listed prices for your boat, including the average, lowest and highest prices found in Boat Trader's search results.

## **What is a bill of sale for a boat?**

A boat bill of sale is a contract used to transfer ownership of a vessel from a seller to a buyer. The agreement must be signed by both parties and may also require a witness signature, boat financing lender approval/signature, and in some cases a notary to notarize. The bill of sale should typically only be filled out and signed once the seller has delivered the watercraft to the buyer, and the buyer has remitted payment to the seller.

## **How can I sell my boat fast?**

The speed at which a boat will sell varies. Advertising your boat in as many places as possible will typically allow you to sell faster than listing it in only one place. Boat Trader offers the ability to list in multiple places—by exporting your listing to boats.com with a simple add-on once you are ready to check out.

If you’re looking to get your boat sold as soon as possible, price is probably the main determining factor in how fast a boat will sell. Listings priced below market values will sell typically faster. A great way to ensure your boat is priced correctly is by using Boat Trader’s Price Checker Tool, or browsing similar listings in your area to determine a fair price.

## **Where is the best place to sell a used boat?**

Online boating marketplaces like Boat Trader and boats.com are the best way to get your boat in front of local buyers quickly. Other methods should not be overlooked in addition to these online marketplaces—like placing a

for sale sign on your boat in your driveway or in a public location.

## Is there a Kelly Blue Book for boats?

We hear many customers ask, "How do I know what my boat is worth?" Boat Trader's Price Checker Tool can give you insight into current market value for a boat you own or are looking to sell. Boat Trader offers the largest selection of boats for sale in America, and we also recommend using Boat Trader's search to find similar boat listings in your region. Using Boat Trader's search can also help determine a fair price for your boat and understand its market value.

## Is my boat too big or expensive to list on Boat Trader?

No! Regardless of price point, type or size, Boat Trader will help you reach the most boat buyers in your area. This includes all types of boat buyers interested in a wide variety of boat types and price ranges—big or small.

## How long does it take to sell a used boat?

About 81% of boats listed for sale by owner on Boat Trader sell within 12 weeks\*. There are many factors that play into how long it may take to sell your boat. These factors include the quality of your boat listing (Does it include photos and video? Do you have maintenance records for the duration of ownership?). In addition, price is likely the biggest factor in time to sale. If you choose to price your boat at or below market value, it may take you less time to sell it.

\*Boat Trader survey, 2024  
Support

# Boat Trader

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Director  
National Vessel Documentation Center

792 T. J. Jackson Drive  
Falling Waters, WV 25419  
Phone: (800) 799-8362  
Fax: 304-271-2405

**August 2, 2024**

**Regarding your recent submission to the National Vessel Documentation Center**

This cover letter with enclosure(s) is sent in response to a submission made to this office. If you have any questions, please contact the National Vessel Documentation Center at the number shown above.

**Enclosures:**

(1) Abstract of Title                      O/N:1227342                      3 PAGE(S)

**TOTAL:**    4 PAGE(S) (including cover page)

**U.S. Coast Guard  
GENERAL INDEX OR ABSTRACT OF TITLE**

OFFICIAL NUMBER: 1227342 NAME OF VESSEL PARADISE FOUND  
 HIN NUMBER: \_\_\_\_\_ HULL ID NUMBER: CNB50065B808 IMO NUMBER: \_\_\_\_\_  
 VESSEL BUILT AT UNKNOWN  
 (AND) \_\_\_\_\_ IN \_\_\_\_\_  
 BY UNKNOWN  
 \_\_\_\_\_  
 FOR UNKNOWN  
 BUILDER'S CERTIFICATE DATED UNKNOWN  
 TITLE ASSIGNED TO \_\_\_\_\_

**STATUS: ON RECORD**  
**REPUBLIC OF SOUTH AFRICA REGISTRY (10745) REFLECTS OWNER AS: PANTELONAKI YACHTING (PTY) LTD.**

INSTRUMENT TYPE  
**BILL OF SALE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>MAY 21, 2010</b>	AMOUNT <b>\$1.00</b>	BATCH <b>746753</b>	DOC ID <b>12061196</b>
DATE FILED <b>MAY 22, 2010</b>		TIME FILED <b>3:40 PM</b>	STATUS <b>RECORDED</b>	
SELLER <b>PANTELONAKI YACHTING (PTY) LTD</b>				
BUYER <b>MAGNA CHARTA LLC</b>				

DISCHARGED **YES** INSTRUMENT TYPE **PREFERRED MORTGAGE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>MAY 6, 2010</b>	AMOUNT <b>\$350,000.00</b>	BATCH <b>746753</b>	DOC ID <b>12061198</b>
DATE FILED <b>MAY 22, 2010</b>		TIME FILED <b>3:40 PM</b>	STATUS <b>RECORDED</b>	
MORTGAGOR <b>MAGNA CHARTA LLC</b>				
MORTGAGEE <b>CGI FINANCE INC PO BOX 1719 PORTLAND, OR 97207-1719</b>				

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**U.S. Coast Guard  
GENERAL INDEX OR ABSTRACT OF TITLE**

Continuation Sheet No. 1

<b>DISCHARGED</b> <b>YES</b>		<b>INSTRUMENT TYPE</b> <b>PREFERRED MORTGAGE</b>		
<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> DECEMBER 2, 2011	<b>AMOUNT</b> \$333,809.93	<b>BATCH</b> 840165	<b>DOC ID</b> 14496888
<b>DATE FILED</b> DECEMBER 19, 2011		<b>TIME FILED</b> 9:54 AM	<b>STATUS</b> RECORDED	
<b>MORTGAGOR</b> MAGNA CHARTA LLC				
<b>MORTGAGEE</b> SGB FINANCE NORTH AMERICA INC PO BOX 1719 PORTLAND OR 97207-1719				

<b>INSTRUMENT TYPE</b> <b>SATISFACTION OF MORTGAGE</b>			<b>REFERS TO: BATCH: 746753 DOC ID:</b> 12061198	
<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> DECEMBER 27, 2011	<b>AMOUNT</b> \$350,000.00	<b>BATCH</b> 841231	<b>DOC ID</b> 14523975
<b>DATE FILED</b> DECEMBER 27, 2011		<b>TIME FILED</b> 10:43 AM	<b>STATUS</b> RECORDED	
<b>GRANTOR</b> CGI FINANCE INC				
<b>GRANTEE</b> MAGNA CHARTA LLC				

<b>DISCHARGED</b> <b>YES</b>		<b>INSTRUMENT TYPE</b> <b>PREFERRED MORTGAGE</b>		
<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> DECEMBER 4, 2014	<b>AMOUNT</b> \$100,000.00	<b>BATCH</b> 24486000	<b>DOC ID</b> 17
<b>DATE FILED</b> DECEMBER 18, 2014		<b>TIME FILED</b> 1:55 PM	<b>STATUS</b> RECORDED	
<b>MORTGAGOR</b> MAGNA CHARTA LLC				
<b>MORTGAGEE</b> SHORE PREMIER FINANCE PO BOX 1908 ELIZABETH CITY NC 27906				

<b>INSTRUMENT TYPE</b> <b>SATISFACTION OF MORTGAGE</b>			<b>REFERS TO: BATCH: 840165 DOC ID:</b> 14496888	
<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> DECEMBER 22, 2014	<b>AMOUNT</b> \$333,809.93	<b>BATCH</b> 24530100	<b>DOC ID</b> 2
<b>DATE FILED</b> DECEMBER 23, 2014		<b>TIME FILED</b> 8:53 AM	<b>STATUS</b> RECORDED	
<b>MORTGAGEE</b> SGB FINANCE NORTH AMERICA				
<b>MORTGAGOR</b> MAGNA CHARTA LLC				

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**U.S. Coast Guard  
GENERAL INDEX OR ABSTRACT OF TITLE**

Continuation Sheet No. 2

INSTRUMENT TYPE

**SATISFACTION OF MORTGAGE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>OCTOBER 10, 2019</b>	AMOUNT <b>\$100,000.00</b>	BATCH <b>68553000</b>	DOC ID <b>2</b>
DATE FILED <b>OCTOBER 10, 2019</b>		TIME FILED <b>3:24 PM</b>		STATUS <b>RECORDED</b>
MORTGAGOR <b>MAGNA CHARTA LLC</b>				
MORTGAGEE <b>CENTENNIAL BANK DBA SHORE PREMIER FINANCE ISAOA</b>				

INSTRUMENT TYPE

**BILL OF SALE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>AUGUST 14, 2021</b>	AMOUNT <b>\$1.00</b>	BATCH <b>95888300</b>	DOC ID <b>4</b>
DATE FILED <b>AUGUST 23, 2021</b>		TIME FILED <b>5:58 PM</b>		STATUS <b>RECORDED</b>
SELLER <b>MAGNA CHARTA LLC</b>				
BUYER <b>COURTNEY MARIE MCDONALD</b>				

INSTRUMENT TYPE

**BILL OF SALE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>OCTOBER 5, 2022</b>	AMOUNT <b>\$1.00</b>	BATCH <b>113360600</b>	DOC ID <b>4</b>
DATE FILED <b>NOVEMBER 14, 2022</b>		TIME FILED <b>4:59 PM</b>		STATUS <b>RECORDED</b>
SELLER <b>COURTNEY MARIE MCDONALD</b>				
BUYER <b>GUARDIAN VENTURE GROUP LLC</b>				

INSTRUMENT TYPE

**PREFERRED MORTGAGE**

% CONVEYED <b>100</b>	DATE OF INSTRUMENT <b>OCTOBER 5, 2022</b>	AMOUNT <b>\$368,000.00</b>	BATCH <b>113360600</b>	DOC ID <b>2</b>
DATE FILED <b>NOVEMBER 14, 2022</b>		TIME FILED <b>4:59 PM</b>		STATUS <b>RECORDED</b>
MORTGAGOR <b>GUARDIAN VENTURE GROUP LLC</b>				
MORTGAGEE <b>HERRING BANK 2201 CIVIC CIRCLE AMARILLO TX 79109</b>				

ISSUED AS AN ABSTRACT OF TITLE AS OF

DATE: 07/29/2024

TIME: 6:30 AM

  
 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER

**EXHIBIT F**

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Vessel Documentation Center

792 T. J. Jackson Drive  
Falling Waters, WV 25419  
Phone: (800) 799-8362  
Fax: 304-271-2405

**August 2, 2024**

**Regarding your recent submission to the National Vessel Documentation Center**

This cover letter with enclosure(s) is sent in response to a submission made to this office. If you have any questions, please contact the National Vessel Documentation Center at the number shown above.

**Enclosures:**

(1) Abstract of Title                      O/N:1038690                      4 PAGE(S)

**TOTAL:**    5 PAGE(S) (including cover page)

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-1332 (Rev. 6-93)	<b>GENERAL INDEX OR ABSTRACT OF TITLE</b>	OMB APPROVED 2115-0110
--	---	---------------------------

VESSEL BUILT AT DELTA, BC, CANADA  
 (AND) \_\_\_\_\_ IN 1995  
 BY WEST BAY SONSHIP YACHTS LTD.  
 FOR WESTSHIP YACHT SALES, INC.  
 \_\_\_\_\_  
 BUILDER'S CERTIFICATE DATED DECEMBER 6, 1995  
 TITLE ASSIGNED TO RONALD R. KRESGE

1038690  
 (OFFICIAL NUMBER)  
BZH005251596  
 (HULL ID NUMBER)

- (5) \_\_\_\_\_
- (4) \_\_\_\_\_
- (3) \_\_\_\_\_
- (2) \_\_\_\_\_
- (1) SEA CROWN (03JAN96)  
 NAME OF VESSEL

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
PM	100	12 07 95	\$315,000.00	NVDC 96-02	105

FILED PORT	DATE	TIME	DATE TERMINATED
NVDC	12 22 95	12 44 PM	

GRANTOR  
 RONALD R. KRESGE

GRANTEE  
 NATIONSBANK OF NORTH CAROLINA, N.A.  
 PO BOX 23500  
 GREENSBORO NC 27420

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
SMTG	100	5 24 96	\$315,000.00	96-51	617

FILED PORT	DATE	TIME	DATE TERMINATED
NVDC	5 28 96	11:15 am	- - -

GRANTOR Refers to Book NVDC 96-02 Page 105  
 NATIONSBANK, N.A. formerly NATIONSBANK OF NORTH CAROLINA, N.A.

GRANTEE  
 RONALD R. KRESGE

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
BS	100	12 23 99	\$1.00	00-17	126

FILED PORT	DATE	TIME	DATE TERMINATED
NVDC	02 17 00	2:30 pm	-

GRANTOR  
 Ronald R Kresge

GRANTEE  
 Westpot Yacht Sales Inc.

ISSUED AS AN ABSTRACT OF TITLE                       ISSUED FOR CHANGE OF PORT OF RECORD

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
 PAGE: \_\_\_\_\_ OF \_\_\_\_\_ PORT: \_\_\_\_\_

\_\_\_\_\_  
 DOCUMENTATION OFFICER

\*CORRECTED AT NVDC 8/11/06

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-1332A (Rev. 6-93)		<b>GENERAL INDEX OR ABSTRACT OF TITLE</b> <b>CONTINUATION SHEET NO. -2-1*</b>				OFFICIAL NO.  1038690	
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
BS	100	01 31 00	\$1.00	00-17	127		
FILED PORT		DATE	TIME		DATE TERMINATED		
NVDC		02 17 00	02 30 PM		- - -		
GRANTOR							
WESTPORT YACHT SALES INC							
GRANTEE							
P.A.W. MARINE INC							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
BS	100	01 31 00	\$1.00	00-17	128		
FILED PORT		DATE	TIME		DATE TERMINATED		
NVDC		02 17 00	02 30 PM		- - -		
GRANTOR							
P.A.W. MARINE INC							
GRANTEE							
NEIL B STRAUSS ****VESSEL NAME CHANGED TO: TIMELESS (2-23-00) ****							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
PM	100	01 29 00	\$620,000.00	00-17	129		
FILED PORT		DATE	TIME		DATE TERMINATED		
NVDC		02 17 00	02 30 PM		- - -		
GRANTOR							
NEIL B STRAUSS							
GRANTEE							
REPUBLIC SECURITY BANK 450 SOUTH AUSTRALIAN AVE, WEST PALM BEACH FL 33401							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
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FILED PORT		DATE	TIME		DATE TERMINATED		
GRANTOR							
GRANTEE							
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DATE:		TIME:					
PAGE: OF		PORT:					
DOCUMENTATION OFFICER							

\*CORRECTED AT NVDC 8/11/06

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-1332A (Rev. 6-93)		<b>GENERAL INDEX OR ABSTRACT OF TITLE CONTINUATION SHEET NO.</b>				OFFICIAL NO.  1038690	
		3-- 2*					
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
SMTG	100	9 19 01	\$620,000.00	01-85	193		
FILED PORT		DATE	TIME	DATE TERMINATED			
NVDC		10 10 01	2 29 PM	- - -			
GRANTOR							
REFERS TO BOOK 00-17 PAGE 129 REPUBLIC SECURITY BANK							
GRANTEE							
NEIL B STRAUSS							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
BS	100	5 16 01	\$10.00	01-85	194		
FILED PORT		DATE	TIME	DATE TERMINATED			
NVDC		9 14 01	3 30 PM	- - -			
GRANTOR							
NEIL B STRAUSS							
GRANTEE							
HAL JONES & CO							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
BS	100	9 10 01	\$1.00	01-85	195		
FILED PORT		DATE	TIME	DATE TERMINATED			
NVDC		9 14 01	3 30 PM	- - -			
GRANTOR							
HAL HONES & CO							
GRANTEE							
TEX W TRACY							
INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE		
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FILED PORT		DATE	TIME	DATE TERMINATED			
GRANTOR							
GRANTEE							
<input type="checkbox"/> ISSUED AS AN ABSTRACT OF TITLE <span style="margin-left: 200px;"><input type="checkbox"/> ISSUED FOR CHANGE OF PORT OF RECORD</span>							
DATE:		TIME:					
PAGE: OF		PORT:					
DOCUMENTATION OFFICER							

**U.S. Coast Guard  
GENERAL INDEX OR ABSTRACT OF TITLE**

Continuation Sheet No. 3

**STATUS: ON RECORD**

**BAHAMAS REGISTRATION CERTIFICATE [NP08649] REFLECTS OWNER AS:  
JUAN A GALAN JR**

INSTRUMENT TYPE

**BILL OF SALE**

<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> APRIL 13, 2021	<b>AMOUNT</b> \$1.00	<b>BATCH</b> 89987300	<b>DOC ID</b> 4
<b>DATE FILED</b> APRIL 18, 2021		<b>TIME FILED</b> 8:19 PM		<b>STATUS</b> RECORDED
<b>SELLER</b> JUAN A GALAN JR				
<b>BUYER</b> SUMMER SET LLC				

**STATUS: ON RECORD**

**VESSEL NAME CHANGE: SUMMER SET (6/15/21)**

INSTRUMENT TYPE

**PREFERRED MORTGAGE**

<b>% CONVEYED</b> 100	<b>DATE OF INSTRUMENT</b> APRIL 22, 2021	<b>AMOUNT</b> \$300,000.00	<b>BATCH</b> 90879800	<b>DOC ID</b> 7
<b>DATE FILED</b> MAY 05, 2021		<b>TIME FILED</b> 2:14 PM		<b>STATUS</b> RECORDED
<b>MORTGAGOR</b> SUMMER SET LLC				
<b>MORTGAGEE</b> AVB BANK 322 SOUTH MAIN BROKEN ARROW OK 74012				

ISSUED AS AN ABSTRACT OF TITLE AS OF

DATE: 07/29/2024

TIME: 6:30 AM

  
 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER