IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 19-CV-00332-SRB

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH THE NATIONAL ASSOCIATION OF REALTORS, CERTIFICATION OF SETTLEMENT CLASS, AND APPOINTMENT OF CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

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INTRODUCTION

After five years of hard-fought litigation, a jury trial, and extensive arm's-length settlement negotiations, Plaintiffs and the National Association of Realtors ("NAR") reached a global Settlement[1] that provides substantial monetary relief—including a settlement fund of at least $418 million—to a nationwide class of home sellers and requires extensive practice changes that will ultimately benefit future home sellers and buyers. Economists and other market experts have predicted that the Settlement could ultimately save consumers billions of dollars.[2]

The Settlement resolves on a nationwide basis Plaintiffs' claims for damages and injunctive relief against NAR for its alleged anticompetitive practices in the market for residential real estate brokerage services, including Plaintiffs' claims in the above-captioned case, *Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.), *Daniel Umpa v. The National Association of Realtors, et al.*, No. 23-cv-945 (W.D. Mo.), and *Don Gibson v. The National Association of Realtors, et al.*, No. 23-cv-00788 (W.D. Mo.) (collectively, "the Actions"). The Settlement is fair, adequate, reasonable, and beneficial to the Settlement Class, and thus Plaintiffs respectfully move this Court for preliminary approval.

The Settlement creates a non-reversionary settlement fund of at least $418 million plus interest (for a total of at least $693.25 million in proposed settlements thus far in the Actions); requires extensive practice changes, including the complete elimination of cooperative compensation offers on REALTOR® multiple listing services ("MLSs") nationwide; requires NAR to provide valuable cooperation in continuing litigating against other defendants and in

[1] The Agreement is attached as Exhibit A to the Berman Declaration (Ex. 1).
[2] *See, e.g.*, Julian Mark, Aaron Gregg & Rachel Kurzius, *Realtors' Settlement Could Dramatically Change Cost of Housing Sales*, Washington Post, March 15, 2024, https://www.washingtonpost.com/business/2024/03/15/nar-real-estate-commissions-settlement/.

administering the settlement; and provides a mechanism for both REALTOR® and non-REALTOR® MLSs and brokerages to participate in the Settlement, including by agreeing to the practice changes and, in certain cases, paying additional funds for the benefit of the class.

The Settlement was the product of a half-decade litigation and extensive negotiations. The Settlement was informed by weighing the substantial monetary, practice change, and cooperation relief against the risks, cost, and delay of further litigation (including appeals), as well as limitations on NAR's ability to pay the full amount of any trial judgment entered against it.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) certifying a Settlement Class; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) ordering notice to the class.

BACKGROUND

I. THE LITIGATION

The *Moehrl* class action was filed in the Northern District of Illinois on March 6, 2019, on behalf of home sellers who paid a broker commission in connection with the sale of residential real estate listed on 20 Covered MLSs spanning 19 states. (Moehrl Doc. 1). The *Burnett* action was filed in this Court on April 29, 2019, on behalf of home sellers who paid a broker commission in connection with the sale of residential real estate listed on one of four Subject MLSs in Missouri. (Burnett Doc. 1).

The Plaintiffs in both actions alleged that NAR and the nation's largest real estate brokerage firms entered into an unlawful agreement in violation of the Sherman Act, 15 U.S.C. § 1, to artificially inflate the cost of commissions in residential real estate transactions. Specifically, Plaintiffs alleged a longstanding conspiracy among Defendants to agree to NAR rules (a) requiring home sellers to make blanket unilateral offers of compensation to real estate brokers

working with buyers, (b) restraining negotiation of those offers, (c) denying buyers information on the commissions being offered, (d) allowing buyer agents to represent that their services are "free," and (e) incentivizing and facilitating steering by brokers towards high commission listings and away from discounted listings (together, the "Challenged Rules"). Plaintiffs claimed that the Challenged Rules are anticompetitive and caused them to pay artificially inflated broker commissions when they sold their homes. Defendants have denied Plaintiffs' allegations.

Defendants filed motions to dismiss the *Burnett* action on August 5, 2019, and this Court denied their motions on October 16, 2019. (Burnett Doc. 131). Similarly, Defendants filed motions to dismiss the *Moehrl* action on August 9, 2019, and the Court in that action denied their motions on October 2, 2020. (Moehrl Doc. 184). The parties proceeded with discovery.

On April 22, 2022, this Court granted the *Burnett* Plaintiffs' motion for class certification; appointed Scott and Rhonda Burnett, Jerod Breit, Ryan Hendrickson, Jeremy Keel, and Scott Trupiano as class representatives; and appointed Ketchmark & McCreight, Boulware Law LLC, and Williams Dirks Dameron LLC as co-lead class counsel. (Burnett Doc. 741). Hollee Ellis and Frances Harvey joined as class representatives in the *Burnett* action with the Third Amended Complaint (Burnett Doc. 759).

On March 29, 2023, Judge Wood granted the plaintiffs' motion for class certification in the *Moehrl* action, appointed Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh as class representatives, and appointed Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Susman Godfrey LLP as co-lead class counsel. (Moehrl Doc. 403).

The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests

for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and other disputes relevant to obtaining evidence supporting their claims. The parties conducted around 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts supporting their claims and in rebuttal to the nine experts retained by Defendants in each case. Moreover, most experts were deposed in connection with the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The Plaintiffs in both cases have also briefed summary judgment, and the Plaintiffs in *Burnett* proceeded to trial, including against NAR, and briefed post-trial motions. (Ex. 1, Berman Decl. ¶ 10; Ex. 2, Dirks Decl. ¶¶ 13-17).

II. SETTLEMENT NEGOTIATIONS AND MEDIATION

Class Counsel and counsel for NAR engaged in extensive arm's-length settlement negotiations that lasted nearly four years. These included several telephonic and in-person mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a mediation with a federal magistrate judge. Although these mediations did not directly result in a Settlement, the Parties continued to engage directly through multiple intensive in-person and telephonic negotiations over several months, from November 2023 through March 15, 2024, when they ultimately reached an agreement on the Settlement. (Berman Decl. ¶¶ 8-9; Dirks Decl. ¶ 18).

The Settling Parties reached the Settlement Agreement after considering the risks and costs of continued litigation, including appeals and a potential bankruptcy. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed supports their claims. Plaintiffs and counsel, however, also recognize the myriad of risks and delay of further

proceedings in a complex case like this, and believe that the Settlement confers substantial benefits upon the Settlement Class Members. (Berman Decl. ¶ 7, 12; Dirks Decl. ¶¶ 7, 19-21). Moreover, Plaintiffs and counsel conducted a thorough financial analysis of NAR's ability to pay, which reflected limits on the monetary recovery feasible through either settlement or continued litigation. (Berman Decl. ¶ 12; Dirks Decl. ¶ 19).

III. SUMMARY OF THE SETTLEMENT AGREEMENT

A. Settlement Class

The proposed Settlement Class in the Settlement Agreement includes all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN MLS: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or PIN MLS: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice.

(Agreement ¶ 21).

The Settlement Class period is based on federal and state law limitations periods potentially applicable to sellers of homes located in particular states and on various MLS running from the filing of the *Moehrl, Burnett, Gibson, Nosalek* actions covering those particular states and MLSs.

B. Settlement Amount

The Settlement provides that NAR will pay a Total Settlement Amount of $418 million plus interest for the benefit of the Settlement Class. This amount is inclusive of all costs of settlement, including payments to class members, attorneys' fees and costs, service awards for current and former class representatives (including Settlement Class Representatives), and costs of notice and administration. (Agreement ¶ 24).

The Total Settlement Amount is non-reversionary; once the Settlement is finally approved by the Court and after administrative costs, litigation expenses, and attorneys' fees are paid, the net funds will be distributed to Settlement Class Members with no amount reverting back to NAR, regardless of the number of claims made. (Agreement ¶ 46).

C. Changes to Business Practices

The Settlement requires NAR (and its affiliates, as a condition of any release) to make several significant practice changes.

Among these required practice changes is the complete elimination of cooperative compensation offers from REALTOR® MLSs. In particular, NAR must eliminate any existing requirements, and is required to prohibit REALTOR® MLSs and Member Boards from adopting any requirements, that (i) "listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers)"; or that compensation "offers, if made, must be blanket, unconditional, or unliteral." (Agreement ¶ 58(i)). As part of these changes, NAR must require that REALTOR® MLSs "eliminate all broker compensation fields on the MLS" and "prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives . . . . via any other REALTOR® MLS field." (Agreement ¶ 58(iii)). NAR must also "eliminate and prohibit any requirements conditioning participation or membership in a

REALTOR® MLS on offering or accepting offers of compensation to buyer brokers or other buyer representatives." (Agreement ¶ 58(iv)). In addition, NAR must prohibit anyone using an MLS from making cooperative compensation offers on the MLS. (Agreement ¶ 58(ii)(a)).

The required practice changes also prevent NAR, Member Boards, and REALTOR® MLSs from recreating an MLS-like system under a different name and from facilitating others' efforts to do so. (Agreement ¶ 58(v)). This includes express restrictions on: (i) providing "listing information to an internet aggregator" that uses it to facilitate listing brokers or sellers making cooperative compensation offers; and (ii) "providing data or data feeds" to a REALTOR® or REALTOR® MLS Participant where this data is used to facilitate offers of compensation on listings from more than one brokerage.

In addition, the practice changes require increased pricing transparency to sellers and buyers. Before touring a home with a buyer, all REALTOR® MLS Participants working with buyers must enter into a written agreement that specifies and "conspicuously discloses the amount or rate of compensation" the broker will receive "from any source." (Agreement ¶ 58(vi), (a)) Moreover, that amount "must be objectively ascertainable and may not be open-ended (e.g., 'buyer broker compensation shall be whatever amount the seller is offering to the buyer')." (Agreement ¶ 58(vi)(b)). And such a Realtor "may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer." (Agreement ¶ 58(vi)(c)). With respect to sellers, REALTORS® and REALTOR® MLS Participants must "conspicuously disclose" and obtain advance, written approval for "any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers" and must specify the "the amount or rate of any such payment." (Agreement ¶ 58(viii)).

NAR must also generally "prohibit REALTORS® and REALTOR® MLS Participants from representing to a client or customer that their brokerage services are free or available at no cost to their clients" and must generally require them to "disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable" including in listing agreements, buyer representation agreements, and pre-closing disclosure documents. (Agreement ¶ 58(ix)).

NAR must also adopt, for the first time, rules expressly and directly prohibiting steering by REALTORS® and REALTOR® MLS Participants, including that they "must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered . . . ." (Agreement ¶ 58(x)).

Moreover, the Agreement includes several monitoring and enforcement mechanisms and incentives. As a condition for obtaining releases under the Settlement, REALTORS®, REALTOR® Member Boards, and REALTOR® MLSs must not only comply with the relevant practice changes, but they must also "agree[] to provide ***proof*** of such compliance if requested by Co-Lead Counsel" (Agreement ¶ 18(b), (c), (d)). In addition, the Settlement Agreement requires NAR to track whether certain of its affiliates have satisfied the conditions for obtaining a relief. It affords "[a]ny Settlement Class Member . . . the right to inquire of [NAR] as to whether a Person is a REALTOR®, REALTOR-Associate® Member, or REALTOR® Member Board and has satisfied the conditions for being a 'Released Party,'" and requires NAR to "promptly provide this information." (Agreement ¶ 18(b)). It also requires NAR to "develop educational materials" consistent with "each provision in these practice changes, and to eliminate any contrary materials." (Agreement ¶ 58(xiii)).

These practice changes have been cited as changes that will "drive down housing costs."

Debra Kamin, *Powerful Realtor Group Agrees to Slash Commissions to Settle Lawsuits*, New York Time, March 15, 2024, https://www.nytimes.com/2024/03/15/realestate/national-association-realtors-commission-settlement.html. *See also*, Scott Horsley, *Buying or Selling a Home? How the Real Estate Fee Structure Impacts You,* NPR, March 22, 2024, https://www.npr.org/2024/03/22/1239486107/realtor-fee-commission-homes-for-sale ("Overall expenses are expected to be significantly lower."); Julian Mark, Aaron Gregg & Rachel Kurzius, *Realtors' Settlement Could Dramatically Change Cost of Housing Sales*, Washington Post, March 15, 2024, https://www.washingtonpost.com/business/2024/03/15/nar-real-estate-commissions-settlement/.

Plaintiffs agreed to these practice changes in consultation with leading experts, including Profs. Einer Elhauge and Roger Alford. Dr. Elhauge is a Professor of Law and Economics at Harvard University, was the Chairman of President Obama's Antitrust Advisory Committee, and is well regarded as a leading mind in economics and the law in the United States. Prof. Roger P. Alford is Professor of Law at University of Notre Dame and a former Deputy Assistant Attorney General at the Antitrust Division of the U.S. Department of Justice.

D. Cooperation Requirements

In addition to providing for substantial monetary payments and meaningful injunctive relief, the Settlement Agreement obligates NAR to cooperate with Plaintiffs in the further prosecution of their claims against the Defendants who remain in the Actions, including to the extent that any is consolidated by the Judicial Panel on Multidistrict Litigation, which remaining Defendants are each jointly and severally liable for *all* damages caused by the alleged conspiracy. NAR's cooperation includes the following: (1) providing up to 6 current officers or employees to participate as witnesses in depositions and trial; (2) using reasonable efforts to authenticate

documents and establish that those documents are admissible; (3) permitting the use of discovery materials obtained in *Burnett* and *Moehrl*; and (4) providing additional document discovery. (Agreement ¶ 61). Additionally, MLSs that are released by the Settlement will also be required to provide relevant class member and listing data and answer questions about that data to support the provision of Class Notice, administration of any settlements, or the litigation of the Actions. (Agreement ¶ 69)

E. Release of Claims Against NAR, its Members, and Participating Entities

Upon entry of a final judgment approving the Settlement, the Settlement Agreement will release and discharge: (i) NAR; (ii) NAR's Members, Associate Members, and its Member Boards that do not operate an unincorporated MLS on certain conditions, including that they agree to abide by applicable practice changes; (iii) REALTOR® MLSs, as defined in the Settlement Agreement, on certain conditions, including that they agree to abide by applicable practice changes; (iv) any non-REALTOR® MLSs, as defined in the Settlement Agreement, but only on certain conditions, including that they agree to practice changes and pay an additional amount for the benefit of the Class as outlined in Appendix D; (v) real estate brokerages that, together with their affiliates, have $2 billion or less in total sales volume who have a Realtor as a Principal and comply with the practice changes; and (vi) real estate brokerages with a REALTOR® Principal that, together with their affiliates, have over $2 billion in total sales volume but only on certain conditions, including that they agree to practice changes and pay an additional amount for the benefit of the Class as outlined in Appendix C. (Agreement ¶¶ 18).

The Settlement Agreement, if approved, ends litigation with NAR, and to the extent that they comply with the relevant terms of the Settlement Agreement, state, local, and territorial REALTOR® associations, many of NAR's members, REALTOR® MLSs, and small brokerages.

It also provides a framework for larger brokerages and non-REALTOR® MLSs to resolve potential liabilities. Importantly, any entity receiving a release must agree to practice changes described in the Settlement.[3]

F. Application for Award of Attorneys' Fees, Costs, and Class Representative Service Awards

The Settlement authorizes Settlement Class Counsel to seek to recover their attorneys' fees and costs incurred in prosecuting the Actions, as well as to seek service awards for current and former class representatives, including the Settlement Class Representatives. (Agreement ¶ 43). Following the Court's preliminary approval of the Settlement and issuance of notice, Class Counsel will apply to the Court for an award of attorneys' fees, costs, and potentially for service awards, to be paid out of the Settlement Fund. (Agreement ¶ 43)

IV. THE CLASS DEFINITION CONTEMPLATED BY THE SETTLEMENT SATISFIES RULE 23, AND THE CLASS SHOULD BE CERTIFIED

Certifying a nationwide Settlement Class is appropriate here, where the Settlement Class members are all home sellers who allegedly suffered the same or similar harms as those alleged in the *Burnett* and *Moehrl* cases from the same defendants.

A. Class Definition

This Court previously certified under Rule 23(b)(3) the following class antitrust claim class:

> All persons who, from April 29, 2015 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc.,

[3] The Settlement Agreements also expressly exclude from the Release a variety of individual claims that Class Members may have concerning product liability, breach of warranty, breach of contract, or tort of any kind (other than a breach of contract or tort based on any factual predicate in this Action). Also exempted are any "individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence, or other tort claim, other than a claim that a Class Member paid an excessive commission or home price due to the claims at issue in these Actions." (Agreement ¶ 36).

> Realogy Holdings Corp., RE/MAX LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a home listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer's broker in connection with the sale of the home;

The Subject MLSs in the *Burnett* action were four MLSs in Missouri.

The *Moehrl* Court previously certified the following damages class under Federal Rule of Civil Procedure 23(b)(3):

> Home sellers who paid a commission between March 6, 2015, and December 31, 2020, to a brokerage affiliated with a Corporate Defendant in connection with the sale of residential real estate listed on a Covered MLS and in a covered jurisdiction. Excluded from the class are (i) sales of residential real estate for a price below $56,500, (ii) sales of residential real estate at auction, and (iii) employees, officers, and directors of defendants, the presiding Judge in this case, and the Judge's staff.

(Moehrl Doc. 403). In addition, the *Moehrl* Court previously certified the following injunctive relief class under Federal Rule of Civil Procedure 23(b)(2):

> Current and future owners of residential real estate in the covered jurisdictions who are presently listing or will in the future list their home for sale on a Covered MLS. Excluded from the class are (i) sales of residential real estate for a price below $56,500, (ii) sales of residential real estate at auction, and (iii) employees, officers, and directors of defendants, the presiding Judge in this case, and the Judge's staff. (*Id*.)

The Covered MLSs in the *Moehrl* action are 20 MLSs spanning 19 states across the United States.

The *Gibson* case asserts nationwide classes on behalf of: all persons in the United States who, from October 31, 2019, through the present, used a listing broker affiliated with any Corporate Defendant in the sale of a home listed on an MLS, and who paid a commission to the buyer's broker in connection with the sale of the home.

The Settlement is conditioned upon the Court certifying a class for settlement purposes only that is, in some ways, broader than the litigation classes certified in the Actions, as to this Settlement only, including in the following respects: (a) the class is nationwide in scope, while *Burnett* and *Moerhl* were limited to specific MLSs; (b) sellers regardless of the broker used (rather

than only those affiliated with the Defendants); (c) a date range that generally extends to the date of notice; and (d) a date range in some states that extends beyond the federal statute of limitations for antitrust claims. The proposed Settlement Class definition, pursuant to Rule 23(b)(3) is as follows:

> all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:
>
> - Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
> - Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
> - Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
> - Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2018 to date of Class Notice;
> - Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2017 to date of Class Notice;
> - For all other homes: October 31, 2019 to date of Class Notice.

(Agreement ¶ 21).

The Settlement Class definition satisfies the requirements of Rule 23(a) and 23(b)(3). Accordingly, Plaintiffs request that the Court certify the Settlement Class for settlement purposes.

B. Legal Standard for Modifying the Class Definition

The Court has authority under Rule 23 to certify a nationwide settlement class here. Even in the litigation context, courts may certify a class broader than the one alleged in the complaint. *See, e.g., Chapman v. First Index, Inc.*, 796 F.3d 783, 785 (7th Cir. 2015) (Easterbrook, J.) (explaining that the "obligation to define the class falls on the judge's shoulders" and "motions practice and a decision under Rule 23 do not require the plaintiff to amend the complaint"); *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d 152 (S.D.N.Y. 2018) ("consistent

with the certifying court's broad discretion over class definition," adopting "the class definition that Plaintiffs propose in their motion for class certification [even though] it expands upon the definition found in the Amended Complaint").

In the settlement context, courts regularly certify broader classes. *See, e.g.*, *In re Gen. Am. Life Ins. Co. Sales Pracs. Litig*., 357 F.3d 800, 805 (8th Cir. 2004) ("There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this."); *Smith v. Atkins*, 2:18-cv-04004-MDH (W.D. Mo.); *Spann v. J.C. Penney Corp*., 314 F.R.D. 312, 320 (C.D. Cal. 2016); *In re TFT-LCD (Flat Panel) Antitrust Litig*., No. 07-cv-1827, 2011 WL 13152270, at *9 (N.D. Cal. Aug. 24, 2011) ("For the history of class certifications, courts have generally certified settlement classes broader than the previously-certified litigation classes; the claims released are typically more extensive than the claims stated. Courts have noted that the concerns about manageability and/or the class-wide applicability of proof (which can serve to limit or defeat class certification for trial) are in large part no longer relevant when establishment of a defendant's liability is replaced by a settlement."); *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 661 (E.D. Va. 2001) (certifying settlement class broader than previously certified litigation class); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 172 (same).

Often, broad classes are a practical prerequisite to reaching any settlement because a defendant will not agree to any meaningful settlement unless it can obtain global peace. *See, e.g.*, *Albin v. Resort Sales Missouri, Inc*., No. 20-03004-CV-S-BP, 2021 WL 5107730, at *5 (W.D. Mo. May 21, 2021) (reasoning that the absence of "a single nationwide class action" would "discourage class action defendants from settling" (quotation omitted)); *accord Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 103 n.5, 106 (2d Cir. 2005) ("Broad class action settlements are common,

since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country. Practically speaking, class action settlements simply will not occur if the parties cannot set definitive limits on defendants' liability" (quotation omitted)) (affirming nationwide settlement in an antitrust case); *Sullivan v. DB Invs., Inc*., 667 F.3d 273, 310-11 (3d Cir. 2011) (en banc) ("[Without] global peace . . . there would be no settlements." (affirming nationwide settlement in an antitrust case)). Conversely, because global peace is most valuable to defendants, defendants will pay more to obtain it, thus benefitting class members. *See, e.g., Rawa v. Monsanto Co*., 934 F.3d 862, 869 (8th Cir. 2019) (noting that each California class member received more under the nationwide settlement than they sought under the abandoned statewide class); *In re BankAmerica Corp. Sec. Litig*., 210 F.R.D. 694, 705 (E.D. Mo. 2002) ("[Defendants] paid both classes of plaintiffs more in the instant global settlement out of a desire to obtain 'total peace' than they would have paid either group plaintiffs individually.").

Here, certifying a nationwide class covering all multiple listing services is warranted for several reasons. First, the impact of the antitrust harm is nationwide, so a nationwide settlement is justified. Second, Plaintiffs have conducted extensive discovery into the alleged nationwide conspiracy and have thoroughly litigated the claims, providing a robust factual record on which to assess the claims and base negotiations, including expert testimony that the alleged conspiracy affected home sales across the country, regardless of which multiple listing service was used. Third, Plaintiffs could have made nationwide allegations cover all multiple listing services in this action. Fourth, a nationwide settlement will conserve judicial and private resources. 7B Wright & Miller, Federal Practice & Procedure § 1798.1 (3d ed. 2005) ("Clearly, a single nationwide class action seems to be the best means of achieving judicial economy."). Fifth, class members will be fully apprised of the settlement class definition through the notice process.

C. The Proposed Settlement Class Satisfies Rule 23(a)

The Settlement Class must satisfy the four requirements of Rule 23(a) and one of the subsections of Rule 23(b). *See Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *Burnett v. Nat'l Ass'n of Realtors*, No. 19-cv-00332, 2022 WL 1203100, at *4 (W.D. Mo. Apr. 22, 2022). The Court should grant certification here because the proposed Settlement Class satisfies Rule 23(a) and (b)(3). Provisional certification will allow the Settlement Class to receive notice of the Settlement and its terms, including the rights of Class Members to submit a claim and recover a class award if the Settlement is finally approved, to object to and/or be heard on the Settlement's fairness at the Fairness Hearing, or to opt out.

1. Numerosity

As set forth in *Burnett* Plaintiffs' previous class certification briefing before this Court, Rule 23(a)(1) requires that "the class be so numerous that joinder of all members is impracticable." "[A] plaintiff does not need to demonstrate the exact number of class members as long as a conclusion is apparent from good faith estimates." *Hand v. Beach Entertainment KC, LLC*, 456 F. Supp. 3d 1099, 1140 (W.D. Mo. 2020). Although the Eighth Circuit has not established strict requirements regarding the size of a proposed class, *see Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559 (8th Cir. 1982), class sizes as small as forty have satisfied this requirement. *Rannis v. Rechia*, 380 Fed. App'x 646, 651 (9th Cir. 2010).

Here, the Settlement Class Members number in the millions, dispersed across the United States. Moreover, this Court and the *Moehrl* Court previously held that litigation classes that are smaller than the Settlement Class at issue here satisfy the numerosity requirement. *See Burnett*, 2022 WL 1203100, at *19; *Moehrl v. Nat'l Ass'n of Realtors*, No. 19-cv-01610, 2023 WL 2683199, at *11 (N.D. Ill. Mar. 29, 2023). Thus, the Settlement Class plainly satisfies Rule

23(a)(1)'s numerosity requirement.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Plaintiffs must show that resolution of an issue of fact or law "is central to the validity of each" class member's claim; "[e]ven a single [common] question will" satisfy the commonality requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011); *see also Paxton*, 688 F.2d at 561 (8th Cir. 1982) ("The rule does not require that every question of law or fact be common to every member of the class"). "In the antitrust context, courts have generally held that an alleged conspiracy or monopoly is a common issue that will satisfy Rule 23(a)(2) as the singular question of whether defendants conspired to harm plaintiffs will likely prevail." *D&M Farms v. Birdsong Corp.*, No. 2:19-cv-463, 2020 WL 7074140, at *3 (E.D. Va. Dec. 1, 2020).

Here, the Court previously held that there are many issues common to the *Burnett* classes, including (1) whether Defendants engaged in a conspiracy to artificially inflate the cost of commissions in residential real estate transactions; (2) whether the conspiracy violates Section 1 of the Sherman Act; (3) the duration, scope, extent, and effect of the conspiracy; (4) whether a per se or rule of reason analysis should apply; and (5) whether Plaintiffs and other members of the Classes are entitled to, among other things, damages, and/or injunctive relief. *See Burnett*, 2022 WL 1203100, at *5. Similarly, the *Moehrl* Court found that the commonality requirement was met based on the common question "whether Defendants conspired to artificially inflate the buyer-broker commissions paid by the class by adopting the Challenged Restraints, in violation of § 1 of the Sherman Act." *Moehrl*, 2023 WL 2683199, at *11. These common issues exist with respect to the Settlement Class as they did with respect to the classes initially certified in the *Burnett* and *Moehrl* actions. *See, e.g.*, *Hughes v. Baird & Warner, Inc*, No. 76-cv-3929, 1980 WL 1894, at *2

(N.D. Ill. Aug. 20, 1980) ("The obvious question of fact common to the entire class is whether or not a conspiracy existed. This question will most probably predominate the entire lawsuit."). In particular, the conduct of NAR that is being challenged generally centers on rules adopted nationwide and applying to Realtors nationwide.

3. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical" of Class Members' claims. "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995); *Burnett*, 2022 WL 1203100, at *6. Rule 23(a)(3) "requires a demonstration that there are other members of the class who have the same or similar grievances as the plaintiff." *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 830 (8th Cir. 1977). "In the antitrust context, typicality is established when the named plaintiffs and all class members alleged the same antitrust violations by defendants. Specifically, named plaintiffs' claims are typical in that they must prove a conspiracy, its effectuation, and damages therefrom – precisely what the absent class members must prove to recover." *Hyland v. Homeservices of Am., Inc.*, No. 3:05-cv-612, 2008 WL 4858202, at *4 (W.D. Ky. Nov. 7, 2008) (internal citations and quotations omitted); *Burnett*, 2022 WL 1203100, at *6.

This Court previously held that *Burnett* Plaintiffs' claims are typical of members of the *Burnett* classes. Similarly, here, Plaintiffs' claims are typical of members of the proposed Settlement Class. Each Settlement Class Member sold a home that was listed on an MLS in the United States. Settlement Class Members' claims arise out of a common course of misconduct by Defendants; they all paid a commission when they sold their homes that was inflated by Defendants' conduct. As such, Rule 23(a)(3) is satisfied.

4. Adequacy

Rule 23(a)(4) requires that, for a case to proceed as a class action, the court must find that "the representative parties will fairly and adequately protect the interests of the class." This inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157–58 n.13 (1982)). For a conflict to defeat class certification, the conflict "must be more than merely speculative or hypothetical," but rather "go to the heart of the litigation." *Gunnells*, 348 F.3d at 430-31 (citation omitted).

As with the classes earlier certified in the Actions, *Burnett*, 2022 WL 1203100, at *1; *Moehrl*, 2023 WL 2683199, at *11, there is no conflict here; the interests of Plaintiffs are aligned with those of Settlement Class Members. Plaintiffs, like all Settlement Class Members, share an overriding interest in obtaining the largest possible monetary recovery, the most effective practice changes, and the most helpful cooperation from NAR. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) ("[S]o long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes."). Moreover, because any non-nationwide settlement would have left NAR exposed to litigation involving claims exceeding its ability to pay, the only feasible means for Plaintiffs to obtain *any settlement at all* was to settle on a nationwide basis on behalf of the entire Settlement Class. Finally, Plaintiffs are not afforded any special or unique compensation by the proposed Settlement Agreements. As such, Rule 23(a)(4) is satisfied.

D. The Proposed Settlement Class Satisfies Rule 23(b)(3)

Once Rule 23(a)'s four prerequisites are met, Plaintiffs must demonstrate that the proposed Settlement Class satisfies Rule 23(b)(3). Specifically, Plaintiffs must show that "questions of law

or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Plaintiffs have done so.

1. Predominance

"The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation . . . and goes to the efficiency of a class action as an alternative to individual suits." *Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 479 (8th Cir. 2016) (internal citations omitted). The predominance question at class certification is not whether Plaintiffs have already proven their claims through common evidence. *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 618 (8th Cir. 2011). Rather it is whether questions of law or fact capable of resolution through common evidence predominate over individual questions. *Id.*

"[W]hether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019). "[T]he predominance requirement is relaxed in the settlement context." *In re Pre-Filled Propane Tank Antitrust Litig*., No. 14-02567, 2019 WL 7160380, at *4 (W.D. Mo. Nov. 18, 2019); *see also Holt v. CommunityAmerica Credit Union*, No. 4:19-cv-00629, 2020 WL 12604383, at *4 (W.D. Mo. Sept. 4, 2020). When a class is being certified for settlement, "a district court need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. 591 at 620. Therefore, as courts in this circuit recognize, "When a class is being certified for settlement, the Court need only analyze the predominance of common questions of law and the superiority of class action for fairly and effectively resolving the controversy; it need not examine Rule 23(b)(3)(A–D) manageability issues, because it will not be managing a class action trial. *In re Zurn Pex Plumbing Prod. Liab. Litig.*, No. 08-MDL-1958, 2013

WL 716088, at *5 (D. Minn. Feb. 27, 2013). For example, in *Zurn Pex*, the district court found that common issues predominated because class representatives and members of the settlement class all sought to remedy a "shared legal grievance." *Id.*

Indeed, the Eighth Circuit, in rejecting objections to another class action settlement, stated that "the interests of the various plaintiffs do not have to be identical to the interests of every class member." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999). Instead, the Eighth Circuit emphasized that certification of a settlement class was appropriate where "all of the plaintiffs seek essentially the same things: compensation for damage already incurred, restoration of property values to the extent possible, and preventive steps to limit the scope of future damage." *Id.*

Here, all Plaintiffs seek to remedy the same grievance—widespread conduct by NAR throughout the United States that has resulted in supracompetitive broker commission rates. This conduct includes nationwide policies enacted by NAR, including nationwide MLS rules that mandate blanket unilateral offers of compensation to cooperating brokers that, before this Settlement, existed in MLSs throughout the United States. All Plaintiffs seek the same relief—compensation for the higher broker rates that they have had to pay, as well as systemic reforms that address the underlying conduct.

Common issues also predominate for each element that Plaintiffs must prove to prevail in an antitrust case: (1) a violation of the antitrust laws; (2) the impact of the unlawful activity; and (3) measurable damages. *See, e.g.*, *Burnett*, 2022 WL 1203100, at *10. First, as discussed above, all members of the Settlement Class share the same legal grievance—a violation of the antitrust laws by Defendants. Second, this Court has already recognized that "the fact of antitrust impact can be established through common proof . . . ." *Burnett*, 2022 WL 1203100, at *11 (quoting *In re*

Nexium Antitrust Litig., 777 F.3d 9, 18 (1st Cir. 2015). *Burnett* and *Moehrl* Plaintiffs have already "shown the existence of common questions concerning antitrust impact that can be answered with common evidence" (*Moehrl*, 2023 WL 2683199, at *19; *Burnett*, 2022 WL 1203100, at *12), including expert opinions, analyses of residential real estate transactions in foreign benchmark countries, and transaction data from Defendants and MLSs. At bottom, evidence of impact from the fact that commissions in the United States are higher than international markets is common to the nationwide settlement class. Third, all or nearly all members of the Settlement Class have been damaged by paying inflated commissions as a result of the Challenged Rules or other similar rules or by paying any commission to a buyer broker. The experts in both the *Burnett* and *Moehrl* actions presented reliable methods of measuring damages as the difference between the amount Class Members paid for buyer broker commissions in the actual world versus what they would have paid in the but-for world. The same type of methodology can be used for the broader Settlement Class.

2. Superiority of a Class Action

In addition to the predominance of common questions, Rule 23(b)(3) requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Factors relevant to the superiority of a class action under Rule 23(b)(3) include: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

In this case, the first three factors weigh heavily in favor of class certification. First, Class Members have little economic incentive to sue individually based on the amount of potential

recovery involved, and any Settlement Class Member who wishes to opt out will have an opportunity to do so. Second, there are few known existing individual lawsuits filed by Settlement Class Members. Third, judicial efficiency is served by approving the Settlement. It would be inefficient—for both the Court and the parties—to engage in millions of individual trials involving similar claims. "Requiring individual Class Members to file their own suits would cause unnecessary, duplicative litigation and expense, with parties, witnesses and courts required to litigate time and again the same issues, possibly in different forums." *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. at 240.

Finally, the Supreme Court has found that when certifying a settlement class "a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Such is the case here. If approved, the Settlement Agreements would obviate the need for a trial against NAR, and thus questions concerning that trial's manageability are irrelevant. Accordingly, the Court should certify the Settlement Class.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

Federal Rule of Civil Procedure 23(e) sets out a two-part process for approving class settlements. This case is at the first stage of the approval process, often called "preliminary approval," where the Court decides if it is "likely" to approve the Settlement such that notice of the Settlement should be sent to the class. Fed. R. Civ. P. 23(e)(1)(B). At this stage, the Court does not make a final determination of the merits of the proposed Settlement. Full evaluation is made at the final approval stage, after notice of the Settlement has been provided to the members of the class and those class members have had an opportunity to voice their views. At this first stage, the

parties request that the Court grant "preliminary approval" of the Settlement and order that notice be directed to the Settlement Class.

As a general matter, "the law strongly favors settlements. Courts should hospitably receive them." *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990) (noting it is especially true in "a protracted, highly divisive, even bitter litigation"). Courts adhere to "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." 4 Newberg on Class Actions § 11.41; *see also Petrovic*, 200 F.3d at 1148 (8th Cir. 1999) ("A strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor."); *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) ("A settlement agreement is 'presumptively valid.'" (quoting *In re Uponor, Inc., F1807 Plumbing Fittings Products Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013)); *Sanderson v. Unilever Supply Chain, Inc.*, 10-cv-00775-FJG, 2011 WL 5822413, at *3 (W.D. Mo. Nov. 16, 2011) (crediting the judgment of experienced class counsel that a settlement was fair, reasonable, and adequate). The presumption in favor of settlements is particularly strong "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005).

The standard for reviewing a proposed settlement of a class action is whether it is "fair, reasonable, and adequate." *Wireless II*, 396 F.3d at 932. The Eighth Circuit has set forth four factors that a court should review in determining whether to approve a proposed class action settlement: "(1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement." *Id.* (citing *Grunin*, 513 F.2d at 124; *Van Horn v.*

Trickey, 840 F.2d 604, 607 (8th Cir. 1988)). "The views of the parties to the settlement must also be considered." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995).

A. The Merits of Plaintiffs' Cases, Weighed Against the Terms of the Settlement

The parties naturally dispute the strength of their claims and defenses. The Settlement reflects a compromise based on the parties' educated assessments of their best-case and worst-case scenarios, and the likelihood of various potential outcomes. Plaintiffs' best-case scenario is prevailing and recovering on the merits at trial in *Moehrl, Gibson, and Umpa*, and upholding their award on appeal in those cases, as well as in *Burnett*. But "experience proves that, no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict, particularly in complex antitrust litigation." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 523 (E.D. Mich. 2003). The same is true for post-trial motions and appeals. And being liable alone for the compete amount of alleged damages in any one of these cases would bankrupt NAR.

Against this risk, the Settlement provides for a recovery of $418 million plus interest from NAR. As discussed in detail below, the Settlement is supported by the financial condition of NAR, which lacks the ability to pay the full damages sought in any of the Actions.

The Settlement further provides historic changes to NAR's (and its members') practices as outlined above, including elimination of cooperative compensation from REALTOR® MLSs nationwide.

Plaintiffs also secured cooperation from NAR in prosecuting their remaining claims in the Actions—where Plaintiffs will seek to secure additional monetary and non-monetary relief from other Defendants. As courts recognize, this is a significant factor in approving settlements. *See In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (approving settlement in light of settling defendant's "assistance in the case against [a non-settling defendant]"); *see generally In*

re IPO Sec. Litig., 226 F.R.D. 186, 198–99 (S.D.N.Y. 2005) (recognizing the value of cooperating defendants in complex class action litigation).

Finally, the Settlement's terms were reached following arm's-length negotiations that occurred over a period of multiple years, including nearly a year of intensive negotiations, and involved the assistance of multiple well-respected mediators. Plaintiffs held several mediation sessions with NAR as well as several multi-day direct negotiations, several of which were attended by senior NAR executives including its General Counsel and CEO. (Dirks Decl. ¶ 19). "When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable." *Marcus v. Kansas*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002).

B. NAR's Financial Condition

The Settlement is fair and reasonable in light of NAR's financial condition and its inability to satisfy even the *Burnett* judgment. (Berman Decl. ¶ 12; Dirks Decl. ¶ 19). The Settlement obtains greater than 50% of NAR's net assets. *See* NAR Form 990. Thus, the Settlement captures an amount that represents a majority of NAR's liquid assets, without completely depleting the working capital the organization requires to operate. This is especially so where NAR anticipates a decline in future membership revenues as a result of this Settlement and current market conditions.

C. The Complexity and Expense of Further Litigation

Plaintiffs' claims raise numerous complex legal and factual issues under antitrust law. This is reflected in the parties' voluminous briefing to date, which includes extensive class certification and summary judgment briefing in both *Moehrl* and *Burnett*, as well as post-trial briefing in *Burnett*. In addition, the parties have engaged in extensive appellate briefing, including (rejected)

Rule 23(f) petitions in both *Moehrl* and *Burnett*, as well as two separate appeals in the *Burnett* litigation concerning arbitration issues. Furthermore, even after the *Burnett* trial, NAR was poised to mount a strenuous appeal. In *Moehrl*, trial against NAR was imminent. By contrast, the Settlement ensures recovery to the Class that will be allocated and distributed in an equitable manner. In light of the many uncertainties still pending in the litigation, an equitable and certain recovery is highly favorable, and weighs in favor of approving the proposed Settlement. (Berman Decl. ¶¶ 7-10; Dirks Decl. ¶ 7, 12-20).

D. The Amount of Opposition to the Settlement

The Settlement Class Representatives have approved the terms of the Settlement. (Berman Decl. ¶ 13; Dirks Decl. ¶ 21). Notice regarding the Settlement has not yet been distributed. In the event any objections are received after notice is issued, they will be addressed by Plaintiffs' counsel as part of the final approval process.

E. The Settlement Also Satisfies the Rule 23(e) Factors

In addition to the *Van Horn* factors used by the Eighth Circuit, courts in this district also routinely consider the overlapping Rule 23(e)(2) factors:

> (A) the Class Representatives and Class Counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the Class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the Class, including the method of processing Class-Member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Settlement satisfies each of these factors. First, Settlement Class Representatives and Class Counsel have adequately represented the Class. Indeed, both this Court and the *Moehrl* Court previously appointed Settlement Class Counsel as class counsel on behalf of the *Burnett* and *Moehrl* classes at the class certification stage. Both courts have also previously appointed the proposed Settlement Class Representatives as representatives on behalf of the respective classes. *Burnett*, 2022 WL 1203100; *Moehrl*, 2023 WL 2683199. Second, as discussed above, the Settlement was negotiated at arm's length over a lengthy period of time. Third, for the reasons stated above, the relief provided to the Class is adequate. The Settlement provides for a significant financial recovery for the Settlement Class, especially considering NAR's limited financial resources. Furthermore, the Settlement includes practice changes that benefit consumers. Fourth, the Settlement treats Class Members fairly and equitably relative to each other.

VI. THE COURT SHOULD APPOINT CO-LEAD CLASS COUNSEL FOR THE CERTIFIED CLASSES IN *BURNETT* AND *MOEHRL* AS CO-LEAD COUNSEL FOR THE SETTLEMENT CLASS

Fed R. Civ. P. 23(g) requires a court certifying a case as a class action to appoint class counsel. Plaintiffs respectfully request that the Court appoint *Burnett* and *Moehrl* Lead Counsel as Settlement Class Counsel, namely Ketchmark & McCreight, Boulware Law LLC, Williams Dirks Dameron LLC, Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Susman Godfrey LLP. Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. (Berman Decl. ¶¶ 3; Dirks Decl. ¶¶ 2-3). Moreover, as detailed above, they have diligently prosecuted this case for five years, handling, among other things, motions to dismiss, protracted fact discovery from parties and non-parties, review and synthesis of millions of pages of documents, expert discovery, discovery disputes, class certification, and depositions

of fact and expert witnesses, and prevailed in the *Burnett* trial. (Berman Decl. ¶ 10; Dirks Decl. ¶¶ 4, 13-15). Both this Court and the *Moehrl* Court have already recognized Lead Counsels' diligent prosecution of their cases by appointing them as Class Counsel for the *Burnett* and *Moehrl* Classes, respectively, as part of their rulings on class certification. Class Counsel have participated in a lengthy negotiation process to achieve the best possible result for the classes.

VII. CLASS NOTICE SHOULD PROCEED IN A SUBSTANTIALLY SIMILAR MANNER AS THE EARLIER SETTLEMENTS

Rule 23(e) requires that, prior to final approval of a settlement, notice must be provided to class members who would be bound by it. Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

In order to afford NAR and its affiliates sufficient time to implement the practice changes, and to permit interested parties to opt into the Settlement, the Parties agreed that notice will not be sent until 120 days after the filing of this Motion. (Agreement ¶ 30). When notice is sent, the process will be substantially similar to the notice provided with the Anywhere, RE/MAX and Keller Williams Settlements—which the Court already approved. (See, Ex. 3, Keough Declaration ¶ 11); *see also Burnett* ECF Doc. 1321 (approving notice plan)). As this Court previously held, JND's proposed notice plan provides for the "best notice practicable and satisfies the requirements of due process." Doc. 1321; s*ee also In re Packaged Seafood Prod. Antitrust Litig.*, No. 15-MD-2670, 2023 WL 2483474, at *2 (S.D. Cal. Mar. 13, 2023) (approving notice plan with estimated reach of at least 70% and observing that "[c]ourts have repeatedly held that notice plans with similar reach satisfy Rule 23(c)(2)(B)" (citing cases)). This plan, pursuant to Rule 23(c)(2)(B), provides the "best notice practicable" to all potential Settlement Class Members who will be bound by the proposed Settlement. Accordingly, the Court should appoint JND as the notice administrator

and authorize the proposed notice plan contained herein.

CONCLUSION

The Settlement Agreements provide an immediate, substantial, and fair recovery for the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) certifying the Settlement Class for settlement purposes only; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing *Burnett* Class Counsel and *Moehrl* Class Counsel as Settlement Class Counsel; and (5) ordering that notice be directed to the Class in a manner substantially similar to that issued in conjunction with the Anywhere, RE/MAX and Keller Williams Settlements.

April 19, 2024

Respectfully Submitted,

/s/ Robert A. Braun

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Attorneys for the Settlement Class

Exhibit 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES, HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Civil Action No. 19-CV-00332-SRB

DECLARATION OF STEVE W. BERMAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH THE NATIONAL ASSOCIATION OF REALTORS, CERTIFICATION OF A SETTLEMENT CLASS, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL

I, Steve W. Berman, state under oath, as follows:

1. I am the Managing Partner of Hagens Berman Sobol Shapiro LLP ("Hagens Berman"). The Court in *Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (Northern District of Illinois) ("Moehrl") appointed my firm, together with Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), and Susman Godfrey LLP ("Susman Godfrey"), as Co-Lead Class Counsel in the *Moehrl* litigation.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlements with the National Association of Realtors, Certification of a Settlement Class, and Appointment of Settlement Class Counsel. Based on personal knowledge or discussions with counsel in my firm and co-counsel regarding the matters stated herein, if called upon, I could and would testify competently thereto.

3. I have served as lead or co-lead counsel in antitrust, securities, consumer, products liability, and employment class actions, and other complex litigation matters throughout the country. For example, I have represented thousands of plaintiffs in large antitrust cases and have achieved favorable results for them. I was a co-lead trial lawyer in *In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, MDL No. 2541 (N.D. Cal.) where the class obtained injunctive relief following a bench trial. That judgment was unanimously affirmed by the Supreme Court in *Alston v NCAA* and has been credited for the adoption of new NCAA rules allowing college athletes to monetize their name, image, and likeness (NIL) rights. Prior to the injunction, the class settled the damages portion of the case for $208 million, resulting in an almost complete recovery of single damages. As co-lead counsel in *In re Visa Check/Mastercard Antitrust Litigation*, No. 96-cv-05238 (E.D.N.Y.), we obtained the then largest antitrust settlement in history for consumers while challenging alleged anti-competitive agreements among U.S. banks, Visa, and Mastercard, regarding ATM fees. I also represented consumers in *In re Optical Disk Drive Products Antitrust Litigation*, No. 10-md-2143-RS (N.D. Cal.), *In re Electronic Books Antitrust Litigation*, No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-02430 (N.D. Cal.),

obtaining court-approved settlements for class members in all three cases. I was approved as co-lead counsel to represent a certified class of thousands of consumers in *In re Broiler Chicken Antitrust Litigation*, No. 1:16-cv-08637 (N.D. Ill. May 27, 2022), ECF No.5644. I have negotiated settlements for and tried numerous class and non-class cases during my decades of practice including settlements that were at the time, the largest securities, ERISA, and automobile defect class settlements in history.

4. Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. Hagens Berman, Cohen Milstein, and Susman Godfrey—Co-Lead Class Counsel in *Moehrl*—each have extensive antitrust class action experience and have successfully prosecuted some of the most complex private antitrust cases in the last two decades. Each has a history of winning landmark verdicts and negotiating favorable settlements for their clients. Their collective and individual litigation experience—discussed in the memorandum of law and exhibits filed in Support of Plaintiffs' Motion to Appoint Interim Co-Lead Class Counsel in the *Moehrl* action—amply demonstrates that these three firms have extensive knowledge of the relevant law, as well as the resources for effective representation of Settlement Class Plaintiffs, and the proven ability to reach superior results for parties injured by anticompetitive practices. (*Moehrl* Docs. 50-1 – 50-14)

5. On behalf of Plaintiffs, other Co-Lead Counsel and I personally conducted intensive settlement negotiations with counsel for the National Association of Realtors ("NAR") over the course of more than a year.

6. Plaintiffs and NAR executed a Settlement Agreement on March 15, 2024. Attached as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and NAR.

7. In my opinion, and in that of highly experienced Co-Lead Counsel, the proposed Settlement Agreement is fair, reasonable, and adequate. It provides substantial monetary and non-monetary benefits to the Settlement Class, and it avoids the risks, costs, and delay of

continuing protracted litigation against NAR. Details of the agreed monetary relief, changes to business practices, and cooperation in Plaintiffs' ongoing litigation against the non-settling defendants are set forth in the Settlement Agreement attached as Exhibit A.

8. Plaintiffs' Co-Lead Counsel and counsel for NAR engaged in extensive arm's-length settlement negotiations that lasted over many months, including telephonic and in-person mediations with a nationally recognized and highly experienced mediator. Plaintiffs and NAR also engaged in numerous direct settlement negotiations, including several days of in-person negotiation that culminated in the ultimate Settlement Agreement with NAR. Many of these sessions resulted in heated exchanges and walk aways for periods of time.

9. There was no collusion among counsel for the parties at any time during these settlement negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. Plaintiffs sought to obtain the largest possible monetary recovery, as well as the most impactful changes to the NAR's business practices, to avert anticompetitive conduct going forward. Plaintiffs further sought the most helpful cooperation possible from NAR.

10. When the Settlement Agreement was executed, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed items in order to obtain important evidence to support their claims. The parties conducted over 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts to support their claims and to rebut arguments from the nine experts retained by Defendants in each case. Most experts in the case were deposed in connection with the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The *Burnett* Plaintiffs also successfully won a trial verdict against NAR and other Defendants. The *Moehrl* Plaintiffs had nearly completed briefing of summary judgment. Based

on their extensive investigative and analytical efforts, Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements.

11. Plaintiffs and Class Counsel reached the Settlement Agreement after considering the risk and cost of litigation. Plaintiffs and Class Counsel believe the claims asserted are meritorious and that the evidence developed to date supports the claims, but also recognize the risk and delay of further proceedings in a complex case like this, and believe that the Settlement confers substantial benefits upon the Settlement Class Members.

12. Moreover, Plaintiffs and counsel, including counsel who is a certified CPA and forensic fraud examiner conducted a thorough financial analysis of the ability to pay of the National Association of Realtors, which directly affected the monetary amounts that it was feasible to recover from NAR through settlement. In my opinion, the Settlement is fair and reasonable in light of the financial condition of NAR.

13. The Settlement Class Representatives in *Moehrl* approved the terms of the Settlements.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed April 16, 2024, at Seattle, Washington.

/s/ Steve W. Berman
STEVE W. BERMAN

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX, LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 19-cv-00332-SRB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX, LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 1:19-cv-01610-ARW

CORRECTED SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into this 15th day of March, 2024 (the "Execution Date"), by and between defendant the National Association of REALTORS® and plaintiffs Rhonda Burnett, Jerod Breit, Jeremy Keel, Hollee Ellis, Frances Harvey, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners (collectively "Plaintiffs"), who filed suit in the above captioned actions and in *Daniel Umpa v. The National Association of Realtors, et al.*, No. 23-cv-945 (W.D. Mo.), and *Don Gibson v. The National Association of Realtors, et al*., No. 23-cv-00788 (W.D. Mo.) (all four actions collectively, "the Actions"), both individually and as representatives of one or more classes of home sellers. Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, in the Actions, Plaintiffs allege that the National Association of REALTORS® participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state laws;

WHEREAS, the National Association of REALTORS® denies Plaintiffs' allegations in the Actions and has asserted defenses to Plaintiffs' claims;

WHEREAS, the parties in Burnett proceeded to a jury trial, and the jury returned a verdict in favor of the plaintiffs in that action;

WHEREAS, the National Association of REALTORS® has filed post-trial motions in Burnett pursuant to Federal Rules of Civil Procedure 50 and 59 and a motion to decertify the class, and joined in post-trial motions filed by Keller Williams, Inc., HomeServices of America, Inc., BHH Affiliates, LLC, and HSF Affiliates, LLC, which are pending;

WHEREAS, the National Association of REALTORS® has filed a motion in Moehrl pursuant to Federal Rule of Civil Procedure 56;

WHEREAS, extensive arm's-length settlement negotiations have taken place between Plaintiffs' Co-Lead Counsel and counsel for the National Association of REALTORS®, including several telephonic mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal district judge, and a mediation with a federal magistrate judge;

WHEREAS, the Actions will continue, including against certain other defendants, unless Plaintiffs separately settle with those defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Actions, including more than four years of fact and expert discovery, and have concluded that a settlement with the National Association of REALTORS® according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, the National Association of REALTORS® believes that it is not liable for the claims asserted and has good defenses to Plaintiffs' claims and meritorious summary judgment and post-trial motions, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that Plaintiffs and Settlement Class Members have or could have asserted against the Released Parties, as defined below; and

WHEREAS, the National Association of REALTORS®, in addition to the settlement payments set forth below, has agreed to cooperate in discovery and at trial with Plaintiffs and to implement certain practice changes, each as set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and other good and valuable consideration, and intending to be legally bound, it is agreed by and between the National Association of REALTORS® and the Plaintiffs that the Actions be settled,

compromised, and dismissed with prejudice as to the National Association of REALTORS® only, without costs to Plaintiffs, the Settlement Class, or the National Association of REALTORS® except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Settlement Agreement, have the following meanings:

1. "Burnett" means the case pending in the United States District Court for the Western District of Missouri, Case No. 4:19-cv-00332-SRB.

2. "Burnett MLSs" means the multiple listing services identified as "Subject MLSs" in Burnett.

3. "Co-Lead Counsel" means the following law firms:

KETCHMARK AND MCCREIGHT P.C.
11161 Overbrook Road, Suite 210
Leawood, KS 66211

BOULWARE LAW LLC
1600 Genessee, Suite 416
Kansas City, MO 64102

WILLIAMS DIRKS DAMERON LLC
1100 Main Street, Suite 2600
Kansas City, MO 64105

HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

4. "Court" means the United States District Court for the Western District of Missouri.

5. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.

6. "Effective Date" means the date when both: (a) the Court has entered a final judgment order approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Actions against the National Association of REALTORS® with prejudice has been entered; and (b) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement and the entry of a final judgment has expired or, if appealed, approval of the Settlement and the final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review; excluding, however, any appeal or other proceedings unrelated to this Settlement Agreement initiated by any Non-National Association of REALTORS® Defendant, and any such appeal or other proceedings shall not delay this Settlement Agreement from becoming final and shall not apply to this Paragraph. This Paragraph shall not be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.

7. "REALTOR® Member Boards" means local or state/territory real estate boards or associations of REALTORS®, all of whose members are also members of the National Association of REALTORS® through those boards or associations.

8. "Moehrl" means the case pending in the Northern District of Illinois Case No. 1:19-cv-01610-ARW.

9. "Moehrl MLSs" means the multiple listing services identified as "Covered MLSs" in Moehrl.

10. "MLS PIN" means the multiple listing service identified in United States District Court for the District of Massachusetts, Case No. 1:20-cv-12244-PBS, which is currently pending.

11. "REALTOR® MLS" means: (a) any separately incorporated multiple listing service that is owned exclusively by one or more REALTOR® Member Boards as of the Execution Date (and not in whole or part by any non-Member Board Person); or (b) any other multiple listing service that is not separately incorporated from and is operated exclusively by a Member Board.

12. "Non-National Association of REALTORS® Defendant" means any defendant in the Actions excepting the National Association of REALTORS®.

13. "Opt-Outs" means members of the Settlement Class who have timely exercised their rights to be excluded from the Settlement Class or have otherwise obtained Court approval to exercise such rights.

14. "Participant" means a principal broker or a brokerage firm participating in a multiple listing service.

15. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates, and assignees.

16. "Principal" means licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm.

17. "Released Claims" means any and all manner of claims, regardless of the cause of action, arising from or relating to conduct that was alleged or could have been alleged in the Actions based on any or all of the same factual predicates for the claims alleged in the Actions, including but

not limited to commissions negotiated, offered, obtained, rebated, or paid to brokerages in connection with the sale of any residential home.

18. "Released Parties" means:

a. the National Association of REALTORS®, and all of its respective past, present, and future, direct and indirect, subsidiaries, predecessors, successors, affiliates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), institutes, societies, councils, and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns.

b. Any REALTORS® (members of the National Association of REALTORS®), REALTOR-Associate® Members, and REALTOR® Member Boards that do not operate an unincorporated multiple listing service, and all of their respective past and present, direct and indirect, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, that (i) is a member of the National Association of REALTORS® on the date of Class Notice; and (ii) complies with the practice changes reflected in Paragraphs 58(vi)-(x) of this Settlement Agreement and agrees to provide proof of such compliance if requested by Co-Lead Counsel; and (iii) does not assert any claims in the time period specified in Paragraph 59 they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged in the Actions or the

practice changes in this Settlement Agreement. Any Settlement Class Member shall have the right to inquire of the National Association of REALTORS® as to whether a Person is a REALTOR®, REALTOR-Associate® Member, or REALTOR® Member Board and has satisfied the conditions for being a "Released Party," and the National Association of REALTORS® shall promptly provide this information.

c. Any REALTOR® MLS (including a REALTOR® Member Board that operates an unincorporated multiple listing service), including its respective past and present, direct and indirect, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, but only if that REALTOR® MLS (i) complies with the procedures and requirements reflected in Paragraph 66 of this Settlement Agreement; (ii) complies with the practice changes reflected in Paragraph 68 of this Settlement Agreement and agrees to provide proof of such compliance if requested by Co-Lead Counsel; and (iii) does not assert any claims in the time period specified in Paragraph 59, they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged in the Actions or the practice changes in this Settlement Agreement.

d. Any non-REALTOR® MLS, including its respective past and present, direct and indirect, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors,

attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, but only if that non-REALTOR® MLS (i) complies with the procedures and requirements reflected in Paragraph 67 of this Settlement Agreement; (ii) complies with the practice changes reflected in Paragraph 68 of this Settlement Agreement and agrees to provide proof of such compliance if requested by Co-Lead Counsel; (iii) does not assert any claims, in the time period specified in Paragraph 59, they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged in the Actions or the practice changes in this Settlement Agreement; and (iv) pays the Settlement Class pursuant to the procedures in Appendix D.

e. Any real estate brokerage with a calendar year 2022 Total Transaction Volume for residential home sales of $2 billion or less, including all of their respective past, present, and future, direct and indirect, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, but only if that brokerage (i) has a REALTOR® as a Principal with membership in the National Association of REALTORS® on the date of Class Notice; (ii) has a Principal who was a Participant in any MLS (including a Member Board that operates an unincorporated multiple listing service) at any time during the time period covered by the Settlement Class; (iii) complies with the practice changes reflected in Paragraphs 58(vi)-(x) of this Settlement Agreement and agrees to provide proof of such compliance if requested by

Co-Lead Counsel; and (iv) does not assert any claims, in the time period specified in Paragraph 59, they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged in the Actions or the practice changes in this Settlement Agreement. Any Settlement Class Member shall have the right to inquire of the National Association of REALTORS® as to whether a Person is a REALTOR®, REALTOR-Associate® Member, or REALTOR® Member Board and has satisfied the conditions for being a "Released Party," and the National Association of REALTORS® shall promptly provide this information.

f. Notwithstanding Paragraphs 18(a)-(e) of this Settlement Agreement, any real estate brokerage with a calendar year 2022 Total Transaction Volume for residential home sales in excess of $2 billion, including all of their respective past, present, and future, direct and indirect, parents subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, but only if that brokerage (i) has a REALTOR® as a Principal with membership in the National Association of REALTORS® on the date of Class Notice; (ii) has a Principal who was a Participant in any MLS (including a Member Board that operates an unincorporated multiple listing service) at any time during the time period covered by the Settlement Class; (iii) does not assert any claims in the time period specified in Paragraph 59, they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged

in the Actions or the practice changes in this Settlement Agreement; (iv) complies with the practice changes reflected in Paragraphs 58(vi)-(x) of this Settlement Agreement and agrees to provide proof of such compliance if requested by Co-Lead Counsel; and (v) agrees to be bound by the procedure and requirements reflected in Section B of Appendix C, including by making payments pursuant to those Paragraphs.

g. Notwithstanding Paragraph 18(a)-(f) of this Settlement Agreement, HomeServices of America, Inc., BHH Affiliates, LLC, Berkshire Hathaway Energy Company, Long & Foster Companies, Inc., and HSF Affiliates, LLC shall not be a "Released Party," nor shall any such defendant's past, present, and future, direct and indirect, parents (including holding companies), subsidiaries, related entities, associates, predecessors, successors, or affiliates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), nor any of their respective franchisors, franchisees, officers, directors, managing directors, employees, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, assigns, or independent contractor real estate agents—but only for the times in which they were franchisors, franchisees, officers, directors, managing directors, employees, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, assigns, or independent contractor real estate agents of HomeServices of America, Inc., BHH Affiliates, LLC, Berkshire Hathaway Energy Company, Long & Foster Companies, Inc., or HSF Affiliates, LLC or any of their past, present, and future, direct and indirect, parents (including holding companies), subsidiaries, related entities, associates, predecessors, successors, or affiliates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934).

h. Notwithstanding Paragraphs 18(a)-(f) of this Settlement Agreement, no defendant in the Actions as of the Execution Date—other than the National Association of REALTORS® (which is addressed in Paragraph 18(a) of this Settlement Agreement) and HomeServices of America, Inc., BHH Affiliates, LLC, Berkshire Hathaway Energy Company, Long & Foster Companies, Inc., and HSF Affiliates, LLC (which are addressed in Paragraph 18(g) of this Settlement Agreement)—(i) shall be a "Released Party," (ii) nor shall any such defendant's past, present, and future, direct and indirect, parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, (iii) nor any of their respective franchisors, franchisees, officers, directors, managing directors, employees, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, or assigns—but only for the times in which they were franchisors, franchisees, officers, directors, managing directors, employees, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, or assigns of such a defendant. Independent contractor real estate agents affiliated with a defendant in the Actions, other than the National Association of REALTORS® or Persons not released under Paragraph 18(g), are covered by Paragraph 18(b) of this Settlement Agreement for the period of such affiliation.

19. "Releasing Parties" means Plaintiffs and any Settlement Class Members (including any of their immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates, acting in their capacity as such; and for entities including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint

ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such solely with respect to the claims based on or derived from claims of the Plaintiffs or Settlement Class Members).

20. "Settlement" means the settlement contemplated by this Settlement Agreement.

21. "Settlement Class" means the class of persons that will be certified by the Court for Settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014
- to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice.

Plaintiffs and National Association of REALTORS® intend this Settlement Agreement to provide for a nationwide class with a nationwide settlement and release.

22. "Settlement Class Member" means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

23. "Settling Parties" means Plaintiffs and the National Association of REALTORS®.

24. "Total Monetary Settlement Amount" means $418.00 million. All costs of settlement, including all payments to Settlement Class Members, all attorneys' fees and costs, all service awards to current and former class representatives, and all costs of Class Notice and administration, will be paid out of the Total Monetary Settlement Amount, and the National Association of REALTORS® will pay nothing apart from the Total Monetary Settlement Amount, except as provided in Paragraphs 37 and 40 of this Settlement Agreement.

25. "Total Transaction Volume" means the aggregate dollar value of all residential home sales and purchases of a real estate brokerage, together with the aggregate dollar value of all residential home sales and purchases of that brokerage's direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934) and of each's franchisees, in which each such Person represented the buyer, the seller, or both in a real estate brokerage capacity. For any transactions in which a real estate broker represented both the buyer and the seller, that transaction shall be counted twice for purposes of calculating the "Total Transaction Volume." The "Sales Volume" reflected in the T360 Real Estate Almanac shall serve as an irrebuttable presumption of a Person's "Total Transaction Volume."

B. Stipulation to Class Certification

26. The Settling Parties hereby stipulate, for purposes of this Settlement only, that the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied, and, subject to Court approval, the Settlement Class shall be certified for Settlement purposes as to the National Association of REALTORS®. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement not become Effective, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void.

27. Neither this Settlement Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Settlement Agreement should be intended to be, construed as, or deemed to be evidence of an admission or concession by the National Association of REALTORS® that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

C. Approval of this Settlement Agreement and Dismissal of the Actions

28. The Settling Parties agree to make reasonable best efforts to effectuate this Settlement Agreement, including, but not limited to, seeking the Court's approval of procedures (including the giving of Class Notice under Federal Rules of Civil Procedure 23(c) and (e)); scheduling a final fairness hearing to obtain final approval of the Settlement and the final dismissal with prejudice of the Actions as to the National Association of REALTORS®; and the National Association of REALTORS®'s cooperation by providing information reflecting its ability to pay limitations. The Settling Parties further agree that Co-Lead Counsel may seek whatever approvals are required by the court in Moehrl related to obtaining approval of and effectuating this Settlement Agreement.

29. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement. The motion for preliminary approval shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this Settlement. At least 48 hours before submission to the Court, the papers in support of the motion for preliminary approval shall be provided by Co-Lead Counsel to counsel for the National Association of REALTORS® for its review. To the extent that the National Association of REALTORS® objects to any aspect of the motion for preliminary approval, it shall communicate such objection to Co-Lead Counsel and the Settling Parties shall meet and confer to resolve any such objection. The Settling Parties shall take

all reasonable actions as may be necessary to obtain preliminary approval of the Settlement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Settling Parties will negotiate in good faith to modify this Settlement Agreement directly or with the assistance of an agreed mediator and will endeavor to resolve any issues to the satisfaction of the Court.

30. Subject to approval by the Court, the Settling Parties will agree on a method or methods of providing notice of this Settlement to the Settlement Class and for claim administration that meet the requirements of due process and Federal Rule of Civil Procedure 23 ("Class Notice") and are substantially similar to the forms of notice already agreed-to and approved by the Court in the previous settlements with Anywhere, RE/MAX, and Keller Williams. Class members who file a claim to participate in the Anywhere, RE/MAX, or Keller Williams settlements will be deemed to also have made a claim to participate in this Settlement unless they affirmatively state they are excluding themselves from this Settlement Class. The Settling Parties agree to the use of the claims administrator previously selected to administer the Anywhere, RE/MAX, and Keller Williams settlements and approved by the Court. The Settling Parties agree that Class Notice must not be provided earlier than 120 days following the filing of the first motion for preliminary approval of this Settlement Agreement.

31. Within 10 calendar days after the filing of the first motion for preliminary approval of this Settlement Agreement, the claims administrator shall at the National Association of REALTORS®'s expense, to be credited against the Total Monetary Settlement Amount, cause notice of this Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

32. If the Settlement is preliminarily approved by the Court, Plaintiffs shall timely seek final approval of the Settlement and entry of a final judgment order as to the National Association of REALTORS®:

(a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b), solely for purposes of this Settlement;

(b) granting final approval of the Settlement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23(e) and directing the consummation of the Settlement according to its terms;

(c) enjoining the National Association of REALTORS® and any opting in REALTOR® MLS, non-REALTOR® MLS, and real estate brokerage in accordance with Paragraph 58 and Paragraph 66 of this Settlement Agreement.

(d) directing that, as to the National Association of REALTORS® only, the Actions be dismissed with prejudice and, except as provided for herein, without costs;

(e) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the Court; and

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of final judgment as to the National Association of REALTORS®.

33. This Settlement Agreement will become Effective only after the occurrence of all conditions set forth in the definition of the Effective Date.

D. <u>Releases, Discharge, and Covenant Not to Sue</u>

34. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties

from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of Class Notice of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Actions and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (a) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of Class Notice; and (b) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

35. The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, the Releasing Parties expressly, fully, finally, and forever settle and release, and, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, without regard to the subsequent discovery or existence of such other, different, or additional facts, as well as any and all rights and benefits existing under (a) Cal. Civ. Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES

NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction, including but not limited to Section 20-7-11 of the South Dakota Codified Laws, which provides that "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;" or (b) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other, different, or additional facts. The Releasing Parties acknowledge that the inclusion of unknown claims in the definition of Released Claims was separately bargained for and was a material element of this Settlement Agreement.

36. The Releasing Parties intend by this Settlement Agreement to settle with and release only the Released Parties, and the Settling Parties do not intend this Settlement Agreement, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in the Actions), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury. The release does not extend to any individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence or

other tort claim, other than a claim that a class member paid an excessive commission or home price due to the claims at issue in the Actions.

E. Payment of the Settlement Amount

37. Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the United States Treasury Regulations (the "Escrow Account"). Within 30 days following the filing of the first motion for preliminary approval of this Settlement Agreement, the National Association of REALTORS® will deposit $5 million into the Escrow Account. Within 90 days following final approval of the Settlement by the Court (and notwithstanding the exhaustion of any appellate rights), the National Association of REALTORS® will deposit $197 million into the Escrow Account. No later than one year after the initial $197 million payment, the National Association of REALTORS® will deposit $72 million in principal into the Escrow Account. No later than two years after the initial $197 million payment, the National Association of REALTORS® will deposit another $72 million in principal into the Escrow Account. No later than three years after the initial $197 million payment, the National Association of REALTORS® will deposit into the Escrow Account the remaining principal, along with interest on each of the installment payments, as determined at the federal statutory rate under 28 U.S.C. 1961, into the Escrow Account. All accrued interest shall be for the benefit of the Settlement Class unless the Settlement is not approved, in which case the interest shall be for the benefit of the National Association of REALTORS®.

38. The obligation to make the three installment payments reflected above will be evidenced by a promissory note ("Note") that will be assignable by Plaintiffs, acting on behalf of the Settlement Class, with advance written notice of any assignment provided to the National Association of REALTORS®. The obligation and Note will be enforceable by the Court upon motion by Plaintiffs or Plaintiffs' assignee, and the Court shall retain continuing jurisdiction over the Settling

Parties regarding its enforcement notwithstanding the entry of a final judgment.

39. The National Association of REALTORS® represents that, as of the date of the Settlement Agreement, its current obligations with respect to funded debt are not greater than $35 million. The Note will be secured by liens and perfected security interests ("Liens") against the entirety of the assets of the National Association of REALTORS® and its subsidiaries as specified in the Security Agreement ("Obligors"). The Liens securing the Note will be evidenced by a security agreement ("Security Agreement") and any ancillary documentation necessary to perfect the Liens and/or document their priority relative to other security interests held by the Obligors' creditors ("Security Documentation") to be entered into between the Settling Parties. The Liens securing the Note shall be expressly subordinated to security interests granted to the lender ("Truist") under that certain Construction Loan Agreement dated as of September 14, 2018, between the National Association of REALTORS® and Truist (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement") not more than the amount of the funded debt described above incurred as Obligations (as defined in the Loan Agreement) as of the date of this Settlement Agreement and interest on the principal on the amount of the Obligations as of the date of this Settlement Agreement and any compounding thereof, as consideration for Truist's agreement to waive alleged events of default under the Loan Agreement. The Settling Parties agree to negotiate the Note, Security Agreement, and Security Documentation (including, for the avoidance of doubt, a satisfactory intercreditor and/or subordination agreement between Truist and the Plaintiffs) in good faith during the 90 days following Execution Date. To the extent the Settling Parties are unable to reach agreement on the Note, Security Agreement, or Security Documentation they agree to submit their dispute to Greg Lindstrom or another mediator agreed to by the parties for binding resolution.

F. <u>The Settlement Fund</u>

40. The Total Monetary Settlement Amount, any interest earned thereon, and any payments by Released Parties pursuant to this Settlement Agreement shall be held in the Escrow Account and constitute the "Settlement Fund." The full and complete cost of the Class Notice, claims administration, Settlement Class Members' compensation, current and former class representatives' incentive awards, attorneys' fees and reimbursement of all actual expenses of the Actions, any other litigation costs of Plaintiffs (all as approved by the Court), and all applicable taxes, if any, assessable on the Settlement Fund or any portion thereof, will be paid out of the Settlement Fund. If separate Class Notice occurs with respect to any settlement with a non-REALTOR® MLS or brokerage that opts into the Settlement (including by executing an Appendix C or D), the National Association of REALTORS® agrees to pay the full and complete cost of such Class Notice above and beyond the Total Monetary Settlement Amount, up to $3,000,000.00.

41. The Settling Parties and their counsel will not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing Class Notice to the Settlement Class or administering the settlement except in Paragraphs 40-42 of this Settlement Agreement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance of the Settlement Fund shall be disbursed to Settlement Class Members as provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

42. After preliminary approval of the Settlement and approval of a Class Notice plan, Co-Lead Counsel may utilize a portion of the Settlement Fund to provide Class Notice of the Settlement to potential members of the Settlement Class. The National Association of REALTORS® will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $5,000,000.00 to pay the costs for Class Notice. If Plaintiffs settle with one (or more) Non-National Association of REALTORS® Defendants and Class Notice of one or more other

settlements is included in the Class Notice of the National Association of REALTORS® settlement, then the cost of such Class Notice will be apportioned equitably between (or among) the National Association of REALTORS® Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for Class Notice and administration costs is not refundable to the National Association of REALTORS® in the event the Settlement is disapproved, rescinded, or otherwise fails to become Effective.

43. Subject to Co-Lead Counsel's sole discretion as to timing, except that the timing must be consistent with any rules requiring that Settlement Class Members be given the opportunity to review fee applications, Co-Lead Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and current and former class representative service awards to be paid out of the Settlement Fund. Within 14 business days after any order by the Court awarding attorneys' fees, expenses, or class representative incentive awards or such later date as directed by Co-Lead Counsel, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award up to the amount specified in Paragraph 24 of this Settlement Agreement for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-Lead Counsel in accordance with and attaching the Court's Order, provided that each Co-Lead Counsel receiving payment signs an assurance, in the form attached hereto as Appendix A, attesting that they will repay all awarded amounts if this Settlement Agreement does not become Effective.

44. The Settlement Fund will be invested in United States Government Treasury obligations or United States Treasury money market funds.

45. The National Association of REALTORS® will not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment,

distribution, use or administration except as expressly otherwise provided in this Settlement Agreement. The National Association of REALTORS®'s only payment obligation is to pay the Total Monetary Settlement Amount.

46. There will be no reduction of the Total Monetary Settlement Amount based on Opt-Outs. The Settlement will be non-reversionary except as set forth below in Section G of this Settlement Agreement. If the Settlement becomes Effective, no proceeds from the Settlement will revert to the National Association of REALTORS® regardless of the claims that are made.

47. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 40-42 of this Settlement Agreement.

48. The distribution of the Settlement Fund shall be administered pursuant to a plan of allocation (the "Plan of Allocation") proposed by Co-Lead Counsel in their sole and absolute discretion and subject to the approval of the Court. The National Association of REALTORS® will have no participatory or approval rights with respect to the Plan of Allocation. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation, including, but not limited to, any adjustments to an authorized claimant's claim, is completely independent of and is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Settlement Agreement. The Settlement Class, Plaintiffs, and the National Association of REALTORS® shall be bound by the terms of this Settlement Agreement, irrespective of whether the Court or any other court, including on any appeal, disapproves or modifies the Plan of Allocation, and any modification or rejection of the Plan of Allocation shall not affect the validity or enforceability of this Settlement Agreement or otherwise operate to terminate, modify, or cancel that Agreement.

49. The Releasing Parties will look solely to the Settlement Fund for settlement and satisfaction against the Released Parties of all Released Claims and shall have no other recovery against the National Association of REALTORS® or the Released Parties.

F. Taxes

50. Co-Lead Counsel is solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. The National Association of REALTORS® has no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the Settlement does not become Effective and the Settlement Fund is returned to the National Association of REALTORS®. In the event the Settlement does not become Effective and any funds including interest or other income are returned to the National Association of REALTORS®, the National Association of REALTORS® will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. The National Association of REALTORS® makes no representations regarding, and will not be responsible for, the tax consequences of any payments made pursuant to this Settlement Agreement to Co-Lead Counsel or to any Settlement Class Member.

G. Rescission

51. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if

such approval is modified in or set aside on appeal in any material respects, or if the Court does not enter final approval, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Settlement Agreement may be rescinded by the National Association of REALTORS® or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within 10 business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order. The Settling Parties have agreed in the Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to the National Association of REALTORS® a list of exclusion requests. In its sole discretion, the National Association of REALTORS® shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified the Confidential Supplemental Agreement.

52. If the Settlement or Settlement Agreement is rescinded or terminated for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to the National Association of REALTORS®. In the event that this Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of Class Notice and administration will not be returned to the National Association of REALTORS®. Funds to cover Class Notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to the National Association of REALTORS®.

53. If the Settlement or Settlement Agreement is rescinded or terminated for any reason permitted under this Settlement Agreement, then the Settling Parties will be restored to their

respective positions in the Actions as of the Execution Date. Plaintiffs and the National Association of REALTORS® agree that any rulings or judgments that occur in the Actions after Execution Date and before this Settlement Agreement is rescinded will not bind Plaintiffs, the National Association of REALTORS® or any of the Released Parties. Plaintiffs and the National Association of REALTORS® agree to waive any argument of claim or issue preclusion against Plaintiffs or the National Association of REALTORS® arising from such rulings or judgments. In the event of a rescission or termination for any reason permitted under this Agreement, the Actions will proceed as if this Settlement Agreement had never been executed and this Settlement Agreement, and representations made in conjunction with this Settlement Agreement, may not be used in the Actions or otherwise for any purpose. The National Association of REALTORS® and Plaintiffs expressly reserve all rights if this Settlement Agreement does not become Effective or if it is rescinded or terminated as permitted by this Agreement by the National Association of REALTORS® or the Plaintiffs, including the National Association of REALTORS®'s rights to seek review, including appeal, of any judgment entered in Burnett on any available ground.

54. The Settling Parties agree that pending deadlines for motions not yet filed, and all deadlines (whether pending or past) for motions that will be withdrawn pursuant to this Settlement Agreement, shall be tolled for the period from Execution Date, until the date this Settlement Agreement is rescinded, and no Settling Party shall contend that filing or renewal of such motions was rendered untimely by or was waived by the operation of this Settlement Agreement. The Settling Parties further agree that, within five business days of the Execution Date, they will jointly petition the courts overseeing the Actions to request a stay of all pending deadlines as to the National Association of REALTORS® only.

55. The National Association of REALTORS® warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time this Settlement

Agreement is executed. For the avoidance of doubt, this representation takes no account of the jury verdict rendered in Burnett. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Total Monetary Settlement Amount, or any portion thereof, by or on behalf of the National Association of REALTORS® to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of the National Association of REALTORS®, then, at the election of Co-Lead Counsel, this Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

56. The Settling Parties' rights to terminate this Settlement Agreement and withdraw from this Settlement Agreement are a material term of this Settlement Agreement.

57. The National Association of REALTORS® reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Outs.

H. <u>Practice Changes</u>

58. As soon as practicable, and in no event later than the date of Class Notice (as provided in Paragraph 30 of this Settlement Agreement), the National Association of REALTORS® (defined for purposes of this paragraph to include present and future, direct and indirect subsidiaries, predecessors, and successors) will implement the following practice changes:

i. eliminate and prohibit any requirement by the National Association of REALTORS®, REALTOR® MLSs, or Member Boards that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate and prohibit any requirement that such offers, if made, must be blanket, unconditional, or unilateral;

ii. prohibit REALTOR® MLS Participants, subscribers, other real estate brokers, other real estate agents, and their sellers from (a) making offers of compensation on the MLS to buyer brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on the MLS listing broker compensation or total broker compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);

iii. require REALTOR® MLSs to (a) eliminate all broker compensation fields on the MLS and (b) prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives described in Paragraphs 58(i) and (ii) of this Settlement Agreement via any other REALTOR® MLS field;

iv. eliminate and prohibit any requirements conditioning participation or membership in a REALTOR® MLS on offering or accepting offers of compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) a REALTOR® MLS providing data or data feeds to a REALTOR®, REALTOR® MLS Participant, or third party unless the REALTOR® MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the REALTOR® MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or REALTOR® MLS Participant displaying both (1) data or data feeds from a REALTOR® MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the

operation of this Paragraph 58(vi) of this Settlement Agreement, require that all REALTOR® MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

a. to the extent that such a REALTOR® or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;

b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offering to the buyer"); and

c. such a REALTOR® or Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;

vii. prohibit REALTORS® and REALTOR® MLS Participants from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;

viii. require REALTORS® and REALTOR® MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;

ix. require REALTORS® and REALTOR® MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set

by law and are fully negotiable (a) in their listing agreement if it is not a government-specified form, (b) in their agreement with buyers if it is not a government-specified form, and (c) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then REALTORS® and REALTOR® MLS Participants must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable. NAR also shall require that REALTOR® Member Boards and REALTOR® MLSs, to the extent they publish form listing agreements, buyer representation agreements, and pre-closing disclosure documents for use by REALTORS®, Participants, and/or subscribers, must conform those documents to this Paragraph 58(ix).

x. require that REALTORS® and REALTOR® MLS Participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer;

xi. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Settlement Agreement; and

xii. develop educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

xiii. the practice changes in Paragraph 58 of this Settlement Agreement shall not prevent (a) offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service; or (b) sellers from offering buyer concessions on a REALTOR® MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or

conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

59. The obligations set forth in Paragraph 58 of this Settlement Agreement will terminate 7 years after the Class Notice date. Moreover, if in an action brought against the National Association of REALTORS® by the United States Department of Justice, United States Federal Trade Commission, or any State Attorney General and a final judgment is entered by a court (with all stay rights exhausted) which requires the National Association of REALTORS® to adopt any practice changes that are inconsistent with the practice changes required by this Settlement Agreement, the National Association of REALTORS® may comply with the terms of such judgment, unless the judgment is reversed or vacated, notwithstanding the practice changes specified in this Settlement Agreement. In such circumstance, the National Association of REALTORS® will continue to be obligated to observe the practice changes specified in this Settlement Agreement that are not affected by such judgment.

60. The National Association of REALTORS® acknowledges that the practice changes set forth here are a material component of this Settlement Agreement and agrees to use its best efforts to implement the practice changes specified in Paragraph 58 of this Settlement Agreement.

I. Cooperation

61. The National Association of REALTORS® (defined for purposes of this paragraph to include present and future, direct and indirect subsidiaries, predecessors, and successors) will provide valuable cooperation to Plaintiffs and Settlement Class Member as follows in the Actions, including to the extent that any is consolidated pursuant to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100):

i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;

ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

iii. make available up to six (6) then-current employees, who are not practicing attorneys, identified by Plaintiffs who will sit for deposition in the Actions and will testify live at trial in any of the Actions if requested by Plaintiffs;

iv. agree that Plaintiffs in the Actions may use any discovery materials provided by the National Association of REALTORS® or its officers or employees in Moehrl or Burnett;

v. agree to produce in any Actions (excepting Moehrl and Burnett) non-privileged documents in its possession, custody, or control from up to eight (8) current or former employees or officers ("Custodians"), that are returned by a reasonable and agreed-upon list of search terms for documents created after January 1, 2022. The National Association of REALTORS® will, within 150 days of the later of (a) the Date of Preliminary Approval or (b) the date by which Plaintiffs identify Custodians and the Settling Parties agree on search terms, whichever is later, produce those documents. If the Parties are unable to reach agreement on a final list of Search Terms after good faith negotiations, they will submit any dispute for mediation by an agreed mediator. For any documents that are withheld on the basis of privilege or as attorney work product, the National Association of REALTORS®

will produce a privilege log according to the requirements of the ESI Order entered in Burnett. Any disputes over privilege or as to attorney work product will be governed by the procedure reflected in the ESI Order entered in Burnett.

vi. submit a withdrawal of expert designations and obtain agreement with any experts retained solely by the National Association of REALTORS® as of February 1, 2024 that they will not testify at trial as a retained expert for any Non-National Association of REALTORS® Defendant in the Actions;

vii. decline to waive any conflict that its counsel may have with respect to representing any non-Released Parties in the Actions;

viii. agree that, if a Non-National Association of REALTORS® Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of the National Association of REALTORS® or its subsidiaries, the National Association of REALTORS® will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

ix. within five business days after the Execution Date, withdraw their existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100);

x. within five business days after the Execution Date, withdraw any pending non-settlement related motions and supporting filings in the Actions filed by the National Association of REALTORS® only, including those concerning summary judgment, the exclusion of experts, and post-trial motions without prejudice to renewal in the event this Settlement or Settlement Agreement is rescinded, and in that event Plaintiffs shall not contend that renewal was rendered untimely by or was waived by the operation of this Settlement Agreement; and

xi. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs, unless required by subpoena or other compulsory process.

62. The National Association of REALTORS®'s cooperation obligations, as set forth in Paragraph 61 of this Settlement Agreement, shall not require the production of information, testimony, and/or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

63. The National Association of REALTORS®'s obligation to cooperate will not be affected by the release set forth in this Settlement Agreement or the final judgment orders with respect to the National Association of REALTORS®. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in all of the Actions and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

64. The National Association of REALTORS® acknowledges that the cooperation set forth here is a material component of this Settlement Agreement and agrees to use its reasonable best efforts to provide the cooperation specified in Paragraph 61 of this Settlement Agreement.

65. Notwithstanding any of the foregoing, nothing herein shall restrict or impact the ability of the National Association of REALTORS® to defend itself in any way in any litigation aside from the Actions, or government investigations.

J. REALTOR® and Non-REALTOR® MLS Opt-In, Release, and Cooperation

66. In order to be included as a Released Party, each REALTOR® MLS must among other requirements agree to be bound by the practice changes in Paragraph 68 and the cooperation

terms in Paragraph 69, including by executing Appendix B and providing it to the below email address within 60 days of the filing of the first motion for preliminary approval of this Settlement Agreement:

(1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and

(3) nargovernance@nar.realtor

67. In order to be included as a Released Party, each non-REALTOR® MLS must among other requirements agree to be bound by the practice changes in Paragraph 68 of this Settlement Agreement, the cooperation terms in Paragraph 69 of this Settlement Agreement, and the payment terms reflected in Appendix D, including by executing Appendix D and providing it to the below email address within 60 days of the filing of the first motion for preliminary approval of this Settlement Agreement:

(1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and

(3) nargovernance@nar.realtor

68. As soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of this Settlement Agreement, each opting-in REALTOR® MLS and non-REALTOR® MLS will implement the following practice changes:

i. eliminate any requirement by the MLS that listing brokers or sellers must make offers of cooperating compensation to brokers or other buyer representatives (either directly or through buyers), and eliminate any requirement that such offers, if made, must be blanket, unconditional, or unilateral;

ii. prohibit MLS Participants, subscribers, other real estate brokers, other real estate agents, and sellers from (a) making offers of compensation on the MLS to cooperating brokers or other buyer representatives (either directly or through buyers); or (b) disclosing on the MLS listing broker compensation or total brokerage compensation (i.e., the combined

compensation to both listing brokers and cooperating brokers);

iii. eliminate all broker compensation fields on the MLS, and prohibit the sharing of offers of compensation to buyer brokers or other buyer representatives described in Paragraphs 68(i) and (ii) of this Settlement Agreement via any other fields on the MLS;

iv. eliminate and prohibit any requirements conditioning participation or membership in an MLS on offering or accepting compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) an MLS providing data or data feeds to an MLS Participant, or third party unless the MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or MLS Participant displaying both (1) data or data feeds from an MLS and (2) offers of compensation to buyer brokers or other buyer representatives, but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the operation of this Paragraph 68(vi) of this Settlement Agreement, require that all MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

a. to the extent that such an MLS Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;

b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offering to the buyer"); and

c. such an MLS Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;

vii. prohibit MLS Participants, subscribers, and other real estate brokers and agents accessing the multiple listing service from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;

viii. require MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;

ix. require MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable (a) in their listing agreement if it is not a government-specified form, (b) in their agreement with buyers if it is not a government-specified form, and (c) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then MLS Participants must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully

negotiable.

x. to the extent that the MLS publishes form listing agreements, buyer representation agreements, or pre-closing disclosure documents for use by REALTORS®, participants, and/or subscribers, ensure that those forms include language disclosing to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable;

xi. require that MLS Participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer;

xii. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Paragraph 68 of this Settlement Agreement; and

xiii. develop or provide from the National Association of REALTORS® educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it;

xiv. the practice changes in Paragraph 68 of this Settlement Agreement shall not prevent (a) offers of compensation off of the MLS to buyer brokers or buyer representatives; or (b) sellers from offering buyer concessions on an MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

69. Each opting-in REALTOR® MLS and non-REALTOR® MLS will provide valuable cooperation to Plaintiffs and Settlement Class Member as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission Antitrust Litigation (MDL No. 3100):

i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;

ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

iii. use reasonable efforts at their expense to provide relevant class member and listing data and answer questions about that data to support the provision of Class Notice, administration of any settlements, or the litigation of the Actions;

iv. stipulate that Plaintiffs have the consent to obtain from third parties relevant class member and listing data to support the provision of Class Notice, administration of any settlements, or the litigation of the Actions;

v. agree that Plaintiffs may use in the Actions any discovery materials provided by it or its officers or employees in Moehrl or Burnett;

vi. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;

vii. if a Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of the multiple listing service, the multiple listing service will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

viii. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100);

ix. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

70. Each opting-in REALTOR® MLS's and non-REALTOR® MLS's cooperation obligations, as set forth in Paragraph 69 of this Settlement Agreement, shall not require the production of information, testimony, and/or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

71. Each opting-in REALTOR® MLS's and non-REALTOR® MLS's obligation to cooperate will not be affected by the release set forth in this Settlement Agreement or the final judgment orders with respect to the National Association of REALTORS® or the opting-in REALTOR® MLS or non-REALTOR® MLS. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in all of the Actions and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

K. Miscellaneous

72. This Settlement Agreement and any actions taken to carry out the Settlement are not intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any Settling Party. The National Association of REALTORS® denies the allegations of the complaints in the Actions. Neither this Settlement Agreement, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or

omission by the National Association of REALTORS®, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by the National Association of REALTORS® in any proceeding.

73. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations. The Settling Parties also participated in mediation sessions before a neutral mediator, Greg Lindstrom, of Phillips ADR Enterprises, P.C. and with two other mediators. The Settling Parties reached this Settlement Agreement after considering the risks and costs of litigation. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. The terms of the settlement continue to be subject to mediation privilege and must be kept strictly confidential until 10:00am Eastern Daylight Time on March 15, 2024, except as necessary for the National Association of REALTORS® to inform certain members, REALTOR® Boards, and REALTOR® MLSs or as otherwise agreed in writing by the Co-Lead Counsel and the National Association of REALTORS®.

74. Any disputes relating to this Settlement Agreement will be governed by Missouri law without regard to conflicts of law provisions.

75. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against any alleged co-conspirator or other Person or entity other than the Released Parties, including but not limited to the non-National Association of REALTORS® defendants in the Actions. All rights of any Settlement Class Member against any Non-National Association of REALTORS® Defendant or an alleged co-conspirator or other person or entity other than the Released Parties are specifically reserved by Plaintiffs and the other Settlement Class Members.

76. This Settlement Agreement constitutes the entire agreement among Plaintiffs and the National Association of REALTORS® pertaining to the Settlement of the Actions against the

National Association of REALTORS®. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and the National Association of REALTORS®.

77. This Settlement Agreement may be executed in counterparts by Plaintiffs and the National Association of REALTORS®, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

78. Neither Plaintiffs nor the National Association of REALTORS® shall be considered the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, the common law, or rule of interpretation that would or might cause any provision of this Settlement Agreement to be construed against the drafter.

79. The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

80. The provisions of this Settlement Agreement governing the opt-in and release of certain MLSs and brokerages (including Appendices B, C, and D) shall be deemed severable, and the invalidity, ineffectiveness, or unenforceability of those provisions shall not affect the validity or enforceability of the other provisions of this Settlement Agreement. The validity, effectiveness, and enforceability of this Settlement Agreement with and as it pertains to the National Association of REALTORS® shall not be affected in any way by the decisions of MLSs or brokerages to accept or decline the opt-in provisions reflected in this Settlement Agreement or of any court with respect to the approval of the opt-in and release provisions of certain MLSs and brokerages (including Appendices B, C, and D).

81. The opt-in and release of REALTOR® MLSs shall be subject to the same separate opt-out, objection, and Class Notice deadlines as this Settlement Agreement with the National Association of REALTORS®. At Plaintiffs' sole option (and in consultation with the opting-in non-REALTOR® MLSs or brokerages), the opt-out, objection, and class notice deadlines for any

Settlements with non-REALTOR® MLSs (as reflected in Appendix D) and brokerages (as reflected in Appendix C) may be subject to different opt-out, objection, and class notice deadlines from this Settlement Agreement with the National Association of REALTORS®.

82. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and the Settlement.

83. The terms of this Settlement Agreement are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, Released Parties, and any Settlement Class Members.

84. Any disputes between the National Association of REALTORS® and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented first to Gregory Lindstrom or another mediator agreed to by the parties for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

85. Each Settling Party acknowledges that he, she or it has been and is being fully advised by competent legal counsel of such Settling Party's own choice and fully understands the terms and conditions of this Settlement Agreement, and the meaning and import thereof, and that such Settling Party's execution of this Settlement Agreement is with the advice of such Settling Party's counsel and of such Settling Party's own free will. Each Settling Party represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement and was not fraudulently or otherwise wrongfully induced to enter into this Settlement Agreement.

86. The Settling Parties shall have the right to amend this Settlement Agreement, upon mutual written consent, to correct any scrivener's errors in this Settlement Agreement, provided that

such amendment does not materially adversely affect the rights of the Settling Parties.

87. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

NATIONAL ASSOCIATION OF REALTORS®

By:

Cooley LLP

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and NATIONAL ASSOCIATION OF REALTORS® REALTY, INC., Defendants.	Case No. 19-cv-00332-SRB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 1:19-cv-01610-ARW

Plaintiffs Rhonda Burnett, Jerod Breit, Jeremy Keel, Hollee Ellis, Frances Harvey, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners (collectively "Plaintiffs") and defendant the National Association of REALTORS® (collectively, "the Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, each firm defined in the Settlement Agreement as Co-Lead Counsel desires to give an undertaking (the "Undertaking") for repayment of the award of attorneys' fees, costs, and expenses approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned counsel, individually and as agent for his/her law firm, hereby submits both to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, Co-Lead Counsel and their shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Western District of Missouri for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and in the Settlement Agreement.

In the event that the Settlement Agreement does not receive final approval or any part of the final approval is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Co-Lead Counsel shall, within thirty (30) days repay to the National Association of REALTORS®, based upon written instructions provided by the National Association of REALTORS®, the full amount of

the attorneys' fees and costs paid to Co-Lead Counsel from the Settlement Fund, including any accrued interest.

In the event the Settlement Agreement becomes Effective, but the attorneys' fees, costs, and expenses awarded by the Court or any part of them are vacated, overturned, modified, reversed, or rendered void as a result of an appeal, Co-Lead Counsel shall within thirty (30) days repay to the Settlement Fund, based upon written instructions provided by the settlement administrator, the attorneys' fees and costs paid to Co-Lead Counsel from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all appeals of the final settlement order and judgment pertaining to attorneys' fees, such that the finality of those fees no longer remains in doubt.

In the event Co-Lead Counsel fails to repay to the National Association of REALTORS® any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of the National Association of REALTORS®, and notice to Co-Lead Counsel, summarily issue orders, including but not limited to judgments and attachment orders against Co-Lead Counsel.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of each firm identified as Co-Lead Counsel. This agreement will only be effective upon its execution by each firm identified in the Settlement Agreement as Co-Lead Counsel.

Co-Lead Counsel acknowledge that this Undertaking is a material component of the Settlement Agreement and agree to use its reasonable efforts to timely effect the terms specified in this Undertaking. Each undersigned warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time this Undertaking is executed.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States and the State of Missouri that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

By:

Cooley LLP

APPENDIX B - REALTOR® MLS "OPT IN" AGREEMENT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and NATIONAL ASSOCIATION OF REALTORS® REALTY, INC., Defendants.	Case No. 19-cv-00332-SRB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 1:19-cv-01610-ARW

WHEREAS, some plaintiffs have alleged that certain MLSs participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state laws;

WHEREAS, Stipulating MLS is a REALTOR® MLS and denies Plaintiffs' allegations in the Actions;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims and allegations asserted in the Actions, including more than four years of fact and expert discovery, and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Stipulating MLS believes that it is not liable for the claims and allegations asserted and has good defenses, but nevertheless has decided to enter into this agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by the Settlement Agreement, and to put to rest with finality all claims and allegations that Plaintiffs and Settlement Class Members have or could have asserted against the Stipulating MLS; and

WHEREAS, Stipulating MLS has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in the Settlement Agreement and Appendix B.

NOW, THEREFORE, in consideration of the agreements and releases set forth in the Settlement Agreement and Appendix B and other good and valuable consideration, and intending to be legally bound, it is agreed by and between _____ ("Stipulating MLS") and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Stipulating MLS only, without costs to Plaintiffs, the Settlement Class or Stipulating MLS except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

1. Stipulating MLS agrees that the terms reflected in this Appendix B shall have the same meaning as those defined in the Settlement Agreement.

2. Stipulating MLS represents that it is a REALTOR® MLS, as that term is defined in the Settlement Agreement. This representation is a material component of Appendix B and Stipulating MLS's inclusion as a Released Party.

3. Stipulating MLS agrees that, to be effective, it must provide an executed version of this Appendix B to the below email address within 60 days of the filing of the first motion for preliminary approval of the Settlement Agreement:

(1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and

(3) nargovernance@nar.realtor

4. As a condition for being a Released Party, as that term is defined in the Settlement Agreement, stipulating MLS agrees to be bound by the practice changes in Paragraph 68 and the cooperation terms in Paragraph 69 of the Settlement Agreement.

5. As soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of the Settlement Agreement, each Stipulating MLS will implement the following practice changes:

i. eliminate any requirement by the MLS that listing brokers or sellers must make offers of compensation to cooperating brokers or other buyer representatives (either directly or through buyers), and eliminate any requirement that such offers, if made, must be blanket, unconditional, or unilateral;

ii. prohibit the MLS participants, subscribers, other real estate brokers, other real estate agents, and sellers from (a) making offers of compensation on the multiple listing service to cooperating brokers or other buyer representatives (either directly or through buyers); or (b) disclosing on the multiple listing service listing broker compensation or total

brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);

iii. eliminate all broker compensation fields on the MLS, and prohibit the sharing of offers of compensation to buyer brokers or other buyer representatives via any other fields on the MLS;

iv. eliminate and prohibit any requirements conditioning participation or membership in an MLS on offering or accepting compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) a REALTOR® MLS providing data or data feeds to a REALTOR®, REALTOR® MLS participant, or third party unless the REALTOR® MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the REALTOR® MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or REALTOR® MLS Participant displaying both (1) data or data feeds from an MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the operation of this Paragraph 5(vi) of Appendix B, require that all MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

a. to the extent that such a Participant will receive compensation from

any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;

b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offering to the buyer"); and

c. such a Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;

vii. prohibit Participants, subscribers, and other real estate brokers and agents accessing the multiple listing service from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;

viii. require MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;

ix. require MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable (i) in their listing agreement if it is not a government-specified form, (ii) in their agreement with buyers if it is not a government-specified form, and (iii) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a

government form, then MLS participants must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable.

x. to the extent that the multiple listing services publishes form listing agreements, buyer representation agreements, or pre-closing disclosure documents for use by REALTORS®, participants, and/or subscribers, ensure that those forms include language disclosing to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable.

xi. require that MLS Participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the broker assisting the buyer;

xii. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Paragraph 5 of Appendix B; and

xiii. develop or provide educational materials developed by the National Association of REALTORS® that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

xiv. the practice changes in Paragraph 5 of Appendix B shall not prevent (a) offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service or (b) sellers from offering buyer concessions on an MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

6. The obligations set forth in Paragraph 5 of this Appendix B will terminate 7 years after the notice date.

7. Stipulating MLS agrees to provide proof of compliance with these practice changes if requested by Co-Lead Counsel.

8. Stipulating MLS will provide valuable cooperation to Plaintiffs and Settlement Class Member as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission Antitrust Litigation (MDL No. 3100):

i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;

ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

iii. use reasonable efforts at their expense to provide relevant class member and listing data and answer questions about that data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;

iv. stipulate that Plaintiffs have the consent to obtain from third parties relevant class member and listing data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;

v. agree that Plaintiffs may use in the remaining Actions any discovery materials provided by it or its officers or employees in Moehrl or Burnett;

vi. agree that the Settlement Agreement and Appendix B shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;

vii. if a Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of the multiple listing service, the multiple listing service will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

viii. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and

ix. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

9. Stipulating MLS's cooperation obligations, as set forth in Paragraph 8 of Appendix B, shall not require the production of information, testimony, and/or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

10. Stipulating MLS's obligation to cooperate will not be affected by the release set forth in the Settlement Agreement, Appendix B, or the final judgment orders with respect to National Association of REALTORS®. Unless this Settlement Agreement or Appendix B is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in all of the Actions and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

11. Stipulating MLS acknowledges that the practice changes and cooperation set forth in Paragraphs 5 and 8 of Appendix B are material components of Appendix B and agrees to use its reasonable best efforts to provide them.

12. Stipulating MLS consents to entry of a final judgment order enjoining Stipulating MLS in accordance with the provisions of Paragraph 68 of the Settlement Agreement.

13. The terms of Appendix B are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of Plaintiffs and Stipulating MLS, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, Released Parties, and any Settlement Class Members.

14. Any disputes between Stipulating MLS and Co-Lead Counsel concerning this Appendix B shall, if they cannot be resolved, be presented first to an agreed mediator for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

15. The Court shall retain jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement, including Appendix B.

16. Stipulating MLS acknowledges that it has been and is being fully advised by competent legal counsel of Stipulating MLS's own choice and fully understands the terms and conditions of the Settlement Agreement, including Appendix B, and the meaning and import thereof, and that such Stipulating MLS's execution of this Appendix B is with the advice of such Stipulating MLS's counsel and of such Stipulating MLS's own free will. Stipulating MLS submits to the exclusive jurisdiction of the Court for the purposes of interpreting and enforcing the terms of Appendix B, including but not limited to, the practice changes contained therein. Stipulating MLS represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter

into the Settlement Agreement, including Appendix B, and was not fraudulently or otherwise wrongfully induced to enter into the Settlement Agreement.

17. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Appendix B.

Date: ____ day of _____, 2024

_____

On behalf of _____

APPENDIX C – BROKERAGE "OPT IN" AGREEMENT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and NATIONAL ASSOCIATION OF REALTORS® REALTY, INC., Defendants.	Case No. 19-CV-00332-SRB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 1:19-cv-01610-ARW

WHEREAS, Plaintiffs allege that the National Association of REALTORS®, its members, and real estate brokers participating in MLSs throughout the United States participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state laws;

WHEREAS, Stipulating Party denies these allegations;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims and allegations that have been and/or could be asserted against Stipulating Party, including more than four years of fact and expert discovery, and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Stipulating Party believes that it is not liable for the claims and allegations asserted and has good defenses, but nevertheless has decided to enter into this Appendix C to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Appendix C, and to put to rest with finality all claims and allegations that Plaintiffs and Settlement Class Members have or could have asserted against the Stipulating Party; and

WHEREAS, Stipulating Party has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in this Appendix C.

NOW, THEREFORE, in consideration of the agreements and releases set forth in the Settlement Agreement and Appendix C and other good and valuable consideration, and intending to be legally bound, it is agreed by and between _____ ("Stipulating Party") and the Plaintiffs that certain actual or potential claims be settled, compromised, and dismissed with prejudice as to Stipulating Party, without costs to Plaintiffs, the Settlement Class or Stipulating Party except as provided for herein, subject to the approval of the Court, on the

following terms and conditions:

A. Definitions

Stipulating Party agrees that the terms reflected in this Appendix C shall have the same meaning as those defined in the Settlement Agreement, unless otherwise specified. The following terms, as used in this Appendix C only, have the following meanings:

1. "Burnett" means the case pending in the United States District Court for the Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

2. "Burnett MLSs" means the multiple listing services identified as Subject MLSs in Burnett.

3. "Co-Lead Counsel" means the following law firms:

KETCHMARK AND MCCREIGHT P.C.
11161 Overbrook Road, Suite 210
Leawood, KS 66211

BOULWARE LAW LLC
1600 Genessee, Suite 416
Kansas City, MO 64102

WILLIAMS DIRKS DAMERON LLC
1100 Main Street, Suite 2600
Kansas City, MO 64105

HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

4. "Court" means the United States District Court for the Western District of Missouri.

5. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.

6. "Effective Date" means the date when both: (a) the Court has entered a final judgment order approving the Settlement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Actions against the National Association of REALTORS® with prejudice has been entered; and (b) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement and the entry of a final judgment has expired or, if appealed, approval of the Settlement and the final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review; excluding, however, any appeal or other proceedings unrelated to this Settlement initiated by any Non-National Association of REALTORS® Defendant, and any such appeal or other proceedings shall not delay this Settlement from becoming final and shall not apply to this Paragraph; nor shall this Paragraph be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.

7. "Moehrl" means the case pending in the Northern District of Illinois Case No. 1:19-cv-01610-ARW, which is currently pending.

8. "Moehrl MLSs" means the multiple listing services named in Moehrl.

9. "MLS PIN" means the multiple listing service at issue in United States District Court for the District of Massachusetts Case No. I :20-cv-12244-PBS, which is currently pending.

10. "Opt-Outs" means members of the Settlement Class who have timely exercised their rights to be excluded from the Settlement Class or have otherwise obtained Court approval to exercise such rights.

11. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates, and assignees.

12. "Released Claims" means any and all manner of claims, regardless of the cause of action, arising from or relating to conduct that was alleged or could have been alleged in the Actions based on any or all of the same factual predicates for the claims alleged in the Actions, including but not limited to commissions negotiated, offered, obtained, rebated, or paid to brokerages in connection with the sale of any residential home.

13. "Released Parties" means Stipulating Party and its past, present, and future, direct and indirect, parents, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. However, "Released Parties" shall not include any Person who is excluded from being a released party under Paragraphs 18(g) or (h) of the Settlement Agreement.

14. "Releasing Parties" means Plaintiffs and any Settlement Class Members (including any of their immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates, acting in their capacity as such; and for entities including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting

in their capacity as such solely with respect to the claims based on or derived from claims of the Plaintiffs or Settlement Class Members).

15. "Settlement" means the settlement of the Actions contemplated by this Appendix C.

16. "Settlement Class" means the class of persons that will be certified by the Court for settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice.

For avoidance of doubt, Plaintiffs and Stipulating Party intend this Settlement to provide for a nationwide class with a nationwide settlement and release.

17. "Settlement Class Member" means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

18. "Settling Parties" means Plaintiffs and Stipulating Party.

B. <u>Operation of the Settlement</u>

19. Stipulating Party represents that neither it nor its past or present, direct or indirect parents (including holding companies), subsidiaries, affiliates (all as defined in SEC rule 12b-2

promulgated pursuant to the Securities Exchange Act of 1934), associates, predecessors, successors, franchisors, or franchisees is a defendant in the Actions, as that term is defined in the Settlement Agreement. This representation is a material component of Appendix C and Stipulating Party's inclusion as a Released Party

20. Settling Parties agree that, as a condition precedent for this Appendix C to become effective, Stipulating Party must deliver to the below email address within 60 days of the filing of the first motion for preliminary approval of the Settlement Agreement each of the following: (i) an executed version of this Appendix C; (ii) a declaration sworn pursuant 28 U.S.C. § 1746 by a competent officer of Stipulating Party accurately attesting to the Stipulating Party's "Total Transaction Volume" for each of the most recent four calendar years; and (iii) an indication of whether Stipulating Party selects either "Option 1" or "Option 2" as defined in this Appendix C:

(1) realtorsoptin@jndla.com (2) realtorsoptin@cohenmilstein.com and

(3) nargovernance@nar.realtor

21. As a condition for being a Released Party, Stipulating Party agrees to be bound by this Appendix C, including the practice changes and cooperation terms reflected in Paragraphs 35-41 of Appendix C.

22. **Option 1**: Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the United States Treasury Regulations (the "Escrow Account"). Within 120 days following preliminary approval of the Settlement Agreement by the Court, Stipulating Party will deposit into the Escrow Account an amount equal to 0.0025 multiplied by its average annual Total Transaction Volume over the most recent four calendar years ("Total Monetary Settlement Amount"). "Total Transaction Volume" is defined as the aggregate value of all residential home sales and purchases in which the Stipulating Entity and its direct and indirect parents (including holding companies),

subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and any of their franchisees represented in a real estate brokerage capacity either the buyer, the seller, or both. For any transactions in which a real estate broker represented both the buyer and the seller, that transaction shall be counted twice for purposes of calculating the "Total Transaction Volume." By way of example, a Stipulating Party with a $2 billion average annual Total Transaction Volume would be required under this agreement to deposit $5 million in the Escrow Account.

23. **Option 2**: Alternatively, to the extent Stipulating Party has a good faith belief that it lacks the ability to pay the amount required under Option 1, Stipulating Party agrees to participate in a non-binding mediation with Co-Lead Counsel to occur within 110 days following preliminary approval of the Settlement Agreement by the Court. That mediation will occur before Greg Lindstrom, of Phillips ADR Enterprises, P.C. or another mediator jointly selected by the parties to Appendix C. The costs of the mediation shall be borne entirely by Stipulating Party. Plaintiffs and Stipulating Party agree to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation, including the mediation. If, following the non-binding mediation described herein, Stipulating Party and Co-Lead Counsel are unable to reach agreement on a settlement within 130 days following preliminary approval of the Settlement Agreement by the Court, Stipulating Party shall not become a "Released Party" under the Settlement Agreement (including this Appendix C) and any further rights or obligations under the Settlement Agreement (including this Appendix C) of Stipulating Party, Plaintiffs, Co-Lead Counsel, or the Settlement Class to one another shall terminate.

C. Stipulation to Class Certification

24. The Settling Parties hereby stipulate for purposes of this settlement only, that the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied and,

subject to Court approval, the Settlement Class shall be certified for settlement purposes as to Stipulating Party. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement not become Effective, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void.

25. Neither the Settlement, Appendix C, or Settlement Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of the Settlement, Appendix C, or Settlement Agreement should be intended to be, construed as, or deemed to be evidence of an admission or concession by Stipulating Party that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

D. Approval of this Appendix C and Dismissal of the Actions

26. The Settling Parties agree to make reasonable best efforts to effectuate the Settlement Agreement (including Appendix C), including, but not limited to, seeking the Court's approval of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)); scheduling a final fairness hearing to obtain final approval of the settlement and the final dismissal with prejudice of the Actions as to Stipulating Party; and Stipulating Party's cooperation by providing information reflecting its ability to pay limitations.

27. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement reflected in Appendix C (the "Motion"). The Motion may be separate from and be filed at a different time than the preliminary approval motion provided in connection with the other class relief afforded in the Settlement Agreement by the National Association of REALTORS®. The Motion shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until

the Effective Date of this Settlement reflected in Appendix C. Stipulating Party shall not have any right or opportunity to review the Motion. The Settling Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the Settlement reflected in Appendix C. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Settling Parties will negotiate in good faith to modify Appendix C directly or with the assistance of an agreed mediator and will endeavor to resolve any issues to the satisfaction of the Court.

28. Subject to approval by the Court, Plaintiffs will undertake a method of providing notice of this Settlement to the Settlement Class and for claim administration that meets the requirements of due process and Federal Rule of Civil Procedure 23 and is substantially similar to the forms of notice already agreed-to and approved by the Court in the previous settlements with Anywhere, RE/MAX, and Keller Williams. Class members who file a claim under the Anywhere, RE/MAX and Keller Williams settlements will be deemed to also make a claim against this Settlement unless they affirmatively state they are not claiming this Settlement. The Settling Parties agree to the use of the claims administrator previously selected to administer the Anywhere, RE/MAX, and Keller Williams settlements and approved by the Court. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel and may occur separately from and at a different time than the class notice provided in connection with the class relief afforded in the Settlement Agreement by the National Association of REALTORS®.

29. Within ten (10) calendar days after the filing with the Court of this Appendix C and the accompanying motion papers seeking its preliminary approval, the claims administrator shall at Stipulating Party's expense to be credited against the Total Monetary Settlement Amount cause notice of the Settlement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

30. If the Settlement is preliminarily approved by the Court, Plaintiffs shall timely seek final approval of the Settlement and entry of a final judgment order as to Stipulating Party:

(a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b), solely for purposes of this Settlement;

(b) granting final approval of the Settlement as fair, reasonable, and adequate within the meaning of Federal Rules of Civil Procedure 23(e) and directing the consummation of the Settlement according to its terms;

(c) enjoining the Stipulating Party in accordance with the provisions of Paragraph 35 of Appendix C.

(d) directing that, as to Stipulating Party only, the Actions be dismissed with prejudice and, except as provided for herein, without costs;

(e) reserving exclusive jurisdiction over the Settlement and this Appendix C, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the Court; and

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of final judgment as to Stipulating Party.

31. This Appendix C will become Effective only after the occurrence of all conditions set forth above in the definition of the Effective Date.

E. <u>Releases, Discharge, and Covenant Not to Sue</u>

32. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive,

declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of preliminary approval of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Actions and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (i) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of preliminary approval of the Settlement; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

33. The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, the Releasing Parties expressly, fully, finally, and forever settle and release, and, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, without regard to the subsequent discovery or existence of such other, different, or additional facts, as well as any and all rights and benefits existing under (i) Cal. Civ. Code Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD

HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction, including but not limited to Section 20-7-11 of the South Dakota Codified Laws, which provides that "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;" or (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other, different, or additional facts. The Releasing Parties acknowledge that the inclusion of unknown claims in the definition of Released Claims was separately bargained for and was a material element of the Settlement Agreement.

34. The Releasing Parties intend by this Appendix C to settle with and release only the Released Parties, and the Settling Parties do not intend this Appendix C, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in the Actions), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury. The release does not extend to any individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence or other tort claim, other than a claim that a class member paid an excessive commission or home price due to the claims at issue in the Actions.

F. <u>Practice Changes</u>

35. Stipulating Party agrees that, as soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of this Settlement Agreement, Stipulating Party (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors, but not franchisees) will implement the following practice changes:

i. advise and periodically remind Stipulating Party's company-owned brokerages, franchisees (if any), and their agents that there is no Stipulating Party requirement that they must make offers to or must accept offers of compensation from cooperating brokers or that, if made, such offers must be blanket, unconditional, or unilateral;

ii. require that any Stipulating Party company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents) disclose to prospective home sellers and buyers and state in conspicuous language that broker commissions are not set by law and are fully negotiable (i) in their listing agreement if it is not a government or MLS-specified form, (ii) in their buyer representation agreement if there is one and it is not a government or MLS-specified form, and (iii) in pre-closing disclosure documents if there are any and they are not government or MLS-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents is a government or MLS-specified form, then Stipulating Party will require that any company-owned brokerages and their agents (and recommend and encourage that any Stipulating Party franchisees and their agents) include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable;

iii. prohibit all Stipulating Party company-owned brokerages and their agents acting as buyer representatives (and recommend and encourage that franchisees and their

agents acting as buyer representatives refrain) from advertising or otherwise representing that their services are free;

iv. require that company owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each active listing shared with prospective buyers in any format;

v. prohibit company owned brokerages and their agents (and recommend and encourage that any franchisees and their agents refrain) from utilizing any technology or taking manual actions to filter out or restrict listings that are searchable by and displayed to consumers based on the level of compensation offered to any cooperating broker unless directed to do so by the client (and eliminate any internal systems or technological processes that may currently facilitate such practices);

vi. advise and periodically remind company owned brokerages and their agents of their obligation to (and recommend and encourage that any franchisees and their agents) show properties regardless of the existence or amount of compensation offered to buyer brokers or other buyer representatives provided that each such property meets the buyer's articulated purchasing priorities;

vii. for each of the above points, for company owned brokerages, franchisees, and their agents, develop training materials consistent with the above relief and eliminate any contrary training materials currently used.

36. If not automatically terminated earlier by their own terms, the obligations set forth in the immediately preceding paragraph will sunset 5 years after the Effective Date.

37. Stipulating Party agrees to provide proof of compliance with these practice changes if requested by Co-Lead Counsel.

G. <u>Cooperation</u>

38. Stipulating Party agrees to provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission Antitrust Litigation (MDL No. 3100):

i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;

ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

iii. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;

iv. if a defendant includes a witness on a witness list in the Actions who is then a current officer or employee of Stipulating Party, Stipulating Party will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

v. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and

vi. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

39. Stipulating Party's cooperation obligations, as set forth in Paragraph 38 of Appendix C, shall not require the production of information, testimony, and/or documents that are protected

from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

40. Stipulating Party's obligation to cooperate will not be affected by the releases set forth in this Settlement Agreement or Appendix C or the final judgment orders with respect to the National Association of REALTORS® or Stipulating Party. Unless this Appendix C is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in all of the Actions and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

41. Stipulating Party acknowledges that the practice changes and cooperation set forth in this Appendix C are a material component of Appendix C and agrees to use its reasonable best efforts to provide them.

H. The Settlement Fund

42. The Total Monetary Settlement Amount and any interest earned thereon shall be held in the Escrow Account and constitute the "Settlement Fund." The full and complete cost of the settlement notice, claims administration, Settlement Class Members' compensation, current and former class representatives' incentive awards, attorneys' fees and reimbursement of all actual expenses of the Actions, any other litigation costs of Plaintiffs (all as approved by the Court), and all applicable taxes, if any, assessable on the Settlement Fund or any portion thereof, will be paid out of the Settlement Fund. In no event will Stipulating Party's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

43. The Settling Parties and their counsel will not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement

Class or administering the settlement except in Paragraphs 40 and 42 of Appendix C. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance of the Settlement Fund shall be disbursed to Settlement Class Members as provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

44. Subject to Co-Lead Counsel's sole discretion as to timing, except that the timing must be consistent with rules requiring that Settlement Class Members be given the opportunity to review fee applications, Co-Lead Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and current and former class representative service awards to be paid out of the Settlement Fund. Within 14 business days after any order by the Court awarding attorneys' fees, expenses, or class representative incentive awards or such later date as directed by Co-Lead Counsel,, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award up to the amount specified in Paragraphs 22 or 23 of Appendix C for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-Lead Counsel in accordance with and attaching the Court's Order, provided that each Co-Lead Counsel receiving payment signs an assurance, in the form attached hereto as Appendix A, attesting that they will repay all awarded amounts if this Settlement Agreement does not become Effective.

45. The Settlement Fund will be invested in United States Government Treasury obligations or United States Treasury money market funds.

46. Stipulating Party will not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, use or administration except as expressly otherwise provided in this Appendix C.

47. There will be no reduction of the Total Monetary Settlement Amount based on Opt-Out Sellers. The Settlement will be non-reversionary except as set forth below in Paragraphs 33-37 of Appendix C. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Stipulating Party regardless of the claims that are made.

48. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in this Appendix C.

49. The distribution of the Settlement Fund shall be administered pursuant to a plan of allocation (the "Plan of Allocation") proposed by Co-Lead Counsel in their sole and absolute discretion and subject to the approval of the Court. Stipulating Party will have no participatory or approval rights with respect to the Plan of Allocation. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation, including, but not limited to, any adjustments to an authorized claimant's claim, is completely independent of and is not a part of this Settlement Agreement (including Appendix C) and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. The Settlement Class, Plaintiffs, and Stipulating Party shall be bound by the terms of the Settlement Agreement (including Appendix C), irrespective of whether the Court or any other court, including on any appeal, disapproves or modifies the Plan of Allocation, and any modification or rejection of the Plan of Allocation shall not affect the validity or enforceability of this Settlement Agreement or otherwise operate to terminate, modify, or cancel that Agreement.

50. The Releasing Parties will look solely to the Settlement Fund for settlement and satisfaction against the Released Parties of all Released Claims and shall have no other recovery against Stipulating Party or the Released Parties.

I. Taxes

51. Co-Lead Counsel is solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Stipulating Party has no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the Settlement does not become Effective and the Settlement Fund is returned to Stipulating Party. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Stipulating Party, Stipulating Party will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Stipulating Party makes no representations regarding, and will not be responsible for, the tax consequences of any payments made pursuant to this Settlement to Co-Lead Counsel or to any Settlement Class Member.

J. Rescission

52. If the Court does not certify the Settlement Class as defined in this Appendix C, or if the Court does not approve this Appendix C in all material respects, or if such approval is modified or set aside on appeal, or if the Court does not enter final approval, or if any judgment approving this Appendix C is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Appendix C may be rescinded by Stipulating Party or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within ten (10) business days of the entry of an order not granting court

approval or having the effect of disapproving or materially modifying the terms of the Appendix C. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement or such final judgment order. The decision of certain Settlement Class Members to opt out of the Settlement shall not be a basis for Stipulating Party to rescind or terminate the Appendix C.

53. If Appendix C is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Stipulating Party.

54. Stipulating Party warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time this Appendix C is executed. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Total Monetary Settlement Amount, or any portion thereof, by or on behalf of Stipulating Party to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of Stipulating Party, then, at the election of Co-Lead Counsel, the Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

55. The Settling Parties' rights to terminate this Settlement and withdraw from Appendix C are a material term of this Settlement.

56. Stipulating Party reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

K. Miscellaneous

57. This Appendix C and any actions taken to carry out the Settlement are not intended

to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any party. Stipulating Party denies the material allegations of the complaints in the Actions and in the other cases in In re Real Estate Commission Antitrust Litigation (MDL No. 3100). Neither this Appendix C, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Stipulating Party, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Stipulating Party in any proceeding.

58. The terms of Appendix C are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of Plaintiffs and Stipulating Party, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, Released Parties, and any Settlement Class Members.

59. Any disputes between Stipulating Party and Co-Lead Counsel concerning this Appendix C shall, if they cannot be resolved, be presented first to an agreed mediator for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

60. The provisions of this Appendix C shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

61. Any disputes relating to this Appendix C will be governed by Missouri law without regard to conflicts of law provisions.

62. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and Appendix C.

63. This Settlement Agreement and Appendix C constitute the entire agreement among Plaintiffs and Stipulating Party pertaining to the Settlement of any claims or potential claims against Stipulating Party. This Appendix C may be modified or amended only by a writing executed by

Plaintiffs and Stipulating Party.

64. Stipulating Party acknowledges that it has been and is being fully advised by competent legal counsel of Stipulating Party's own choice and fully understands the terms and conditions of this Settlement Agreement, including Appendix C, and the meaning and import thereof, and that such Stipulating Party's execution of this Appendix C is with the advice of such Stipulating Party's counsel and of such Stipulating Party's own free will. Stipulating Party submits to the exclusive jurisdiction of the Court for the purposes of interpreting and enforcing the terms of Appendix C, including but not limited to, the practice changes contained therein. Stipulating Party represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement, including Appendix C, and was not fraudulently or otherwise wrongfully induced to enter into this Appendix C.

65. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Appendix C.

Date: ____ day of _____, 2024

_____

On behalf of _____

ON BEHALF OF CO-LEAD COUNSEL

_____

APPENDIX D – NON-REALTOR® MLS "OPT IN" AGREEMENT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and NATIONAL ASSOCIATION OF REALTORS® REALTY, INC., Defendants.	Case No. 19-cv-00332-SRB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS®, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 1:19-cv-01610-ARW

WHEREAS, some plaintiffs have alleged that certain MLSs participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state laws;

WHEREAS, Stipulating MLS denies Plaintiffs' allegations in the Actions;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims and allegations asserted in the Actions, including more than four years of fact and expert discovery, and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Stipulating MLS believes that it is not liable for the claims and allegations asserted and has good defenses, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims and allegations that Plaintiffs and Settlement Class Members have or could have asserted against the Stipulating MLS; and

WHEREAS, Stipulating MLS, has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in the Settlement Agreement and Appendix D.

NOW, THEREFORE, in consideration of the agreements and releases set forth in the Settlement Agreement and Appendix D and other good and valuable consideration, and intending to be legally bound, it is agreed by and between _____ ("Stipulating MLS") and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Stipulating MLS only, without costs to Plaintiffs, the Settlement Class or Stipulating MLS except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. <u>Definitions</u>

Stipulating MLS agrees that the terms reflected in this Appendix D shall have the same meaning as those defined in the Settlement Agreement, unless otherwise specified. The following terms, as used in this Appendix D only, have the following meanings:

1. "Burnett" means the case pending in the United States District Court for the Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

2. "Burnett MLSs" means the multiple listing services at issue in Burnett.

3. "Co-Lead Counsel" means the following law firms:

KETCHMARK AND MCCREIGHT P.C.
11161 Overbrook Road, Suite 210
Leawood, KS 66211

BOULWARE LAW LLC
1600 Genessee, Suite 416
Kansas City, MO 64102

WILLIAMS DIRKS DAMERON LLC
1100 Main Street, Suite 2600
Kansas City, MO 64105

HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

4. "Court" means the United States District Court for the Western District of Missouri.

5. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.

6. "Effective Date" means the date when both: (a) the Court has entered a final judgment order approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal

Rules of Civil Procedure and a final judgment dismissing the Actions against the National Association of REALTORS® with prejudice has been entered; and (b) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement and the entry of a final judgment has expired or, if appealed, approval of the Settlement and the final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review; excluding, however, any appeal or other proceedings unrelated to this Settlement initiated by any Non-National Association of REALTORS® Defendant, and any such appeal or other proceedings shall not delay the Settlement from becoming final and shall not apply to this Paragraph; nor shall this Paragraph be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.

7. "Moehrl" means the case pending in the Northern District of Illinois Case No. 1:19-cv-01610-ARW, which is currently pending.

8. "Moehrl MLSs" means the multiple listing services named in Moehrl.

9. "MLS PIN" means the multiple listing service at issue in United States District Court for the District of Massachusetts Case No. I :20-cv-12244-PBS, which is currently pending.

10. "Opt-Outs" means members of the Settlement Class who have timely exercised their rights to be excluded from the Settlement Class or have otherwise obtained Court approval to exercise such rights.

11. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such

individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates, and assignees.

12. "Released Claims" means any and all manner of claims, regardless of the cause of action, arising from or relating to conduct that was alleged or could have been alleged in the Actions based on any or all of the same factual predicates for the claims alleged in the Actions, including but not limited to commissions negotiated, offered, obtained, rebated, or paid to brokerages in connection with the sale of any residential home.

13. "Released Parties" for purposes of this Appendix D means Stipulating MLS and its past and present, direct and indirect, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. However, "Released Parties" shall not include any Person who is excluded from being a released party under Paragraphs 18(g) or (h) of the Settlement Agreement.

14. "Releasing Parties" means Plaintiffs and any Settlement Class Members (including any of their immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates, acting in their capacity as such; and for entities including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such solely with respect to the claims based on or derived from claims of the Plaintiffs or Settlement Class Members).

15. "Settlement" means the settlement of the Actions contemplated by this Settlement Agreement.

16. "Settlement Class" means the class of persons that will be certified by the Court for settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice.

For avoidance of doubt, Plaintiffs and National Association of REALTORS® intend this Settlement Agreement to provide for a nationwide class with a nationwide settlement and release.

17. "Settlement Class Member" means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

18. "Settling Parties" means Plaintiffs and Stipulating MLS.

B. <u>Operation of the Settlement</u>

19. Stipulating MLS represents that neither it nor its past or present, direct or indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, franchisors, or franchisees is a defendant in the Actions, as that term is defined in the Settlement Agreement. This representation is a material component of Appendix D and Stipulating MLS's

inclusion as a Released Party.

20. Settling Parties agree that, as a condition precedent for this Appendix D to become effective, Stipulating MLS must deliver to the below email address within 60 days of the filing of the first motion for preliminary approval of the Settlement Agreement each of the following: (i) an executed version of this Appendix D; and (ii) an indication of whether Stipulating MLS selects either "Option 1" or "Option 2" as defined in this Appendix D:

(1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and

(3) nargovernance@nar.realtor

21. As a condition for being a Released Party, Stipulating MLS agrees to be bound by this Appendix D, including the practice changes and cooperation terms reflected in Paragraphs 35-36 of Appendix D.

22. **Option 1**: Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations (the "Escrow Account"). Within 120 days following preliminary approval of the settlement by the Court, Stipulating MLS will deposit into the Escrow Account a dollar amount equal to 100 multiplied by the number of its subscribers in calendar year 2023. The "2023 Subscribers" reflected in the T360 Real Estate Almanac (2023) shall serve as an irrebuttable presumption of that Stipulating MLS's number of subscribers in calendar year 2023.

23. **Option 2**: Alternatively, to the extent Stipulating MLS has a good faith belief that it lacks the ability to pay the amount required under Option 1, Stipulating MLS agrees to participate in a non-binding mediation with Co-Lead Counsel to occur within 110 days following preliminary approval of the Settlement by the Court. That mediation will occur before Greg Lindstrom, of Phillips ADR Enterprises, P.C. or another mediator jointly selected by the parties to Appendix D. The costs of the mediation shall be borne entirely by Stipulating MLS. Plaintiffs and Stipulating

MLS agree to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation, including the mediation. If, following the non-binding mediation described herein, Stipulating MLS and Co-Lead Counsel are unable to reach agreement on a settlement within 130 days following preliminary approval of the Settlement Agreement by the Court, Stipulating MLS shall not become a "Released Party" under the Settlement Agreement (including this Appendix D) and any further rights or obligations under the Settlement Agreement (including this Appendix D) of Stipulating MLS, Plaintiffs, Co-Lead Counsel, or the Settlement Class to one another shall terminate.

C. Stipulation to Class Certification

24. The Settling Parties hereby stipulate for purposes of this settlement only that the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes as to Stipulating MLS. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement not become Effective, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void.

25. Neither the Settlement, Appendix D, or Settlement Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Settlement, Appendix D, or Settlement Agreement should be intended to be, construed as, or deemed to be evidence of an admission or concession by Stipulating MLS that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

D. Approval of this Appendix D and Dismissal of the Actions

26. The Settling Parties agree to make reasonable best efforts to effectuate this Settlement Agreement (including Appendix D), including, but not limited to, seeking the Court's approval of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)); scheduling a final fairness hearing to obtain final approval of the settlement and the final dismissal with prejudice of the Actions as to Stipulating MLS; and Stipulating MLS cooperation by providing information reflecting its ability to pay limitations.

27. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the settlement reflected in Appendix D (the "Motion"). The Motion may be separate from and be filed at a different time than the preliminary approval motion provided in connection with the other class relief afforded in the Settlement Agreement by the National Association of REALTORS®. The Motion shall include a proposed form of order preliminarily approving the settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this settlement reflected in Appendix D. Stipulating MLS shall not have any right or opportunity to review the Motion. The Settling Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the settlement reflected in Appendix D. To the extent the Court finds that the settlement does not meet the standard for preliminary approval, the Settling Parties will negotiate in good faith to modify Appendix D directly or with the assistance of an agreed mediator and will endeavor to resolve any issues to the satisfaction of the Court.

28. Subject to approval by the Court, Plaintiffs will undertake a method of providing notice of this settlement to the Settlement Class and for claim administration that meets the requirements of due process and Federal Rule of Civil Procedure 23 and is substantially similar to the forms of notice already agreed-to and approved by the Court in the previous settlements with Anywhere, RE/MAX, and Keller Williams. Class members who file a claim under the Anywhere, RE/MAX and Keller Williams settlements will be deemed to also make a claim against this

Settlement unless they affirmatively state they are not claiming this Settlement. The Settling Parties agree to the use of the claims administrator previously selected to administer the Anywhere, RE/MAX, and Keller Williams settlements and approved by the Court. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel and may occur separately from and at a different time than the class notice provided in connection with the class relief afforded in the Settlement Agreement by the National Association of REALTORS®.

29. Within ten (10) calendar days after the filing with the Court of this Appendix D and the accompanying motion papers seeking its preliminary approval, the claims administrator shall at Stipulating MLS's expense to be credited against the Total Monetary Settlement Amount cause notice of the Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

30. If the Settlement is preliminarily approved by the Court, Plaintiffs shall timely seek final approval of the Settlement and entry of a final judgment order as to Stipulating MLS:

(a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b), solely for purposes of this Settlement;

(b) granting final approval of the Settlement as fair, reasonable, and adequate within the meaning of Federal Rules of Civil Procedure 23(e) and directing the consummation of the Settlement according to its terms;

(c) enjoining the Stipulating MLS in accordance with the provisions of Paragraph 35 of Appendix D.

(d) directing that, as to Stipulating MLS only, the Actions be dismissed with prejudice and, except as provided for herein, without costs;

(e) reserving exclusive jurisdiction over the Settlement and this Appendix D, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the Court; and

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of final judgment as to Stipulating MLS.

31. This Appendix D will become Effective only after the occurrence of all conditions set forth above in the definition of the Effective Date.

E. Releases, Discharge, and Covenant Not to Sue

32. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of preliminary approval of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Actions and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (i) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of preliminary approval of the Settlement; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

33. The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, the Releasing Parties expressly, fully, finally, and forever settle and release, and, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, without regard to the subsequent discovery or existence of such other, different, or additional facts, as well as any and all rights and benefits existing under (i) Cal. Civ. Code Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction, including but not limited to Section 20-7-11 of the South Dakota Codified Laws, which provides that "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;" or (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other, different, or additional facts. The

Releasing Parties acknowledge that the inclusion of unknown claims in the definition of Released Claims was separately bargained for and was a material element of the Settlement Agreement.

34. The Releasing Parties intend by this Appendix D to settle with and release only the Released Parties, and the Settling Parties do not intend this Appendix D, or any part hereof, or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in the Actions), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury. The release does not extend to any individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence or other tort claim, other than a claim that a class member paid an excessive commission or home price due to the claims at issue in the Actions.

F. <u>Practice Changes</u>

35. Stipulating MLS agrees that, as soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of the Settlement Agreement, each Stipulating MLS will implement the following practice changes:

i. eliminate any requirement by the MLS that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate any requirement that such offers, if made, must be blanket, unconditional, or unilateral;

ii. prohibit the MLS Participants, subscribers, other real estate brokers, other real estate agents, and sellers from (a) making offers of compensation on the multiple listing service to cooperating brokers or other buyer representatives (either directly or through buyers); or (b) disclosing on the multiple listing service listing broker compensation or total

brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);

iii. eliminate all broker compensation fields on the MLS, and prohibit the sharing of offers of compensation to buyer brokers or other buyer representatives via any other fields on the MLS;

iv. eliminate and prohibit any requirements conditioning multiple listing service participation or membership in an MLS on offering or accepting compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) an MLS providing data or data feeds to a REALTOR®, MLS Participant, or third party unless the MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or MLS Participant displaying both (1) data or data feeds from an MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the operation of this Paragraph 35(vi) of Appendix D, require that all MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

a. to the extent that such a Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate

of compensation it will receive or how this amount will be determined;

b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offering to the buyer"); and

c. such a Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;

vii. prohibit Participants, subscribers, and other real estate brokers and agents accessing the multiple listing service from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;

viii. require MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;

ix. require MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable (i) in their listing agreement if it is not a government-specified form, (ii) in their agreement with buyers if it is not a government-specified form, and (iii) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then MLS participants must include a disclosure with conspicuous

language expressly stating that broker commissions are not set by law and are fully negotiable;

x. to the extent that the multiple listing services publishes form listing agreements, buyer representation agreements, or pre-closing disclosure documents for use by REALTORS®, participants, and/or subscribers, ensure that those forms include language disclosing to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable;

xi. require that MLS participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the broker assisting the buyer;

xii. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Paragraph 35 of Appendix D; and

xiii. develop educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

xiv. the practice changes in the Paragraph 35 of Appendix D shall not prevent (a) offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service or (b) sellers from offering buyer concessions on an MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

36. Stipulating MLS agrees to provide proof of compliance with these practice changes if requested by Co-Lead Counsel.

G. <u>Cooperation</u>

37. Stipulating MLS will provide valuable cooperation to Plaintiffs and Settlement Class Member as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission Antitrust Litigation (MDL No. 3100):

i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;

ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

iii. use reasonable efforts at their expense to provide relevant class member and listing data and answer questions about that data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;

iv. stipulate that Plaintiffs have the consent to obtain from third parties relevant class member and listing data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;

v. agree that Plaintiffs may use in the remaining Actions any discovery materials provided by it or its officers or employees in Moehrl or Burnett;

vi. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;

vii. if a Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of the multiple listing service, the multiple listing

service will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

viii. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and

ix. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

38. Stipulating MLS's cooperation obligations, as set forth in Paragraph 37 of Appendix D, shall not require the production of information, testimony, and/or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

39. Stipulating MLS's obligation to cooperate will not be affected by the releases set forth in this Settlement Agreement or Appendix D or the final judgment orders with respect to National Association of REALTORS® or Stipulating Party. Unless this Appendix D is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in all of the Actions and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

40. Stipulating MLS acknowledges that the practice changes and cooperation set forth in this Appendix D are a material component of Appendix D and agrees to use its reasonable best efforts to provide them.

H. <u>The Settlement Fund</u>

41. The Total Monetary Settlement Amount and any interest earned thereon shall be held in the Escrow Account and constitute the "Settlement Fund." The full and complete cost of the settlement notice, claims administration, Settlement Class Members' compensation, current and former class representatives' incentive awards, attorneys' fees and reimbursement of all actual expenses of the Actions, any other litigation costs of Plaintiffs (all as approved by the Court), and all applicable taxes, if any, assessable on the Settlement Fund or any portion thereof, will be paid out of the Settlement Fund. In no event will Stipulating MLS's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

42. The Settling Parties and their counsel will not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or administering the settlement except in this Appendix D. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance of the Settlement Fund shall be disbursed to Settlement Class Members as provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

43. Subject to Co-Lead Counsel's sole discretion as to timing, except that the timing must be consistent with rules requiring that Settlement Class Members be given the opportunity to review fee applications, Co-Lead Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and current and former class representative service awards to be paid out of the Settlement Fund. Within 14 business days after any order by the Court awarding attorneys' fees, expenses, or class representative incentive awards or such later date as directed by Co-Lead Counsel, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award up to the amount specified in Paragraphs 22 or 23 of Appendix D for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-

Lead Counsel in accordance with and attaching the Court's Order, provided that each Co-Lead Counsel receiving payment signs an assurance, in the form attached hereto as Appendix A, attesting that they will repay all awarded amounts if this Settlement Agreement does not become Effective.

44. The Settlement Fund will be invested in United States Government Treasury obligations or United States Treasury money market funds.

45. Stipulating MLS will not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, use or administration except as expressly otherwise provided in this Appendix D.

46. There will be no reduction of the Total Monetary Settlement Amount based on Opt-Out Sellers. The Settlement will be non-reversionary except as set forth below in Paragraphs 51 of Appendix D. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Stipulating MLS regardless of the claims that are made.

47. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in this Appendix D.

48. The distribution of the Settlement Fund shall be administered pursuant to a plan of allocation (the "Plan of Allocation") proposed by Co-Lead Counsel in their sole and absolute discretion and subject to the approval of the Court. Stipulating MLS will have no participatory or approval rights with respect to the Plan of Allocation. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation, including, but not limited to, any adjustments to an authorized claimant's claim, is completely independent of and is not a part of this Settlement Agreement (including Appendix D) and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. The Settlement Class, Plaintiffs, and Stipulating MLS shall be bound by the terms of the Settlement Agreement (including

Appendix D), irrespective of whether the Court or any other court, including on any appeal, disapproves or modifies the Plan of Allocation, and any modification or rejection of the Plan of Allocation shall not affect the validity or enforceability of this Settlement Agreement or otherwise operate to terminate, modify, or cancel that Agreement.

49. The Releasing Parties will look solely to the Settlement Fund for settlement and satisfaction against the Released Parties of all Released Claims and shall have no other recovery against Stipulating MLS or the Released Parties.

I. Taxes

50. Co-Lead Counsel is solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Stipulating MLS has no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the Settlement does not become Effective and the Settlement Fund is returned to Stipulating MLS. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Stipulating MLS, Stipulating MLS will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Stipulating MLS makes no representations regarding, and will not be responsible for, the tax consequences of any payments made pursuant to this Settlement Agreement to Co-Lead Counsel or to any Settlement Class Member.

J. Rescission

51. If the Court does not certify the Settlement Class as defined in this Appendix D, or if the Court does not approve this Appendix D in all material respects, or if such approval is modified or set aside on appeal, or if the Court does not enter final approval, or if any judgment approving this Appendix D is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Appendix D may be rescinded by Stipulating MLS or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within ten (10) business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of the Appendix D. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement or such final judgment order. The decision of certain Settlement Class Members to opt out of the Settlement shall not be a basis for Stipulating MLS to rescind or terminate the Appendix D.

52. If Appendix D is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Stipulating MLS.

53. Stipulating MLS warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time this Appendix D is executed. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Total Monetary Settlement Amount, or any portion thereof, by or on behalf of Stipulating MLS to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the U.S. Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of Stipulating MLS, then, at the election of Co-Lead Counsel, the Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null

and void.

54. The Settling Parties' rights to terminate this Settlement and withdraw from Appendix D are a material term of this Settlement.

55. Stipulating MLS reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

K. Miscellaneous

56. This Appendix D and any actions taken to carry out the Settlement are not intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any party. Stipulating MLS denies the material allegations of the complaints in the Actions and in the other cases in In re Real Estate Commission Antitrust Litigation (MDL No. 3100). Neither this Appendix D, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Stipulating MLS, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Stipulating MLS in any proceeding.

57. The terms of Appendix D are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of Plaintiffs and Stipulating MLS, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, Released Parties, and any Settlement Class Members.

58. Any disputes between Stipulating MLS and Co-Lead Counsel concerning this Appendix D shall, if they cannot be resolved, be presented first to an agreed mediator for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

59. The provisions of this Appendix D shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

60. Any disputes relating to this Appendix D will be governed by Missouri law without regard to conflicts of law provisions.

61. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and Appendix D.

62. This Settlement Agreement and Appendix D constitute the entire agreement among Plaintiffs and Stipulating MLS pertaining to the Settlement of any claims or potential claims against Stipulating MLS. This Appendix D may be modified or amended only by a writing executed by Plaintiffs and Stipulating MLS.

63. Stipulating MLS acknowledges that it has been and is being fully advised by competent legal counsel of Stipulating MLS's own choice and fully understands the terms and conditions of this Settlement Agreement, including Appendix D, and the meaning and import thereof, and that such Stipulating MLS's execution of this Appendix D is with the advice of such Stipulating MLS's counsel and of such Stipulating MLS's own free will. Stipulating MLS submits to the exclusive jurisdiction of the Court for the purposes of interpreting and enforcing the terms of Appendix D, including but not limited to, the practice changes contained therein. Stipulating MLS represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement, including Appendix D, and was not fraudulently or otherwise wrongfully induced to enter into this Appendix D.

64. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Appendix D.

Date: ____ day of _____, 2024

_____

On behalf of _____

ON BEHALF OF CO-LEAD COUNSEL

_____
Cohen Milstein Sellers & Toll PLLC

Exhibit 2

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 19-CV-00332-SRB

DECLARATION OF ERIC L. DIRKS IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENT WITH THE NATIONAL ASSOCIATION OF REALTORS

I, Eric L. Dirks, hereby declare as follows:

1. I am a partner at the law firm of Williams Dirks Dameron LLC in Kansas City, Missouri, and counsel for the Plaintiff and the Class in the *Burnett* action. I submit this declaration in support of Plaintiffs Motion for Preliminary Approval of the Settlement with NAR. I make this statement of my own personal knowledge, and if called to testify, would testify competently thereto.

2. The following is a brief description of my professional background. I am a founding partner of the law firm of Williams Dirks Dameron LLC, in Kansas City, Missouri where I focus my practice on complex litigation, including nationwide class actions. Before my involvement in this case, I acted as counsel on over four dozen class and collective actions, I have

settled numerous class actions, tried a class action to verdict and through appeal in federal court (prior to the *Burnett* trial), and successfully argued the issue of class certification before the Missouri Supreme Court. As the Court is aware, my firm and our co-counsel in this case successfully navigated this case from its infancy to a $1.785 Billion jury verdict.

3. I am AV rated with Martindale Hubbell, am routinely selected as a Super Lawyers Top 50 in Kansas City and have been selected to Kansas City's Best of the Bar on multiple occasions. I have publicly spoken on numerous occasions on the topic of complex litigation, including class actions.

4. I spent the majority of my time over the past three years working on the *Burnett* matter and am intimately familiar with all aspects of the case.

5. Based on my experience prosecuting this case and our research, the Settlement with NAR represents the largest known consumer class settlement involving the real estate brokerage industry.

6. The Settlement is more than a large financial recovery for the class. The practice changes set out in the Settlement are a substantial victory for class members and, in my opinion, will ultimately result in cost savings for future home sellers. Numerous experts and commentators agree the changes will save consumers billions of dollars per year going forward.

7. Based on my experience in handling class action litigation for the past two decades, I can say without a doubt that the Settlements constitute a fair and reasonable– indeed excellent– result for the class.

8. Our firm and co-counsel filed *Burnett* in 2019 and have collectively dedicated more resources to the prosecution of this litigation than any other case in our firms' history. To my knowledge, prior to *Moehrl* and *Burnett*, there had never been a significant public or private

prosecution or settlement of the current Mandatory Offer of Compensation Rule. Throughout the litigation NAR took the position that its conduct was lawful and that the cases lacked merit.

9. *Burnett* and *Moehrl* represent the only certified litigation classes of plaintiffs involving the Mandatory Offer of Compensation Rule. Our firm and co-counsel, along with class counsel in *Moehrl* (collectively "Class Counsel" or "co-counsel"), litigated the only cases involving the Mandatory Offer of Compensation Rule until other plaintiffs began filing similar cases once they had the opportunity to observe our successes in the litigation.

10. After we reached Settlements with Anywhere, RE/MAX and Keller Williams, we continued litigating against NAR and other defendants. In *Burnett*, we litigated all the way through trial and in *Moehrl*, trial was imminent.

11. Based on my two decades of experience prosecuting class actions and serving as class counsel in numerous class actions, I can say that this Litigation was the most unique and hotly-contested I have experienced. Moreover, the result came after years of work in not one, but two, litigious class actions: *Burnett* and *Moehrl*.

12. In each case, Defendants mounted a comprehensive and independent defense, requiring us to give an equally forceful prosecution. Defendants were represented by no less than twenty well-respected defense firms during the course of the *Burnett* litigation including: Cooley, Quinn Emanuel Urquhart Sullivan, Arent Fox Schiff, Jones Day, Holland & Knight, Faegre Baker Daniels, Morgan Lewis & Bockius, Foley & Lardner, MacGill PC, Gibson Dunn & Crutcher, Barnes & Thornburg, MoloLamken, Polsinelli, Stinson, Brown & James, Lathrop GPM, Horn Aylward & Bandy, and Armstrong Teasdale.

13. The issues were complex. We defeated two motions to dismiss, three motions to compel arbitration, 5 motions for summary judgment, three appeals, and took and defended over

80 depositions in *Burnett*. The cases involved at least 20 different experts on liability and damages involving numerous reports and depositions. Damages experts reviewed huge data sets including millions of rows of data. Expert testimony covered a broad array of subject matters.

14. We reviewed more than 5 million pages of documents, and we isolated and reviewed unique documents, which culminated in the parties marking hundreds of deposition and trial exhibits. Both sides issued numerous third-party subpoenas to multiple MLSs and real estate brokerages.

15. Even after prevailing at trial in *Burnett*, Defendants continued to fight nearly every aspect of the case. Nonetheless, we were successful in our efforts on behalf of the Settlement Classes with respect to Anywhere, RE/MAX, Keller Williams, and now NAR.

16. Liability was also far from the only risk we faced. It was critical to prevail on that point but hardly sufficient to obtain a significant recovery. Defendants levied every conceivable challenge at class certification, expert testimony, and damages.

17. It was not until after the *Burnett* trial, and NAR exhausting its options at every turn (i.e. motions to dismiss, motions for summary judgment, Daubert motions, appeals from class certification order), that NAR was prepared to settle. Ultimately, Plaintiffs' decision to settle was based on the substantial monetary and practice change relief weighed against the risks on appeal and NAR's inability to satisfy the *Burnett* judgment.

18. The Settlement was reached only after numerous attempts at mediation and negotiations. The cases were first mediated April of 2020 with Hon. Garrett Brown (Ret.). The parties attended a mediation with Judge Brown as well as several less formal phone calls and meetings. These attempts were unsuccessful. The parties then mediated with Greg Lindstrom in January of 2023, a well-known national antitrust expert and mediator. The attempts were again

unsuccessful. Numerous phone calls and emails between Plaintiffs and Mr. Lindstrom and separately between Defendants and Mr. Lindstrom were also unsuccessful. The parties then attended another mediation with Judge Willie Epps in July of 2023. While some progress was made, no settlement was reached. After trial, Plaintiffs and NAR attended multiple day long in-person negotiation sessions in an attempt to resolve the Actions. These attempts spanned four months and were hotly contested. The settlement was ultimately reached and executed on March 15, 2024.

19. In order to determine that the Settlement is in the best interest of the Class, and in addition to the discovery process and evaluation of data and witnesses, Plaintiffs used a forensic accountant to evaluate the internal financial documents of NAR. NAR provided detailed internal financial documentation and their General Counsel and CEO participated in meetings where Plaintiffs counsel asked questions about NAR's finances. It was only after this process of evaluating NAR's ability to pay that the parties reached settlement. In my opinion, the Settlement is fair, reasonable and adequate.

20. I also believe the Settlement is in the best interests of the Settlement Class given the risks and delay of further litigation and the prospective relief obtained. Moreover, due to the nature of joint and several liability, the Settlement Class Members' recovery is not limited to the amount NAR pays – they will be eligible to participate in any future settlements or recoveries (as well as the previous $208.5 million in settlements obtained from Anywhere, RE/MAX and Keller Williams). Indeed, as Class Counsel, we continue to strenuously litigate on behalf of this Settlement Class.

21. The *Burnett* and *Gibson* class representatives have approved this Settlement.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 16 day of April 2024.

Eric L. Dirks

Exhibit 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS, FRANCES HARVEY, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	Case No. 19-CV-00332-SRB

DECLARATION OF JENNIFER M. KEOUGH
REGARDING PROPOSED NOTICE PLAN

I, Jennifer M. Keough, declare as follows:

1. I am Chief Executive Officer, President, and Co-Founder of JND Legal Administration LLC ("JND"). I have more than 20 years of legal experience creating and supervising notice and claims administration programs and have personally overseen well over 1000 matters. I am regularly called upon to submit declarations in connection with JND's notice and administration work.

2. I submit this Declaration based on my personal knowledge, as well as upon information provided to me by experienced JND employees and Counsel for the Plaintiffs and Defendants, to describe the proposed Notice Program and address why it is consistent with other best practicable court approved notice plans and the requirements of Rule 23 of the Federal Rules

of Civil Procedure ("Rule 23"), the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule, as well as the Federal Judicial Center ("FJC") guidelines for best practicable due process notice.

RELEVANT EXPERIENCE

3. JND is a leading legal administration services provider with its headquarters in Seattle, Washington and other offices within the United States. JND's class action division provides all services necessary for the effective implementation of class actions, including: (1) all facets of legal notice to potential class members, such as developing the final class members list and addresses for them, outbound mailing, email notification, and the design and implementation of media programs; (2) website design and deployment, including online claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) calculation design and programming; (7) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (8) qualified settlement fund tax reporting; (9) banking services and reporting; and (10) all other functions related to the secure and accurate administration of class actions.

4. JND is an approved vendor for the United States Securities and Exchange Commission ("SEC"), the Federal Trade Commission ("FTC"), and the Consumer Financial Protection Bureau ("CFPB"). In addition, we have worked with a number of other government agencies including the U.S. Equal Employment Opportunity Commission ("EEOC"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Communications Commission ("FCC"), the Department of Justice ("DOJ"), and the Department of Labor ("DOL"). We also have Master Services Agreements with various corporations and banks which were only awarded after JND underwent rigorous reviews of our

systems, privacy policies, and procedures. JND has also been certified as SOC 2 Type 2 compliant by noted accounting firm Moss Adams.[1]

5. JND has been recognized by various publications, including the *National Law Journal*, the *Legal Times*, and the *New York Law Journal*, for excellence in class action administration. JND was named the #1 Class Action Claims Administrator in the U.S. by the national legal community for multiple consecutive years, and we were inducted into the *National Law Journal* Hall of Fame in 2022 and 2023 for having held this title. JND was also recognized last year as the Most Trusted Class Action Administration Specialists in the Americas by *New World Report* (formerly *U.S. Business News*) in the publication's 2022 Legal Elite Awards program.

6. The principals of JND collectively have over 80 years of experience in class action legal and administrative fields. JND has overseen the administration of some of the most complex administration programs in the country and regularly prepare and implement court-approved notice campaigns throughout the United States.

7. JND was appointed as the notice and claims administrator in the landmark $2.67 billion Blue Cross Blue Shield antitrust settlement in which we mailed over 100 million postcard notices; sent hundreds of millions of email notices and reminders; placed notice via print, television, radio, internet, and more; staffed a call center with 250 agents during the peak of the notice program; and received and processed more than eight million claims. I am the Court-appointed notice expert in that case. JND was also appointed the settlement administrator in the $1.3 billion Equifax Data Breach Settlement, where we received more than 18 million claims and I supervised all aspect of direct notice. Email notice was sent twice to over 140 million class

[1] As a SOC 2 Compliant organization, JND has passed an audit under AICPA criteria for providing data security.

members, the interactive website received more than 130 million hits, and the call center was staffed with 1,500 agents at the peak of call volume.

8. Other large JND matters include a voluntary remediation program in Canada on behalf of over 30 million people; the $1.5 billion Mercedes-Benz Emissions Settlements; the $120 million GM Ignition Switch Settlement, where we mailed nearly 30 million notices and processed over 1.5 million claims; and the $215 million USC Student Health Center Settlement on behalf of women who were sexually abused by a doctor at USC; as well as hundreds of other matters.

9. Prior to forming JND with my partners, I was involved in many other large-scale notice and claims programs. For example, my team and I handled all aspects of mailed notice, website activities, call center operations, claim intake, scanning and data entry, and check distribution for the $20 billion Gulf Coast Claims Facility. In the $10+ billion BP Deepwater Horizon Settlement, I worked directly for Patrick Juneau, the Court-appointed claims administrator, in overseeing all inbound and outbound mail activities, all call center operations, all claim intake, scanning and data entry and all check distributions for the program. I oversaw the entire administration process in the $3.4 billion Cobell Indian Trust Settlement (the largest U.S. government class action settlement ever).

10. JND's Legal Notice Team, which operates under my direct supervision, researches, designs, develops, and implements a wide array of legal notice programs to meet the requirements of Rule 23 and relevant state court rules. In addition to providing notice directly to potential class members through direct mail and email, our media campaigns, which are regularly approved by courts throughout the United States, have used a variety of media including newspapers, press releases, magazines, trade journals, radio, television, social media, and the internet depending on

the circumstances and allegations of the case, the demographics of the class, and the habits of its members, as reported by various research and analytics tools.

11. During my career, I have submitted several hundred declarations to courts throughout the country attesting to our role in the creation and launch of various notice programs. Particularly relevant here, I submitted a declaration regarding the proposed notice plan and JND was appointed as the Settlement Administrator for the RE/MAX, Anywhere, and Keller Williams Settlements. The notice elements we are proposing here are substantially similar to what we designed and implemented for the RE/MAX, Anywhere, and Keller Williams Settlements.

SETTLEMENT CLASS

12. JND has been asked by the Parties to prepare a Notice Program to reach Settlement Class Members in the National Association of Realtors Settlement and inform them about their rights and options in the proposed Settlement. This Notice Program may easily be done in conjunction with providing notice related to other forthcoming settlements.

13. According to the National Association of Realtors Settlement Agreement, the Settlement Class consists of all persons who will be certified by the Court for settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service ("MLS") anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

a. Moehrl MLSs: March 6, 2015 to date of Class Notice;

b. Burnett MLSs: April 29, 2014 to date of Class Notice;

c. MLS PIN: December 17, 2016 to date of Class Notice;

d. Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2018 to date of Class Notice;

e. Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN: October 31, 2017 to date of Class Notice; and

f. All other homes: October 31, 2019 to date of Class Notice.

NOTICE PROGRAM SUMMARY

14. The proposed Notice Program has been designed to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice programs. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a notice plan with a 70%-95% reach effective.[2]

15. The proposed Notice Program mirrors the programs in the Anywhere, RE/MAX and Keller Williams Settlements and consists of the following components:

a. Direct notice to all Settlement Class Members for whom the Settling Defendants provide contact information or for whom contact information is located via other means (e.g. third-party data).

b. A targeted digital effort with the leading digital network (Google Display Network – "GDN"), the top social media platform (Facebook), and a respected programmatic partner (OMTD).

c. A notice placement in a popular consumer magazine (*Better Homes & Gardens*).

[2] Reach is the percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once over the course of a campaign. Reach factors out duplication, representing total different net persons.

d. Additional efforts including an internet search campaign to assist interested Settlement Class Members in finding the case website, the distribution of a national press release, and sponsorships with popular class action websites (TopClassActions.com and ClassAction.org).

e. A claims stimulation effort that will include the sending of multiple email notices reminding potential Settlement Class Members of the approaching claims deadline.

f. An established case-specific Settlement website where information about the Settlement, as well as copies of relevant case documentation, including but not limited to the Settlement Agreement, the Plan of Distribution (once submitted to the Court), the Long Form Notice, and the Claim Form, will be accessible to Settlement Class Members. Settlement Class Members will also be encouraged to file claims online through a secure portal on the website.

g. An established toll-free telephone number with an Interactive Voice Recording system ("IVR") that Settlement Class Members may call to obtain more information about the Settlement and request copies of the Long Form Notice and Claim Form. The IVR recording will be comprehensive; however, if operators become desired, JND will accommodate.

h. The creation of a QR Code (a matrix barcode) that will allow quick and direct access to the Settlement website through a mobile device.

16. Throughout the Notice Program, JND will monitor, adjust, and/or optimize as needed to achieve the desired goals.

17. Based on my experience in developing and implementing class notice programs, I believe the proposed Notice Program will meet, and in fact exceed, the standards for providing the best practicable notice in class action settlements.

18. Each component of the proposed Notice Program is described in more detail in the sections below.

DIRECT NOTICE

19. An adequate notice plan needs to satisfy "due process" when reaching a class. The United States Supreme Court, in *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), stated that direct notice (when possible) is the preferred method for reaching a class. In addition, Rule 23(c)(2) of the Federal Rules of Civil Procedure provides that "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means."

20. As a result, at my direction, JND staff will effectuate direct individual notice to all members of the Settlement Class for whom Settling Defendants provide contact information or for whom we were able to obtain such information through other means. Courts have approved notice programs in which email is the primary method of delivering notice to class members.

21. Email notice will be sent to all Settlement Class Members for whom an email address is available.

22. For those Settlement Class Members where an email address is unavailable or where the email bounces back and cannot be ultimately delivered, JND proposes sending a Postcard Notice.

23. Both the Email Notice and the Postcard Notice will be modeled off of the long form notice and will identify and direct Settlement Class Members to an interactive Settlement website where they can review the Settlement Agreement, and other key documents in the case, and initiate the claims process (a hard copy claim form may also be requested).

24. Both the Email Notice and the Postcard Notice will include a Spanish-language tag that will direct Spanish-speaking Settlement Class Members to the Settlement website for a notice in Spanish.

25. Importantly, whether a Settlement Class Member is sent direct notice by email or postcard, the notice will satisfy the Federal Rules of Civil Procedure and due process.

Email Notice

26. Prior to sending the Email Notice, JND will evaluate the email for potential spam language to improve deliverability. This process includes running the email through spam testing software, DKIM[3] for sender identification and authorization, and hostname evaluation. Additionally, we will check the send domain against the 25 most common IPv4 blacklists.[4]

27. JND uses industry-leading email solutions to achieve the most efficient email notification campaigns. Our Data Team is staffed with email experts and software solution teams to conform each notice program to the particulars of the case. JND provides individualized support during the program and manages our sender reputation with the Internet Service Providers ("ISPs"). For each of our programs, we analyze the program's data and monitor the ongoing effectiveness of the notification campaign, adjusting the campaign as needed. These actions ensure

[3] DomainKeys Identified Mail, or DKIM, is a technical standard that helps protect email senders and recipients from spam, spoofing, and phishing.

[4] IPv4 address blacklisting is a common practice. To ensure that the addresses being used are not blacklisted, a verification is performed against well-known IP blacklist databases. A blacklisted address affects the reputation of a company and could cause an acquired IP addresses to be blocked.

the highest possible deliverability of the email campaign so that more potential Settlement Class Members receive notice.

28. For each email campaign, including this one, JND will utilize a verification program to eliminate invalid email and spam traps that would otherwise negatively impact deliverability. We will then clean the list of email addresses for formatting and incomplete addresses to further identify all invalid email addresses.

29. To ensure readability of the email, our team will review and format the body content into a structure that is compatible with all email platforms, allowing the email to pass easily to the recipient. Before launching the email campaign, we will send a test email to multiple ISPs and open and test the email on multiple devices (iPhones, Android phones, desktop computers, tablets, etc.) to ensure the email opens as expected.

30. Additionally, JND will include an "unsubscribe" link at the bottom of the email to allow Settlement Class Members to opt out of any additional email notices from JND. This step is essential to maintain JND's good reputation among the ISPs and reduce complaints relating to the email campaign.

31. Emails that are returned to JND are generally characterized as either "Hard Bounces" or "Soft Bounces." A Hard Bounce occurs when the ISP rejects the email due to a permanent reason such as the email account is no longer active. A Soft Bounce occurs when the email is rejected for temporary reasons, such as the recipient's email address inbox is full.

32. When an email is returned due to a Soft Bounce, JND attempts to re-send the email notice up to three additional times in an attempt to secure deliverability. If the Soft Bounce email continues to be returned after the third re-send, the email is considered undeliverable. Emails that result in a Hard Bounce are also considered undeliverable.

Postcard Notice

33. JND will send a color Postcard Notice to known Settlement Class Members provided by Defendants for whom an email address is not available or for whom the Email Notice was deemed ultimately undeliverable. In my experience, the use of color will help differentiate the postcard from junk mail.

34. Prior to sending the Postcard Notice, JND staff will run the mailing addresses through the United States Postal Service ("USPS") National Change of Address ("NCOA") database.[5] At my direction, JND staff will track all Postcard Notices returned undeliverable by the USPS and will promptly re-mail Postcard Notices that are returned with a forwarding address. Also, with my oversight, JND staff will take reasonable efforts to research and determine if it is possible to reach a Settlement Class Member for whom the Postcard Notice is returned without a forwarding address by mailing to a more recent mailing address at which the potential Settlement Class Member may be reached.

MEDIA NOTICE

35. In addition to the direct notice effort, JND proposes a robust media campaign that *alone* will reach at least 70% of potential members of the Settlement Class.

36. The media campaign consists of a targeted digital effort with GDN, Facebook, and OMTD, as well as a print notice placement in a popular consumer magazine (e.g., *Better Homes & Gardens*).

Media Resources

[5] The NCOA database is the official USPS technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

37. JND utilizes the most reputable advertising media research tools to ensure that the best media is selected and that our reach calculations can withstand the most critical review and challenge. The media research tools we utilized in our analysis and will use to implement the media campaign include MRI, ComScore, Google Active View, Google Analytics, Google Tag Manager, and The Trade Desk.

38. MRI data was used to analyze the demographics and media usage of potential Settlement Class Members, as well as to determine the reach of our proposed print effort. Understanding who we are trying to reach is key in determining how best to reach them. MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media through probabilistic and address-based sampling. MRI is the leading producer of media and consumer research in the United States.

39. JND used Comscore data to not only analyze where potential Settlement Class Members are spending time on the internet, but more importantly, for calculating the reach of our proposed digital effort. Comscore's multi-reach platform allows us to analyze unduplicated audiences (net reach) across multiple platforms (e.g., Google, Facebook) and devices (desktop and mobile). Through the platform, we were able to assess the efficiency and effectiveness of our proposed media plan by reducing waste and improving campaign performance across all devices.

40. At the time of implementation, our digital experts will verify and monitor our digital placements. Google Active View, which is accredited by the Media Rating Council (MRC), will be used to measure viewable impressions across the web and in apps. Google Active View supports the Interactive Advertising Bureau (IAB) and MRC definition of viewability—a minimum of 50% of the ad is in view for a minimum of one second for display ads. In addition, over a hundred complex algorithms will be used to spot bad traffic as it happens to prevent invalid

clicks, impressions, views, or interactions. These efforts prevent impressions from being served and counted when they have not been loaded onto a person's screen.

41. JND will place a Google Analytics pixel across all case landing pages to monitor and track website traffic. Through the use of Google Analytics and custom UTM codes, our digital experts will be able to monitor the number of website visits, average time spent per visit, and the number of pages visited per session. Data will be broken down by source, or referring website, in order to make optimizations based on media placements that are driving the longest time on site and the largest number of claim form submissions. Demographic data such as age and gender, will be reviewed and optimized towards those groups who prove to be the most responsive and interactive with the case website.

42. JND will also place a 'Container Tag' across all case landing pages using Google Tag Manager, a tag management system (TMS) that allows advertisers to place and update measurement codes and code fragments on a landing page from a single source. With these codes placed within the container, website data is passed back to advertising platforms (such as Meta, Google, The Trade Desk), allowing machine learning to take place, optimizing towards placements and audiences that are driving site traffic and claim form submissions. All data collected through Google Tag Manager adheres to Google's Privacy Policies and Principles. No personal identifiable information (PII) is collected.

43. JND places media through The Trade Desk, the leading Demand Side Platform (DSP) that champions transparency, as well as industry-wide collaboration and innovation. The Trade Desk provides JND the same buying power/access to inventory as the biggest Fortune 100 companies. JND has access to nearly any website's banner inventory, streaming video, streaming audio and OTT (over-the-top) inventory. Through The Trade Desk's countless partnerships with

data providers, JND also has access to leading technology to target and reach audiences based on criteria such as recent/frequent browsing habits, purchase data, recent and frequent geo locations, and more.

Target Analysis

44. JND analyzed the demographics and media usage of potential Settlement Class Members to determine how best to reach them. MRI data does not measure home sellers; however, data is available for adults 18 years of age or older (Adults 18+) who are current homeowners ("Homeowners").

45. Among other things, MRI data indicated that Homeowners are active internet users, with 98% using the internet and 67% visiting Facebook in a 30-day period. In terms of devices, 91% use their cellphone or smartphone to access the internet.

46. JND considered these and other key demographics and media usage when designing our Notice Program and selecting targets.

Digital Effort

47. The proposed digital effort consists of placements with GDN, the leading digital network; Facebook, the top social media platform; and OMTD, a respected programmatic partner. A total of 311 million digital impressions will be served among adults 35 years of age or older ("Adults 35+") with focused targeting included.[6]

48. To concentrate our efforts on reaching potential Settlement Class Members, GDN impressions will specifically target homeowners and/or users who have searched on Google for key terms related to this matter, such as Burnett, Moehrl, Sitzer, NAR, National Association of

[6] Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

Realtors, National Association of Realtors Settlement. A portion of the Facebook impressions will specifically target users who recently moved or expressed an interest in things related to this matter such as a homeowner association, a moving company, home renovations, real estate, investing, home improvement and/or National Association of Realtors. The programmatic impressions on OMTD will emphasize Adults 35-64 and will target users based on "length of residency" being between 3-10 years and those who are likely homeowners or sold a house one or more years ago to narrow our focus on potential Settlement Class Members.

49. Multiple targeting strategies will also be used to increase the effectiveness of our digital effort, including the following techniques:

a. Predictive Targeting (GDN only) uses multiple data points (search queries, sites visited, and digital behavior trends) to make inferences regarding future behavior/performance for a given campaign.

b. Look-a-like Targeting (LAL) to individuals whose characteristics match that of individuals who have visited the case website and/or submitted an online claim.

c. Audience Targeting optimizes efforts based on demographics, behavior, and interests of potential Settlement Class Members.

d. Geotargeting optimizes efforts based on the location of potential Settlement Class Members.

e. Keyword Targeting allows targeting to users based on their search queries, recent social media posts or engagement with websites or posts that feature specific keywords.

f. Machine Learning will be used across all digital media platforms in order to optimize campaigns in real time based on placements, times of day and sub-targets

within the larger demo and geo target that are likely to drive claim form submissions.

50. The digital activity will be served across all devices (desktop, laptop, tablet and mobile), with a heavy emphasis on mobile devices. The digital ads will directly link to the Settlement website, where Settlement Class Members may access more information about the Settlement, including the Long Form Notice, as well as file a claim electronically.

Print Effort

51. Print media will include a notice placement in *Better Homes & Gardens* magazine, a highly read consumer lifestyle magazine. *Better Homes & Gardens* publishes monthly with a circulation of 3.1 million and a readership of 18 million. It reaches 11% of Adults 35+ and extends reach to older homeowners who may not frequent the internet. A QR code will appear in the print ad for easy, direct access to the Settlement website through mobile devices.

ADDITIONAL EFFORTS

52. JND will undertake additional efforts to further disseminate notice to Settlement Class Members, including an internet search campaign, a national press release, and sponsorships with popular class action websites.

53. Given that web browsers frequently default to a search engine page, search engines are a common source to get to a specific website (i.e., as opposed to typing the desired URL in the navigation bar). As a result, JND proposes a Google search effort to assist interested Settlement Class Members in finding the case website. The Keyword List utilized with GDN will be applied and expanded to include additional keywords based on content on the case website landing page, the legal names of the cases, as well as other case information. These keywords are words/phrases that are bid on when they match the search term (or a variation of the search term) a person types into their Google search bar. When a search term matches to a keyword or phrase, a Responsive

Search Ad (RSA) may be served, generating a tailored message relevant to the search term. RSAs utilize machine learning to pair various combinations of ad copy (headlines and descriptions) based on which groupings have worked well previously (i.e., produced a strong CTR/conversion performance), and what the platform anticipates will generate the ideal results from the unique searcher. When the RSA is clicked on, the visitor will be redirected to the case website where they can get more information.

54. To further assist in getting "word of mouth" out about the case, JND proposes the distribution of a press release at the start of the campaign to over 11,000 media outlets nationwide.

55. Certain class action websites are frequented for updates on class action lawsuits. These sites, help drive potential class members to the case specific website. As a result, we propose sponsorship opportunities with TopClassActions.com and ClassAction.org.

CLAIMS STIMULATION EFFORT

56. Prior to the claim filing deadline, JND's team will initiate an effort to encourage Settlement Class Members to submit claims and to remind them of the impending deadline.

57. The claims stimulation effort will include sending multiple reminder email notices to potential Settlement Class Members who have yet to take action (i.e., file a claim and/or exclude themselves from the Settlements).

58. Additional digital efforts may also be considered such as (1) an audience custom list, (2) retargeting and/or (3) look-alike targeting. Digital banner ads may be sent to potential Settlement Class Members who visited the Settlement website but did not complete a claim submission (retargeting), as well as to individuals who demographically/geographically match with those Settlement Class Members who have already filed online claims (look-alike targeting).

JND will monitor the Settlement website traffic and utilize that information if a digital claims stimulation effort is needed.

SETTLEMENT WEBSITE

59. At my direction, JND created an informational, interactive Settlement website where potential Settlement Class Members can obtain more information about their rights and options under the Settlements and submit claims. Information regarding this Settlement will be incorporated into the existing Settlement website. The website, www.RealEstateCommissionLitigation.com, has an easy-to-navigate design and is formatted to emphasize important information and deadlines. The Settlement website contains, among other things, information about the Settlements, a Frequently Asked Questions section, a list of Important Dates and Important Documents, the ability to download a Long Form Notice and Claim Form in both English and Spanish, the ability to submit claims electronically through a secure claims filing portal, and information about how Settlement Class Members can access the toll-free telephone number.

60. The Settlement website is mobile-enabled and ADA compliant, and will undergo significant penetration testing to make sure that the site cannot be breached as well as load testing to make sure that the site will be able to accommodate the expected traffic from a class this large. It will also be designed to maximize search engine optimization through Google and other search engines.

DEDICATED TOLL-FREE NUMBER

61. JND established and will maintain a dedicated toll-free telephone number with an automated IVR, available 24 hours a day, seven days a week, which will provide Settlement-

related information to Settlement Class Members, and the ability to request and receive the notices and the claim form by mail.

62. The Settlement website and IVR recordings will be designed to be comprehensive, answering all common questions; however, if operators become desired, JND will accommodate that need by providing an option to speak with a Customer Service Representative. JND has multiple call center sites, all in the United States, and can ensure enough staffing and redundancy to handle any volume of calls we receive on this matter.

DEDICATED POST OFFICE BOXES

63. JND established two separate United States Post Office Boxes: one dedicated for Settlement Class Members to submit letters, inquiries, and claim forms; and one dedicated strictly to receive exclusion requests, which will be utilized for this Settlement.

QR CODE

64. JND created a QR Code (a matrix barcode) that will allow quick and direct access to the Settlement website through mobile devices. The QR Code is included, where practicable, in printed notice documents (i.e., the email, postcard, and print publication notices).

REACH

65. The proposed media effort alone is designed to reach at least 70% of potential Settlement Class Members. The extensive direct notice effort, internet search campaign, distribution of the national press release, class action sponsorship opportunities, and claims stimulation effort will extend the reach further. The proposed Notice Program is similar to and, indeed, more robust than that of other court approved programs and meets the high reach standard set forth by the FJC.

NOTICE DESIGN AND CONTENT

66. I reviewed and provided input to the Parties on the form and content for each of the notice document exhibits in the RE/MAX, Anywhere, and Keller Williams Settlements, and it is my understanding that the form of the notice and claim form will be substantially similar to the documents used in the previous Settlements. Based on my experience designing court-approved class notice programs, if the notice documents for this Settlement are substantially similar to the notice documents previously used, then in my opinion, each of these notice documents will comply with Rule 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law, or rule, as well as the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

67. Each of the notice documents will contain easy-to-read summaries of the Settlement and the options that are available to Settlement Class Members. Additionally, the notice documents will provide instructions on how to obtain more information about the Settlement.

68. The Long Form Notice will be posted on the Settlement website and will be available by mail if requested. It will provide details regarding, among other things, the nature of the action; who is in the Settlement Class; general descriptions of the claims asserted and references to the defenses of Settling Defendants; the monetary relief afforded by the Settlement Agreement; the right of Settlement Class Members to obtain counsel, object to the Settlement, or exclude themselves from the Settlement; and the binding effect of the Settlement on Settlement Class Members. The Long Form Notice will also provide, inter alia, details on when claims and objections are due, how and when to opt-out, how and where to seek additional information, and how to submit a claim.

69. The Email Notice and Postcard Notice will provide, among other things, a summary of what the lawsuit is about, who is affected, what a Settlement Class Member may receive from the Settlement, the deadline by which a claim should be submitted, other options (opting out and objecting), and how and where to obtain more information.

70. To the extent that some Class Members may speak Spanish as their primary language, the print notice documents will include a subheading in Spanish at the top directing Spanish speaking Settlement Class Members to visit the Settlement website for a notice in Spanish.

CLAIM FORM

71. The Claim Form will explain the claims process, is designed to ensure that filing a claim is as simple as possible and will be sent to any individual who requests a written form. However, the direct notice portion of the Notice Program is designed to drive claimants to the Settlement website where they can utilize an interactive process for claims submission. Online claim forms not only save substantial money in postage but are generally favored by claimants since the wizard feature of the process will walk them through the form step by step and will be very user-friendly. The online claim form process will prevent claimants from submitting an electronic claim without clicking necessary verifications such as signature. Electronic claims also eliminate the step of manual data entry and generally make processing easier and less expensive.

72. The interactive Claim Form will be accessed through a secure portal and will request the same information from claimants that is set forth in the printed Claim Form. The interactive Claim Form will also be designed to ensure that required information is provided before a claimant can move onto the next step of the Claim Form.

73. Broadly stated, to complete the Claim Form, the claimant will provide their name and contact information as well as identify, to the extent possible, information about the home sale,

such as the address of the home sold, date of sale, amount of the total commission paid, and any documents to support the proof of payment.

74. All claimants may submit Claim Forms electronically through the Settlement website or physically by mail to the established Settlement P.O. Box.

OBJECTIONS AND OPT-OUTS

75. Members of the Settlement Class may object to the Settlement. Settlement Class Members may also exclude themselves ("opt-out") entirely. The Long Form Notice explains these legal rights (and others) to Settlement Class Members.

76. Any member of the Settlement Class who wishes to object to any aspect of the Settlement must send to Class Counsel, Defendants' Counsel, and file with the Court, a written statement of its objection. The objection must include the case name and number (*Burnett, et al., v. National Ass'n of Realtors, et al.*, Case No. 19-CV-00332-SRB (W.D. Mo.)), the Settlement Class Member's name, address, telephone number, signature, and the reasons that they object to the Settlement.

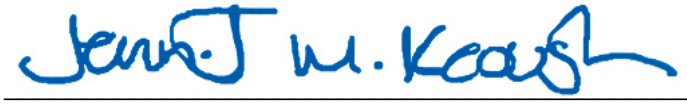
77. Any Settlement Class Member may also opt out of the Settlement. To do so, Settlement Class Members must submit a written request to JND stating their intent to exclude themselves from the Settlement. The exclusion request must include the Settlement Class Member's present name, address, and telephone number; a statement that they wish to be excluded from the Settlement; and their handwritten signature. If the Settlement Class Member is deceased or incapacitated, the signature of the legally authorized representative of the Settlement Class Member must be included.

CONCLUSION

78. In my opinion, the Notice Program provides the best notice practicable under the circumstances, is consistent with the requirements of Rule 23, and is consistent with other similar court-approved best notice practicable notice programs. The Notice Program is designed to reach as many Settlement Class Members as possible and inform them about the Settlement and their rights and options, and provide them with the opportunity to review a plain language notice with the ability to easily take the next step and learn more about the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 16, 2024, in Seattle, Washington.



JENNIFER M. KEOUGH