

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN
MEINERS, and DANIEL UMPA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

Civil Action No. 4:23-cv-00788-SRB

[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION AND SUGGESTIONS IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENTS WITH COMPASS, REAL
BROKERAGE, REALTY ONE, @PROPERTIES, AND DOUGLAS ELLIMAN;
CERTIFICATION OF SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS
REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND – <i>MOEHRL AND BURNETT</i>	2
1. Ketchmark & McCreight	5
2. Boulware Law LLC	5
3. Williams Dirks Dameron LLC.....	5
4. Cohen Milstein Sellers & Toll PLLC	5
5. Hagens Berman Sobol Shapiro LLP	5
6. Susman Godfrey LLP	5
III. BACKGROUND – <i>GIBSON AND UMPA</i>	6
A. The Litigation.....	6
B. Settlement Negotiations	7
C. Summary of Settlement Agreements in <i>Gibson</i>	8
1. Settlement Classes	8
2. Settlement Amounts.....	9
3. Practice Changes.....	10
4. Cooperation.....	11
5. Release of Claims Against Settling Defendants	11
6. Application for Award of Attorney Fees, Costs, and Class Representative Incentive Awards	12
IV. THE CLASS DEFINITION CONTEMPLATED BY THE SETTLEMENTS SATISFIES RULE 23, AND THE CLASS SHOULD BE CERTIFIED	13
A. Class Definition	13
B. Legal Standard for Modifying the Class Definition	15
C. The Proposed Settlement Classes Satisfy Rule 23(a)	17

1.	Numerosity.....	17
2.	Commonality.....	18
3.	Typicality	19
4.	Adequacy	20
D.	The Proposed Settlement Classes Satisfy Rule 23(b)(3)	21
1.	Predominance.....	21
2.	Superiority of a Class Action.....	24
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS.....	26
A.	The Merits of the Plaintiffs’ Cases, Weighed Against the Terms of the Settlements.....	27
B.	Defendants’ Financial Conditions.....	29
C.	The Complexity and Expense of Further Litigation	30
D.	The Amount of Opposition to the Settlements	30
E.	The Settlements Also Satisfy the Rule 23(e) Factors	30
VI.	THE COURT SHOULD APPOINT COUNSEL FOR PLAINTIFFS AND THE PUTATIVE CLASS IN GIBSON AS CO-LEAD COUNSEL FOR THE SETTLEMENT CLASSES	32
VII.	CLASS NOTICE SHOULD PROCEED IN A SUBSTANTIALLY SIMILAR MANNER AS IN THE SETTLEMENTS WITH ANYWHERE, RE/MAX, AND KELLER WILLIAMS IN THE BURNETT CASE.....	33
VIII.	CONCLUSION.....	34

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Albin v. Resort Sales Missouri, Inc.</i> , 2021 WL 5107730 (W.D. Mo. May 21, 2021).....	16
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	20, 22, 25
<i>In re Ampicillin Antitrust Litig.</i> , 82 F.R.D. 652 (D.D.C. 1979).....	28
<i>In re BankAmerica Corp. Sec. Litig.</i> , 210 F.R.D. 694 (E.D. Mo. 2002).....	16
<i>Bishop v. DeLaval Inc.</i> , 2022 WL 18957112 (W.D. Mo. July 20, 2022) (Bough, J.).....	31
<i>Burnett v. Nat’l Ass’n. of Realtors</i> , Case No. 4:19-cv-00332-SRB (W.D. Mo.).....	<i>passim</i>
<i>Burnett v. Nat’l Ass’n of Realtors</i> , 2022 WL 1203100 (W.D. Mo. Apr. 22, 2022).....	<i>passim</i>
<i>In re Cardizem CD Antitrust Litig.</i> , 218 F.R.D. 508 (E.D. Mich. 2003).....	27
<i>Chapman v. First Index, Inc.</i> , 796 F.3d 783 (7th Cir. 2015) (Easterbrook, J.).....	15
<i>Cohn v. Nelson</i> , 375 F. Supp. 2d 844 (E.D. Mo. 2005).....	27
<i>Comcast Corp. v. Behrend</i> , 569 U.S. 27 (2013).....	17
<i>In re Corrugated Container Antitrust Litig.</i> , 643 F.2d 195 (5th Cir. 1981).....	20
<i>D&M Farms v. Birdsong Corp.</i> , 2020 WL 7074140 (E.D. Va. Dec. 1, 2020).....	18
<i>DeBoer v. Mellon Mortg. Co.</i> , 64 F.3d 1171 (8th Cir. 1995).....	19, 27

<i>Donaldson v. Pillsbury Co.</i> , 554 F.2d 825 (8th Cir. 1977)	19
<i>Ebert v. Gen. Mills, Inc.</i> , 823 F.3d 472 (8th Cir. 2016)	21
<i>In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.</i> , 357 F.3d 800 (8th Cir. 2004)	15
<i>Gibson, et al. v. NAR, et al.</i> , Case No. 4:23-cv-788-SRB	<i>passim</i>
<i>Gunnells v. Healthplan Servs., Inc.</i> , 348 F.3d 417 (4th Cir. 2003)	20
<i>Hand v. Beach Entertainment KC, LLC</i> , 456 F. Supp. 3d 1099 (W.D. Mo. 2020)	17
<i>Holt v. CommunityAmerica Credit Union</i> , 2020 WL 12604383 (W.D. Mo. Sept. 4, 2020)	22, 31
<i>Hughes v. Baird & Warner, Inc.</i> , 1980 WL 1894 (N.D. Ill. Aug. 20, 1980)	19
<i>Hyland v. Homeservices of Am., Inc.</i> , 2008 WL 4858202 (W.D. Ky. Nov. 7, 2008)	20
<i>In re Hyundai & Kia Fuel Econ. Litig.</i> , 926 F.3d 539 (9th Cir. 2019)	21
<i>In re Ikon Office Solutions, Inc., Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	16
<i>In re IPO Sec. Litig.</i> , 226 F.R.D. 186 (S.D.N.Y. 2005)	28
<i>Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1</i> , 921 F.2d 1371 (8th Cir. 1990)	26
<i>Marcus v. Kansas</i> , 209 F. Supp. 2d 1179 (D. Kan. 2002)	29
<i>Marshall v. Nat'l Football League</i> , 787 F.3d 502 (8th Cir. 2015)	26
<i>In re MicroStrategy, Inc. Sec. Litig.</i> , 148 F. Supp. 2d 654 (E.D. Va. 2001)	16

<i>Moehrl v. Nat’l Ass’n of Realtors</i> , 2023 WL 2683199 (N.D. Ill. Mar. 29, 2023).....	18, 19, 20, 23
<i>Moehrl v National Association of Realtors</i> , Case No. 1:19-cv-01610-ARW (N.D. Ill.).....	<i>passim</i>
<i>In re Namenda Direct Purchaser Antitrust Litig.</i> , 331 F. Supp. 3d 152 (S.D.N.Y. 2018).....	15
<i>In re Packaged Seafood Prod. Antitrust Litig.</i> , 2023 WL 2483474 (S.D. Cal. Mar. 13, 2023)	33
<i>Paxton v. Union Nat’l Bank</i> , 688 F.2d 552 (8th Cir. 1982)	18
<i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999)	22, 26
<i>In re Pre-Filled Propane Tank Antitrust Litig.</i> , 2019 WL 7160380 (W.D. Mo. Nov. 18, 2019).....	22, 31
<i>Rannis v. Rechia</i> , 380 Fed. App’x 646 (9th Cir. 2010)	18
<i>Rawa v. Monsanto Co.</i> , 934 F.3d 862 (8th Cir. 2019)	16
<i>Sanderson v. Unilever Supply Chain, Inc.</i> , 2011 WL 5822413 (W.D. Mo. Nov. 16, 2011).....	26
<i>In re Serzone Prods. Liab. Litig.</i> , 231 F.R.D. 221 (S.D. W.Va. 2005).....	25
<i>Smith v. Atkins</i> , 2:18- cv-04004-MDH (W.D. Mo.)	15
<i>Spann v. J.C. Penney Corp.</i> , 314 F.R.D. 312 (C.D. Cal. 2016).....	15
<i>Sullivan v. DB Invs., Inc.</i> , 667 F.3d 273 (3d Cir. 2011) (en banc).....	16
<i>Temp. Servs. v. Am. Int’l Grp.</i> , 2012 WL 13008138 (D.S.C. July 31, 2012).....	25
<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> , 2011 WL 13152270 (N.D. Cal. Aug. 24, 2011)	15

<i>Umpa v. NAR, et al.</i> , Case No. 4:23-CV-945-SRB.....	<i>passim</i>
<i>Van Horn v. Trickey</i> , 840 F.2d 604 (8th Cir. 1988)	30
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	18
<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> , 396 F.3d 96 (2d Cir. 2005).....	16
<i>In re Wireless Telephone Federal Cost Recover Fees Litig.</i> , 396 F.3d 922 (8th Cir. 2005)	27
<i>In re Zurn Pex Plumbing Prod. Liab. Litig.</i> , 2013 WL 716088 (D. Minn. Feb. 27, 2013)	22
<i>In re Zurn Pex Plumbing Prods. Liab. Litig.</i> , 644 F.3d 604 (8th Cir. 2011)	21, 22

STATUTES

Sherman Act, 15 U.S.C. § 1	3, 19
----------------------------------	-------

Other Authorities

7B Wright & Miller, Fed. Prac. & Proc. Civ. § 1798.1 (3d ed. 2005).....	17
Fed. R. Civ. P. 23(a)(1).....	17
Fed. R. Civ. P. 23(a)(4).....	20
Fed. R. Civ. P. 23(b)(3).....	21, 24
Fed. R. Civ. P. 23(c)(2)(B)	33
Fed. R. Civ. P. 23(e)(1)(B)	26
Fed. R. Civ. P. 23(e)(2).....	21
Fed R. Civ. P. 23(g)	32
Fed. R. Evid. 408	7, 29

I. INTRODUCTION

After extensive litigation in these actions, as well as the related *Moehrl* and *Burnett* actions, and arms-length negotiations Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa (“Gibson Plaintiffs” or “Plaintiffs”), on behalf of themselves and the proposed Settlement Classes (defined herein), have reached Settlements with the following Defendants (the “Settling Defendants”):

1. Compass, Inc. (“Compass”),
2. The Real Brokerage Inc. and Real Broker, LLC (together, “Real Brokerage”),
3. Realty ONE Group, Inc. (“Realty ONE”),
4. At World Properties LLC (“@properties”), and
5. Douglas Elliman Inc. and Douglas Elliman Realty, LLC (“Douglas Elliman”).

The proposed Settlements resolve on a nationwide basis Plaintiffs’ claims for damages and injunctive relief against the Settling Defendants for their alleged anticompetitive practices in the nationwide market for residential real estate brokerage services.

The *Gibson* Settlement Agreements provide for meaningful practice changes, cooperation in litigation against non-settling defendants, and total payments of \$96 million as follows:

Settling Defendant	Settlement Payment Amount
Compass	\$57.5 million
Real Brokerage	\$9.25 million
Realty ONE	\$5 million
@properties	\$6.5 million
Douglas Elliman	\$7.75 million guaranteed and up to \$10 million in contingent payments
TOTAL	\$96 million

Each Settlement was the product of intensive negotiations, facilitated by an experienced mediator, following years of aggressive discovery, litigation, and settlement negotiations with other

Defendants in the related *Burnett* and *Moehrl* actions. The Settlements were 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 Settling Defendants' ability to pay the full amount of any trial judgment entered against them. The Settlements are fair, adequate, reasonable, and beneficial to the Settlement Classes.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements; (2) certifying Settlement Classes; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) appointing JND as the notice administrator and directing notice to the classes.

II. BACKGROUND – *MOEHRL AND BURNETT*

After five years of hard-fought litigation in related cases *Burnett v. Nat'l Ass'n. of Realtors*, Case No. 4:19-cv-00332-SRB (W.D. Mo.) ("*Burnett*"), and *Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.) ("*Moehrl*"), a jury trial and intensive settlement negotiations, *Burnett* and *Moehrl* Plaintiffs have reached global settlements with all Defendants in those actions, that provide monetary relief totaling at least \$626.5 million¹ and require historic practice changes that will ultimately benefit future home sellers and buyers. Economists and other market experts have predicted that the Settlements could ultimately save consumers billions of dollars.²

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

¹ This figure does not include the pending settlement with the HomeServices Defendants.

² See, e.g., Julian Mark, Aaron Gregg & Rachel Kurzius, *Realtors' Settlement Could Dramatically Change Cost of Housing Sales*, WASH. POST (Mar. 15, 2024), <https://www.washingtonpost.com/business/2024/03/15/nar-real-estate-commissions-settlement/>.

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. *Moehrl* and *Burnett* 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”). *Moehrl* and *Burnett* 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 the 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). Shelly Dreyer,

Hollie 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. *Moehrl* and *Burnett* 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. (Berman Decl. ¶ 18; Dirks Decl. ¶¶ 11–12). Much of the discovery focused on the nationwide rules and practices of NAR and its members. Class Counsel and experts in *Burnett* and *Moehrl* analyzed rules, policies, practices, and transaction data, including on a nationwide basis. (Berman Decl. ¶ 19; Dirks Decl. ¶ 12). They also evaluated whether those policies and practices

differed among the various MLSs. The information and data were not limited to the *Burnett* and *Moehrl* Defendants, but rather focused on the entire industry. *Id.*

After years of aggressive litigation and settlement negotiations, *Moehrl* and *Burnett* Plaintiffs, and the defendants in those cases, entered into settlement Agreements that require those defendants to make important Practice Changes, provide Cooperation in the ongoing litigation, and pay the following amounts:

1. Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”): \$83.5 million;
2. RE/MAX LLC (“RE/MAX”): \$55 million;
3. Keller Williams Realty, Inc. (“Keller Williams”): \$70 million; and
4. National Association of Realtors (“NAR”): at least \$418 million.

(Berman Decl. ¶ 20; Dirks Decl. ¶ 8).³ This Court, in *Burnett*, has granted preliminary approval of the four settlements with Anywhere, RE/MAX, Keller Williams, and NAR.⁴ In addition, *Burnett* and *Moehrl* Plaintiffs filed a notice of pending settlement and joint motion to stay for the only remaining defendant—the HomeServices Defendants—on April 26, 2024.⁵ In connection with the first four settlements, the *Burnett* Court appointed *Moehrl* and *Burnett* Co-Lead Class Counsel as Settlement Class Counsel, namely:

1. Ketchmark & McCreight,
2. Boulware Law LLC,
3. Williams Dirks Dameron LLC,
4. Cohen Milstein Sellers & Toll PLLC,
5. Hagens Berman Sobol Shapiro LLP, and

³ The HomeServices Defendants have entered into a binding term sheet but have not yet finalized a long-form settlement agreement. (Berman Decl. ¶ 20).

⁴ See *Burnett* Doc. 1321 (granting preliminary approval of settlements with Anywhere and RE/MAX), *Burnett* Doc. 1372 (granting preliminary approval of settlement with Keller Williams), and *Burnett* Doc. 1460 (granting preliminary approval of settlement with NAR).

⁵ See *Burnett* Doc. 1462 (notice of pending settlement and joint motion to stay case as to the HomeServices Defendants).

6. Susman Godfrey LLP.⁶

III. BACKGROUND – *GIBSON AND UMPA*

A. The Litigation

The *Moehrl* and *Burnett* actions together initially raised claims against five defendant families on behalf of home sellers who listed their properties on one of 24 covered MLSs. Following on the crucial groundwork laid in *Burnett* and *Moehrl*, Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa, filed the above-captioned case (“*Gibson*”) to bring the same claims against additional Defendants on behalf of a nationwide class of home sellers. The cases were originally filed as two related actions, *Gibson, et al. v. NAR, et al.*, Case No. 4:23-CV-788-SRB (“*Gibson*”) on October 31, 2023, and *Umpa v. NAR, et al.*, Case No. 4:23-CV-945-SRB (“*Umpa*”) on December 27, 2023. On April 23, 2024, the Court granted Plaintiffs’ motion to consolidate the *Gibson* and *Umpa* matters and to file a consolidated class action complaint under the *Gibson* caption. *Gibson* Docs. 145–146; *Umpa* Docs. 245–246.

The six law firms appointed Co-Lead Class Counsel in *Moehrl* and *Burnett* also represent Plaintiffs and the putative class in *Gibson*. With their successful track record in *Moehrl* and *Burnett*, Class Counsel bring substantial knowledge and expertise to the prosecution of the *Gibson* action. In the wake of momentous class certification, trial, and settlement wins in *Moehrl* and *Burnett*, other parties have filed related actions across the country. Plaintiffs’ counsel worked to consolidate the litigation so that the related cases could be prosecuted in an organized and efficient manner that is equitable to members of the nationwide class.

Plaintiffs and their counsel have worked diligently to advance the litigation in *Gibson* and *Umpa*. Prior to filing these actions, class counsel undertook significant research into the Settling

⁶ See *Burnett* Docs. 1321, 1372, 1460.

Defendants, their participation in NAR, their enforcement of the Mandatory Offer of Compensation Rule, and their market share and market presence. Counsel reviewed publicly available information, including SEC filings, company websites, third party websites, YouTube videos, and other sources in order to investigate the connection between these companies and the practices found to be antitrust violations in *Burnett*. (Dirks Decl. ¶ 13) Counsel determined that each of the Defendants in this action followed and enforced the Mandatory Offer of Compensation Rule. *Id.* Plaintiffs and their counsel then filed detailed complaints against the Defendants and have diligently prosecuted the case through its early stages to date. Plaintiffs' counsel have worked cooperatively, including moving to consolidate the *Gibson* and *Umpa* complaints for purposes of efficiency. Plaintiffs' counsel also handled various early steps in the case, including negotiating a scheduling order and working on preparing ESI and protective orders. (Berman Decl. ¶ 22).

The extensive work in *Moehrl* and *Burnett* paved the way for the settlements in this case. (Berman Decl. ¶ 18–21; Dirks Decl. ¶ 9–12).

B. Settlement Negotiations

The Parties reached each of these settlements through extensive negotiations. For the Compass, Real Brokerage, @properties, and Douglas Elliman mediations, the parties engaged in negotiations through the assistance of a nationally recognized and highly experienced mediator, Greg Lindstrom, who has worked on numerous settlement-related matters for these cases. In each of these matters, the parties had an all-day mediation, attended by lead counsel for Plaintiffs, lead counsel for the relevant Defendant, and key relevant executives from each defendant, at which Mr. Lindstrom acted as the mediator. For each settlement, the parties reached agreement only after numerous hours of negotiation. (Berman Decl. ¶¶ 7, 15; Dirks Decl. ¶¶ 14–15). For the Realty ONE settlement, the parties held extensive direct negotiations over the course of several weeks. As part of the negotiations, the parties provided mediation briefs and statements. Defendants also

provided detailed financial records, pursuant to FRE 408, that the Plaintiffs carefully reviewed to determine Defendants' ability to pay. *Id.*

The Parties reached the Settlement Agreements after considering the risks and costs of litigation. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed to date supports the claims. Plaintiffs and counsel, however, also recognize the myriad risks and delay of further proceedings in a complex case like this, and believe that the Settlements confer substantial benefits upon the Settlement Class Members. (Berman Decl. ¶¶ 13–14; Dirks Decl. ¶ 17). Moreover, Plaintiffs and counsel conducted a thorough financial analysis of the ability to pay of Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, and whether each of them could withstand a greater monetary judgment, which directly affected the monetary amounts that it was feasible to recover from the Settling Defendants. (Berman Decl. ¶ 15; Dirks Decl. ¶¶ 14–16).

The Settling Defendants deny Plaintiffs' claims and deny any wrongdoing but wish to avoid the time, expense, uncertainty, and risk attendant with further litigation.

C. Summary of Settlement Agreements in *Gibson*

1. Settlement Classes

The proposed Settlement Class in the Settlement Agreements with Compass, Real Brokerage, Realty ONE, and Douglas Elliman 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 between October 31, 2019,⁷ and the date of Class Notice. (Compass ¶ 15, Real Brokerage ¶ 15; Realty ONE ¶ 15, Douglas Elliman ¶ 15). The proposed Settlement Class in the Settlement Agreement with @properties is as follows: All

⁷ In connection with the @properties settlement, the relevant time period corresponds to the time period used in the NAR settlement for certain geographic areas. (@properties ¶ 15).

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 in Arkansas, Kentucky, and Missouri: October 31, 2018 to the date of class notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of class notice; and
- For all other homes: October 31, 2019 to date of Class Notice.

(@properties ¶ 15). The complete description of the Settlement Class for each settlement is contained in the Settlement Agreements.

2. Settlement Amounts

The proposed Settlements provide that the Settling Defendants will pay the following amounts for the benefit of the Settlement Classes:

- Compass: \$57.5 million;
- Real Brokerage: \$9.25 million;
- Realty ONE: \$5 million;
- @properties: \$6.5 million; and
- Douglas Elliman: Up to \$17.75 million.⁸

(Compass ¶ 18, Real Brokerage ¶ 18; Realty ONE ¶ 18, @properties ¶ 18, Douglas Elliman ¶ 18).

These amounts are inclusive of all costs of settlement, including payments to class members, attorney fees and costs, service awards for current and former class representatives, including Settlement Class Representatives, and costs of notice and administration. (*Id.*)

⁸ Douglas Elliman agrees to pay \$7.75 million up front, and an additional \$10 million subject to certain financial benchmarks between December 31, 2025 and December 31, 2027. (Douglas Elliman ¶ 18).

The Settlement Amounts are non-reversionary: once the Settlements are finally approved by the Court and after administrative costs, litigation expenses, and attorney fees are deducted, the net funds will be distributed to Settlement Class Members with no amount reverting back to the Settling Defendants, regardless of the number of Opt-Out Sellers or claims made. (Compass ¶ 38, Real Brokerage ¶ 38; Realty ONE ¶ 38, @properties ¶ 38, Douglas Elliman ¶ 38).

3. Practice Changes

The proposed Settlements provide for Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, and their subsidiaries and affiliates, to make the following Practice Changes within six months after the Settlements become effective:

- i. advise and periodically remind company-owned brokerages, franchisees (if any), and their agents that there is no company 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 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 are a government or MLS-specified form, then Settling Defendant will require that any company owned brokerages and their agents (and recommend and encourage that any 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 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 home marketed to 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 MLS 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 cooperative compensation offered provided that each such property meets the buyer's articulated purchasing priorities; and
- 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.

(Compass ¶ 49, Real Brokerage ¶ 49; Realty ONE ¶ 49, @properties ¶ 49, Douglas Elliman ¶49).

If not automatically terminated earlier by their own terms, these practice changes will sunset five years after the Effective Date of the Settlement Agreements. (*Id.* at ¶ 50.)

4. Cooperation

In addition to providing substantial monetary payments and meaningful injunctive relief, the Settlement Agreements obligate the Settling Defendants to cooperate with Plaintiffs in the further prosecution of their claims against the remaining Defendants, which remaining Defendants each remain jointly and severally liable for *all* damages caused by the members of the alleged conspiracy. The Settling Defendants' cooperation includes the following: (1) producing relevant transactional data and class member data; (2) producing documents showing membership and participation in NAR, compliance with challenged NAR rules, and other specified documents; (3) providing access to witnesses for depositions and trial; (4) authenticating documents and providing the facts necessary to establish the admissibility of certain evidence; (5) withdrawing non-settlement related filings. (Compass ¶ 52, Real Brokerage ¶ 52; Realty ONE ¶ 52, @properties ¶ 52, Douglas Elliman ¶ 52).

5. Release of Claims Against Settling Defendants

In exchange for the Settlement Amount, Practice Changes, and Cooperation commitments from Settling Defendants Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, upon the Effective Date, Plaintiffs and the Settlement Classes will release and discharge the Settling Defendants, and their respective subsidiaries, related entities, affiliated franchisees, independent contractors, and other representatives from any and all claims 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, or paid to brokerages in connection with the sale of any residential home.” (Compass ¶¶ 7, 11–13, 28–30; Real Brokerage ¶¶ 7, 11–13, 28–30; Realty ONE ¶¶ 7, 11–13, 28–30; @properties ¶¶ 7, 11–13, 28–30; Douglas Elliman ¶¶ 7, 11–13, 28–30). The complete terms of the releases are contained in the Settlement Agreements.

The Settlement Agreements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, however, do nothing to abrogate the rights of any member of the Settlement Classes to recover from any other Defendant. (Compass ¶ 59, Real Brokerage ¶ 59, Realty ONE ¶ 59, @properties ¶ 59, Douglas Elliman ¶ 59). 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.” (Compass ¶ 30; Real Brokerage ¶ 30, Realty ONE ¶ 30, @properties ¶ 30; Douglas Elliman ¶ 30).

6. Application for Award of Attorney Fees, Costs, and Class Representative Incentive Awards

The Settlements authorize Settlement Class Counsel to seek to recover their attorney 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. (Compass ¶¶ 32, 35; Real Brokerage ¶¶ 32, 35; Realty ONE ¶¶ 32, 35; @properties ¶¶ 32, 35; Douglas Elliman ¶¶ 32, 35). Following the Court’s preliminary approval of the Settlements, Class Counsel will submit an application to the Court for an award of attorney fees, costs, and potentially for service awards, to be paid out of the Settlement Fund.

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

Certifying the requested Settlement Classes is appropriate here, where the additional class members are home sellers who suffered the same or similar harms as *Gibson* and *Umpa* Plaintiffs, but at the hands of different real estate brokerage firms.

A. Class Definition

For purposes of the Settlements with Compass, Real Brokerage, Realty ONE, and Douglas Elliman, the proposed Settlement Class definition, pursuant to Rule 23(b)(3) is as follows (the “Settlement Class”):

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 between October 31, 2019, and the date of Class Notice.⁹

(Compass ¶ 15, Real Brokerage ¶ 15; Realty ONE ¶ 15; Douglas Elliman ¶ 15).

⁹ For the avoidance of doubt, Plaintiffs and the Settling Defendants intend the Settlement Agreements to provide for a nationwide class with a nationwide settlement and release. (*Compass* ¶ 15, *Real Brokerage* ¶ 15; *Realty ONE* ¶ 15; *@properties* ¶15; *Douglas Elliman* ¶ 15). For the complete description of the Settlement Classes, *see Id.*

For purposes of the Settlement with @properties, the proposed Settlement Class definition is as follows (the “@properties Settlement Class”):

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 in Arkansas, Kentucky, and Missouri: October 31, 2018 to the date of class notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of class notice; and
- For all other homes: October 31, 2019 to date of Class Notice.

(@properties ¶ 15).

The Settlements are conditioned upon the Court certifying a class for settlement purposes that is broader than the class definitions in the *Gibson* or *Umpa* complaints, including (a) sellers who paid a commission to any brokerage (rather than limited to brokerages affiliated with Corporate Defendants), and (b) a slightly expanded time range for the *Umpa* action (beginning October 31, 2019, rather than December 27, 2019). Gibson Plaintiffs alleged the following Class Definition:

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. (*Gibson* Doc. 1, ¶151; Doc. 130, ¶ 204).

Daniel Umpa, with certain exceptions, alleged the following Class Definition:

All persons in the United States who, from December 27, 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 a cooperating broker in connection with the sale of the home. (*Umpa* Doc. 1, ¶¶ 161–162).

Gibson Plaintiffs, in their Consolidated Class Action Complaint, with certain exceptions, allege the following Class Definition:

All persons in the United States who, from December 27, 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 a cooperating broker in connection with the sale of the home, except as provided below. (Gibson Doc. 146, ¶ 246).

The Settlement Class definitions satisfy the requirements of Rule 23(a) and 23(b)(3) for the reasons discussed below. Accordingly, Plaintiffs request that the Court certify the Settlement Classes for settlement purposes only.

B. Legal Standard for Modifying the Class Definition

The Court has authority under Rule 23 to certify the proposed Settlement Classes 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, 212 (S.D.N.Y. 2018) (“[C]onsistent 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., Burnett Doc.* 1321, ¶ 7 (certifying a “settlement class [that] is broader than the class alleged in the complaint”); *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 (E.D. Pa. 2000) (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 of plaintiffs individually.”).

Here, certifying a broader class covering home sales where a commission was paid to any brokerage is warranted for several reasons. First, *Burnett* and *Moehrl* 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 or which brokerage was paid a commission. Second, Plaintiffs could have made allegations covering home sales where a commission was paid to any brokerage. Third, a nationwide settlement will conserve judicial and private resources. 7B Wright & Miller, Fed. Prac. & Proc. Civ. § 1798.1 (3d ed. 2005) (“Clearly, a single nationwide class action seems to be the best means of achieving judicial economy.”). Fourth, class members will be fully apprised of the Settlement Classes definition through the notice process.

C. The Proposed Settlement Classes Satisfy Rule 23(a)

The Settlement Classes 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. 4:19-cv-00332, 2022 WL 1203100, at *4 (W.D. Mo. Apr. 22, 2022). The Court should grant provisional certification here because the proposed Settlement Classes satisfy Rule 23(a) and (b)(3). Provisional certification will allow the Settlement Classes to receive notice of the Settlements and its terms, including the rights of class members to submit a claim and recover a class award if the Settlements are finally approved, to object to and/or be heard on the Settlements’ fairness at the Fairness Hearing, or to opt out.

1. Numerosity

Rule 23(a)(1) requires “the class be so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[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) (quotation omitted). 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 40 have satisfied this requirement. *Rannis v. Rechia*, 380 Fed. App’x 646, 651 (9th Cir. 2010).

Here, Plaintiffs estimate that Settlement Class Members number in the tens of millions, dispersed across the United States. Moreover, this Court in *Burnett* and the *Moehrl* Court have previously held that litigation classes smaller than the Settlement Classes at issue here satisfied the numerosity requirement. *See Burnett*, 2022 WL 1203100, at *5; *Moehrl v. Nat’l Ass’n of Realtors*, No. 1:19-cv-01610, 2023 WL 2683199, at *11 (N.D. Ill. Mar. 29, 2023). Thus, the Settlement Classes plainly satisfy 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) (quotation omitted); *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).

In the related *Burnett* case, this 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 *Burnett* 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 proposed Settlement Classes in *Gibson* as they did with respect to the classes initially certified in *Burnett* and *Moehrl*. *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 Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman that is being challenged in *Gibson* 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.

In the related *Burnett* case, this Court previously held that *Burnett* Plaintiffs’ claims are typical of members of the *Burnett* classes. Similarly, here, *Gibson* Plaintiffs’ claims are typical of members of the proposed Settlement Classes. Each Settlement Class Member sold a home that was listed on a multiple listing service 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.” Fed. R. Civ. P. 23(a)(4). 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 v. Healthplan Servs., Inc.*, 348 F.3d 417, 430–31 (4th Cir. 2003) (citation omitted).

As with the classes earlier certified in the related *Burnett* and *Moehrl* actions, *Burnett*, 2022 WL 1203100, at *1, *7; *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 Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman. 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 a narrower settlement would have left the Settling Defendants exposed to litigation involving claims exceeding their ability to pay, the only feasible means for Plaintiffs to obtain *any settlement at all* was to settle on a comprehensive basis on behalf of the entire Settlement Classes. 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 Classes Satisfy Rule 23(b)(3)

Once Rule 23(a)’s four prerequisites are met, Plaintiffs must demonstrate that the proposed Settlement Classes satisfy 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

quotations and 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 shared legal grievance—widespread conduct by Corporate Defendants and NAR throughout the United States that has resulted in supra-competitive broker commission rates. This conduct includes nationwide policies enacted by the various Defendants to perpetuate the challenged conduct—including requirements that agents and brokerages affiliated with the Corporate Defendants belong to NAR, participate in both NAR-affiliated and non-NAR affiliated multiple listing services and/or follow NAR’s Code of Ethics and MLS Handbook. It also includes nationwide policies enacted by NAR, including NAR’s Code of Ethics. Indeed, Defendants’ requirements that their subsidiaries and franchises comply with relevant NAR rules and/or belong to NAR raise issues that are common to the Settlement Classes. Such evidence will come from Defendants’ files, statements, policies, contracts, records, and employees, and is not specific to individual class members. Also at issue are specific multiple listing service rules, including rules mandating blanket unilateral offers of compensation to cooperating brokers, that are present in multiple listing services throughout the United States—including in multiple listing services that are not directly or indirectly affiliated with NAR. 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 Classes share the same legal grievance—a violation of the antitrust

laws by Defendants. Second, as in the *Burnett* action, “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 “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 *10–12, *18), including expert opinions, analysis of residential real estate transactions in foreign benchmark countries, and transaction data from defendants and MLSs. The same common questions are at issue in *Gibson*. At bottom, evidence of impact from the fact that commissions in the United States are higher than international markets is evidence common to the nationwide Settlement Classes in *Gibson*. Third, all members of the proposed Settlement Classes 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. Experts in the *Burnett* and *Moehrl* actions presented reliable methods of measuring damages as the difference between the amount class members paid for buyer agent commissions in the actual world versus what they would have paid in the but-for world. (*Moehrl* Doc. 403; *Burnett* Doc. 741) The same type of methodology could be used for the broader Settlement Classes in *Gibson*.

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.” Fed. R. Civ. P. 23(b)(3). 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.” *Id.*

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 is just a small handful of other lawsuits filed by individual Settlement Class Members, all of which were filed after the initial *Gibson* complaint and none of which have made significant progress in litigation to date. Settlement Class Members will retain the ability to opt out of the Settlement Classes if they wish to pursue their claims individually. Third, judicial efficiency is served by approving the Settlements. 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. 221, 240 (S.D. W.Va. 2005).

Moreover, “the expense of individual actions, weighed against the potential individual recovery of the vast majority of class members here, would be prohibitive.” *Temp. Servs. v. Am. Int’l Grp.*, No. 3:08-cv-00271-JFA, 2012 WL 13008138, at *4 (D.S.C. July 31, 2012); *see also Amchem Prods., Inc.*, 521 U.S. at 617 (stating that certification is especially important in cases with relatively small recoveries per class member “to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights” (quotation and citation omitted)). Because it would be economically unreasonable for Settlement Class Members to adjudicate their separate claims individually, the superiority of a class action is

evident. Proceeding as a class action, rather than a host of separate individual trials, would provide significant economies in time, effort, and expense, and permit Settlement Class Members to seek damages that would otherwise be too costly to pursue.

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 the Settling Defendants, and thus questions concerning that trial’s manageability are irrelevant. Accordingly, the Court should certify the Settlement Classes.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS

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 settlements such that notice of the settlements 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 settlements. Full evaluation is made at the final approval stage, after notice of the settlements has been provided to the members of the class and those class members have had an opportunity to voice their views of the settlements. At this first stage, the parties request that the Court grant “preliminary approval” of the Settlements and order that notice be sent to the Settlement Classes.

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). 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 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) (quotation and citation omitted).

The standard for reviewing a proposed settlement of a class action is whether it is “fair, reasonable, and adequate.” *In re Wireless Telephone Federal Cost Recover Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). 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 v. Int’l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975); *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 the Plaintiffs’ Cases, Weighed Against the Terms of the Settlements

The parties naturally dispute the strength of their claims and defenses. The Settlements reflect 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 on the merits at trial in *Gibson*, and upholding their award on appeal. 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 complete amount of alleged damages in either of these cases would bankrupt the Settling Defendants.

Against this risk, the Settlements provide for a recovery of \$96 million from just five of many Defendants named in this action. As discussed in detail below, these settlements are supported by the financial condition of the Settling Defendants, who lack the ability to pay the cumulative damages alleged.

The Settlements further provide important changes to the Settling Defendants' business practices to protect class members who sell homes in the future. Among other things, the Settling Defendants have committed to take steps to educate their affiliated agents that (a) the companies do not require listing agents to make offers of compensation to buyer agents; (b) commissions are negotiable; (c) buyer agents may not represent that their services are free; (d) any offers of compensation to buyer brokers must be disclosed at the earliest moment possible; (e) agents may not filter listings based on level of compensation offered to buyer agents unless directed to do so by the client; and (f) buyer agents are obligated to show relevant properties to their clients regardless of the level of compensation offered. (Compass ¶ 49(i)–(vii); Real Brokerage ¶ 49(i)–(vii); Realty ONE ¶ 49(i)–(vii); @properties ¶ 49(i)–(vii); Douglas Elliman ¶ 49(i)–(vii)). *Gibson* Plaintiffs, along with *Burnett* and *Moehrl* Plaintiffs, have entered into a separate proposed settlement with NAR to achieve additional injunctive relief—including changes to the challenged rules. And the Settlements do not preclude Plaintiffs from obtaining additional relief from the non-settling Defendants.

Toward that end, Plaintiffs further secured cooperation from the Settling Defendants to assist Plaintiffs with prosecuting their claims against the remaining defendants at trial—where Plaintiffs will strive to secure additional monetary and non-monetary relief. 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 terms with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman were reached as the product of arm’s length negotiations over a period of several months, facilitated by a well-respected mediator, following over four years of hard-fought litigation and settlement negotiations in the related *Burnett* and *Moehrl* actions. (Berman Decl. ¶ 7; Dirks Decl. ¶ 14). “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. Defendants’ Financial Conditions

The Settlements are fair and reasonable in light of the financial condition of Settling Defendants, Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, and the limited resources available to each to satisfy a settlement as compared to the size of the potential damages. Pursuant to Federal Rule of Evidence 408, Plaintiffs received and carefully reviewed detailed financial records from each of the Settling Defendants, including analysis by one of Plaintiffs’ counsel, a certified public accountant with training in financial forensics. (Berman Decl. ¶ 15; Dirks Decl. ¶¶ 14–16). The monetary settlements were reached with due consideration for the Defendants’ limited ability to pay. (*Id.*) Furthermore, the entire real estate industry has faced

significant financial headwinds over the last 18 months due to challenging financial conditions including high interest rates. In 2023, just 4.09 million existing homes were sold in the United States, the lowest number since 1995.¹⁰ This has caused understandable financial difficulties for Defendants, whose businesses are directly tied to the number of home sales.

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 voluminous briefing to date in the related cases, including extensive class certification and summary judgment briefing in *Moehrl* and *Burnett*, as well as post-trial briefing in *Burnett*. In addition, the parties in those actions 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. Litigation in *Gibson* could prove to be similarly arduous and costly as Plaintiffs must pursue discovery and prove their claims against a different and larger set of Defendants.

By contrast, the Settlements ensure a recovery to the Settlement Classes that will be allocated and distributed in an equitable manner. In light of the many uncertainties of litigation, an equitable and certain recovery is highly favorable, and weighs in favor of approving the proposed Settlements. (Berman Decl. ¶¶ 13–14; Dirks Decl. ¶ 17).

D. The Amount of Opposition to the Settlements

Class Counsel have discussed the Settlement Agreements with the Class Representatives, who have approved them. (Berman Decl. ¶ 16; Dirks Decl. ¶ 18). Notice regarding the Settlements

¹⁰ Brooklee Han, *Just 4.09 million existing homes were sold in 2023*, HOUSINGWIRE (Jan. 19, 2024), <https://www.housingwire.com/articles/just-4-09-million-existing-homes-were-sold-in-2023/#:~:text=Existing%20home%20sales%20dropped%20to,sold%2C%20the%20fewest%20since%201995>.

has not yet been distributed. In the event any objections are received after notice is issued, they will be addressed by counsel as part of the final approval process.

E. The Settlements Also Satisfy the Rule 23(e) Factors

In addition to the *Van Horn* factors set forth 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).¹¹

The Settlements satisfy each of these factors. First, Settlement Class Representatives and Class Counsel have adequately represented the classes. Settlement Class Representatives approved the terms of each settlement. Settlement Class Representatives also approved the filing of the *Gibson* and *Umpa* complaints and are prepared to represent the consolidated class as litigation continues against the remaining Defendants. (Berman Decl. ¶¶ 16, 23; Dirks Decl. ¶ 18). Indeed, both this Court, in *Burnett*, and the *Moehrl* Court previously appointed proposed Settlement Class

¹¹ See generally *Bishop v. DeLaval Inc.*, No. 5:19-cv-06129, 2022 WL 18957112, at *1 (W.D. Mo. July 20, 2022) (Bough, J.); *Holt v. CommunityAmerica Credit Union*, No. 4:19-cv-00629, 2020 WL 12604383, at *2 (W.D. Mo. Sept. 4, 2020); *In re Pre-Filled Propane Tank Antitrust Litig.*, No. 14-02567, 2019 WL 7160380, at *1–2 (W.D. Mo. Nov. 18, 2019).

Counsel as class counsel on behalf of the related *Burnett* and *Moehrl* classes at the class certification stage. Second, as discussed above, the Settlements were negotiated at arm's length. Third, for the reasons stated above, the relief provided to the classes is adequate. The Settlements provide for a significant financial recovery for the Settlement Classes, especially considering Settling Defendants' limited financial resources. Furthermore, the Settlements include practice changes that benefit consumers. Fourth, the Settlements treat Class Members fairly and equitably relative to each other. An allocation plan that ensures an equitable distribution of monetary funds amongst the Settlement Classes will be submitted to the Court for approval in due course.

VI. THE COURT SHOULD APPOINT COUNSEL FOR PLAINTIFFS AND THE PUTATIVE CLASS IN *GIBSON* AS CO-LEAD COUNSEL FOR THE SETTLEMENT CLASSES

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 the law firms who represented Plaintiffs in *Gibson* and *Umpa*, and who currently represent Plaintiffs in the consolidated *Gibson* action, 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. ¶¶ 4–6; Dirks Decl. ¶¶ 2–3).

Moreover, as detailed above, Proposed Settlement Class Counsel are the same attorneys who originally brought the *Moehrl* and *Burnett* actions in early 2019. They have diligently prosecuted those cases 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, depositions of fact and expert

witnesses; and they prevailed in the *Burnett* trial. (Berman Decl. ¶¶ 18–19, 21; Dirks Decl. ¶¶ 4, 7, 11–12). Both the *Burnett* and *Moehrl* Courts have already recognized Lead Counsels’ effective prosecution of those cases by appointing them as Class Counsel for the *Burnett* and *Moehrl* Classes, respectively, as part of their rulings on class certification.

Proposed Settlement Class Counsel later filed the *Gibson* and *Umpa* actions to encompass additional defendants and a broader class, in order to maximize the monetary and injunctive relief available for home sellers who allegedly overpaid for real estate commissions. (Berman Decl. ¶21; Dirks Decl. ¶ 8). Proposed Settlement Class Counsel have worked hard to manage the litigation. (Berman Decl. ¶ 22; Dirks Decl. ¶¶ 13–14) And they have participated in a lengthy settlement negotiation process with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman to achieve the best possible result for the Settlement Classes. (Berman Decl. ¶¶ 7–17; Dirks Decl. ¶¶ 14–15).

VII. CLASS NOTICE SHOULD PROCEED IN A SUBSTANTIALLY SIMILAR MANNER AS IN THE SETTLEMENTS WITH ANYWHERE, RE/MAX, AND KELLER WILLIAMS IN THE *BURNETT* CASE

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.” Fed. R. Civ. P. 23(c)(2)(B).

Plaintiffs propose that the form and manner of notice of the proposed Settlements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman be substantially similar to the notice provided with the Anywhere, RE/MAX and Keller Williams Settlements in connection with the *Burnett* action—which this Court approved. (*See Burnett* Doc. 1321 (approving notice plan); *see also Burnett* Doc. 1319-1 (Keough Declaration in support of Proposed

Notice Plan); *Burnett* Doc. 1365 and 1371 (motions to approve form of notices).¹² As this Court held in *Burnett*, JND's proposed notice plan provides for the "best notice practicable and satisfies the requirements of due process." *Burnett* Doc. 1321; see 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 Settlements. Accordingly, the Court should appoint JND as the notice administrator and authorize the proposed notice plan.

VIII. CONCLUSION

The Settlement Agreements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman provide an immediate, substantial, and fair recovery for the Settlement Classes. Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements; (2) certifying the Settlement Classes for settlement purposes only; (3) appointing *Gibson* Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as identified above; and (5) appointing JND as the notice administrator and ordering that notice be directed to the Settlement Classes in a manner substantially similar to that issued in conjunction with the Anywhere, RE/MAX, and Keller Williams Settlements in the *Burnett* action.

¹² Plaintiffs and Settling Defendants have agreed that the timing of a request to disseminate notice to the Settlement Classes of the Settlement Agreements is at the discretion of proposed Co-Lead Settlement Class Counsel and may be combined with notice of other settlements in the *Gibson* and *Umpa* actions and/or the *Burnett* and *Moehrl* actions. (Compass ¶ 24; Real Brokerage ¶ 24; Realty ONE ¶ 24, @properties ¶ 24, Douglas Elliman ¶ 24).

DATED: April 29, 2024

Respectfully submitted by:

**HAGENS BERMAN SOBOL SHAPIRO
LLP**

/s/ Steve W. Berman

Steve W. Berman (*pro hac vice*)
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Rio S. Pierce (*pro hac vice*)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
riop@hbsslaw.com

Jeannie Evans (*pro hac vice*)
Nathan Emmons (Mo. Bar. No. 70046)
455 North Cityfront Plaza Drive, Suite 2410
Chicago, IL 60611
Telephone: (708) 628-4949
jeannie@hbsslaw.com
nathane@hbsslaw.com

**COHEN MILSTEIN SELLERS &
TOLL PLLC**

/s/ Benjamin D. Brown

Benjamin D. Brown (*pro hac vice*)
Robert A. Braun (*pro hac vice*)
Sabrina Merold (*pro hac vice*)
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005
Telephone: (202) 408-4600
bbrown@cohenmilstein.com
rbraun@cohenmilstein.com
smerold@cohenmilstein.com

Daniel Silverman (*pro hac vice*)
769 Centre Street, Suite 207
Boston, MA 02130
Telephone: (617) 858-1990
dsilverman@cohenmilstein.com

BOULWARE LAW LLC

/s/ Brandon J.B. Boulware

Brandon J.B. Boulware MO # 54150
Jeremy M. Suhr MO # 60075
Erin D. Lawrence MO # 63021
1600 Genessee Street, Suite 416
Kansas City, MO 64102
Tele: (816) 492-2826
Fax: (816) 492-2826
brandon@boulware-law.com
jeremy@boulware-law.com
erin@boulware-law.com

KETCHMARK AND MCCREIGHT P.C.

Michael Ketchmark MO # 41018
Scott McCreight MO # 44002
11161 Overbrook Rd. Suite 210
Leawood, Kansas 66211
Tele: (913) 266-4500
mike@ketchmclaw.com
smccreight@ketchmclaw.com

WILLIAMS DIRKS DAMERON LLC

Michael A. Williams MO # 47538
Matthew L. Dameron MO # 52093
Eric L. Dirks MO # 54921
1100 Main Street, Suite 2600
Kansas City, MO 64105
Tele: (816) 945 7110
Fax: (816) 945-7118
mwilliams@williamsdirks.com
matt@williamsdirks.com
dirks@williamsdirks.com

Attorneys for Plaintiffs and the Class

SUSMAN GODFREY L.L.P.

Marc M. Seltzer (*pro hac vice*)
Steven G. Sklaver (*pro hac vice*)
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: (310) 789-3100
mseltzer@susmangodfrey.com
ssklaver@susmangodfrey.com

Beatrice C. Franklin (*pro hac vice*)
One Manhattan West
New York, New York 10001
Telephone: (212) 336-8330
bfranklin@susmangodfrey.com

Matthew R. Berry (*pro hac vice*)
Floyd G. Short (*pro hac vice*)
Alexander W. Aiken (*pro hac vice*)
401 Union St., Suite 3000
Seattle, Washington 98101
Telephone: (206) 516-3880
mberry@susmangodfrey.com
fshort@susmangodfrey.com
aaiken@susmangodfrey.com

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of April 2024, the foregoing was electronically filed through the Court's ECF system which will send notification of the same to all counsel of record.

DATED: April 29, 2024

/s/ Steve W. Berman
STEVE W. BERMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN
MEINERS, and DANIEL UMPA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

Civil Action No. 4:23-cv-00788-SRB

[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PRELIMINARY
APPROVAL OF SETTLEMENTS WITH COMPASS, REAL BROKERAGE, REALTY
ONE, @PROPERTIES, AND DOUGLAS ELLIMAN; CERTIFICATION OF
SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS REPRESENTATIVES
AND 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 Nat’l Ass’n of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.) (“*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. Hagens Berman, Cohen Milstein, and Susman Godfrey also served as co-counsel for Plaintiffs in *Umpa v Nat’l Ass’n of Realtors*, Case No. 4:23-cv-00945-FJG (W.D. Mo.) until that case was consolidated with this case (“*Gibson*”) on April 23, 2024. (*Gibson* Doc. 145, *Umpa* Docs. 245–246). Our three firms, together with Ketchmark & McCreight, P.C. (“Ketchmark & McCreight”), Boulware Law LLC (“Boulware Law”) and Williams Dirks Dameron LLC

(“Williams Dirks Dameron”) now serve as co-counsel for Plaintiffs in the consolidated *Gibson* action. (*Gibson* Doc. 146).

3. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Settlements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman; Certification of Settlement Classes; and Appointment of Class Representatives and 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.

4. 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 the lead trial lawyer in *In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litig.*, MDL No. 2541 (N.D. Cal.) where the class obtained injunctive relief following a bench trial. As co-lead counsel in *In re Visa Check/Mastercard Antitrust Litig.*, No. 96-cv-05238 (E.D.N.Y.), I 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 Litig.*, No. 10-md-2143-RS (N.D. Cal.), *In re Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litig.*, 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 Litig.*, No. 1:16-cv-08637 (N.D. Ill.

May 27, 2022), ECF No.5644. I have negotiated numerous settlements in class and non-class cases during my decades of practice.

5. Proposed Settlement Class Counsel are the following law firms:

- Ketchmark & McCreight, P.C.,
- Boulware Law LLC,
- Williams Dirks Dameron LLC,
- Cohen Milstein Sellers & Toll PLLC,
- Hagens Berman Sobol Shapiro LLP, and
- Susman Godfrey LLP.

6. 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 for Appointment of Interim Co-Lead Class Counsel—amply demonstrates that all six 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. (*Gibson* Doc. 156).

7. On behalf of Plaintiffs, other Co-Lead Counsel and I personally participated in intensive settlement negotiations with counsel for Defendants Compass, Inc. (“Compass”), The Real Brokerage, Inc. and Real Broker, LLC (together, “Real Brokerage”), Realty ONE Group, Inc. (“Realty ONE”), At World Properties LLC (“@properties”), and Douglas Elliman, Inc. (“Douglas

Elliman”) (collectively “Settling Defendants”) over the course of several months. Each Settlement was achieved through extensive negotiations. For the Compass, Real Brokerage, @properties, and Douglas Elliman mediations, the parties engaged in negotiations through the assistance of an experienced mediator, Greg Lindstrom, who has worked on numerous settlement-related matters for these cases. In each of these matters, the parties had an all-day mediation, attended by lead counsel for Plaintiffs, lead counsel for the relevant Defendant, and key relevant executives from each Defendant, at which Mr. Lindstrom acted as the mediator. For each settlement, the parties reached agreement only after numerous hours of negotiation. For the Realty ONE settlement, the parties engaged in direct negotiations, including several face-to-face meetings. As part of the negotiations, the parties exchanged mediation briefs and statements.

8. Plaintiffs and Compass executed a Settlement Agreement on March 21, 2024. Attached as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and Compass.

9. Plaintiffs and Real Brokerage likewise executed a Settlement Agreement on April 7, 2024. Attached as Exhibit B is a true and accurate copy of the Settlement Agreement between Plaintiffs and Real Brokerage.

10. Plaintiffs and Realty ONE likewise executed a Settlement Agreement on April 23, 2024. Attached as Exhibit C is a true and accurate copy of the Settlement Agreement between Plaintiffs and Realty ONE.

11. Plaintiffs and @properties likewise executed a Settlement Agreement on April 23, 2024. Attached as Exhibit D is a true and accurate copy of the Settlement Agreement between Plaintiffs and @properties.

12. Plaintiffs and Douglas Elliman likewise executed a Settlement Agreement on April 26, 2023. Attached as Exhibit E is a true and accurate copy of the Settlement Agreement between Plaintiffs and Douglas Elliman.

13. In my opinion, and in that of highly experienced Co-Lead Counsel, the proposed Settlement Agreements are fair, reasonable, and adequate. They provide substantial monetary and non-monetary benefits to the Settlement Classes, and they avoid the risks, costs, and delay of continuing protracted litigation against Settling Defendants. Details of the agreed monetary relief, changes to the Settling Defendants' business practices, and cooperation in Plaintiffs' ongoing litigation against the non-settling defendants are set forth in the Settlement Agreements attached as Exhibits A–E.

14. Plaintiffs and Class Counsel reached the Settlement Agreements after arms-length negotiations and 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 Settlements confer substantial benefits upon the Settlement Class Members.

15. In my opinion, the Settlements are fair and reasonable in light of the financial condition of Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, and the limited resources available to each to satisfy a judgment as compared to the size of the potential damages. Pursuant to FRE 408, Plaintiffs received and carefully reviewed detailed financial records from each of the Defendants, including analysis by one of Plaintiffs' counsel, a certified public accountant with training in financial forensics. Counsel assessed whether Settling Defendants could withstand a greater amount. The monetary settlements were reached with due consideration for the Defendants' ability to pay a judgment or settlement.

16. The Settlement Class Representatives in *Gibson* have been provided the Settlement Agreements for review, and they have approved the terms of the Settlements.

17. 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 Settling Defendants' business practices, to avert anticompetitive conduct going forward. Plaintiffs further sought the most helpful cooperation possible from Settling Defendants.

18. When the Settlement Agreements were executed with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman in this action, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. Extensive litigation and settlement negotiations in the related actions *Moehrl* and *Burnett v. Nat'l Ass'n of Realtors*, Case No. 1:19-cv-00332-SRB (W.D. Missouri) ("*Burnett*"), laid the foundation for expeditiously achieving favorable settlements with the Defendants in this action. The parties in *Burnett* and *Moehrl* completed over five 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 claims from the nine experts retained by Defendants in each case. Most experts in the case were deposed after 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* prevailed at trial, including against NAR, and briefed post-trial motions.

19. Discovery in *Burnett* and *Moehrl* focused on the nationwide rules and practices of NAR and its members. Class Counsel and experts in *Burnett* and *Moehrl* analyzed rules, policies, practices, and transaction data, including on a nationwide basis. They also evaluated whether those policies and practices differed among MLSs across the country. Class Counsel obtained and analyzed information regarding the entire industry, and not just the MLSs and Defendants at issue in *Burnett* and *Moehrl*.

20. During the course of the *Burnett* and *Moehrl* litigation, Plaintiffs' counsel engaged in extensive arm's-length settlement negotiations with various defendants in those cases that lasted nearly four years, including several in-person and telephonic mediations with a nationally recognized and highly experienced mediator, mediations with a retired federal court judge and a federal magistrate judge, and dozens of one-on-one calls and direct communications. This work resulted in Settlement Agreements in those actions that required NAR and several of the largest real estate brokerage firms to abolish the challenged rules, provide cooperation in litigation against non-settling defendants, and pay the following amounts:

- a. Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) ("Anywhere"): \$83.5 million,
- b. RE/MAX LLC ("RE/MAX"): \$55 million,
- c. Keller Williams Realty, Inc. ("Keller Williams"): \$70 million, and
- d. National Association of Realtors ("NAR"): at least \$418 million.

The HomeServices Defendants have also entered into a binding term sheet, but have not yet finalized a long-form settlement agreement.

21. Proposed Settlement Class Counsel for the settlements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman are the same attorneys who

successfully represented home sellers in the *Burnett* and *Moehrl* actions—prevailing at trial in *Burnett*, and achieving favorable settlements on behalf of home sellers. Proposed Settlement Class Counsel were able to capitalize on their work in those actions. Plaintiffs filed the *Gibson* and *Umpa* actions alleging a nationwide class against additional Defendants. Based on their extensive investigative and analytical efforts in *Burnett* and *Moehrl*, as well as in this action, Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements.

22. Proposed Settlement Class Counsel have worked diligently to advance the litigation in *Gibson* and *Umpa*. They worked with Plaintiffs to file detailed complaints against the Defendants and have diligently prosecuted the case through its early stages to date. Plaintiffs' counsel have worked cooperatively, including moving to consolidate the *Gibson* and *Umpa* complaints for purposes of efficiency. Plaintiffs' counsel also handled various early steps in the case, including negotiating a scheduling order, and working on preparing ESI and protective orders.

23. In my opinion, Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa are ably representing the interests of the proposed class. They approved each settlement. They also approved the filing of the *Gibson* and *Umpa* complaints and are prepared to represent the consolidated class as litigation continues against the remaining Defendants.

24. Plaintiffs propose that the form and manner of notice of the proposed Settlements with Compass, Real Brokerage, Realty ONE, and Douglas Elliman be substantially similar to the notice provided with the Anywhere, RE/MAX, and Keller Williams Settlements in connection with the *Burnett* action—which this Court approved. Based on investigation of Class Counsel, and in consultation with the Claims Administrator appointed by the Court in *Burnett* and *Moehrl*, I

believe the proposed notice plan provides for the best notice practicable to Settlement Class Members and satisfies the requirements of due process.

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

Executed April 29, 2024, at Seattle, Washington.



STEVE W. BERMAN

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 21st day of March, 2024 (the “Execution Date”), by and between defendant Compass, Inc. (“Compass”) and Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa, (collectively “Plaintiffs”), who filed suit in the above captioned 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 Compass 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, Compass denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Compass, including an in-person mediation with a nationally recognized and highly experienced mediator, leading to this Settlement Agreement;

WHEREAS, the Actions will continue against the Non-Compass Defendants unless Plaintiffs separately settle with any of the Non-Compass Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Actions, and have concluded that a settlement with Compass according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Compass believes that it is not liable for the claims asserted and has good defenses to Plaintiffs’ claims and meritorious 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, Compass, in addition to the settlement payments set forth below, has agreed to cooperate 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 Compass and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Compass only, without costs to Plaintiffs, the Settlement Class or Compass 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. “Actions” means Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB) and Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB)
2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Gibson, Umpa, Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).
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 LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. “Court” means the U.S. District Court for the Western District of Missouri.
5. “Defendants” means HomeServices of America, Inc., and all defendants named in either Gibson and Umpa.
6. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.
7. “Effective Date” means the date when: (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 Compass 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-Compass Defendant or any person or entity related to the Non-Compass Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section 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.

8. “Gibson” means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

9. “Opt-Out Sellers” 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.

10. “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. For the avoidance of doubt, Persons include all real estate brokerages.

11. “Released Claims” means any and all manner of federal and state 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, or paid to brokerages in connection with the sale of any residential home.

12. “Released Parties” means Compass and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-franchisors, 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, and all of the franchisees' and sub-franchisors' officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, "Released Parties" shall not include the Non-Compass Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective 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. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the Compass Entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with Compass and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release Compass or any other Person for any claims based on the conduct of any real estate brokerage acquired by Compass or any other Person who becomes affiliated with Compass after the Execution Date for conduct which took place before the Execution Date, except for the two real estate brokerages, including their subsidiaries (as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and predecessors, and all of their respective franchisees, sub-franchisors, 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, and

all of the franchisees' and sub-franchisors' officers, directors, managing directors, employees, agents, and independent contractors, identified in the Confidential Supplemental Agreement and that will be specifically identified publicly in the notice to the Settlement Class of this proposed Settlement, if they become affiliates or subsidiaries of Compass.

13. "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).

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

15. "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 between October 31, 2019 and date of Class Notice. For avoidance of doubt, Plaintiffs and Compass intend this Settlement Agreement to provide for a nationwide class with a nationwide settlement and release.

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

17. "Settling Parties" means Plaintiffs and Compass.

18. “Total Monetary Settlement Amount” means \$57.5 million (Fifty Seven Million and Five Hundred Thousand Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys’ fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary Settlement Amount, and Compass will pay nothing apart from the Total Monetary Settlement Amount.

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which is currently pending.

B. Stipulation to Class Certification

20. 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 Compass. 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.

21. 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 Compass 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

22. 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 Compass; and Compass's cooperation by providing information reflecting its ability to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting to those limitations. If the Settlement Agreement is executed on March 21 or before 7:00 am ET March 22, Compass will notify the Court on March 22 prior to 8:00 am ET of having reached an agreement in principle with Plaintiffs and stipulate to immediately stay the respective actions as to Compass, subject to the approval of the Court, pending a final decision on settlement approval. This disclosure will occur after Compass has disclosed notice of the Settlement, consistent with its security reporting obligations. If the Settlement is executed after 7:00 am ET, Plaintiffs will notify the Court after the NYSE closes at 4:00 pm ET and after Compass has disclosed notice of the Settlement, consistent with its security reporting obligations. All parties will keep this Settlement Agreement, and its terms, confidential until Compass has disclosed notice of the Settlement, consistent with its security reporting obligations.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). Plaintiffs shall seek a hearing on the motion for preliminary approval on May 9, 2024. 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. The proposed form of the preliminary approval order shall be acceptable to Compass provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Compass for its review. To the extent that Compass objects to any aspect of the Motion, 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 the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

24. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with the settlement with the National Association of Realtors or any other Defendant or (ii) seek approval of a separate plan for providing class notice of this Settlement in a manner that meets the requirements of due process and Federal Rule of Civil Procedure 23 (“Class Notice”). The Settling Parties agree that the method and form of notice shall not be subject to Compass’ review or approval so long as they are substantially in the form of the Court-approved notice of the Anywhere, RE/MAX, and Keller Williams settlements. To the extent Plaintiffs seek to vary the method or form of notice, Compass must provide any edits or objections within 24 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use JND as a claims and notice administrator. The timing of any request to disseminate Class Notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead counsel shall include an objection deadline for this settlement no later than the objection deadline set for the NAR settlement.

25. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at Compass’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.

26. 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 Compass:

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

(d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the United States District Court for the Western District of Missouri; and

(e) 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 Compass.

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

D. Releases, Discharge, and Covenant Not to Sue

28. 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.

29. 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 Agreement.

30. 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 this Action), 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 these Actions.

E. Payment of the Settlement Amount

31. 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 30 business days after preliminary approval of the Settlement, Compass will deposit fifty percent of the Settlement Amount into the qualified settlement fund. Within one year of preliminary approval of the Settlement by the district court, Compass will deposit the remainder of the Settlement Amount into the qualified settlement fund. All accrued interest shall be for the benefit of the plaintiff classes unless the Settlement is not approved, in which case the interest shall be for the benefit of Compass.

F. The Settlement Fund

32. 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 Compass’s monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

33. 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 Paragraph 34. 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.

34. 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 notice of the Settlement to potential members of the Settlement Class. Compass will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$3,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Compass Corporate Defendants and notice of one or more other settlements is included in the notice of the Compass settlement, then the cost of such notice will be apportioned equitably between (or among) the Compass Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for notice and notice administration costs is not refundable to Compass in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

35. 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, 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 18 above 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.

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

37. Compass 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. Compass's only payment obligation is to pay the Total Monetary Settlement Amount.

38. 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 Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Compass regardless of the claims that are made.

39. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 34 and 35 above and 42 below.

40. 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. Compass 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 the Settlement Agreement. The Settlement Class, Plaintiffs, and Compass shall be bound by the terms of the 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.

41. 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 Compass or the Released Parties.

G. Taxes

42. 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. Compass 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 Compass. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Compass, Compass will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Compass 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.

H. Rescission

43. 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 Compass 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 a Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to Compass a list of exclusion requests. In its sole discretion, Compass shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified in the Confidential Supplemental Agreement.

44. If the Settlement or Settlement Agreement is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Compass. In the event that the Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of notice and administration will not be returned to Compass. Funds to cover notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to Compass.

45. If the Settlement or Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Actions as of March 22, 2024. Plaintiffs and Compass agree that any rulings or judgments that occur in the Actions on or after March 22, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Compass or any of the Released Parties. Plaintiffs and Compass agree to waive any argument of claim or issue preclusion against Plaintiffs or Compass

arising from such rulings or judgments. In the event of rescission, 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. Compass and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Compass or the Plaintiffs. 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 March 22, 2024, until the date this Settlement or 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.

46. Compass warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Compass 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 Compass, then, at the election of Plaintiff counsel, the settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

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

I. Practice Changes

49. As soon as practicable, and in no event later than six months after the Effective Date, Compass (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 Compass's company-owned brokerages, franchisees (if any), and their agents that there is no Compass requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any Compass 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 Compass will require that any company-owned brokerages and their agents (and recommend and encourage that any Compass 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 Compass 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 Compass owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
 - v. prohibit Compass 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 Compass 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.

50. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 49 will sunset 5 years after the Effective Date.

51. Compass 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 this Section.

J. Cooperation

52. Compass (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 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), including but not limited to the following. Any disputes regarding the scope of these provisions or compliance with these provisions can be referred to Greg Lindstrom or another mediator, mutually chosen by the parties, for binding resolution.

- i. Compass will use reasonable best efforts to produce relevant summary-level, companywide transactional data limited to the class period. This data will be aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state by state basis. The data will be sufficient to show volume of commerce and the average commission percentage. The data will be produced at a similar time to when other Defendants produce transactional data in *Gibson* and *Umpa*.
- ii. Compass will produce documents sufficient to show its and its officers, employees, and agents' membership and participation in NAR, that was subject to, and complied with the challenged NAR rules during the class period, including

whether and how Compass accepted, adopted and implemented the challenged NAR rules.

- iii. Compass will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony across no more than two 30(b)(1) witnesses. The time only includes Plaintiff questioning and does not include questioning by any other party. Compass will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.
- iv. Compass will use reasonable best 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;
- v. will use reasonable best efforts to provide the facts necessary to establish 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;
- vi. will use reasonable best efforts at its 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;
- vii. if another Defendant includes a witness on a witness list who is then a current officer or employee of Compass or its subsidiaries, Compass will cooperate in providing access via counsel to that witness prior to trial testimony;

- viii. Compass will file a statement, by or on March 25, 2024, before the Judicial Panel on Multidistrict Litigation favoring centralization of all home seller cases related to these Actions in the Western District of Missouri, or will expressly join in other parties' motions advocating that position; and
- ix. agree not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Compass's cooperation obligations, as set forth in Paragraph 52, 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.

54. Compass'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 Compass. 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 the Actions against the non-Compass Defendants and the time for appeal or to seek permission to appeal from the 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.

55. Compass 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 this Section.

K. Miscellaneous

56. 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 party. Compass denies the material 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 Compass, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Compass in any proceeding.

57. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations before a neutral mediator, Greg Lindstrom, of Phillips ADR Enterprises, P.C. The Settling Parties reached the 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 a motion for preliminary approval is filed—except as necessary for Compass to meet its financial reporting obligations.

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

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-Compass Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any Settlement Class Member against any Non-Compass 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.

60. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Compass pertaining to the Settlement of the Actions against Compass. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Compass.

61. This Settlement Agreement may be executed in counterparts by Plaintiffs and Compass, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

62. Neither Plaintiffs nor Compass 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.

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

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

65. The terms of the 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.

66. Any disputes between Compass and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to binding arbitration with Greg Lindstrom.

67. 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

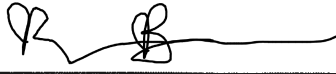
conditions of this Settlement Agreement, and the meaning and import thereof, and that such Settling Party's execution of this Settlement Agreement is with the advice of such Settling Party's counsel and of such Settling Party's own free will. Each Settling Party represents and warrants that it has sufficient 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.

68. 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.

CONFIDENTIAL SETTLEMENT COMMUNICATION

CO-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

COMPASS INC.

By: _____

Brad Serwin, General Counsel

CO-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

COMPASS, INC.

By:  _____

Brad Serwin, General Counsel

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa (collectively

“Plaintiffs”) and defendant Compass, Inc. (“Compass”) (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 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 Compass, based upon written instructions provided by Compass, 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 Compass any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Compass, 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.

CONFIDENTIAL SETTLEMENT COMMUNICATION

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP



Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC

EXHIBIT B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 7th day of April, 2024 (the “Execution Date”), by and between defendants The Real Brokerage Inc. and Real Broker, LLC (together, “Real Brokerage”) and Daniel Umpa, who filed suit in the above captioned Action both individually and as a representative of one or more classes of home sellers (“Plaintiffs”). Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, in the Action Plaintiffs allege that Real Brokerage participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act;

WHEREAS, Real Brokerage denies Plaintiffs’ allegations in the Action and has asserted defenses to Plaintiffs’ claims;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Real Brokerage, including an in-person mediation with a nationally recognized and highly experienced mediator, leading to this Settlement Agreement;

WHEREAS, the Action will continue against the Non-Real Brokerage Defendants unless Plaintiffs separately settle with any of the Non-Real Brokerage Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Action, and have concluded that a settlement with Real Brokerage according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Real Brokerage believes that it is not liable for the claims asserted and that it has good defenses to Plaintiffs’ claims and meritorious pre-trial 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, Real Brokerage, in addition to the settlement payments set forth below, has agreed to cooperate 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 Real Brokerage and the Plaintiffs that the Action be settled, compromised, and dismissed with prejudice as to Real Brokerage only, without costs to Plaintiffs, the Settlement Class or Real Brokerage 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. "Action" means Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB)
2. "Corporate Defendants" means any defendant aside from the National Association of Realtors named in Umpa, Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB), Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).

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 LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. "Court" means the U.S. District Court for the Western District of Missouri.
5. "Defendants" means HomeServices of America, Inc., and all defendants named in either Gibson and Umpa.
6. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.
7. "Effective Date" means the date when: (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 Action against Real Brokerage 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-Real Brokerage Defendant or any person or entity related to the Non-Real Brokerage Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section

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.

8. “Gibson” means Western District of Missouri Case No. 23-cv-788, which is currently pending.

9. “Opt-Out Sellers” 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.

10. “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. For the avoidance of doubt, Persons include all real estate brokerages.

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

12. “Released Parties” means Real Brokerage and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-franchisors, 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, and all of the franchisees' and sub-franchisors' officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, "Released Parties" shall not include the Non-Real Brokerage Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective 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. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the Real Brokerage entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with Real Brokerage and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release Real Brokerage or any other Person for any claims based on the conduct of any real estate brokerage acquired by Real Brokerage or any other Person affiliated with such an acquired brokerage that becomes affiliated with Real Brokerage after the Execution Date for conduct which took place before the Execution Date.

13. "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).

14. “Settlement” means the settlement of the Action contemplated by this Settlement Agreement.

15. “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 between October 31, 2019 and date of Class Notice. For avoidance of doubt, Plaintiffs and Real Brokerage intend this Settlement Agreement to provide for a nationwide class with a nationwide settlement and release.

16. “Settlement Class Member” means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

17. “Settling Parties” means Plaintiffs and Real Brokerage.

18. “Total Monetary Settlement Amount” means \$9.25 million (Nine Million Two-Hundred and Fifty Thousand Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys’ fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary Settlement Amount, and Real Brokerage will pay nothing apart from the Total Monetary Settlement Amount.

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which is currently pending.

B. Stipulation to Class Certification

20. 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 Real Brokerage. 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.

21. 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 Real Brokerage 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 Action

22. 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 Action as to Real Brokerage; and Real Brokerage's cooperation by providing information reflecting its ability to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting to those limitations.

The Parties will notify the Court on April 8 prior to 8:00 am ET of the Settlement and stipulate to immediately stay the Action as to Real Brokerage, subject to the approval of the Court, pending a final decision on settlement approval. This disclosure will occur after Real Brokerage has disclosed

notice of the Settlement, consistent with its security reporting obligations. All parties will keep this Settlement Agreement, and its terms, confidential until Real Brokerage has disclosed notice of the Settlement, consistent with its security reporting obligations.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). Plaintiffs shall seek a hearing on the motion for preliminary approval on May 9, 2024. 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. The proposed form of the preliminary approval order shall be acceptable to Real Brokerage provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Real Brokerage for its review. To the extent that Real Brokerage objects to any aspect of the Motion, 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 the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

24. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with the settlement with the National Association of Realtors or any other Defendant or (ii) seek approval of a separate plan for providing class notice of this Settlement in a manner that meets that meet the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties agree that

the method and form of notice shall not be subject to Real Brokerage's review or approval so long as they are substantially in the form of the Court-approved notice of the Anywhere, RE/MAX, and Keller Williams settlements. To the extent Plaintiffs seek to vary the method or form of notice, Real Brokerage must provide any edits or objections within 24 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use JND as a claims and notice administrator. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead Counsel shall include an objection deadline for this settlement no later than the objection deadline set for the NAR settlement.

25. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at Real Brokerage'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.

26. 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 Real Brokerage:

(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) directing that, as to Real Brokerage only, the Action be dismissed with prejudice and, except as provided for herein, without costs;

(d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and

consummation of this Settlement to the United States District Court for the Western District of Missouri; and

(e) 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 Real Brokerage.

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

D. Releases, Discharge, and Covenant Not to Sue

28. 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 Action 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.

29. 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 Agreement.

30. 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 this Action), 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 this Action.

E. Payment of the Settlement Amount

31. 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 30 business days after preliminary approval of the Settlement, Real Brokerage will deposit the Total Monetary Settlement Amount into the qualified settlement fund. All accrued interest shall be for the benefit of the plaintiff classes unless the Settlement is not approved, in which case the interest shall be for the benefit of Real Brokerage.

F. The Settlement Fund

32. 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 Action, 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 Real Brokerage's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

33. 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 Paragraph 52. 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.

34. 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 notice of the Settlement to potential members of the Settlement Class. Real Brokerage will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Real Brokerage Corporate Defendants and notice of one or more other settlements is included in the notice of the Real Brokerage settlement, then the cost of such notice will be apportioned equitably between (or among) the Real Brokerage Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for notice and notice administration costs is not refundable to Real Brokerage in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

35. 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, the escrow agent for the Settlement Fund shall pay any approved attorneys' 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.

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

37. Real Brokerage 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. Real Brokerage's only payment obligation is to pay the Total Monetary Settlement Amount.

38. 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 Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Real Brokerage regardless of the claims that are made.

39. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 34 and 35 above and 42 below.

40. 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. Real Brokerage 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 the Settlement Agreement. The Settlement Class, Plaintiffs, and Real Brokerage shall be bound by the terms of the 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.

41. 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 Real Brokerage or the Released Parties.

G. Taxes

42. 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. Real Brokerage 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 Real Brokerage. In the event the Settlement does not become Effective and any funds including interest or other income are returned

to Real Brokerage, Real Brokerage will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Real Brokerage 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.

H. Rescission

43. 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 Real Brokerage 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 a Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to Real Brokerage a list of exclusion requests. In its sole discretion, Real Brokerage shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified in the Confidential Supplemental Agreement.

44. If the Settlement or Settlement Agreement is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Real

Brokerage. In the event that the Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of notice and administration will not be returned to Real Brokerage. Funds to cover notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to Real Brokerage.

45. If the Settlement or Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Action as of April 8, 2024. Plaintiffs and Real Brokerage agree that any rulings or judgments that occur in the Action on or after April 8, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Real Brokerage or any of the Released Parties. Plaintiffs and Real Brokerage agree to waive any argument of claim or issue preclusion against Plaintiffs or Real Brokerage arising from such rulings or judgments. In the event of rescission, the Action 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 Action or otherwise for any purpose. Real Brokerage and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Real Brokerage or the Plaintiffs. 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 April 8, 2024, until the date this Settlement or 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.

46. Real Brokerage warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of

a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Real Brokerage 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 Real Brokerage, then, at the election of Plaintiff counsel, the settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

48. Real Brokerage reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practice Changes

49. As soon as practicable, and in no event later than six months after the Effective Date, Real Brokerage (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 Real Brokerage's company-owned brokerages, franchisees (if any), and their agents that there is no Real Brokerage requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any Real Brokerage 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 Real Brokerage will require that any company-owned brokerages and their agents (and recommend and encourage that any Real Brokerage 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 Real Brokerage 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 Real Brokerage owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
- v. prohibit Real Brokerage 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 Real Brokerage 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.

50. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 49 will sunset 5 years after the Effective Date.

51. Real Brokerage 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 this Section.

J. Cooperation

52. Real Brokerage (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 provide valuable cooperation to Plaintiffs as follows in the Action, including to the extent that it is consolidated pursuant to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100), including but not limited to the following. Any disputes regarding the scope of these provisions or compliance with these provisions can be referred to Greg Lindstrom or another mediator, mutually chosen by the parties, for binding resolution.

- i. Real Brokerage will use reasonable best efforts to produce relevant summary-level, companywide transactional data limited to the class period. This data will be aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state by state basis. The data will be sufficient to show volume of commerce and the average commission percentage. The data will be produced at a similar time to when other Defendants produce transactional data in *Umpa*.
- ii. Real Brokerage will produce documents sufficient to show its and its officers, employees, and agents' membership and participation in NAR, that it was subject to, and whether Real Brokerage complied with the challenged NAR rules during the class period, including whether and how Real Brokerage accepted, adopted and implemented the challenged NAR rules.
- iii. Real Brokerage will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony across no more than two 30(b)(1) witnesses. The time only includes Plaintiff questioning and does not include questioning by any other party. Real Brokerage will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.
- iv. Real Brokerage will use reasonable best efforts to authenticate documents and/or things produced by it in the Action 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;
- v. Real Brokerage will use reasonable best efforts to provide the facts necessary to establish that documents and/or things produced by it in the Action 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;

- vi. Real Brokerage will use reasonable best efforts at its 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 Action;
- vii. if another Defendant includes a witness on a witness list who is then a current officer or employee of Real Brokerage or its subsidiaries, Real Brokerage will cooperate in providing access via counsel to that witness prior to trial testimony;
- viii. Real Brokerage will file a statement, by or on April 8, 2024, before the Judicial Panel on Multidistrict Litigation withdrawing the position it previously submitted; and
- ix. Real Brokerage agrees not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Real Brokerage’s cooperation obligations, as set forth in Paragraph 52, 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.

54. Real Brokerage’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 Real Brokerage. 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 the Action against the non-Real Brokerage Defendants 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.

55. Real Brokerage 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 this Section.

K. Miscellaneous

56. This Settlement Agreement and any action 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. Real Brokerage denies the material allegations of the complaints in the Action. 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 Real Brokerage, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Real Brokerage in any proceeding.

57. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations before a neutral mediator, Greg Lindstrom, of Phillips ADR Enterprises, P.C. The Settling Parties reached the 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 a motion for preliminary approval is filed—except as necessary for Real Brokerage to meet its financial reporting obligations and as required by law.

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

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-Real Brokerage Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any Settlement Class Member against any Non-Real Brokerage 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.

60. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Real Brokerage pertaining to the Settlement of the Action against Real Brokerage. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Real Brokerage.

61. This Settlement Agreement may be executed in counterparts by Plaintiffs and Real Brokerage, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

62. Neither Plaintiffs nor Real Brokerage 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.

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

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

65. The terms of the 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.

66. Any disputes between Real Brokerage and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to binding arbitration with Greg Lindstrom.

67. 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.

68. 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.

CO-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

The Real Brokerage Inc.

By: _____

Real Broker, LLC

By: _____

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION**

DANIEL UMPA, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

Daniel Umpa (“Plaintiffs”) and defendants The Real Brokerage Inc. and Real Broker, LLC (“Real Brokerage”) (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 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 Real Brokerage, based upon written instructions provided by Real Brokerage, 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 Real Brokerage any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Real

Brokerage, 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:



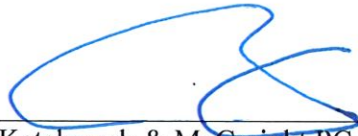
Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP



Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC

O'Melveny & Myers LLP

EXHIBIT C

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 23rd day of April 2024 (the “Execution Date”), by and between defendant Realty ONE Group, Inc. (“Realty ONE”) and Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa, who filed suit in the above captioned Actions both individually and as a representative of one or more classes of home sellers (“Plaintiffs”). Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, in the Actions Plaintiffs allege that Realty ONE 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, Realty ONE denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Realty ONE, leading to this Settlement Agreement;

WHEREAS, the Actions will continue against the Non-Realty ONE Defendants unless Plaintiffs separately settle with any of the Non-Realty ONE Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Actions, and have concluded that a settlement with Realty ONE according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Realty ONE believes that it is not liable for the claims asserted and has good defenses to Plaintiffs’ claims and meritorious 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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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, Realty ONE, in addition to the settlement payments set forth below, has agreed to cooperate 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 Realty ONE and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Realty ONE only, without costs to Plaintiffs, the Settlement Class or Realty ONE 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. “Actions” means Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB) and Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB).
2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Umpa, Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB), Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).
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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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 LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. “Court” means the U.S. District Court for the Western District of Missouri.

5. “Defendants” means HomeServices of America, Inc., and all defendants named in either Gibson and Umpa.

6. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.

7. “Effective Date” means the date when: (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 Realty ONE 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-Realty ONE Defendant or any person or entity related to the Non-Realty ONE Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section be

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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.

8. “Gibson” means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

9. “Opt-Out Sellers” 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.

10. “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. For the avoidance of doubt, Persons include all real estate brokerages.

11. “Released Claims” means any and all manner of federal and state 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, or paid to brokerages in connection with the sale of any residential home.

12. “Released Parties” means Realty ONE and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-franchisors, officers, directors, managing directors, limited liability company

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

managers, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, and all of the franchisees' and sub-franchisors' officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, "Released Parties" shall not include the Non-Realty ONE Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective 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. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the Realty ONE entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with Realty ONE and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release Realty ONE or any other Person for any claims based on the conduct of any real estate brokerage acquired by Realty ONE or any other Person who becomes affiliated with Realty ONE after the Execution Date for conduct which took place before the Execution Date.

13. "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,

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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).

14. “Settlement” means the settlement of the Actions contemplated by this Settlement Agreement.

15. “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 between October 31, 2019, and date of Class Notice. For avoidance of doubt, Plaintiffs and Realty ONE intend this Settlement Agreement to provide for a nationwide class with a nationwide settlement and release.

16. “Settlement Class Member” means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

17. “Settling Parties” means Plaintiffs and Realty ONE.

18. “Total Monetary Settlement Amount” means \$5 million (Five Million Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys’ fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary Settlement Amount, and Realty ONE will pay nothing apart from the Total Monetary Settlement Amount.

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which is currently pending.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

B. Stipulation to Class Certification

20. 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 Realty ONE. 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.

21. 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 Realty ONE 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

22. 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 Realty ONE; and Realty ONE's cooperation by providing information reflecting its ability to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting to those limitations. At 3pm ET on the next business day following the Execution Date, the Parties will jointly notify the court that they have reached a settlement and stipulate to immediately stay the Actions as to Realty ONE, subject to the approval of the Court, pending a final decision on settlement approval. All parties will keep this Settlement Agreement, and its terms, confidential until the Parties

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

have jointly notified the court. In addition, unless otherwise agreed in writing by the Parties, the Parties agree to keep the Total Monetary Settlement Amount confidential until Plaintiffs move for preliminary approval of the Settlement.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the “Motion”). Plaintiffs shall seek a hearing on the motion for preliminary approval on May 9, 2024. 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. The proposed form of the preliminary approval order shall be acceptable to Realty ONE provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Realty ONE for its review. To the extent that Realty ONE objects to any aspect of the Motion, 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 the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

24. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with the settlement with the National Association of Realtors or any other Defendant or (ii) seek approval of a separate plan for providing class notice of this Settlement in a manner that meets that meet the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties agree that

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

the method and form of notice shall not be subject to Realty ONE's review or approval so long as they are substantially in the form of the Court-approved notice of the Anywhere, RE/MAX, and Keller Williams settlements. To the extent Plaintiffs seek to vary the method or form of notice, Realty ONE must provide any edits or objections within 48 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use JND as a claims and notice administrator. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead counsel shall include an objection deadline for this settlement no later than the objection deadline set for the NAR settlement.

25. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at Realty ONE'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 Actions Fairness Act, 28 U.S.C. § 1715.

26. 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 Realty ONE:

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

(d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

consummation of this Settlement to the United States District Court for the Western District of Missouri; and

(e) 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 Realty ONE.

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

D. Releases, Discharge, and Covenant Not to Sue

28. 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.

29. The Releasing Parties may hereafter discover facts other than or different from those

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

Claims was separately bargained for and was a material element of the Agreement.

30. 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 this 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 this Actions.

E. Payment of the Settlement Amount

31. 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 30 business days after preliminary approval of the Settlement, Realty ONE will deposit twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. By December 1, 2025, Realty ONE will deposit an additional twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. By December 1, 2026, Realty ONE will deposit an additional twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. By December 1, 2027, Realty ONE will deposit the final twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. All accrued interest shall be for the benefit of the plaintiff classes unless the Settlement is not approved, in which case the interest shall be for the benefit of Realty ONE.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

F. The Settlement Fund

32. 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 Realty ONE’s monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

33. 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 Paragraph 52. 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.

34. 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 notice of the Settlement to potential members of the Settlement Class. Realty ONE will not object to Plaintiffs’ counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Realty ONE Corporate Defendants and notice of one or more other settlements is included in the notice of the Realty ONE settlement, then the cost of such notice will be apportioned equitably between (or among) the Realty ONE Settlement Fund and the other settling Defendant(s)’ settlement funds. The amount spent or

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

accrued for notice and notice administration costs is not refundable to Realty ONE in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

35. 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, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award 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.

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

37. Realty ONE 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. Realty ONE's only payment obligation is to pay the Total Monetary Settlement Amount.

38. 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 Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Realty ONE regardless of the claims that are made.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

39. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 34 and 35 above and 42 below.

40. 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. Realty ONE 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 the Settlement Agreement. The Settlement Class, Plaintiffs, and Realty ONE shall be bound by the terms of the 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.

41. 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 Realty ONE or the Released Parties.

G. Taxes

42. 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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Realty ONE 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 Realty ONE. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Realty ONE, Realty ONE will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Realty ONE 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.

H. Rescission

43. 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 Realty ONE 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.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

44. If the Settlement or Settlement Agreement is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Realty ONE. In the event that the Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of notice and administration will not be returned to Realty ONE. Funds to cover notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to Realty ONE.

45. If the Settlement or Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Actions as of April 4, 2024. Plaintiffs and Realty ONE agree that any rulings or judgments that occur in the Actions on or after April 4, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Realty ONE or any of the Released Parties. Plaintiffs and Realty ONE agree to waive any argument of claim or issue preclusion against Plaintiffs or Realty ONE arising from such rulings or judgments. In the event of rescission, 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. Realty ONE and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Realty ONE or the Plaintiffs. 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 April 4, 2024, until the date this Settlement or 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.

46. Realty ONE warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent,

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Realty ONE 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 Realty ONE, then, at the election of Plaintiff counsel, the settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

48. Realty ONE reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practice Changes

49. As soon as practicable, and in no event later than six months after the Effective Date, Realty ONE (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 Realty ONE’s company-owned brokerages, franchisees (if any), and their agents that there is no Realty ONE requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any Realty ONE company-owned brokerages and their agents (and

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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 Realty ONE will require that any company-owned brokerages and their agents (and recommend and encourage that any Realty ONE 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 Realty ONE 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 Realty ONE owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
- v. prohibit Realty ONE 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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

- 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 Realty ONE 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.

50. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 49 will sunset 5 years after the Effective Date.

51. Realty ONE 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 this Section.

J. Cooperation

52. Realty ONE (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 provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that it is consolidated pursuant to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100):

- i. provide up to three (3) current officers or employees of Realty ONE, to be identified and agreed to via a good faith meet and confer process, to participate as

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

- trial and/or deposition witnesses at Plaintiffs' determination, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.
- ii. use reasonable best 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;
 - iii. use reasonable best 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;
 - iv. agree to produce non-privileged documents in its possession, custody, or control from up to four (4) current or former employees or officers ("Custodians"), that are returned by a reasonable and agreed-upon list of search terms for documents created after October 31, 2019. Realty ONE will, within 150 days of the later of (a) the Date of preliminary approval of the Settlement 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 withheld on the basis of privilege or as attorney work product, Realty ONE will produce a privilege log according to the requirements of the ESI Order entered in the Actions. Any disputes over privilege or as attorney work product will be governed by the procedure reflected in the ESI Order entered in the Actions.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

- v. use reasonable efforts at its expense to provide relevant class member data and answer questions about that data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;
- vi. if another Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of Realty ONE or its subsidiaries, Realty ONE will cooperate in providing access via counsel to that witness prior to trial testimony for up to three (3) hours;
- vii. withdraw any pending non-settlement related motions and supporting filings in the Actions without prejudice to renewal in the event this Settlement or Settlement Agreement is rescinded, and in that event Plaintiff shall not contend that renewal was rendered untimely by or was waived by the operation of this Settlement Agreement; and
- viii. Realty ONE agrees not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Realty ONE's cooperation obligations, as set forth in Paragraph 52, 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.

54. Realty ONE'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 Realty ONE. 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 the Actions against the non-Realty ONE Defendants and the time for appeal or to seek

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

permission to appeal from the 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.

55. Realty ONE 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 this Section.

K. Miscellaneous

56. This Settlement Agreement and any action 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. Realty ONE denies the material 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 Realty ONE, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Realty ONE in any proceeding.

57. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations. The Settling Parties reached the 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 a motion for preliminary approval is filed.

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

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

any other Settlement Class Member against (a) any Non-Realty ONE Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any Settlement Class Member against any Non-Realty ONE 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.

60. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Realty ONE pertaining to the Settlement of the Actions against Realty ONE. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Realty ONE.

61. This Settlement Agreement may be executed in counterparts by Plaintiffs and Realty ONE, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

62. Neither Plaintiffs nor Realty ONE 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.

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

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

65. The terms of the 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.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

66. Any disputes between Realty ONE and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to binding arbitration with Greg Lindstrom.

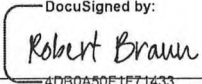
67. Each Settling Party acknowledges that he, she or it has been and is being fully advised by competent legal counsel of such Settling Party's own choice and fully understands the terms and conditions of this Settlement Agreement, and the meaning and import thereof, and that such Settling Party's execution 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.

68. 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.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

DocuSigned by:


4D80A30F1F71433...
Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

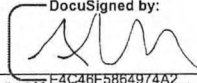
DocuSigned by:


A307B865D4B0412...
Ketchmark & McCreight PC

Boulware Law LLC

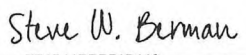
Williams Dirks Dameron LLC

Realty ONE Group, Inc.

DocuSigned by:

By: _____
E4C46F5864974A2...
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

CO-LEAD COUNSEL

DocuSigned by:

EE1B44DBD71B440...

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

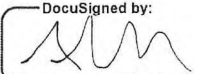
Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Realty ONE Group, Inc.

By: 
E4C48F5864974A2...

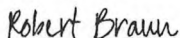
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

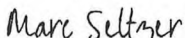
DocuSigned by:



4DB0A50F1F71433...

Cohen Milstein Sellers & Toll PLLC

DocuSigned by:



33298A9E698D444...

Susman Godfrey LLP

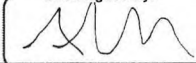
Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Realty ONE Group, Inc.

DocuSigned by:



E4C46F5854974A2...

By: _____

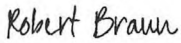
Alex Mihai

Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

DocuSigned by:

4DB0A50F1F71433...
Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

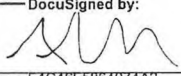
Ketchmark & McCreight PC

Boulware Law LLC

DocuSigned by:

8366A9E9B7649A...
Williams Dirks Dameron LLC

Realty ONE Group, Inc.

By: 
E4C48F5864974A2...
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

DocuSigned by:

Robert Braun

4D90A50F1F71433

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

DocuSigned by:

Brandon Boulware

32072B49A3744AD

Boulware Law LLC

Williams Dirks Dameron LLC

Realty ONE Group, Inc.

DocuSigned by:

Alex Mihai

E4C46F5864974A2...

By: _____
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa (“Plaintiffs”) and
defendant Realty ONE Group, Inc. (“Realty ONE”) (collectively, “the Parties”), by and through and

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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 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 Realty ONE, based upon written instructions provided by Realty ONE, 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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

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 Realty ONE any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Realty ONE, 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:

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

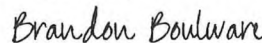
Hagens Berman Sobol Shapiro LLP

DocuSigned by:

4DB0A50F1F71433...
Cohen Milstein Sellers & Toll PLLC

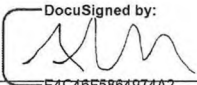
Susman Godfrey LLP

Ketchmark & McCreight PC

DocuSigned by:

32072B49A3744AD...
Boulware Law LLC


Williams Dirks Dameron LLC

Realty ONE Group, Inc.

By: 
E4C48F5864974A2...
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

Hagens Berman Sobol Shapiro LLP

DocuSigned by:

49B0A50F1F71433...
Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

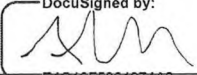
Ketchmark & McCreight PC

Boulware Law LLC

DocuSigned by:

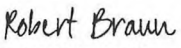
83CC0A8EDB7648A...
Williams Dirks Dameron LLC

Realty ONE Group, Inc.

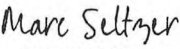
By: 
E#C46F5864974A2...
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

Hagens Berman Sobol Shapiro LLP

DocuSigned by:

4BB9A60F1F71493...

Cohen Milstein Sellers & Toll PLLC

DocuSigned by:

33298A9EC90D444...

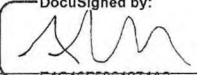
Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

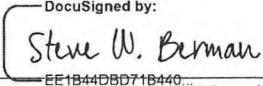
Williams Dirks Dameron LLC

Realty ONE Group, Inc.

DocuSigned by:

E8C46F5864974A2...

By: _____
Alex Mihai
Chief Legal Counsel

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

DocuSigned by:

EE1B44DBD71B440...

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

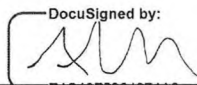
Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Realty ONE Group, Inc.

By: 
E4C46F5864974A2...

Alex Mihai
Chief Legal Counsel

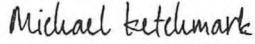
CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408

Hagens Berman Sobol Shapiro LLP

DocuSigned by:

4DB0A50F1F71433...
Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

DocuSigned by:

A307B065D430412...
Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Realty ONE Group, Inc.

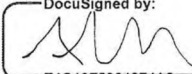
By: 
E4C46F5864974A2...
Alex Mihai
Chief Legal Counsel

EXHIBIT D

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 23rd day of April, 2024 (the “Execution Date”), by and between defendant At World Properties LLC (“@properties”) and Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa, (collectively “Plaintiffs”), who filed suit in the above captioned 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 @properties 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, @properties denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for @properties, including a mediation with a nationally recognized and highly experienced mediator, leading to this Settlement Agreement;

WHEREAS, the Actions will continue against the Non-@properties Defendants unless Plaintiffs separately settle with any of the Non-@properties Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Actions, and have concluded that a settlement with @properties according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, @properties believes that it is not liable for the claims asserted and has good defenses to Plaintiffs’ claims and meritorious 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, @properties, in addition to the settlement payments set forth below, has agreed to cooperate 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 @properties and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to @properties only, without costs to Plaintiffs, the Settlement Class or @properties 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. “Actions” means Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB) and Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB)
2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Gibson, Umpa, Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).

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 LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. “Court” means the U.S. District Court for the Western District of Missouri.
5. “Defendants” means HomeServices of America, Inc., and all defendants named in either Gibson and Umpa.
6. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.
7. “Effective Date” means the date when: (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 @properties 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-@properties Defendant or any person or entity related to the Non-@properties Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section 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.

8. “Gibson” means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

9. “Opt-Out Sellers” 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.

10. “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. For the avoidance of doubt, Persons include all real estate brokerages.

11. “Released Claims” means any and all manner of federal and state 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, or paid to brokerages in connection with the sale of any residential home.

12. “Released Parties” means @properties and all of its respective past, present and future, direct and indirect parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors (together, “@properties Entities”), and all of their respective franchisees (current as of the Execution Date only), sub-franchisors (current as of the Execution Date only), licensees (current as of the Execution Date only), 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, and all of their current franchisees' and current sub-franchisors' and current licensees' officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, "Released Parties" shall not include the Non-@properties Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective 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. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the @properties Entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with @properties Entities (and not a different Corporate Defendant) and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release @properties or any other Person for any claims based on the conduct of any real estate brokerage acquired by @properties or any other Person who becomes affiliated with @properties after the Execution Date for conduct which took place before the Execution Date.

13. "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).

14. “Settlement” means the settlement of the Actions contemplated by this Settlement Agreement.

15. “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 in Arkansas, Kentucky, and Missouri: October 31, 2018 to the date of class notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of class notice; and
- For all other homes: October 31, 2019 to date of Class Notice.

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

16. “Settlement Class Member” means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

17. “Settling Parties” means Plaintiffs and @properties.

18. “Total Monetary Settlement Amount” means \$6.5 million (Six Million and Five Hundred Thousand Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys’ fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary

Settlement Amount, and @properties will pay nothing apart from the Total Monetary Settlement Amount.

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which is currently pending.

B. Stipulation to Class Certification

20. 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 @properties. 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.

21. 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 @properties 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

22. 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 @properties; and @properties’s cooperation by providing information reflecting its ability to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting

to those limitations. The Parties will jointly notify the Court of the Settlement at 10 am ET on the day following the Execution Date and stipulate to immediately stay the respective actions as to @properties, subject to the approval of the Court, pending a final decision on settlement approval. All parties will keep this Settlement Agreement, and its terms, confidential until they jointly notify the Court.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the “Motion”). Plaintiffs shall seek a hearing on the motion for preliminary approval on May 9, 2024. 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. The proposed form of the preliminary approval order shall be acceptable to @properties provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to @properties for its review. To the extent that @properties objects to any aspect of the Motion, 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 the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

24. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with the settlement with the National Association of Realtors or any other Defendant or (ii) seek approval of

a separate plan for providing class notice of this Settlement in a manner that meets that meet the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties agree that the method and form of notice shall not be subject to @properties's review or approval so long as they are substantially in the form of the Court-approved notice of the Anywhere, RE/MAX, and Keller Williams settlements. To the extent Plaintiffs seek to vary the method or form of notice, @properties must provide any edits or objections within 24 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use JND as a claims and notice administrator. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead counsel shall include an objection deadline for this settlement no later than the objection deadline set for the NAR settlement.

25. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at @properties'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.

26. 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 @properties:

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

(d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the United States District Court for the Western District of Missouri; and

(e) 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 @properties.

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

D. Releases, Discharge, and Covenant Not to Sue

28. 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.

29. 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 Agreement.

30. 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 this Action), 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 these Actions.

E. Payment of the Settlement Amount

31. 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 30 business days after preliminary approval of the Settlement, @properties will deposit the Settlement Amount into the qualified settlement fund. All accrued interest shall be for the benefit of the plaintiff classes unless the Settlement is not approved, in which case the interest shall be for the benefit of @properties.

F. The Settlement Fund

32. 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 @properties's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

33. 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 Paragraph 52. 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.

34. 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 notice of the Settlement to potential members of the Settlement Class. @properties will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-@properties Corporate Defendants and notice of one or more other settlements is included in the notice of the @properties settlement, then the cost of such notice will be apportioned equitably between (or among) the @properties Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for notice and notice administration costs is not refundable to @properties in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

35. 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, 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 18 above 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.

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

37. @properties 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. @properties's only payment obligation is to pay the Total Monetary Settlement Amount.

38. 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 Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to @properties regardless of the claims that are made.

39. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 34 and 35 above and 42 below.

40. 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. @properties 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 the Settlement Agreement. The Settlement Class, Plaintiffs, and @properties shall be bound by the terms of the 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.

41. 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 @properties or the Released Parties.

G. Taxes

42. 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. @properties 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 @properties. In the event the Settlement does not become Effective and any funds including interest or other income are returned to @properties, @properties will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. @properties 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.

H. Rescission

43. 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 @properties 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 a Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to @properties a list of exclusion requests. In its sole discretion,

@properties shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified in the Confidential Supplemental Agreement.

44. If the Settlement or Settlement Agreement is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to @properties. In the event that the Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of notice and administration will not be returned to @properties. Funds to cover notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to @properties.

45. If the Settlement or Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Actions as of April 23, 2024. Plaintiffs and @properties agree that any rulings or judgments that occur in the Actions on or after April 23, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, @properties or any of the Released Parties. Plaintiffs and @properties agree to waive any argument of claim or issue preclusion against Plaintiffs or @properties arising from such rulings or judgments. In the event of rescission, 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. @properties and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by @properties or the Plaintiffs. 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 April 23, 2024, until the date this Settlement or 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.

46. @properties warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of @properties 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 @properties, then, at the election of Plaintiff counsel, the settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

48. @properties reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practice Changes

49. As soon as practicable, and in no event later than six months after the Effective Date, @properties (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 @properties’s company-owned brokerages, franchisees (if any), and their agents that there is no @properties requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket,

- unconditional, or unilateral;
- ii. require that any @properties 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 @properties will require that any company-owned brokerages and their agents (and recommend and encourage that any @properties 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 @properties 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 @properties owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
 - v. prohibit @properties 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 @properties 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.

50. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 49 will sunset 5 years after the Effective Date.

51. @properties 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 this Section.

J. Cooperation

52. @properties (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 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), including but not limited to the following. Any disputes regarding the

scope of these provisions or compliance with these provisions can be referred to Greg Lindstrom or another mediator, mutually chosen by the parties, for binding resolution.

- i. @properties will use reasonable best efforts to produce relevant summary-level, companywide transactional data limited to the class period. This data will be aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state by state basis. The data will be sufficient to show volume of commerce and the average commission percentage. The data will be produced at a similar time to when other Defendants produce transactional data in *Gibson and Umpa*.
- ii. @properties will produce documents sufficient to show its and its officers, employees, and agents' membership and participation in NAR, that was subject to, and complied with the challenged NAR rules during the class period, including whether and how @properties accepted, adopted and implemented the challenged NAR rules.
- iii. @properties will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony across no more than two 30(b)(1) witnesses. The time only includes Plaintiff questioning and does not include questioning by any other party. @properties will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.
- iv. @properties will use reasonable best 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;

- v. @properties will use reasonable best efforts to provide the facts necessary to establish 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;
- vi. @properties will use reasonable best efforts at its 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;
- vii. if another Defendant includes a witness on a witness list who is then a current officer or employee of @properties or its subsidiaries, @properties will cooperate in providing access via counsel to that witness prior to trial testimony;
- viii. agree not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. @properties’s cooperation obligations, as set forth in Paragraph 52, 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.

54. @properties’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 @properties. 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 the Actions against the non-@properties Defendants and the time for appeal or to seek permission to appeal from the 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.

55. @properties 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 this Section.

K. Miscellaneous

56. 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 party. @properties denies the material 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 @properties, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by @properties in any proceeding.

57. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations before a neutral mediator, Greg Lindstrom, of Phillips ADR Enterprises, P.C. The Settling Parties reached the 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 a motion for preliminary approval is filed—except as necessary for @properties to meet its financial reporting obligations.

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

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-@properties Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any Settlement Class Member against any Non-@properties 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.

60. This Settlement Agreement constitutes the entire agreement among Plaintiffs and @properties pertaining to the Settlement of the Actions against @properties. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and @properties.

61. This Settlement Agreement may be executed in counterparts by Plaintiffs and @properties, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

62. Neither Plaintiffs nor @properties 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.

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

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

65. The terms of the 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.

66. Any disputes between @properties and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to binding arbitration with Greg Lindstrom.

67. 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.

68. 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.



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP



Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC

At World Properties LLC



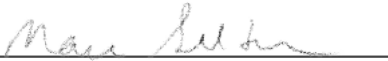
By:

Branden Lopez
General Counsel

Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Branden Lopez
General Counsel

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa (collectively
“Plaintiffs”) and defendant At World Properties LLC (“@properties”) (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 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 @properties, based upon written instructions provided by @properties, 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 @properties any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of @properties, 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:

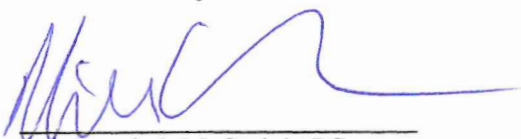


Hagens Berman Sobol Shapiro LLP

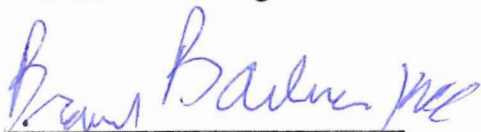


Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP



Ketchmark & McCreight PC

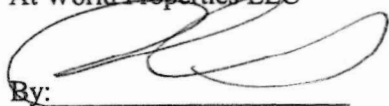


Boulware Law LLC



Williams Dirks Dameron LLC

At World Properties LLC




By:

Branden Lopez
General Counsel

Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Branden Lopez
General Counsel

EXHIBIT E

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN MEINERS, and
DANIEL UMPA, individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

[Consolidated with
4:23-cv-00945-SRB]

Hon. Stephen R. Bough

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 26th day of April, 2024 (the “Execution Date”), by and between Defendants Douglas Elliman Inc. and Douglas Elliman Realty, LLC (“Douglas Elliman”) and Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa, (collectively “Plaintiffs”), who filed suit in the above captioned actions (now consolidated) 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 Douglas Elliman 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, Douglas Elliman denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Douglas Elliman, including an in-person mediation with a nationally recognized and highly experienced mediator, leading to this Settlement Agreement;

WHEREAS, the Actions will continue against the Non-Douglas Elliman Defendants unless Plaintiffs separately settle with any of the Non-Douglas Elliman Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Actions, and have concluded that a settlement with Douglas Elliman according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Douglas Elliman believes that it is not liable for the claims asserted and has good defenses to Plaintiffs’ claims and meritorious motions to dismiss, 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, Douglas Elliman, in addition to any settlement payments set forth below, has agreed to cooperate 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 Douglas Elliman and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Douglas Elliman only, without costs to Plaintiffs, the Settlement Class or Douglas Elliman 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. “Actions” means Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB) and Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB).
2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Gibson, Umpa, Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB) (“Burnett”), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).
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 LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. “Court” means the U.S. District Court for the Western District of Missouri.
5. “Defendants” means HomeServices of America, Inc., and all defendants named in either Gibson and Umpa.
6. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.
7. “Effective Date” means the date when: (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 Douglas Elliman 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-Douglas Elliman Defendant or any person or entity

related to the Non-Douglas Elliman Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section 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.

8. “Gibson” means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.

9. “Opt-Out Sellers” 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.

10. “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. For the avoidance of doubt, Persons include all real estate brokerages.

11. “Released Claims” means any and all manner of federal and state 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, or paid to brokerages in connection with the sale of any residential home.

12. “Released Parties” means Douglas Elliman and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the

Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-franchisors, officers, directors, managing directors, members, managers, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, and all of the franchisees' and sub-franchisors' officers, directors, managing directors, members, managers, employees, agents, and independent contractors. Notwithstanding this definition, "Released Parties" shall not include the Non-Douglas Elliman Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, officers, directors, managing directors, members, managers, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the Released Parties and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with the Released Parties and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release Douglas Elliman or any other Person for any claims based on the conduct of any real estate brokerage acquired by Douglas Elliman or any other Person who becomes affiliated with Douglas Elliman after the Execution Date for conduct which took place before the Execution Date.

13. "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, members, managers, 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).

14. “Settlement” means the settlement of the Actions contemplated by this Settlement Agreement.

15. “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 between October 31, 2019 and the date of the Class Notice. For the avoidance of doubt, Plaintiffs and Douglas Elliman intend this Settlement Agreement and the Settlement Class Definition to encompass a nationwide class with a nationwide settlement and release, including, but not limited to, all persons who sold a home nationwide that was listed on any and all non-NAR multiple listing services, which shall include, but are not limited to, transactions associated with the Real Estate Board of New York (“REBNY”) and/or on the REBNY Residential Listing Service (“RLS”).

16. “Settlement Class Member” means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

17. “Settling Parties” means Plaintiffs and Douglas Elliman.

18. “Total Monetary Settlement Amount” means payment of \$7.75 million in a guaranteed payment, and up to \$10 million in contingent payments based on certain conditions, described below, being timely satisfied, and in combination a total of potentially up to \$17.75 million

(Seventeen Million and Seven Hundred and Fifty Thousand Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys' fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary Settlement Amount, and Douglas Elliman will pay nothing apart from the Total Monetary Settlement Amount.

19. "Umpa" means Western District of Missouri Case No. 23-cv-00945, which is currently pending, and which has now been consolidated with Gibson.

B. Stipulation to Class Certification

20. 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 Douglas Elliman. 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.

21. 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 Douglas Elliman 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

22. 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 Douglas Elliman; and Douglas Elliman's cooperation by providing information reflecting its ability to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting to those limitations. All parties will keep this Settlement Agreement, and its terms, confidential until Douglas Elliman has disclosed notice of the Settlement, consistent with its securities law reporting obligations. On the day that Douglas Elliman publicly discloses the Settlement, or no later than one (1) business day later, Douglas Elliman will notify the Court in a joint filing with Plaintiffs that it and Plaintiffs have reached an agreement to resolve the claims against Douglas Elliman, and that Plaintiffs and Douglas Elliman stipulate to, and jointly request, an immediate stay of the respective actions as to Douglas Elliman, pending the Court's final decision on approval of the settlement.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). Plaintiffs shall seek a hearing on the Motion for preliminary approval on May 9, 2024. 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. The proposed form of the preliminary approval order shall be acceptable to Douglas Elliman provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements in Burnett. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Douglas Elliman for its review. To the extent that Douglas Elliman objects to any aspect of the Motion, 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 the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

24. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with the settlement with the National Association of Realtors or any other Defendant or (ii) seek approval of a separate plan for providing class notice of this Settlement in a manner that meets the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties agree that the method and form of notice shall not be subject to Douglas Elliman's review or approval so long as they are substantially in the form of the Court-approved notice of the Anywhere, RE/MAX, and Keller Williams settlements. To the extent Plaintiffs seek to vary the method or form of notice, Douglas Elliman must provide any edits or objections within 24 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use JND as a claims and notice administrator. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead counsel shall include an objection deadline for this settlement no later than the objection deadline set for the NAR settlement.

25. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at Douglas Elliman's expense to be credited against and not to exceed the guaranteed payment amount of 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.

26. 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 Douglas Elliman:

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

(d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the United States District Court for the Western District of Missouri; and

(e) 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 Douglas Elliman.

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

D. Releases, Discharge, and Covenant Not to Sue

28. 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.

29. 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 with Prejudice in the Actions 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 this Settlement Agreement.

30. 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 this Action), 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 these Actions.

E. Payment of the Settlement Amount

31. 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 30 business days after preliminary

approval of the Settlement by the Court, Douglas Elliman will deposit \$7.75 million into the Escrow Account. Douglas Elliman agrees to pay an additional \$5 million into the Escrow Account if Douglas Elliman has a Cash Balance, calculated as defined below, of at least \$40 million as of December 31, 2025. If Douglas Elliman does not have a cash balance of at least \$40 million as of December 31, 2025, but does have a Cash Balance of at least \$40 million in any following month, until December 31, 2027, then Douglas Elliman will pay \$5 million into the Escrow Account. Douglas Elliman agrees to pay \$5 million into the Escrow Account if Douglas Elliman has a Cash Balance, calculated as defined below, of at least \$40 million as of December 31, 2026. If Douglas Elliman does not have a Cash Balance of at least \$40 million as of December 31, 2026, but does have a Cash Balance of at least \$40 million in any following month, until December 31, 2027, then Douglas Elliman will pay \$5 million into the Escrow Account. If Douglas Elliman's payments become due in the same month (i.e. Douglas Elliman first has a Cash Balance above \$40 million in February of 2027), then Douglas Elliman will make the first payment of \$5 million into the Escrow Account within 30 days, and will then have until December 31, 2027 to make the second payment into the Escrow Account. All payments that Douglas Elliman owes must be completed by December 31, 2027. If Douglas Elliman does not have a Cash Balance above \$40 million at any point from December 31, 2025 until December 31, 2027, then Douglas Elliman will not be responsible for any additional payments besides the initial guaranteed payment of \$7.75 million. In total, these payments of \$7.75 million in a guaranteed payment and up to \$10 million in contingent payments are the Total Monetary Settlement Amount. Cash Balance is calculated based on the average daily cash balance of Douglas Elliman for the 30 days preceding December 31st of the year in question for which the contingent payment is due. Douglas Elliman and Plaintiffs agree that all material cash payments that Douglas Elliman makes, between April 18, 2024 and December 31, 2027, that are not in the ordinary course of business, shall not be counted as deductions against the calculation of the cash balance other than

payments made pursuant to this Settlement Agreement. Examples of such cash payments that may not be in the ordinary course of business include: (i) dividends to shareholders; (ii) distributions to shareholders; (iii) redemptions of stock by Douglas Elliman (other than in connection with employee stock plans that are consistent with existing employee stock plans); or (iv) acquisitions of businesses by Douglas Elliman. Any disputes about the calculation of the cash balance should be resolved through mediation between the parties, either Greg Lindstrom or another mediator, mutually chosen by the parties, for binding resolution. For the avoidance of doubt, and as an example, if Douglas Elliman makes a cash dividend payment of \$10 million on November 30, 2025, that amount shall be included in calculating the cash balance of Douglas Elliman. In the event of a transaction between Douglas Elliman and a third party unaffiliated with Douglas Elliman or non-controlling shareholder in which (i) the third party or non-controlling shareholder acquires a controlling interest in Douglas Elliman Inc.'s stock and Douglas Elliman Inc.'s stock ceases to be traded on a national stock exchange, or (ii) the third party and Douglas Elliman Inc. merge or consolidate with the third party or non-controlling shareholder controlling 50% or more of the combined entity; or (iii) the third party or non-controlling shareholder purchases all or substantially all of Douglas Elliman Inc.'s assets, then payment of any outstanding contingent payment(s) is accelerated, and the contingent payment(s) become due within 30 days of completion of the transaction. All accrued interest from Douglas Elliman's payments into the Escrow Account shall be for the benefit of the plaintiff classes unless the Settlement is not approved, or is rescinded, in which case the interest shall be for the benefit of Douglas Elliman.

F. The Settlement Fund

32. The Total Monetary Settlement Amount (including the contingent payments discussed in Paragraph 31 only if they become due and payable therein) 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 Douglas Elliman's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

33. 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 Paragraph 34. 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.

34. 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 notice of the Settlement to potential members of the Settlement Class. Douglas Elliman will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,000,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Douglas Elliman Corporate Defendants and notice of one or more other settlements is included in the notice of the Douglas Elliman settlement, then the cost of such notice will be apportioned equitably between (or among) the Douglas Elliman Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for notice and notice administration costs is not refundable to Douglas Elliman in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

35. 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, 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 31 above 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.

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

37. Douglas Elliman 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. Douglas Elliman's only payment obligation is to pay the Total Monetary Settlement Amount.

38. 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 Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Douglas Elliman regardless of the claims that are made.

39. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 34 and 35 above and 42 below.

40. 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. Douglas Elliman 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 the Settlement Agreement. The Settlement Class, Plaintiffs, and Douglas Elliman shall be bound by the terms of the 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.

41. 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 Douglas Elliman or the Released Parties.

G. Taxes

42. 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. Douglas Elliman 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 Douglas Elliman. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Douglas Elliman, Douglas Elliman will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income in connection with the Settlement Fund. Douglas Elliman 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.

H. Rescission

43. 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 Douglas Elliman 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 a Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to Douglas Elliman a list of exclusion requests. In its sole discretion, Douglas Elliman shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified in the Confidential Supplemental Agreement.

44. If the Settlement or Settlement Agreement is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Douglas Elliman. In the event that the Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of notice and administration will not be returned to Douglas Elliman. Funds to cover notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to Douglas Elliman.

45. If the Settlement or Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Actions as of April 22, 2024. Plaintiffs and Douglas Elliman agree that any rulings or judgments that occur in the Actions on or after April 22, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Douglas Elliman, or any of the Released Parties. Plaintiffs and Douglas Elliman agree to waive any argument of claim or issue preclusion against Plaintiffs or Douglas Elliman arising from such rulings or judgments. In the event of rescission, the Actions will proceed as if this Settlement Agreement had never been executed and this Settlement Agreement, and representations or agreements made in conjunction with this Settlement Agreement, may not be used in the Actions or otherwise for any purpose. Douglas Elliman and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Douglas Elliman or the Plaintiffs, including, but not limited to, any defenses concerning the Court's lack of personal jurisdiction over Douglas Elliman or any Released

Parties. 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 April 22, 2024, until the date this Settlement or 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.

46. Douglas Elliman warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time this Settlement Agreement is executed, and, will be deemed to warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made to the Escrow Account, if they become due and payable pursuant to Paragraph 31 above. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the actual transfer of the Settlement Amount, or any portion thereof, by or on behalf of Douglas Elliman 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, only if due and payable pursuant to Paragraph 31 above, is not promptly deposited in the Escrow Account by or on behalf of Douglas Elliman, then, at the election of Plaintiff counsel, the settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

48. Douglas Elliman reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practice Changes

49. As soon as practicable, and in no event later than six months after the Effective Date,

Douglas Elliman (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 Douglas Elliman's company-owned brokerages, franchisees (if any), and their agents that there is no Douglas Elliman requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any Douglas Elliman company-owned brokerages and their agents (and recommend and encourage that any franchisees (if any) 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 Douglas Elliman will require that any company-owned brokerages and their agents (and recommend and encourage that any Douglas Elliman 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 Douglas Elliman company-owned brokerages and their agents acting as buyer representatives (and recommend and encourage that franchisees (if any)

- and their agents acting as buyer representatives refrain) from advertising or otherwise representing that their services are free;
- iv. require that Douglas Elliman owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
 - v. prohibit Douglas Elliman owned brokerages and their agents (and recommend and encourage that any franchisees (if any) 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 Douglas Elliman company owned brokerages and their agents of their obligation to (and recommend and encourage that any franchisees (if any) 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 (if any), and their agents, develop training materials consistent with the above relief and eliminate any contrary training materials currently used.

50. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 49 will sunset 5 years after the Effective Date.

51. Douglas Elliman acknowledges that the practice changes set forth here are a material

component of this Settlement Agreement and agrees to use its reasonable best efforts to implement the practice changes specified in this Section.

J. Cooperation

52. Douglas Elliman (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 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), including but not limited to the following. Any disputes regarding the scope of these provisions or compliance with these provisions can be referred to Greg Lindstrom or another mediator, mutually chosen by the parties, for binding resolution.

- i. Douglas Elliman will use reasonable best efforts to produce relevant summary-level, companywide transactional data limited to the class period. This data will be aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state by state basis. The data will be sufficient to show volume of commerce and the average commission percentage. The data will be produced at a similar time to when other Defendants produce transactional data in *Gibson* and *Umpa*.
- ii. Douglas Elliman will produce documents sufficient to show (to the extent such documents exist) its and its officers, employees, and agents' membership and participation in NAR, that was subject to, and complied with the challenged NAR rules during the class period, including whether and how Douglas Elliman accepted, adopted and implemented the challenged NAR rules, if at all.
- iii. Douglas Elliman will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony across no more than two 30(b)(1) witnesses.

The time only includes Plaintiff questioning and does not include questioning by any other party. Notwithstanding anything to the contrary in this Paragraph, no Douglas Elliman deposition witness will sit for more than seven hours on the record of questioning, including questioning from Plaintiffs and any other party, provided that Plaintiffs get up to 4.5 hours. Douglas Elliman will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.

- iv. Douglas Elliman will use reasonable best 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;
- v. Douglas Elliman will use reasonable best efforts to provide the facts necessary to establish 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, if any of those exceptions are applicable, by declarations or affidavits if possible, or at hearings or trial if necessary;
- vi. Douglas Elliman will use reasonable best efforts at its 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;
- vii. if another Defendant includes a witness on a witness list who is then a current officer or employee of Douglas Elliman or its subsidiaries, Douglas Elliman will

cooperate in providing access via counsel to that witness prior to trial testimony;
and

- viii. Douglas Elliman will agree not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Douglas Elliman's cooperation obligations, as set forth in Paragraph 52, 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.

54. Douglas Elliman'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 Douglas Elliman. 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 the Actions against the non-Douglas Elliman Defendants and the time for appeal or to seek permission to appeal from the 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.

55. Douglas Elliman 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 this Section.

K. Miscellaneous

56. 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 party. Douglas

Elliman denies the material 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 Douglas Elliman, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing or concession or agreement to jurisdiction in any court in Missouri (other than in connection with the enforcement of this Settlement Agreement) by Douglas Elliman or any Released Parties in any proceeding.

57. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations before a neutral mediator, Greg Lindstrom, of Phillips ADR Enterprises, P.C. The Settling Parties reached the 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 a motion for preliminary approval is filed—except as necessary for Douglas Elliman to meet its securities law reporting obligations as referenced in Paragraph 22.

58. Any disputes relating to this Settlement Agreement will be governed by Missouri law without regard to conflicts of law provisions. The Parties will not use Douglas Elliman's agreement to be governed by Missouri law as grounds for personal jurisdiction in any litigation, including, but not limited to, continued litigation in the Actions in the event that the settlement is not finally approved. For the avoidance of doubt, Douglas Elliman does not waive and reserves all defenses and rights, including, but not limited to, concerning personal jurisdiction.

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-Douglas Elliman Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any

Settlement Class Member against any Non-Douglas Elliman 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.

60. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Douglas Elliman pertaining to the Settlement of the Actions against Douglas Elliman. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Douglas Elliman.

61. This Settlement Agreement may be executed in counterparts by Plaintiffs and Douglas Elliman, and a DocuSign, facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

62. Neither Plaintiffs nor Douglas Elliman 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.

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

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

65. The terms of the 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.

66. Any disputes between Douglas Elliman and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg

Lindstrom for his assistance in mediating a resolution, and if a resolution is not reached, to binding arbitration with Greg Lindstrom.

67. 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.

68. 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.

CO-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

DOUGLAS ELLIMAN INC.

By: _____

Marc N. Bell, Senior Vice President and General Counsel

DOUGLAS ELLIMAN REALTY, LLC

By: _____

Deva Roberts, Executive Vice President and General Counsel

CO-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

DOUGLAS ELLIMAN INC.

By: MB

Marc N. Bell, Senior Vice President and General Counsel

DOUGLAS ELLIMAN REALTY, LLC

By: _____

Deva Roberts, Executive Vice President and General Counsel

CO-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

DOUGLAS ELLIMAN INC.

By: _____

Marc N. Bell, Senior Vice President and General Counsel

DOUGLAS ELLIMAN REALTY, LLC

By:  _____

Deva Roberts, Executive Vice President and General Counsel

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and JOHN MEINERS,
individually and on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-788-SRB

Hon. Stephen R. Bough

DANIEL UMPA, on behalf of himself and all others similarly
situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, et. al.

Defendants.

Case No. 23-CV-945-SRB

Hon. Stephen R. Bough

Plaintiffs Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa (collectively

“Plaintiffs”) and defendant Douglas Elliman, Inc. (“Douglas Elliman”) (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 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 Douglas Elliman, based upon written instructions provided by Douglas Elliman, 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 Douglas Elliman any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Douglas Elliman, 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:



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP



Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC

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

DON GIBSON, LAUREN CRISS,)
JOHN MEINERS, and DANIEL UMPA,)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

NATIONAL ASSOCIATION OF)
REALTORS, et al.)

Defendants.)

Case No. 4:23-cv-00788-SRB
[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

**DECLARATION OF ERIC L. DIRKS IN SUPPORT OF
PRELIMINARY APPROVAL OF SETTLEMENT WITH COMPASS, INC.
REAL BROKERAGE, REALTY ONE, @PROPERTIES, AND DOUGLAS ELLIMAN**

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* and *Gibson* actions. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of the Settlements with Compass, Real Brokerage, Realty ONE, At World Properties / @ Properties, and Douglas Elliman ("the Settlements"). 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 these actions, 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 the related *Burnett* action successfully navigated the *Burnett* 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 these real estate commission antitrust actions and am intimately familiar with all aspects of the cases.

5. The Settlements are more than a large financial recovery for the class. The practice changes set out in the Settlements 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.

6. 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.

7. Our firm and co-counsel filed *Burnett* in 2019 and have collectively dedicated more resources to the prosecution of the actions 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 Defendants took the position that its conduct was lawful and that the cases lacked merit.

8. 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. The Defendants in *Burnett* and *Moehrl* have all settled. But we did not stop there. We filed the above-captioned case in order to continue to seek monetary and practice change relief on behalf of the Class from additional brokerages in the residential real estate industry who we alleged also followed and enforced the Mandatory Offer of Compensation Rule.

9. The excellent result from the Settlements now before the Court did not just happen. They are a result of five years of litigation addressing the Mandatory Offer of Compensation Rule in *Burnett* and *Moehrl* and then filing suit and litigating against the current Settling Defendants.

10. Plaintiffs and Settling Defendants each had the benefit of the *Burnett* and *Moehrl* litigation to assist in assessing the strengths and weaknesses of the claims at issue in this case as well as the value of the claims.

11. The issues presented in *Burnett* and *Moehrl* were identical to the issues at issue in this case. In *Burnett* and *Moehrl*, 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 who submitted numerous reports and sat for depositions. Damages experts analyzed huge data sets including millions of rows of data. Expert testimony covered a broad array of subject matters. All of this work assisted the parties here in assessing the settlements.

12. We reviewed more than 5 million pages of documents that applied not only to *Burnett*, but also to the nationwide class at issue here, 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. Much of the data provided was not limited to the *Burnett* and *Moehrl* MLSs, but included data and policies nationwide.

13. Prior to filing this case, we undertook significant research into the Settling Defendants, their participation in NAR, their enforcement of the Mandatory Offer of Compensation Rule, and their market share and market presence. We conducted an extensive review of publicly available information, including SEC filings, company websites, third party websites, YouTube and other sources in order to investigate the connection between these companies and the practices found to be antitrust violations in *Burnett*. While some of the business practices and the size and scope of the companies varied, each, in our opinion, was following and enforcing the Mandatory Offer of Compensation Rule. What we learned in the five years of litigating *Burnett*, in conjunction with our investigation, allowed us to weigh the strengths and weaknesses of the case.

14. We mediated separately with four of the five Settling Defendants with Greg Lindstrom, a well-known national antitrust expert and mediator. We did so only after receiving financial information from each of the Settling Defendants. We were able to make a determination of each Settling Defendant's ability to realistically pay a reasonable settlement amount. This was one factor we considered in reaching each of these Settlements.

15. In determining that the Settlements were in the best interest of the Class, Plaintiffs used a forensic accountant to evaluate the internal financial documents of each Settling Defendant.

16. In my opinion, and based on my experience, the Settlements are fair, reasonable and adequate.

17. I also believe the Settlements are 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 paid here, but also includes the \$876.5 million in relief obtained in the *Burnett* and *Moehrl* cases. Indeed, we continue to strenuously litigate on behalf of these Settlement Classes.

18. The *Gibson* class representatives have approved these Settlements.

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

Executed this 29th day of April 2024.



Eric L. Dirks

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN
MEINERS, and DANIEL UMPA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

Civil Action No. 4:23-cv-00788-SRB

[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

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 1,000 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 for having held this title for the third year in a row. JND was also recognized 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 in the *Burnett* action. 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 in connection with the *Burnett* action.

SETTLEMENT CLASSES

12. JND has been asked by the Parties to prepare a Notice Program to reach Settlement Class Members in the Settlements with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, and inform them about their rights and options in the proposed Settlements. This Notice Program may easily be done in conjunction with providing notice related to other forthcoming settlements.

13. According to the Settlement Agreements with Compass, Real Brokerage, Realty ONE, and Douglas Elliman, the Settlement Class consists of:

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 between October 31, 2019 and the date of Class Notice

According to the Settlement Agreement with @properties, the @properties Settlement Class consists of:

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 in Arkansas, Kentucky, and Missouri: October 31, 2018 to the date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of Class Notice; and
- For all other homes: October 31, 2019 to date of Class Notice.²

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.³

15. The proposed Notice Program mirrors the programs in the Anywhere, RE/MAX and Keller Williams Settlements in the *Burnett* action 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 A more complete statement of the Settlement Class definitions is set forth in the Settlement Agreements, which are attached to Plaintiffs’ Motion for Preliminary Approval and the Declaration of Steve Berman in support.

³ 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 Settlements, as well as copies of relevant case documentation, including but not limited to the Settlement Agreements, 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 Settlements 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 Classes 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 Agreements, 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, DKIM⁴ for sender identification and authorization, and hostname evaluation. Additionally, we will check the send domain against the 25 most common IPv4 blacklists.⁵

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

⁴ DomainKeys Identified Mail, or DKIM, is a technical standard that helps protect email senders and recipients from spam, spoofing, and phishing.

⁵ 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.⁶ 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 Classes.

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*).

⁶ 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.

Media Resources

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.⁷

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

⁷ 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.

key terms related to this matter, such as Burnett, Moehrl, Compass, Real Brokerage, Realty ONE, @properties, Douglas Elliman, and/or 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 homeowner associations, moving companies, home renovations, real estate, investing, and/or home improvement. The programmatic impressions on OMTD will emphasize Adults 35-64 and will target users based on “length of residency” being between 0-5 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 Settlements, including the Long Form Notices, 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 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 these Settlements 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 a list of Important Documents, the ability to download the Long Form Notices 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 which will be utilized for these Settlements: one dedicated for Settlement Class Members to submit letters, inquiries, and claim forms; and one dedicated strictly to receive exclusion requests.

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 in the *Burnett* action, and it is my understanding that the form of the notices 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 these Settlements 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 Settlements 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 Settlements.

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 Classes; general descriptions of the claims asserted and references to the defenses of Settling Defendants; the monetary relief afforded by the Settlement Agreements; the right of Settlement Class Members to obtain counsel, object to the Settlements, or exclude themselves from the Settlements; and the binding effect of the Settlements 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 Settlements, 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 Classes may object to the Settlements. 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 Classes who wishes to object to any aspect of the Settlements 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 (*Gibson, et al., v. National Ass’n of Realtors, et al.*, Case No. 4:23-cv-00788-SRB(W.D. Mo.)), the Settlement Class Member’s name, address, telephone number, signature, which of the Settlements they object to, and the reasons that they object to the Settlement(s).

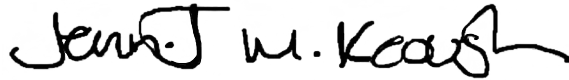
77. Any Settlement Class Member may also opt out of the Settlements. To do so, Settlement Class Members must submit a written request to JND stating their intent to exclude themselves from the Settlements. The exclusion request must include the Settlement Class Member’s present name, address, and telephone number; a statement that they wish to be excluded from one or more of the Settlements; 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 Settlements 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 Settlements.

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 29, 2024, in Seattle, Washington.



JENNIFER M. KEOUGH