

# STATE OF NORTH CAROLINA

GASTON

County

File No.

14CV5710

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

MICHAEL J. MCSWAIN  
227 W. TRADE STREET  
SUITE 1200  
CHARLOTTE

2014 FEB 28 AM 11:37

GASTON NC 28202 C.S.C.

Name And Address Of Plaintiff 2

BY

## GENERAL

### CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), General Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

James B. Gatehouse  
Rayburn Cooper & Durham, P.A.  
227 W. Trade Street, Suite 1200

Charlotte

NC 28202

Telephone No.

Cell Telephone No.

(704) 334-0891

NC Attorney Bar No.

Attorney E-Mail Address

31538

jgatehouse@rcdlaw.net

☒ Initial Appearance in Case

☐ Change of Address

Name Of Firm

Rayburn Cooper & Durham, P.A.

FAX No.

(704) 377-1897

Counsel for

☒ All Plaintiffs ☐ All Defendants ☐ Only (List party(ies) represented)

☐ Amount in controversy does not exceed \$15,000

☐ Stipulate to arbitration

## VERSUS

Name Of Defendant 1

YADKIN BANK  
C/O JOSEPH H. TOWELL, Registered Agent  
209 NORTH BRIDGE STREET, P.O. BOX 888  
ELKIN

NC 28621

Summons Submitted

☒ Yes ☐ No

Name Of Defendant 2

STREETLINKS, LLC  
C/O CORPORATION SERVICE COMPANY, Registered Agent  
327 HILLSBOROUGH STREET  
RALEIGH

NC 27603

Summons Submitted

☒ Yes ☐ No

☒ Jury Demanded In Pleading

☐ Complex Litigation

## TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND) Assess Motions Fee (SEE NOTE)
- ☐ Amended Answer/Reply (AMND-Response) Assess Motions Fee (SEE NOTE)
- ☐ Amended Complaint (AMND) Assess Motions Fee
- ☐ Answer/Reply (ANSW-Response) (SEE NOTE)
- ☐ Change Venue (CHVN) Assess Motions Fee
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL) Assess Motions Fee
- ☐ Contempt (CNTP) Assess Motions Fee
- ☐ Continue (CNTN) Assess Motions Fee
- ☐ Compel (CMPL) Assess Motions Fee
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (List On Back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD) Assess Motions Fee
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL) Assess Motions Fee
- ☐ Extend Time For Complaint (EXCO) Assess Motions Fee

NOTE: See Side Two for a list of motions not subject to the motions fee.

(check all that apply)

- ☐ Failure To Join Necessary Party (FJNP) Assess Motions Fee
- ☐ Failure To State A Claim (FASC)
- ☐ Improper Venue/Division (IMVN) Assess Motions Fee
- ☐ Intervene (INTR) Assess Motions Fee
- ☐ Interplead (OTHR) Assess Motions Fee
- ☐ Lack Of Jurisdiction (Person) (LJPN) Assess Motions Fee
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM) Assess Motions Fee
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA) Assess Motions Fee
- ☐ Sanctions (SANC) Assess Motions Fee
- ☐ Set Aside (OTHR) Assess Motions Fee
- ☐ Show Cause (SHOW) Assess Motions Fee
- ☐ Transfer (TRFR) Assess Motions Fee
- ☐ Third Party Complaint (List Third Party Defendants on Back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD) Assess Motions Fee
- ☐ Withdraw as Counsel (WDCN) Assess Motions Fee
- ☐ Other (specify and list each separately)

NOTE: Assess fee only if court permission is required to amend.

## CLAIMS FOR RELIEF

- ☐ Administrative Appeal (ADMA)
- ☐ Appointment Of Receiver (APRC)
- ☐ Attachment/Garnishment (ATTC)
- ☐ Claim And Delivery (CLMD)
- ☐ Collection On Account (ACCT)
- ☐ Condemnation (CNDM)
- ☐ Contract (CNTR)
- ☐ Discovery Scheduling Order (DSCH)
- ☐ Injunction (INJU)
- ☐ Medical Malpractice (MDML)
- ☐ Minor Settlement (MSTL)
- ☐ Money Owed (MNYO)
- ☐ Negligence - Motor Vehicle (MVNG)
- ☐ Negligence - Other (NEGO)
- ☐ Motor Vehicle Lien G.S. 44A (MVLN)
- ☐ Limited Driving Privilege - Out-Of-State Convictions (PLDP)
- ☐ Possession Of Personal Property (POPP)
- ☐ Product Liability (PROD)
- ☐ Real Property (RLPR)
- ☐ Specific Performance (SPPR)
- ☐ Other (specify and list separately)

Date

February 28, 2014

Signature Of Attorney/Party

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752) or Court Action (AOC-CV-753) cover sheet.

AOC-CV-751, Rev. 6/11, © 2011 Administrative Office of the Courts

# STATE OF NORTH CAROLINA

File No.

14 CVS 710

GASTON County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Michael J. McSwain

Address

227 W. Trade Street, Suite 1200

City, State, Zip

Charlotte NC 28202

VERSUS

Name Of Defendant(s)

Yadkin Bank, f/k/a Yadkin Valley Bank and Trust Company, and  
StreetLinks, LLC

## CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

### To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Yadkin Bank  
c/o Joseph H. Towell, Registered Agent  
209 North Bridge Street, P.O. Box 888  
Elkin NC 28621

Name And Address Of Defendant 2

StreetLinks, LLC  
c/o Corporate Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh NC 27603

### A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

James B. Gatehouse  
Rayburn Cooper & Durham, P.A.  
227 W. Trade St., Suite 1200  
Charlotte NC 28202

Date Issued

2-28-14

Time

11:38

☒ AM  
☐ PM

Signature

*Michael Nease*

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

### ☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM  
☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason.

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA

COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

14-CVS- 710

GASTON COUNTY, C.S.C.

MICHAEL J. MCSWAIN

BY

Plaintiff,

v.

YADKIN BANK, f/k/a YADKIN  
VALLEY BANK AND TRUST COMPANY, and  
STREETLINKS LLC

Defendants.

**COMPLAINT  
(JURY DEMANDED)**

Plaintiff Michael J. McSwain ("McSwain" or "Plaintiff"), complaining of Defendants  
Yadkin Bank, f/k/a Yadkin Valley Bank and Trust Company ("Yadkin") and StreetLinks LLC  
("SteetLinks") (together "Defendants"), alleges and says that:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is a citizen and resident of Gaston County, North Carolina.
2. Upon information and belief, Yadkin is a North Carolina Corporation with its principal place of business in Surry County, North Carolina.
3. Upon information and belief, StreetLinks is an Indiana limited liability company, registered to do business in North Carolina, with its principal place of business in Kansas City, Missouri.
4. This Court has jurisdiction over the subject matter and the parties to this action.
5. Venue is proper in this judicial district.

**FACTUAL BACKGROUND**

6. Plaintiff is a licensed real estate appraiser conducting business as McSwain & Associates, Inc.

7. Upon information and belief, Yadkin is a banking institution that, through its wholly owned subsidiary Sidus Financial, LLC (f/k/a First Mortgage Corporation), regularly makes loans secured by the borrower's principal residence. Prior to extending credit secured by real estate, Yadkin obtains an appraisal of the real estate's value.

8. Upon information and belief, StreetLinks is a national appraisal management company ("AMC") that facilitates the appraisal of residential real estate on behalf of mortgage lenders, including Yadkin.

9. Real estate appraisals are a critical component of the lending process. Securing credit with some collateral, often real estate, is an effective method for lenders to mitigate credit risk. Credit risk is the risk that a borrower will default on his obligations. In the event of default, the secured lender has the option to foreclose upon the collateral and sell it in partial or total satisfaction of the borrower's obligations. Therefore, the loan-to-value ratio ("LTV") is a key indicator of the overall risk in a credit transaction. LTV is calculated as the amount of the loan compared to the value of the underlying collateral.

10. Lenders obtain real estate appraisals to assess their ability to recover in the event of the borrower's default. Theoretically, the more accurate the appraised value of the underlying collateral, the more likely the lender is to recover the full amount of the loan upon a borrower's default.

11. Traditionally, mortgage lenders, such as Yadkin, had a strong incentive to obtain accurate appraisals. Lenders desired adequate protection against credit risk. Obtaining an accurate appraisal was the best way to estimate recovery should the borrower default and the lender sell the collateral.

12. Today, lenders often sell mortgage debt into secondary markets. In a process known as "securitization," buyers in the secondary market bundle mortgage loans and sell them

as securities, known as mortgage-backed securities (“MBS”). These “MBS issuers” receive monthly mortgage payments from borrowers, which they use to pay MBS purchasers principal and interest upon their investment. Since the recent financial crisis, Fannie Mae and Freddie Mac are the primary issuers of residential MBS. Fannie Mae and Freddie Mac are currently operating under a federal government conservatorship.

13. The secondary market for mortgage debt creates two primary benefits for lenders. First, selling mortgage debt allows lenders to immediately realize returns that would normally be paid over a period of thirty years. Lenders then use these funds to make additional loans, which are also immediately sold into the secondary market. The resulting liquidity vastly increases the amount of money that lenders can use to extend credit. Second, lenders can effectively transfer credit risk to MBS issuers. As part of the securitization process, Fannie Mae and Freddie Mac guarantee payments to MBS purchasers. If a borrower defaults on his mortgage payments, Fannie Mae or Freddie Mac will still make payments of principal and interest to MBS purchasers. These guarantee payments come from Fannie Mae or Freddie Mac’s capital reserves instead of the flow of current mortgage payments. Capital reserves are funded by guarantee fees collected from lenders who sell mortgage debt to Fannie Mae or Freddie Mac.

14. The stability of the entire market for mortgage debt depends upon borrowers making their monthly payments. If too many borrowers default, capital reserves will be insufficient for Fannie Mae and Freddie Mac to make payments to MBS purchasers. The result is either that MBS purchasers would lose the principal of their investment or Fannie Mae and Freddie Mac would need federal assistance. This is precisely what occurred during the mortgage crisis of 2007-2008. An extremely high default rate on mortgages underlying MBS forced the federal government to inject over \$150 billion into Fannie Mae and Freddie Mac.



15. The availability of secondary markets for mortgage debt has significantly changed appraisal incentives for lenders. Today, income is driven by the volume of debt that the lender can sell into the secondary market, not the performance of loans that the lender makes. Additionally, by selling mortgage debt into the secondary market, lenders effectively shift credit risk to MBS issuers. The result is that lenders, such as Yادkin, strongly desire inflated appraisals that allow them to make the largest possible loans regardless of the borrower's ability to repay or the lender's ability to recover against the underlying collateral.

16. Due to the potential for abuse, the real estate appraisal process is subject to pervasive federal regulation. Following the Savings and Loan Crisis in the 1980s, Congress adopted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). FIRREA created the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), which has a purpose of providing

that Federal financial and public policy interests in real estate related transactions will be protected by requiring the real estate appraisals utilized in connection with federal related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

12 U.S.C. § 3331. ASC monitors State appraiser certification and licensing requirements, maintains a registry of State certified and licensed appraisers, and maintains a registry of registered AMCs. 12 U.S.C. § 3332. Regulations promulgated under FIRREA also include requirements for appraiser independence. Appraisers employed by lenders ("in-house appraisers") "must be independent of the lending, investment, and collection functions and...have no direct or indirect interest, financial or otherwise, in the property." 12 C.F.R. § 564.5(a). Appraisers hired for a fee cannot have a direct or indirect interest in the property or the transaction. 12 C.F.R. § 564.5(b)(1).

17. Federal monitoring of the appraisal process did little to prevent the mortgage crisis of 2007-2008. In the aftermath of the crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which included and empowered various agencies to create additional regulations related to real estate appraisals.

18. The Appraisal Independence Requirements under Dodd-Frank provide that it is a violation for anyone “extending credit or...providing services related to a consumer credit transaction secured by the principal dwelling of the consumer...[to seek] to influence an appraiser or otherwise encourage a targeted value in order to facilitate the making or pricing of the transaction.” 15 U.S.C. § 1639e(b)(3). Regulations adopted under § 1639e provide that

no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer’s principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

12 C.F.R. § 226.42(c). A lender or AMC explicitly violates appraisal independence by “excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer’s principal dwelling that does not meet or exceed a predetermined threshold.” 12 C.F.R. § 226.42(c)(i)(D).

19. Under new regulations, Lenders can still obtain appraisals from in-house appraisers, so long as they conform to regulations promulgated under FIRREA. 12 C.F.R. § 564.5. However, many lenders have turned to AMCs to facilitate appraisals conforming to regulatory requirements. Dodd-Frank specifically empowers regulations that “(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and (4) require that appraisals are conducted



independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 1639e of title 15.” 12 U.S.C. § 3353.

20. Dodd-Frank’s Appraisal Independence Requirements includes a mandatory reporting provision applicable to mortgage lenders and AMCs. 15 U.S.C. § 1639e(e). A mortgage lender or AMC

involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

Id. The North Carolina Appraisal Board is the applicable State appraiser certifying and licensing agency in this State. N.C. Gen. Stat. § 93E-1-2.1.

21. § 3353 expressly provides that it does not preempt additional State regulation of AMCs. 12 U.S.C. § 3353(b). North Carolina law provides that it is prohibited for AMCs to

influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including...*(8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser...**(9) Any other act or practice that impairs or attempts to impair a real estate appraiser’s independence, objectivity, or impartiality.*

N.C. Gen. Stat. § 93E-2-7 (emphasis added).

22. The North Carolina Appraisers Act also creates and conveys rulemaking authority to the North Carolina Appraisal Board (the “Board”). N.C. Gen. Stat. §§ 93E-1-5(a), 93E-1-10. Pursuant to its rulemaking authority, the Board adopted a rule requiring that “If an appraisal management company decides to remove an independent appraiser from its list of qualified

appraisers, the appraisal management company shall notify the appraiser in writing of the reason for the removal.” 21 N.C. Admin. Code 57D.0311(a) (2013).

23. The Board also adopted a rule governing complaints against appraisers.

If an appraisal management company has a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice, or engaged in unethical conduct, it shall file a complaint with the Board. The complaint shall be filed within 90 days of the date the appraisal is submitted to the appraisal management company.

21 N.C. Admin. Code 57D.0309 (2013).

24. The North Carolina Secure and Fair Enforcement Mortgage Licensing Act (“SAFE Act”) provides that

it shall be unlawful for any person in the course of any residential mortgage loan transaction:...(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan...(11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan...(14) To fail to comply with applicable State and federal laws and regulations related to mortgage lending or mortgage servicing.

N.C. Gen. Stat. § 53-244.111.

25. Upon information and belief, Yadkin is federally insured by the Federal Deposit Insurance Corporation (“FDIC”). Additionally, upon information and belief, Yadkin regularly sells mortgage debt into the secondary mortgage market, including to Fannie Mae and Freddie Mac.

26. As a federally insured entity that is regularly engaged in transactions with federally controlled MBS issuers, Yadkin is subject to federal regulations contained in and promulgated pursuant to FIRREA and Dodd-Frank.

27. Upon information and belief, StreetLinks is a national AMC, registered and doing business in North Carolina. As such it is subject to federal regulations contained in and promulgated under Dodd-Frank. Additionally, StreetLinks is subject to North Carolina regulations applicable to AMCs.

28. Plaintiff contracted with StreetLinks to provide appraisal services. Upon information and belief, Yadkin regularly employs StreetLinks to facilitate appraisal services in North Carolina.

29. On or about December 18, 2012, Plaintiff was engaged by StreetLinks, on behalf of Yadkin, to perform an appraisal on property located at 113 Windsong Drive, Gastonia, North Carolina (the "Windsong Property").

30. During the on-site inspection, Plaintiff was informed by the owner of the Windsong Property that another appraiser had appraised the Windsong Property two weeks before Plaintiff's inspection. The owner further stated that they believed they could not sell the Windsong Property for the amount they had paid to purchase the property, which was \$188,000.

31. Plaintiff appraised the Windsong Property at a market value of \$168,000 as of December 27, 2012.

32. Thereafter, Plaintiff was not requested to review any additional information by either StreetLinks or Yadkin. Additionally, Plaintiff did not receive any requests from a review appraiser, which indicates that neither StreetLinks nor Yadkin requested a review of Plaintiff's appraisal of the Windsong Property. Upon information and belief, proper review protocol is for either StreetLinks or Yadkin to request a review.

33. Upon information and belief, Yadkin, instead of following proper review protocol, ordered a third appraisal through StreetLinks. John A. Harrington Jr. was engaged by StreetLinks to perform an additional appraisal on the Windsong Property. Upon information and

belief, Harrington appraised the Windsong Property at a market value of \$190,000 as of February 1, 2013.

34. Upon information and belief, utilizing the third appraisal, Yadkin closed a mortgage loan of \$167,500 on March 6, 2013, secured by the Windsong Property.

35. On or about December 12, 2012, Plaintiff was engaged by StreetLinks on behalf of Yadkin, to perform an appraisal of property located at 112 Songbird Court, Belmont, North Carolina (the "Songbird Property").

36. Plaintiff, during the on-site inspection, was informed by the owner of the Songbird Property that he knew his property was not worth what Zillow.com was reporting the value to be, which was \$263,000. The owner also stated that he felt sure that the Songbird Property was worth as much or more than the tax value that was reported by the Gaston County Tax Department, which was \$248,000.

37. Plaintiff appraised the Songbird Property to have a market value of \$198,000 as of December 18, 2012.

38. On or about January 14, 2013, Yadkin, through StreetLinks, requested that Plaintiff review four additional comparable sales. Plaintiff specifically addressed each sale and found that each sale was superior in all aspects to the Songbird Property and was therefore not comparable. Just as with the Windsong Property, Plaintiff's appraisal of the Songbird Property was not submitted for review.

39. Upon information and belief, Yadkin subsequently circumvented proper protocol by ordering a second appraisal of the Songbird Property through StreetLinks. Michael Magyar was engaged by StreetLinks to perform the second appraisal. Upon information and belief, Magyar appraised the Songbird Property to have a market value of \$250,000 as of January 28, 2013.

40. Upon information and belief, utilizing the second appraisal, Yadkin closed a mortgage loan of \$200,000 on February 26, 2013, secured by the Songbird Property.

41. On or about January 2, 2013, Yadkin, through its branch manager Nelson E. Thompson, sent an email to Christa Dellinger, a loan officer at Yadkin, stating "Streetlinks has sent out a BUTCHER on two of my last refs [sic]...make sure he is not sent out in our county and make sure he is not on the approval list...I thought I would let him do these two just to see. NOW THE DEALS ARE DEAD. Michael J. McSwain. 'Thanks for my small request.'"

42. Dellinger then sent an email to Brandon Kirkman at StreetLinks requesting that Plaintiff be removed from the list of appraisers who can perform appraisals for Yadkin (the "Approved List").

43. StreetLinks then removed Plaintiff from the Approved List.

44. Subsequently on or about January 2, 2013, Christa Dellinger sent an email to Nelson E. Thompson stating "Done. Sorry for the issues."

45. Thereafter, Nelson E. Thompson forwarded the entire email chain to Patty T. Martin, Rebecca M. White, and Martha Williard, all employees of Yadkin, while also stating "Fyi I have had two cut deeply by appraiser."

46. In response to Thompson's email, White stated that Plaintiff "is a good appraiser and I hate he is been [sic] taken off the list."

47. Plaintiff has since been excluded from performing appraisals for Yadkin.

48. Plaintiff did not receive the notice required by 21 N.C. Admin. Code 57D.0311(a) that he would be excluded from StreetLinks or Yadkin's approved appraiser panel, either prior to or after his removal.

49. Upon information and belief, StreetLinks did not file any complaints with the Board against Plaintiff pursuant to 21 N.C. Admin. Code 57D.0309.

50. Upon information and belief, neither StreetLinks nor Yadkin referred any complaints to the Board about Plaintiff pursuant to 15 U.S.C. § 1639e(e).

51. In addition to being excluded from performing appraisals from January 2, 2013 through the present, Plaintiff did not receive any appraisal orders from Yadkin during the period from September, 28, 2011 until November 13, 2012. Upon information and belief, during this earlier period Plaintiff was also excluded from the Approved List by StreetLinks at the request of Yadkin, its predecessor, or subsidiary.

52. Upon information and belief, Yadkin sought Plaintiff's removal, and Plaintiff was in fact removed from the Approved List because he rendered appraisals that did not meet or exceed a predetermined threshold.

53. Upon information and belief, Yadkin and StreetLinks orchestrated Plaintiff's exclusion to facilitate the provision of inflated appraisals that would allow Yadkin to extend the greatest possible volume of credit. Such under-collateralized debt would then be sold into secondary markets. Yadkin could therefore obtain immediate returns on insufficiently secured debt while also avoiding all credit risk. Meanwhile taxpayers, through Fannie Mae and Freddie Mac, bear the entirety of the credit risk with little chance of receiving a full recovery upon default by selling the collateral.

54. On or about January 17, 2014, Plaintiff made written demand upon Yadkin and StreetLinks. Both Defendants have acknowledged receipt of Plaintiff's demand.

**FIRST CLAIM FOR RELIEF**  
**(Unfair and Deceptive Trade Practices – N.C. Gen. Stat. § 75-1.1)**  
**(Yadkin and StreetLinks)**

55. The allegations of the preceding paragraphs are realleged and incorporated herein by reference.



56. Yadkin committed an unfair or deceptive act or practice by seeking and achieving Plaintiff's exclusion from the Approved List. Yadkin's conduct was a violation of the requirements and standards of various protective statutes and regulations including, but not limited to, 15 U.S.C. § 1639e(b)(3), 15 U.S.C. § 1639e(e), 12 C.F.R. § 226.42, and N.C. Gen. Stat. § 53-244.111.

57. StreetLinks committed an unfair or deceptive act or practice by excluding Plaintiff from the Approved List. StreetLinks' conduct was a violation of the requirements and standards of various protective statutes and regulations including, but not limited to, 15 U.S.C. § 1639e(b)(3), 15 U.S.C. § 1639e(e), 12 C.F.R. § 226.42, 12 U.S.C. § 3353, N.C. Gen. Stat. § 53-244.111, N.C. Gen. Stat. 93E-2-7, 21 N.C. Admin. Code 57D.0311, and 21 N.C. Admin. Code 57D.0309.

58. Defendants' conduct was in or affecting commerce.

59. Defendants' unfair or deceptive act or practice proximately caused damage to Plaintiff in an amount to be determined at trial.

60. By reason of the foregoing, Plaintiff is entitled to recover from Defendants compensatory damages in an amount to be determined at trial but in any event in excess of \$25,000.00, its reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1, and, at its election, treble or punitive damages.

**SECOND CLAIM FOR RELIEF**  
**(Interference with Prospective Economic Advantage)**  
**(Yadkin and StreetLinks)**

61. The allegations of the preceding paragraphs are realleged and incorporated herein by reference.

62. Plaintiff contracted with StreetLinks to provide independent appraisal services to mortgage lenders in North Carolina, including Yadkin.

63. Upon information and belief, on numerous occasions Plaintiff provided independent appraisal services to Yadkin through StreetLinks.

64. Defendants knew of Plaintiff's reasonable expectation that he would continue to provide independent appraisal services to Yadkin through StreetLinks.

65. Defendants knowingly, intentionally, unjustifiably, and in bad faith interfered with Plaintiff's reasonable expectation by excluding him from the Approved List. Defendants' misconduct interfered with Plaintiff's reasonable expectation of commercial advantage.

66. But for Defendants' misconduct, as described above, Plaintiff would have maintained and continued to provide independent appraisal services to Yadkin.

67. As a direct and proximate result of Defendants' misconduct, Plaintiff has been damaged in an amount to be determined at trial.

68. By reason of the foregoing, Plaintiff is entitled to recover from Defendants compensatory and punitive damages in an amount to be determined at trial but in any event in excess of \$25,000.00.

**THIRD CLAIM FOR RELIEF**  
**(Tortious Interference with Contract)**  
**(Yadkin)**

69. The allegations of the preceding paragraphs are realleged and incorporated herein by reference.

70. Plaintiff contracted with StreetLinks to provide independent appraisal services to various mortgage lenders, including Yadkin.

71. Yadkin knew that Plaintiff had a contract with StreetLinks.

72. Yadkin knowingly, intentionally, unjustifiably, and in bad faith induced StreetLinks to exclude Plaintiff from the Approved List.

73. As a direct and proximate result of Yadkin's misconduct, Plaintiff has been damaged in an amount to be proven at trial.

74. By reason of the foregoing, Plaintiff is entitled to recover from Yadkin compensatory and punitive damages in an amount to be determined at trial but in any event in excess of \$25,000.00.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of the Duty of Good Faith and Fair Dealing)**  
**(StreetLinks)**

75. The allegations of the preceding paragraphs are realleged and incorporated herein by reference.

76. In North Carolina, every contract includes an implied duty of good faith and fair dealing.

77. Plaintiff contracted with StreetLinks to provide independent appraisal services to various mortgage lenders, including Yadkin.

78. StreetLinks breached the duty of good faith and fair dealing by wrongfully excluding Plaintiff from the Approved List. StreetLinks conduct was a direct violation of N.C. Gen. Stat. § 53-244.111.

79. As a direct and proximate result of StreetLinks breach, Plaintiff has been damaged in an amount to be proven at trial, but in any event, in excess of \$25,000.00.

**FIFTH CLAIM FOR RELIEF**  
**(Civil Conspiracy)**  
**(Yadkin and StreetLinks)**

80. The allegations of the preceding paragraphs are realleged and incorporated herein by reference.

81. Yadkin and StreetLinks agreed to remove Plaintiff from the Approved List.

82. In orchestrating Plaintiff's removal from the Approved List, Defendants violated the requirements and standards of numerous Federal and State laws including, but not limited to, 15 U.S.C. § 1639e(b)(3), 15 U.S.C. § 1639e(e), 12 U.S.C. § 3353, 12 C.F.R. § 226.42, N.C. Gen. Stat. § 53-244.111, N.C. Gen. Stat. § 93E-2-7, 21 N.C. Admin. Code 57D.0311, and 21 N.C. Admin. Code 57D.0309.

83. Defendants acted in pursuit of a common objective to encourage targeted appraisals.

84. But for Defendants' malicious, willful and wanton conduct, Plaintiff would have continued providing appraisals to Yadkin and would not have suffered injury.

85. By reason of the foregoing, Plaintiff is entitled to recover from Defendants compensatory and punitive damages in an amount to be determined at trial but in any event in excess of \$25,000.00.

WHEREFORE, Plaintiff respectfully prays:

1. that the Court award Plaintiff damages in an amount to be determined at trial;
2. that the Court award Plaintiff punitive damages for Defendants' malicious, willful, or wanton conduct;
3. that the Court award Plaintiff treble damages for Defendants' violations of N.C. Gen. Stat. § 75-1.1, pursuant to N.C. Gen. Stat. § 75-16;
4. that the Court award Plaintiff reasonable attorneys' fees incurred in bringing this action to the full extent permitted by law, including N.C. Gen. Stat. § 75-16.1;
5. that Plaintiff have a trial by jury on all claims triable to a jury by law;
6. that the Court tax the cost of this action against Defendants; and

7. that the Court grant such other and further relief to Plaintiff as the Court deems just and proper.

This the 28th day of February, 2014.

RAYBURN COOPER & DURHAM, P.A.

By: 

James B. Gatehouse

N.C. State Bar No. 22811

Tory I. Summey

N.C. State Bar No. 46437

227 West Trade Street, Suite 1200

Charlotte, NC 28202

Telephone: (704) 334-0891

*Attorneys for Plaintiff Michael J. McSwain*