IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SETTLEMENT SOLUTIONS SERVICES, LLC and MCCURDY & CANDLER BANKRUPTCY FORECLOSURE, LLC;	§	**CIVIL ACTION FILE NO. _____**
Plaintiffs,	§	
v.	§	**JURY DEMAND**
HABIF, AROGETI & WYNNE, LLP ; HA&W HOLDINGS, LLC; APRIO LLP; and RICHARD KOPELMAN;	§	
Defendants.		

COMPLAINT

Plaintiffs Settlement Solutions Services, LLC and McCurdy & Candler Bankruptcy Foreclosure, LLC (collectively "Plaintiffs") assert claims against Defendants Habif, Arogeti & Wynne, LLP, HA&W Holdings, LLC, Aprio LLP, and Richard Kopelman (collectively "Defendants"), and respectfully state as follows:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction under O.C.G.A. § 9-10-91 because the Defendants transact business in this State, committed tortious acts within this State, as more fully described below, and regularly do or solicit business, or engage in other persistent courses of conduct, or derive substantial revenue from goods used or consumed or services rendered in this State.

2. Venue is proper under O.C.G.A. § 9-10-93 because Fulton County is where a substantial part of the business was transacted and the tortious act, omission, or injury occurred out of which Plaintiffs' causes of action arose.

3. This Court has personal jurisdiction over Defendants as each is a citizen/resident of Georgia.

II.

PARTIES

4. Plaintiff Settlement Solutions Services, LLC ("S3") is a limited liability company organized and existing under the laws of Georgia with its principal place of business in Atlanta, Georgia. The members of S3 at the time of the transactions herein were domiciled in and citizens of Georgia.

5. Plaintiff McCurdy & Candler Bankruptcy Foreclosure, LLC ("M&C") is a limited liability company organized and existing under the laws of Georgia with its principal place of business in Atlanta, Georgia. The members of M&C at the time of the transactions herein were domiciled in and citizens of Georgia.

6. Defendant Habif, Arogeti & Wynne, LLP n/k/a Aprio LLP ("HA&W LLP") is a limited liability partnership organized and existing under the laws of Georgia with its principal place of business at 1221 Avenue of the Americas, Suite 4200, New York, NY. Upon information and belief, this Defendant has partners who are citizens of New York and Georgia, among other states. This Defendant is continuously and systematically engaged in business in the State of Georgia, but according to publicly available records does not maintain a registered agent for service of process. HA&W LLP may be served with process by serving any of its partners at Five Concourse Parkway, Suite 1000, Atlanta, GA 30328.

7. Defendant HA&W Holdings, LLC ("HA&W Holdings") is a limited liability company organized and existing under the laws of Georgia with its principal place

of business at Five Concourse Parkway, Suite 1000, Atlanta, GA 30328. Upon information and belief, this Defendant has partners who are citizens of New York and Georgia, among other states. This Defendant is continuously and systematically engaged in business in the State of Georgia, but according to publicly available records does not maintain a registered agent for service of process. HA&W Holdings may be served with process by serving any of its partners at Five Concourse Parkway, Suite 1000, Atlanta, GA 30328.

8. Defendant Aprio LLP ("Aprio) is a limited liability partnership organized and existing, upon information and belief, under the laws of Georgia with its principal place of business at Five Concourse Parkway, Suite 1000, Atlanta, GA 30328. Upon information and belief, this Defendant has partners who are citizens of New York and Georgia, among other states. This Defendant is continuously and systematically engaged in business in the State of Georgia, but according to publicly available records does not maintain a registered agent for service of process. On or about January 1, 2017, Defendants HA&W, LLP and HA&W Holdings began doing business as Aprio LLP. Upon information and belief, Aprio may be a successor-in-liability to HA&W, LLP and HA&W Holdings. Aprio, HA&W LLP and HA&W Holdings are collectively referred to herein as "HA&W".

9. Defendant Richard Kopelman is an individual and citizen of Georgia. He is domiciled in Atlanta, Georgia and may be served with process at his place of business at Five Concourse Parkway, Suite 1000, Atlanta, GA 30328 or his residence at 4761 Mystic Drive, Atlanta, GA 30342.

III.

FACTS

A. About McCurdy & Candler

10. The law firm of McCurdy & Candler was formed in 1951 in Decatur, Georgia. The original partners focused their law practice on a wide variety of transactional law.

11. In 1995, McCurdy & Candler was reformed into a limited liability company that operated as an "umbrella" organization. Plaintiff McCurdy & Candler Bankruptcy Foreclosure, LLC (previously defined herein as "M&C") is a division of McCurdy & Candler and does business under the "McCurdy & Candler, LLC" name. M&C was established to counsel and advise banks and financial institutions in all matters involving loans that were in default. Over the course of the last several decades, M&C has relied on its established title practice to create a practice group that became a leader in the representation of banks and other financial institutions in all aspects of secured lending, including these institutions' efforts to dispose of real estate obtained via the foreclosure process.

B. The American Land Title Association and ALTA Best Practices Certification

12. The American Land Title Association ("ALTA") was founded in 1907 and is the national trade association of more than 6,000 title insurance agents, abstracters, and underwriters. ALTA members search, review, and insure land titles to protect homebuyers and mortgage lenders who invest in real estate.

13. On July 19, 2013, ALTA published the final version of the "ALTA Title Insurance and Settlement Company Best Practices" ("ALTA Best Practices"), a framework

developed to assist lenders in satisfying their responsibility to manage third party vendors (*i.e.*, "service providers"), a category in which many ALTA members belong.

C. M&C Seeks to Become the First Law Firm in the Country to Obtain ALTA Best Practices Compliance Certification.

14. When ALTA first issued a draft of its "Best Practices," a copy of that draft was forwarded to M&C for review and comment. After reviewing this draft internally, M&C quickly realized that the firm had already implemented a host of different processes that effectively made the firm compliant from the start.

15. Recognizing that M&C could be at the forefront of the ALTA Best Practices initiative, M&C began work on creating a method and model on how to best assess, evaluate, and ultimately certify compliance. This work ultimately resulted in a template or "playbook" for the procedures and methodology that could be used to (i) assess Best Practices compliance, (ii) remediate any deficiencies, and (iii) finally conduct an audit to certify compliance with ALTA Best Practices.

16. M&C also ultimately determined that verification of compliance was best accomplished through a third-party confirmation or audit of M&C's policies and procedures and certification that these policies and procedures complied with ALTA Best Practices, rather than the commonly-employed "self-certification". After conducting due diligence on a number of accounting firms, M&C selected and then engaged Defendant HA&W to perform this audit of M&C's policies and procedures.

17. In the summer of 2013, M&C approached HA&W about conducting the ALTA Best Practices certification audit. M&C took the lead in preparing and authoring the extensive "Agreed-Upon Procedures" ("AUPs") that HA&W would utilize in the audit.

18. On November 4, 2013, M&C engaged HA&W to perform its ALTA Best Practices certification audit. HAW utilized the AUPs, initially developed by M&C, to conduct this audit. These AUPs and all related materials were at all times the subject of efforts by Plaintiffs that were reasonable under the circumstances to maintain their secrecy.

19. In early November 2013, when HA&W was performing the compliance review for M&C, M&C also communicated to HA&W its concept of creating a new entity that could partner with an accounting firm to offer a "one-stop" solution for thousands of ALTA members who could potentially benefit from a third-party ALTA Best Practices certification (the "ALTA Product"). These communications included the specifics of utilizing an entity, Plaintiff S3, formed by M&C partners for the specific purpose of implementing this "one-stop" solution.

D. M&C Shares Confidential Proprietary Information for the Development of the Agreed-Upon Procedures.

20. Beginning in October 2013, M&C began sharing highly confidential and proprietary information with HA&W in connection with the development of the AUPs for the audit of M&C's policies and procedures. M&C provided this information to HA&W with the express condition and reasonable belief and expectation that this information would be treated as confidential and would not be converted to HA&W's commercial benefit without M&C's permission.

21. This confidential and proprietary information was not commonly known by or available to the public. These items further derived economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.

22. Furthermore, as explained herein, these items were the subject of efforts that were reasonable under the circumstances to maintain their secrecy.

E. M&C Partners Form S3 for the Sole Purpose of Moving Forward with ALTA Best Practices Certification Audit program.

23. As contemplated, on January 10, 2014, M&C partners Michael Dugan and Sid Gelernter formed S3 for the sole purpose of moving forward with the development of the ALTA Product.

24. Defendants were fully aware that S3 was being formed for the purpose of implementing M&C's ALTA Product idea and Defendants and Plaintiffs had already began discussing the idea of S3 and Defendants forming a joint venture to promote and sell the ALTA Product.

F. Negotiations Between the Parties Continue and Kopelman of HA&W Sends Letter of Intent to S3.

25. On March 11, 2014, Kopelman (as CEO and Managing Partner of HA&W LLP) sent a Letter of Intent to Dugan wherein he sought to "establish the basic framework for a Joint Venture Agreement between HA&W Holdings, LLC…and Settlement Solutions Services, LLC". In this Letter of Intent, Kopelman set out the various steps of the ALTA Product and the roles S3 and Defendants would each play in the joint venture.

26. S3 wasted no time in getting to work on its role of landing contracts with national and regional title firms. To this end, Plaintiffs connected Defendants to numerous contacts and resources within the title insurance industry.

27. Moreover, Defendants held themselves out as "partners" with S3 for the marketing and sale of the ALTA Product in order to make high-level connections in the title insurance industry. Indeed, Plaintiff S3 worked hard to help Defendants make these

connections, believing all the while that these connections were being made in furtherance of the joint venture between S3 and Defendants.

G. PLAINTIFFS RESPOND TO KOPELMAN'S LETTER OF INTENT.

28. On April 5, 2014, Dugan (as a partner of both M&C and S3) responded to Kopelman's Letter of Intent with a few changes. The parties were in agreement on all material terms, including the framework for the joint venture and the roles and responsibilities of each company and the compensation structure.

29. Accordingly, Plaintiff S3 continued moving forward in expending time and resources in promoting Defendants and the new joint venture.

H. THE DEFENDANTS MARKET AND SELL THE ALTA PRODUCT ON THEIR OWN WITHOUT PLAINTIFFS.

30. In the early summer of 2014, Plaintiffs had not heard from Defendants regarding the joint venture to market and sell the ALTA Product. Plaintiffs had heard that Defendants had moved forward on their own with a similar product and in early June 2014, Mark Moyer of S3 contacted Defendant Kopelman to inquire whether this similar product was the same ALTA Product that Plaintiffs had presented to HA&W in connection with the joint venture. Kopelman falsely represented that the Defendants' product was completely different. Plaintiffs later learned that the Defendants' product was a complete copy of Plaintiffs' ALTA Product and/or utilized and contained M&C's trade secrets.

31. The Defendants have continued and still continue to market and sell the ALTA Product, giving no credit or compensation to Plaintiffs. Plaintiffs have been damaged by the misappropriation of trade secrets, and breaches of various duties in an amount to be proven at trial.

IV.

DISCOVERY RULE DEFERS ACCRUAL OF STATUTES OF LIMITATIONS AS TO ALL DEFENDANTS

32. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if fully set forth herein.

33. The causes of action asserted by Plaintiffs against Defendants herein are timely filed as the discovery rule deferred accrual of the respective statutes of limitation for such causes of action.

V.

TOLLING OF STATUTES OF LIMITATIONS AS TO ALL DEFENDANTS DUE TO FRAUDULENT CONCEALMENT

34. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if fully set forth herein.

35. The causes of action asserted by Plaintiffs against Defendants are timely filed as Defendants fraudulently concealed the wrongful conduct alleged herein.

36. Defendants had actual knowledge of the wrongful conduct alleged herein.

37. Defendants fraudulently concealed the wrongful acts and omissions alleged herein by affirmatively making misrepresentations about wrongful conduct despite having a duty to inform Plaintiffs of such wrongful acts and omissions and despite Plaintiffs directly inquiring about the wrongful conduct. Defendants' misrepresentations prevented Plaintiffs from discovering Defendants' wrongful acts and omissions.

38. Defendants had a fixed purpose to conceal the wrongful conduct.

39. Plaintiffs reasonably relied on Defendants' misrepresentations to the detriment of Plaintiffs.

VI.
CAUSES OF ACTION

Count 1: Misappropriation of Trade Secrets

(By M&C against All Defendants)

40. M&C repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein.

41. The product Defendants marketed and sold and continue to market and sell contains and utilizes information that was developed and authored by M&C, including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, methods, techniques, drawings, and processes that are not commonly known by or available to the public and that derive their economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from their disclosure or use, and constitute trade secrets under the George Trade Secret Act of 1990, O.C.G.A. §§ 10-1-760 *et seq*.

42. M&C's trade secrets were subject to M&C's efforts that were reasonable under the circumstances to maintain their secrecy, including informing Defendants that the trade secrets were being shared on a confidential basis, informing Defendants that M&C intended to utilize the trade secrets in the development of the ALTA Product, informing Defendants that the trade secrets were being shared confidentially in connection with negotiation of the joint venture described herein and sharing the trade secrets subject to other common law, statutory and contractual obligations owed to M&C by Defendants.

43. Defendants agreed to maintain the secrecy and confidentiality of M&C's trade secrets.

44. Defendants disclosed and utilized M&C's trade secrets without M&C's express or implied consent. Moreover, at the time of disclosure and use of M&C trade secrets, Defendants knew or had reason to know that knowledge of the trade secrets were acquired under circumstances giving rise to a duty to maintain their secrecy or limit their use or derived from or through a person who owed a duty to M&C to maintain their secrecy or limit their use.

45. Defendants have sold their product (which was a complete copy of M&C's ALTA Product and/or utilized and contained M&C's trade secrets) to third parties and derived economic value from the misappropriation of M&C's trade secrets and have deprived M&C of the economic value of those trade secrets.

46. Defendants' activities constitute a violation of the Georgia Trade Secrets Act of 1990, O.C.G.A. §§ 10-1-760 *et seq*.

47. Plaintiffs should be awarded damages pursuant to O.C.G.A. § 10-1-763(a).

48. Defendants' misappropriation of Plaintiffs' trade secrets was willful and malicious so that exemplary damages and reasonable attorneys' fees should be awarded to Plaintiffs pursuant to O.C.G.A. § 10-1-763(b) and 764.

Count 2: Negligent Misrepresentation

(By S3 against All Defendants)

49. S3 repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein.

50. Defendants' negligently supplied false information and material omissions to S3 regarding their actions in connection with the creating, implementing and marketing of the ALTA Product and the negotiation of the joint venture discussed herein.

51. S3 reasonably relied upon the false information and material omissions; and

52. Defendants' false information and material omissions proximately caused and continues to cause substantial damages to S3.

Count 3: Breach of Contract (Oral/Implied Joint Venture)

(By S3 against All Defendants)

53. S3 repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein.

54. S3 and Defendants entered into an oral and/or implied joint venture to jointly develop and market the ALTA Product. In entering into this joint venture, S3 and Defendants combined their property and/or labor in a joint undertaking for profit, with rights of mutual control and sharing of profits.

55. S3 and Defendants mutually consented to this joint venture agreement and agreed on all essential terms.

56. Defendants breached this joint venture agreement by, *inter alia*, accepting S3's information, knowledge, property, labor, and assistance (all provided in furtherance of and pursuant to the joint venture agreement) and then marketing and selling the ALTA Product on their own without S3's knowledge or consent and without compensating S3 in any way.

57. Defendants' breach of the joint venture agreement proximately caused substantial damage to S3.

Count 4: Breach of Implied Covenants of Good Faith and Fair Dealing

(By S3 against All Defendants)

58. S3 repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein.

59. The joint venture agreement between S3 and Defendants imposed upon each party a duty of good faith and fair dealing in the performance of their respective duties and obligations.

60. Defendants breached the duties of good faith and fair dealing by deceiving S3 into providing Defendants with information, knowledge, property, labor, and assistance (all provided in furtherance of and pursuant to the joint venture agreement) and then marketing and selling the ALTA Product on their own without S3's knowledge or consent and without compensating S3 in any way.

61. Defendants' breach of its duties of good faith and fair dealing proximately caused substantial damage and continues to cause substantial damage to S3.

Count 5: Promissory Estoppel

(By S3 against All Defendants)

62. S3 repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein

63. Defendants made certain promises to S3 regarding their joint creation, implementation and marketing of an ALTA Product.

64. Defendants should have expected that S3 would rely on such promises.

65. S3 did in fact rely on such promises to their detriment.

66. Injustice can be avoided only by the enforcement of the promises because S3 surrendered, forwent or rendered a valuable right to Defendants.

Count 6: Unjust Enrichment

(By S3 against All Defendants)

67. S3 repeats, realleges and incorporates each and every preceding paragraph as if fully set forth herein.

68. S3 conferred a valuable benefit on Defendants by providing Defendants with critical materials, information, labor, and assistance for the joint creation, implementation and marketing of an ALTA Product.

69. Equity requires the Defendants to compensate S3 for this benefit.

Count 7: Attorneys' Fees

(By All Plaintiffs against All Defendants)

70. Plaintiffs repeat, reallege and incorporate each and every preceding paragraph as if fully set forth herein.

71. Plaintiffs were forced to hire an attorney and incur legal fees and expenses as a result of Defendants' actions.

72. Defendants have acted in bad faith, have been stubbornly litigious and have caused Plaintiffs unnecessary trouble and expenses so as to authorize the recovery of their attorneys' fees and expenses of litigation under O.C.G.A. § 13-6-11.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that judgment be made and entered in their favor and against Defendants as follows:

A. Award Plaintiffs actual and compensatory damages on each count in the Complaint in an amount to be determined at trial;

B. Award Plaintiffs exemplary damages in an amount to be determined at trial;

C. Award Plaintiffs expenses of litigation and attorneys' fees pursuant to O.C.G.A. § 13-6-11 and § 10-1-764; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Loewinsohn Flegle Deary Simon, LLP

DAVID R. DEARY
Texas Bar No. 05624900 (will seek admission *pro hac vice*)
W. RALPH CANADA, JR.
Texas Bar No. 03733800 (will seek admission *pro hac vice*)
JEVEN R. SLOAN
Georgia Bar No. 652727
12377 Merit Drive, Suite 900
Dallas, Texas 75251
(214) 572-1700 - Telephone
(214) 572-1717 – Facsimile

The Saylor Law Firm
Edward J. Rappaport
1175 Peachtree Street, NE
100 Colony Square, Suite 1450
Atlanta, Georgia 30361
(404) 892-4400 – Telephone
(404) 892-2400 - Facsimile

ATTORNEYS FOR PLAINTIFFS