

**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

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS,
FRANCES HARVEY, and JEREMY KEEL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS,
REALOGY HOLDINGS CORP., HOMESERVICES OF
AMERICA, INC., BHH AFFILIATES, LLC, HSF
AFFILIATES, LLC, RE/MAX, LLC, and KELLER
WILLIAMS REALTY, INC.,

Defendants.

Case No. 19-cv-00332-SRB

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE
DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS,
REALOGY HOLDINGS CORP., HOMESERVICES OF
AMERICA, INC., BHH AFFILIATES, LLC, HSF
AFFILIATES, LLC, THE LONG & FOSTER COMPANIES,
INC., RE/MAX, LLC, and KELLER WILLIAMS REALTY,
INC.,

Defendants.

Case No. 1:19-cv-01610-ARW

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 5th day of September, 2024 (the “Execution Date”), by and between “Brown Harris Stevens” and “Halstead” (each as defined below; collectively referred to herein as “Brown Harris Stevens”) and Plaintiffs, (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, Plaintiffs allege that Brown Harris Stevens 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, Brown Harris Stevens denies Plaintiffs’ allegations;

WHEREAS, extensive arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Brown Harris Stevens, 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-Brown Harris Stevens Defendants unless Plaintiffs separately settle with any of the Non-Brown Harris Stevens Defendants;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims that have been and/or could be asserted against Brown Harris Stevens, and have concluded that a settlement with Brown Harris Stevens according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Brown Harris Stevens believes that it is not liable for the claims and allegations asserted and has good defenses, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement,

and to put to rest with finality all claims that Plaintiffs and Settlement Class Members have or could have asserted against the Released Parties, as defined below; and

WHEREAS, Brown Harris Stevens, 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 Brown Harris Stevens and the Plaintiffs that certain actual or potential claims be settled, compromised, and dismissed with prejudice as to Brown Harris Stevens only, without costs to Plaintiffs, the Settlement Class or Brown Harris Stevens 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 Burnett v. NAR, (W.D. Mo. Case No. 19-cv-00332-SRB); Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610-ARW); 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), and any to-be-filed action by Co-Lead Counsel in the Western District of Missouri for the purpose of effectuating this Settlement Agreement.
2. “Brown Harris Stevens” refers collectively to “Brown Harris Stevens” and “Halstead” (which was merged with the Brown Harris Stevens brokerages on or about January 1, 2021), and is defined to include each and every brokerage owned by Terra Holdings, LLC that uses those names, including but not limited to:

Brown Harris Stevens Brooklyn, LLC
Brown Harris Stevens Residential Sales, LLC

Brown Harris Stevens Queens, LLC
Brown Harris Stevens Forest Hills, LLC
Brown Harris Stevens Riverdale, LLC
Brown Harris Stevens Development Marketing, LLC Brown Harris Stevens Marketing and Sales,
LLC
Brown Harris Stevens Hudson Valley, LLC
Brown Harris Stevens of the Hamptons, LLC
Brown Harris Stevens Westhampton, LLC
Brown Harris Stevens New Jersey, LLC
Brown Harris Stevens of Palm Beach
Brown Harris Stevens Miami, LLC
Brown Harris Stevens Connecticut, LLC.
Halstead Brooklyn, LLC
Halstead East Hampton, LLC
Halstead Forest Hills, LLC
Halstead Hamptons, LLC
Halstead Property Development Marketing, LLC
Halstead Hudson Valley, LLC
Halstead Queens, LLC
Halstead Connecticut, LLC
Halstead Property, LLC and Halstead Manhattan, LLC
Halstead New Jersey, LLC
Halstead New Jersey Development Marketing, LLC

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 all defendants named in the Actions.
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 Brown Harris Stevens 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 defendant not related to a Brown Harris Stevens entity (a “Non-Brown Harris Stevens Defendant”) or any person or entity related to the Non-Brown Harris Stevens 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 Brown Harris Stevens and Halstead, and all of their respective past, present and future, direct and indirect corporate parents (including holding companies such as Terra Holdings, LLC), 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-Brown Harris Stevens 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 Brown Harris Stevens or any other Person for any claims based on the conduct of any real estate brokerage acquired by Brown Harris Stevens or any other Person who becomes affiliated with Brown Harris Stevens 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 in the following date ranges: Homes listed on Moehrl MLSs: March 6, 2015 to date of class notice; Homes listed on Burnett MLSs: April 29, 2014 to date of class notice; Homes listed on MLS PIN: December 17, 2016 to date of class notice; Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN MLS: October 31, 2018 to date of class notice; Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or PIN MLS, MLS: October 31, 2017 to date of class notice; For all other homes: October 31, 2019 to date of class notice. For the avoidance of doubt, Plaintiffs and Brown Harris Stevens 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 Brown Harris Stevens.

18. “Total Monetary Settlement Amount” means payment of \$2.9 million in a guaranteed payment, paid as provided in Paragraph 31. 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 Brown Harris Stevens 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 Brown Harris Stevens. 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 Brown Harris Stevens 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 Brown Harris Stevens; and Brown Harris Stevens’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.

23. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the “Motion”) and will seek approval of the Settlement in conjunction with the NAR settlement approval process. 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.

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 members who file a claim for prior settlements in the Actions will be deemed to also make a claim against this Settlement unless they affirmatively state they are not claiming this Settlement. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel and may occur separately from and at a different time than the class notice provided in connection with the class relief afforded in the Settlement Agreement by the National Association of REALTORS®. The Settling Parties agree to the use of 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.

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 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. The costs of such notice shall ultimately be credited against the Total Monetary Settlement Amount.

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 the Released Parties:

(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 the Released Parties 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 Brown Harris Stevens.

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 the Actions), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury. The release does not extend to any individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence or other tort claim, other than a claim that a class member paid an excessive commission or home price due to the claims at issue in these Actions.

E. Payment of the Total Monetary 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, Brown Harris Stevens will deposit \$1 million into the Escrow Account. Brown Harris Stevens will pay an additional \$950,000 into the Escrow Account by December 31, 2025. Brown Harris Stevens will pay an additional \$950,000 into the Escrow Account by December 31, 2026. All accrued interest from Brown Harris Stevens’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 Brown Harris Stevens.

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 Brown Harris Stevens’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. Brown Harris Stevens will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$750,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Brown Harris Stevens Defendants and notice of one or more other settlements is included in the notice of the Brown Harris Stevens settlement, then the cost of such notice will be apportioned equitably between (or among) the Brown Harris Stevens 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 Brown Harris Stevens 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. Brown Harris Stevens 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. Brown Harris Stevens'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 Brown Harris Stevens 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. Brown Harris Stevens 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 Brown Harris Stevens 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 Brown Harris Stevens 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. Brown Harris Stevens 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 Brown Harris Stevens. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Brown Harris Stevens, Brown Harris Stevens 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. Brown Harris Stevens 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 Brown Harris Stevens 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.

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 Brown Harris Stevens. 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 Brown Harris Stevens. 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 Brown Harris Stevens.

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 June 17, 2024. 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 in any action for any purpose. Brown Harris Stevens and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Brown Harris Stevens or the Plaintiffs, including, but not limited to, any defenses concerning the Court's lack of personal jurisdiction over Brown Harris Stevens or any Released Parties.

46. Brown Harris Stevens 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 Brown Harris Stevens 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 Brown Harris Stevens, 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. Brown Harris Stevens 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, Brown Harris Stevens (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 Brown Harris Stevens agents that there is no Brown Harris Stevens 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 Brown Harris Stevens 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 Brown Harris Stevens will require that 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 Brown Harris Stevens agents acting as buyer representatives from advertising or otherwise representing that their services are free;
- iv. require that Brown Harris Stevens agents disclose at the earliest moment possible any offer of compensation made in connection with each active listing shared with prospective buyers in any format;
- v. prohibit Brown Harris Stevens agents 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 Brown Harris Stevens agents of their obligation to 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, 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. Brown Harris Stevens 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. Brown Harris Stevens (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. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are

- authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
- ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are “business records,” a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;
 - iii. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;
 - iv. if a defendant includes a witness on a witness list in the Actions who is then a current officer or employee of Stipulating Party, Stipulating Party will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;
 - v. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and
 - vi. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.
 - vii. As necessary to implement this Settlement, Brown Harris Stevens agrees to cooperate with Plaintiffs to be joined or intervene as a defendant in *Burnett* pursuant to Federal Rule of Civil Procedure 21 and/or Federal Rule of Civil Procedure 24. Brown Harris Stevens hereby agrees to cooperate in good faith

with Plaintiffs and Co-Lead Counsel's efforts to efficiently and timely file a motion to accomplish the foregoing. To the extent that Brown Harris Stevens is not made a defendant in *Burnett*, for whatever reason, Brown Harris Stevens acknowledges and agrees that it will be named as a defendant in a new class action lawsuit arising from the same conspiracy alleged in *Burnett*, *Moehrl*, *Gibson*, and *Umpa*. The new lawsuit will be filed in the United States District Court for the Western District of Missouri, Western Division. Brown Harris Stevens agrees to (a) the jurisdiction and venue of the Western District of Missouri for purposes of this settlement only, (b) accept service for the new lawsuit, and (c) to the transfer of the new lawsuit to the court of Judge Stephen R. Bough, if it is not randomly assigned there. To the extent necessary, Brown Harris Stevens hereby agrees to cooperate in good faith with Plaintiffs and Co-Lead Counsel in their efforts to efficiently and timely file the new action and have it transferred to Judge Bough's court. For the avoidance of doubt and notwithstanding the foregoing, Brown Harris Stevens and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Brown Harris Stevens or Plaintiffs, including, but not limited to, any defenses concerning the Court's lack of personal jurisdiction over Brown Harris Stevens or any Released Parties.

53. Brown Harris Stevens'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. Brown Harris Stevens'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 Brown Harris Stevens. 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-Brown Harris Stevens 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. Brown Harris Stevens 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. Brown Harris Stevens denies the material allegations of the complaints in the Actions and in the other cases in *In re Real Estate Commission Antitrust Litigation (MDL No. 3100)*. Neither this 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 Brown Harris Stevens, 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 Brown Harris Stevens 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. Brown Harris Stevens may disclose internally the Settlement Agreement once the Settlement Agreement is executed.

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 Brown Harris Stevens'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, Brown Harris Stevens 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-Brown Harris Stevens 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-Brown Harris Stevens 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 Brown Harris Stevens pertaining to the Settlement of the Actions or potential claims against Brown Harris Stevens. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Brown Harris Stevens.

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

62. Neither Plaintiffs nor Brown Harris Stevens 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.

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 Brown Harris Stevens 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.

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

BROWN HARRIS STEVENS RESIDENTIAL SALES, LLC

By: 

Babette Krolik, Vice President and General Counsel

By: 

Silvia L. Serpe of Serpe LLC (attorneys for Brown Harris Stevens)

APPENDIX C – BROKERAGE “OPT IN” AGREEMENT

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

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS,
FRANCES HARVEY, and JEREMY KEEL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS®,
REALOGY HOLDINGS CORP., HOMESERVICES OF
AMERICA, INC., BHH AFFILIATES, LLC, HSF
AFFILIATES, LLC, RE/MAX LLC, and NATIONAL
ASSOCIATION OF REALTORS® REALTY, INC.,

Defendants.

Case No. 19-CV-00332-SRB

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

CHRISTOPHER MOEHL, MICHAEL COLE, STEVE
DARNELL, JACK RAMEY, DANIEL UMPA and JANE RUH
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS®,
REALOGY HOLDINGS CORP., HOMESERVICES OF
AMERICA, INC., BHH AFFILIATES, LLC, HSF
AFFILIATES, LLC, THE LONG & FOSTER COMPANIES,
INC., RE/MAX LLC, and KELLER WILLIAMS REALTY,
INC.,

Defendants.

Case No. 1:19-cv-01610-ARW

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

WHEREAS, Stipulating Party denies these allegations;

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

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

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

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

following terms and conditions:

A. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. “Moehrl MLSs” means the multiple listing services named in Moehrl.

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

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

11. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association,

government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates, and assignees.

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

13. "Released Parties" means Stipulating Party and its past, present, and future, direct and indirect, parents, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. However, "Released Parties" shall not include any Person who is excluded from being a released party under Paragraphs 16(g) or (h) of the Settlement Agreement.

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

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

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

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN MLS: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or PIN MLS, MLS: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice. For avoidance of doubt, Plaintiffs and Stipulating Party intend this Settlement to provide for a nationwide class with a nationwide settlement and release.

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

18. “Settling Parties” means Plaintiffs and Stipulating Party.

B. Operation of the Settlement

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

inclusion as a Released Party

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

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

(3) nargovernance@nar.realtor

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

22. **Option 1:** Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the United States Treasury Regulations (the "Escrow Account"). Within 120 days following preliminary approval of the Settlement Agreement by the Court, Stipulating Party will deposit into the Escrow Account an amount equal to 0.0025 multiplied by its average annual Total Transaction Volume over the most recent four calendar years ("Total Monetary Settlement Amount"). "Total Transaction Volume" is defined as the aggregate value of all residential home sales and purchases in which the Stipulating Entity and its direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and any of their franchisees represented in a real estate brokerage capacity either the buyer, the seller, or both. For any transactions in which a real estate broker

represented both the buyer and the seller, that transaction shall be counted twice for purposes of calculating the “Total Transaction Volume.” By way of example, a Stipulating Party with a \$2 billion average annual Total Transaction Volume would be required under this agreement to deposit \$5 million in the Escrow Account.

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

C. Stipulation to Class Certification

24. The Settling Parties hereby stipulate for purposes of this settlement only, that the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes as to Stipulating Party. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement

not become Effective, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void.

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

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

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

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

Settling Parties will negotiate in good faith to modify Appendix C directly or with the assistance of an agreed mediator and will endeavor to resolve any issues to the satisfaction of the Court.

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

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

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

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

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

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

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

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

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

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

E. Releases, Discharge, and Covenant Not to Sue

32. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of preliminary approval of the Settlement arising from or related to the Released Claims.

The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Actions and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (i) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of preliminary approval of the Settlement; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

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

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

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction,

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

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

F. Practice Changes

35. Stipulating Party agrees that, as soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of this Settlement Agreement, Stipulating Party (defined for purposes of this paragraph to include present and future, direct and

indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors, but not franchisees) will implement the following practice changes:

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

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

iii. prohibit all Stipulating Party company-owned brokerages and their agents acting as buyer representatives (and recommend and encourage that franchisees and their agents acting as buyer representatives refrain) from advertising or otherwise representing that their services are free;

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

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

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

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

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

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

G. Cooperation

38. Stipulating Party agrees to provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission

Antitrust Litigation (MDL No. 3100):

- i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
- ii. use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are “business records,” a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;
- iii. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;
- iv. if a defendant includes a witness on a witness list in the Actions who is then a current officer or employee of Stipulating Party, Stipulating Party will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;
- v. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and
- vi. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

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

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

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

H. The Settlement Fund

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

43. The Settling Parties and their counsel will not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or administering the settlement except in Paragraphs 40 and 42 of Appendix C. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance

of the Settlement Fund shall be disbursed to Settlement Class Members as provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

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

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

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

47. There will be no reduction of the Total Monetary Settlement Amount based on Opt-Out Sellers. The Settlement will be non-reversionary except as set forth below in Paragraphs 33-37

of Appendix C. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Stipulating Party regardless of the claims that are made.

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

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

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

I. Taxes

51. Co-Lead Counsel is solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund

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

J. Rescission

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

Settlement Class Members to opt out of the Settlement shall not be a basis for Stipulating Party to rescind or terminate the Appendix C.

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

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

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

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

K. Miscellaneous

57. This Appendix C and any actions taken to carry out the Settlement are not intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any party. Stipulating Party denies the material allegations of the complaints in the Actions and in the other cases in In re Real Estate Commission Antitrust Litigation (MDL No. 3100). Neither this Appendix C, nor the fact of

Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Stipulating Party, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Stipulating Party in any proceeding.

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

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

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

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

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

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

64. Stipulating Party acknowledges that it has been and is being fully advised by competent legal counsel of Stipulating Party's own choice and fully understands the terms and conditions of this Settlement Agreement, including Appendix C, and the meaning and import thereof,

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

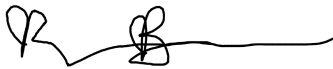
65. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Appendix C.

Date: 18 day of June, 2024



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On behalf of Brown Harris
Stevens (as defined
in Kersner Dec, Ex A.)
ON BEHALF OF CO-LEAD COUNSEL



Cohen Milstein Sellers & Toll PLLC