

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

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

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

**PLAINTIFFS' MOTION AND SUGGESTIONS IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENTS WITH DEFENDANTS REDFIN
AND ENGEL & VÖLKERS; CERTIFICATION OF SETTLEMENT CLASSES; AND
APPOINTMENT OF CLASS REPRESENTATIVES
AND SETTLEMENT CLASS COUNSEL**

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I. INTRODUCTION

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

1. Defendant Redfin Corporation (“Redfin”), and
2. Engel & Völkers GmbH and Engel & Völkers Americas, Inc., and their affiliate Engel & Völkers New York Real Estate LLC (collectively “Engel & Völkers”).¹

These two Settlements are in addition to five previous Settlements that have received preliminary approval in the above-captioned case, as well as four other settlements that have received preliminary or final approval in *Burnett*. Like the prior settlements, the proposed Settlements resolve on a nationwide basis Plaintiffs’ claims for damages and injunctive relief against the Settling Defendants for their alleged anticompetitive practices in the nationwide market for residential real estate brokerage services.

The Settlement Agreements with Redfin and Engel & Völkers provide for meaningful practice changes, cooperation in litigation against non-settling defendants, and payments of \$9.25 Million from Redfin and \$6.9 Million from Engel & Völkers. These payments are in addition to over \$962 million already obtained from other Defendants in this action and the *Burnett* and *Moehrl* actions, for a total recovery of over \$978 million for home sellers to date. Each Settlement was the product of intensive negotiations, facilitated by an experienced mediator, following years of aggressive discovery, litigation, and settlement negotiations with other Defendants in the related

¹ The Settlement Agreements are attached as Exhibits A and B to the Declaration of Steve Berman, Ex. 1 (“Berman Decl.”).

Burnett and *Moehrl* actions. The Settlements were informed by weighing the substantial monetary, practice change, and cooperation relief against the risks, cost, and delay of further litigation (including appeals), as well as limitations on Settling Defendants' ability to pay the full amount of any trial judgment entered against them. The Settlements are fair, adequate, reasonable, and beneficial to the Settlement Classes.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements with Redfin and Engel & Völkers; (2) certifying Settlement Classes; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) appointing JND as the notice administrator and directing notice to the classes. The Court should grant this motion for the same reasons it granted preliminary approval of prior settlements in this case with Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman. (*See* Doc. 163).

II. BACKGROUND – MOEHRL AND BURNETT

After five years of hard-fought litigation in related cases *Burnett v. National Association of Realtors*, Case No. 4:19-cv-00332-SRB (W.D. Mo.) ("*Burnett*"), and *Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.) ("*Moehrl*"), a jury trial and intensive settlement negotiations, *Burnett* and *Moehrl* Plaintiffs have reached global settlements with all Defendants in those actions, that provide monetary relief totaling at least \$876.5 million² (not including later settlements in this action) and require historic practice changes that will ultimately benefit future home sellers and buyers. Economists and other market experts have predicted that the Settlements could ultimately save consumers tens of billions of dollars per year.³

² This figure includes a pending \$250 million settlement with the HomeServices Defendants.

³ *See, e.g.*, Julian Mark, Aaron Gregg & Rachel Kurzius, *Realtors' Settlement Could Dramatically Change Cost of Housing Sales*, WASH. POST (Mar. 15, 2024), <https://www.washingtonpost.com/business/2024/03/15/nar-real-estate-commissions-settlement/>.

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

The plaintiffs in both actions alleged that NAR and the nation's largest real estate brokerage firms entered into an unlawful agreement in violation of the Sherman Act, 15 U.S.C. § 1, to artificially inflate the cost of commissions in residential real estate transactions. *Moehrl* and *Burnett* Plaintiffs alleged a longstanding conspiracy among Defendants to agree to NAR rules (a) requiring home sellers to make blanket unilateral offers of compensation to real estate brokers working with buyers, (b) restraining negotiation of those offers, (c) denying buyers information on the commissions being offered, (d) allowing buyer agents to represent that their services are "free," and (e) incentivizing and facilitating steering by brokers towards high commission listings and away from discounted listings (together, the "Challenged Rules"). *Moehrl* and *Burnett* Plaintiffs claimed that the Challenged Rules are anticompetitive and caused them to pay artificially inflated broker commissions when they sold their homes. Defendants have denied the allegations.

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

On April 22, 2022, this Court granted the *Burnett* Plaintiffs' motion for class certification; appointed Scott and Rhonda Burnett, Jerod Breit, Ryan Hendrickson, Jeremy Keel, and Scott

Trupiano as class representatives; and appointed Ketchmark & McCreight, Boulware Law LLC, and Williams Dirks Dameron LLC as Co-Lead Class Counsel. (*Burnett* Doc. 741). Shelly Dreyer, Hollee Ellis, and Frances Harvey joined as class representatives in the *Burnett* action with the Third Amended Complaint (*Burnett* Doc. 759).

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

The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. *Moehrl* and *Burnett* Plaintiffs briefed numerous discovery motions and other disputes relevant to obtaining evidence supporting their claims. The parties conducted around 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts supporting their claims and in rebuttal to the nine experts retained by Defendants in each case. Moreover, most experts were deposed in connection with the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The plaintiffs in both cases have also briefed summary judgment, and the Plaintiffs in *Burnett* proceeded to trial, including against NAR, and briefed post-trial motions. (Berman Decl. ¶ 15; Dirks Decl., Exhibit 2 at ¶¶ 11–12). Much of the discovery focused on the nationwide rules and practices of NAR and its members. Class Counsel and experts in *Burnett* and *Moehrl* analyzed rules, policies, practices, and transaction data, including on a

nationwide basis. (Berman Decl. ¶ 16; Dirks Decl. ¶ 12). They also evaluated whether those policies and practices differed among the various MLSs. The information and data were not limited to the *Burnett* and *Moehrl* Defendants, but rather focused on the entire industry. *Id.*

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

1. National Association of Realtors (“NAR”): at least \$418 million;
2. HomeServices Defendants: \$250 million;
3. Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”): \$83.5 million;
4. RE/MAX LLC (“RE/MAX”): \$55 million; and
5. Keller Williams Realty, Inc. (“Keller Williams”): \$70 million.

(Berman Decl. ¶ 17; Dirks Decl. ¶ 8). This Court, in *Burnett*, has granted final approval of the settlements with Anywhere, RE/MAX, and Keller Williams,⁴ and preliminary approval of the Settlement with NAR.⁵ In connection with all of these settlements, this Court appointed the following firms Co-Lead Class Counsel:

1. Ketchmark & McCreight,
2. Boulware Law LLC,
3. Williams Dirks Dameron LLC,
4. Cohen Milstein Sellers & Toll PLLC,
5. Hagens Berman Sobol Shapiro LLP, and
6. Susman Godfrey LLP.⁶

⁴ See *Burnett* Doc. 1487.

⁵ See *Burnett* Doc. 1460. This Court has also granted preliminary approval of additional settlements in this action.

⁶ See *Burnett* Docs. 1460 and 1487.

III. BACKGROUND – *GIBSON AND UMPA*

A. The Litigation

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

The six law firms appointed Co-Lead Class Counsel in *Moehrl* and *Burnett* also represent Plaintiffs and the putative class in the consolidated *Gibson* action. The Court appointed them as Interim Co-Lead Class Counsel in this case, with responsibility “for any settlement negotiations with Defendants.” (Doc. 180). The Court also appointed these six firms as Co-Lead Counsel for the Settlement Classes in the first five *Gibson* Settlements. *See* Doc. 163. With their successful track record, Class Counsel brings substantial knowledge and expertise to the prosecution of the *Gibson* action. Plaintiffs and their counsel have worked diligently to advance the litigation in *Gibson* and *Umpa*. Prior to filing these actions, class counsel undertook significant research into the Settling Defendants, their participation in NAR, their enforcement of the Mandatory Offer of Compensation Rule, and their market share and market presence. Counsel reviewed publicly available information, including SEC filings, company websites, third party websites, YouTube videos, and other sources in order to investigate the connection between these companies and the

practices found to be antitrust violations in *Burnett*. (Dirks Decl. ¶ 13). Counsel believed that each of the Defendants in this action followed and enforced the Mandatory Offer of Compensation Rule and/or similar rules of non-NAR MLSs. *Id.* Plaintiffs and their counsel then filed detailed complaints against the Defendants and have diligently prosecuted the case through its early stages to date. Plaintiffs' counsel have worked cooperatively, including moving to consolidate the *Gibson* and *Umpa* complaints for purposes of efficiency. Plaintiffs' counsel also handled various early steps in the case, including negotiating a scheduling order, working on preparing ESI and protective orders and serving discovery. (Berman Decl. ¶ 19).

Plaintiffs and their counsel have previously reached settlements totaling over \$86 million in this case with Defendants Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, plus additional contingent payments. The extensive work in *Moehrl* and *Burnett*, as well as in this case, paved the way for the recent \$16.15 million settlements with Redfin and Engel & Völkers. (Berman Decl. ¶ 15-19; Dirks Decl. ¶ 9-12). Currently, including the two proposed settlements and prior settlements in *Burnett* and *Gibson*, the total recovery on behalf of home sellers is at least \$978.65 million,⁷ in addition to meaningful practice changes and cooperation in the litigation.

B. Settlement Negotiations

The parties reached each of these settlements through extensive negotiations. For both Settlements, the parties engaged in negotiations through the assistance of a nationally recognized and highly experienced mediator, Greg Lindstrom, who has worked on numerous settlement-related matters for these cases. In each of these matters, the parties had an all-day mediation, attended by lead counsel for Plaintiffs and lead counsel for Redfin and Engel & Völkers. For each

⁷ This figure does not include up to \$10 million in additional contingent payments from Douglas Elliman.

settlement, the parties reached agreement only after numerous hours of negotiation. (Berman Decl. ¶¶ 7, 12; Dirks Decl. ¶¶ 14–15). As part of the negotiations, the parties provided mediation briefs and statements. Defendants also provided detailed financial records, pursuant to FRE 408, that the Plaintiffs carefully reviewed to determine Defendants’ ability to pay. *Id.*

The parties reached the Settlement Agreements after considering the risks and costs of litigation. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed to date supports the claims. Plaintiffs and counsel, however, also recognize the myriad of risks and delay of further proceedings in a complex case like this, and believe that the Settlements confer substantial benefits upon the Settlement Class Members. (Berman Decl. ¶¶ 10–11; Dirks Decl. ¶ 17). Moreover, Plaintiffs and counsel conducted a thorough financial analysis of the ability to pay, and whether each of them could withstand a greater monetary judgment, which directly affected the monetary amounts that it was feasible to recover from the Settling Defendants. (Berman Decl. ¶ 12; Dirks Decl. ¶¶ 14–16).

The Settling Defendants deny the material allegations of the Complaint and any wrongdoing but wish to avoid the time, expense, uncertainty, and risk attendant with further litigation.

C. Summary of Settlement Agreements with Redfin and Engel & Völkers

1. Settlement Classes

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

- Homes in Nevada: January 15, 2018 to the date of Class Notice;
- Homes in California: October 2, 2019 to date of Class Notice; and
- For all other homes: October 31, 2019 to date of Class Notice.

(Redfin ¶ 15).

The proposed Settlement Class with respect to Engel & Völkers is: All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

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

(Engel & Völkers ¶ 15).

The Settlement Agreements provide for “a nationwide class with a nationwide settlement and release.” (Redfin ¶ 15; Engel & Völkers ¶ 15). The Classes encompass persons who sold homes on any multiple listing service nationwide, regardless of affiliation with NAR or not, including, for example, NWMLS, WPMLS, and REBNY/RLS. (*See id*; *Burnett* Doc. 1487 at ¶¶ 63, 46).

2. Settlement Amounts

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

- Redfin: \$9.25 million; and
- Engel & Völkers: \$6.9 million.

(Redfin ¶ 18, Engel & Völkers ¶ 18). These amounts are inclusive of all costs of settlement, including payments to class members, attorney fees and costs, service awards for current and former class representatives, including Settlement Class Representatives, and costs of notice and administration. (*Id.*)

The Settlement Amounts are non-reversionary: once the Settlements are finally approved by the Court and after administrative costs, litigation expenses, and attorney fees are deducted, the net funds will be distributed to Settlement Class Members with no amount reverting back to the Settling Defendants, regardless of the number of Opt-Out Sellers or claims made. (Redfin ¶ 38, Engel & Völkers ¶ 38).

3. Practice Changes

The proposed Settlements provide for Redfin and Engel & Völkers, and their subsidiaries and affiliates, to make the following Practice Changes, to the extent they are not already implemented, within six months after the Settlements become effective:

- i. advise and periodically remind company-owned brokerages, franchisees (if any), and their agents that there is no company requirement that they must make offers to or must accept offers of compensation from cooperating brokers or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents) disclose to prospective home sellers and buyers and state in conspicuous language that broker commissions are not set by law and are fully negotiable (i) in their listing agreement if it is not a government or MLS-specified form, (ii) in their buyer representation agreement if there is one and it is not a government or MLS-specified form, and (iii) in pre-closing disclosure documents if there are any and they are not government or MLS-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government or MLS-specified form, then Settling Defendant will require that any company owned brokerages and their agents (and recommend and encourage that any franchisees and their agents) include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable;
- iii. prohibit all company-owned brokerages and their agents acting as buyer representatives (and recommend and encourage that franchisees and their agents acting as buyer representatives refrain) from advertising or otherwise representing that their services are free;
- iv. require that company-owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;

- v. prohibit company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents refrain) from utilizing any technology or taking manual actions to filter out or restrict MLS listings that are searchable by and displayed to consumers based on the level of compensation offered to any cooperating broker unless directed to do so by the client (and eliminate any internal systems or technological processes that may currently facilitate such practices);
- vi. advise and periodically remind company-owned brokerages and their agents of their obligation to (and recommend and encourage that any franchisees and their agents) show properties regardless of the existence or amount of cooperative compensation offered provided that each such property meets the buyer's articulated purchasing priorities; and
- vii. for each of the above points, for company-owned brokerages, franchisees, and their agents, develop training materials consistent with the above relief and eliminate any contrary training materials currently used.

(Redfin ¶ 49, Engel & Völkers ¶ 49). If not automatically terminated earlier by their own terms, these practice changes will sunset five years after the Effective Date of the Settlement Agreements.

(*Id.* at ¶ 50.)

4. Release of Claims Against Settling Defendants

Upon the Effective Date, Plaintiffs and the Settlement Classes will release and discharge the Settling Defendants, and their respective subsidiaries, related entities, affiliated franchisees, independent contractors, and other representatives from any and all claims arising from or relating to “conduct that was alleged or could have been alleged in the Actions based on any or all of the same factual predicates for the claims alleged in the Actions, including but not limited to commissions negotiated, offered, obtained, or paid to brokerages in connection with the sale of any residential home.” (Redfin ¶¶ 7, 11–13, 28–30; Engel & Völkers ¶¶ 7, 11–13, 28–30). The complete terms of the releases are contained in the Settlement Agreements.

The Settlement Agreements, however, do nothing to abrogate the rights of any member of the Settlement Classes to recover from any other Defendant. (Redfin ¶ 59, Engel & Völkers ¶ 59). The Settlement Agreements also expressly exclude from the Release a variety of individual claims

that class members may have concerning product liability, breach of warranty, breach of contract, or tort of any kind (other than a breach of contract or tort based on any factual predicate in this Action). Also exempted are any “individual claims that a class member may have against his or her own broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence, or other tort claim, other than a claim that a Class Member paid an excessive commission or home price due to the claims at issue in these Actions.” (Redfin ¶ 30; Engel & Völkers ¶ 30).

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

The Settlements authorize Settlement Class Counsel to seek to recover their attorney fees and costs incurred in prosecuting the Actions, as well as to seek service awards for current and former class representatives, including the Settlement Class Representatives. (Redfin ¶¶ 32, 35; Engel & Völkers ¶¶ 32, 35). Following the Court’s preliminary approval of the Settlements, Class Counsel will submit an application to the Court for an award of attorney fees, costs, and potentially for service awards, to be paid out of the Settlement Fund.

IV. THE CLASS DEFINITIONS CONTEMPLATED BY THE SETTLEMENTS SATISFY RULE 23, AND THE CLASSES SHOULD BE CERTIFIED

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

For the Settlement with Redfin, the proposed Settlement Class definition, pursuant to Rule 23(b)(3) is as follows (the “Redfin Settlement Class”):

All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes in Nevada: January 15, 2018 to the date of Class Notice;
- Homes in California: October 2, 2019 to date of Class Notice; and

- For all other homes: October 31, 2019 to date of Class Notice.

(Redfin ¶ 15).

For the Settlement with Engel & Völkers, the proposed Settlement Class definition is as follows (the “Engel & Völkers Settlement Class”):

All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

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

(Engel & Völkers ¶ 15).

The Settlement Agreements provide for “a nationwide class with a nationwide settlement and release.” (Redfin ¶ 15; Engel & Völkers ¶ 15). The Classes encompass persons who sold homes on any multiple listing service nationwide, regardless of affiliation with NAR or not, including, for example, NWMLS, WPMLS, and REBNY/RLS. (*See id*; *Burnett* Doc. 1487 at ¶¶ 63, 46).

The Settlements are conditioned upon the Court certifying a class for settlement purposes that is slightly broader than the class definition in the *Gibson* complaint, including (a) sellers who paid a commission to any brokerage (rather than limited to brokerages affiliated with Corporate Defendants), and (b) a slightly expanded time range.

The Settlement Class definitions satisfy the requirements of Rule 23(a) and 23(b)(3) for the reasons discussed below. Thus, class certification is warranted for settlement purposes.

B. Legal Standard for Modifying the Class Definition

The Court has authority under Rule 23 to certify the proposed Settlement Classes here. Even in the litigation context, courts may certify a class broader than the one alleged in the complaint. *See, e.g., Chapman v. First Index, Inc.*, 796 F.3d 783, 785 (7th Cir. 2015) (Easterbrook, J.) (explaining that the “obligation to define the class falls on the judge’s shoulders” and “motions practice and a decision under Rule 23 do not require the plaintiff to amend the complaint.”); *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d 152, 212 (S.D.N.Y. 2018) (“[C]onsistent with the certifying court’s broad discretion over class definition,” adopting “the class definition that Plaintiffs propose in their motion for class certification [even though] it expands upon the definition found in the Amended Complaint.”).

In the settlement context, courts regularly certify broader classes. *See, e.g., Burnett Doc.* 1321, ¶ 7 (certifying a “settlement class [that] is broader than the class alleged in the complaint”); *Burnett Doc.* 1487 at 6 (granting final approval of settlement with broader class than as alleged in the litigation); *Gibson Doc.* 163 (certifying a nationwide settlement class that is broader than the class alleged in the complaint); *In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, 357 F.3d 800, 805 (8th Cir. 2004) (“There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this.”); *Smith v. Atkins*, 2:18-cv-04004-MDH (W.D. Mo.).

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

The Settlement Classes must satisfy the four requirements of Rule 23(a) and one of the subsections of Rule 23(b). *See Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *Burnett v. Nat’l Ass’n of Realtors*, No. 4:19-cv-00332, 2022 WL 1203100, at *4 (W.D. Mo. Apr. 22, 2022). The Court should grant provisional certification here because the proposed Settlement Classes satisfy Rule 23(a) and (b)(3). Provisional certification will allow the Settlement Classes to receive notice

of the Settlements and its terms, including the rights of class members to submit a claim and recover a class award if the Settlements are finally approved, to object to and/or be heard on the Settlements' fairness at the Fairness Hearing, or to opt out.

1. Numerosity

Rule 23(a)(1) requires “the class be so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[A] plaintiff does not need to demonstrate the exact number of class members as long as a conclusion is apparent from good-faith estimates.” *Hand v. Beach Entertainment KC, LLC*, 456 F. Supp. 3d 1099, 1140 (W.D. Mo. 2020) (quotation omitted). Although the Eighth Circuit has not established strict requirements regarding the size of a proposed class, see *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 559 (8th Cir. 1982), class sizes as small as 40 have satisfied this requirement. *Rannis v. Rechia*, 380 Fed. App’x 646, 651 (9th Cir. 2010).

Here, Plaintiffs estimate that Settlement Class Members number in the tens of millions, dispersed across the United States. Moreover, this Court in *Burnett* and the *Moehrl* Court have previously held that litigation classes smaller than the Settlement Classes at issue here satisfied the numerosity requirement. See *Burnett*, 2022 WL 1203100, at *5; *Moehrl v. Nat’l Ass’n of Realtors*, No. 1:19-cv-01610, 2023 WL 2683199, at *11 (N.D. Ill. Mar. 29, 2023). Thus, the Settlement Classes plainly satisfy Rule 23(a)(1)’s numerosity requirement.

2. Commonality

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Plaintiffs must show that resolution of an issue of fact or law “is central to the validity of each” class member’s claim; “[e]ven a single [common] question will” satisfy the commonality requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (quotation omitted); see also *Paxton*, 688 F.2d at 561 (8th Cir. 1982) (“The rule does not require that every question of law or fact be common to every member of the class”). “In the antitrust context, courts have

generally held that an alleged conspiracy or monopoly is a common issue that will satisfy Rule 23(a)(2) as the singular question of whether defendants conspired to harm plaintiffs will likely prevail.” *D&M Farms v. Birdsong Corp.*, No. 2:19-cv-463, 2020 WL 7074140, at *3 (E.D. Va. Dec. 1, 2020).

In the related *Burnett* case, this Court previously held that there are many issues common to the *Burnett* classes, including (1) whether Defendants engaged in a conspiracy to artificially inflate the cost of commissions in residential real estate transactions; (2) whether the conspiracy violates Section 1 of the Sherman Act; (3) the duration, scope, extent, and effect of the conspiracy; (4) whether a per se or rule of reason analysis should apply; and (5) whether *Burnett* Plaintiffs and other members of the Classes are entitled to, among other things, damages, and/or injunctive relief. *See Burnett*, 2022 WL 1203100, at *5. Similarly, the *Moehrl* Court found that the commonality requirement was met based on the common question “whether Defendants conspired to artificially inflate the buyer-broker commissions paid by the class by adopting the Challenged Restraints, in violation of § 1 of the Sherman Act.” *Moehrl*, 2023 WL 2683199, at *11. These common issues exist with respect to the proposed Settlement Classes in *Gibson* as they did with respect to the classes initially certified in *Burnett* and *Moehrl*. *See, e.g., Gibson* Doc. 163; *Hughes v. Baird & Warner, Inc.*, No. 76-cv-3929, 1980 WL 1894, at *2 (N.D. Ill. Aug. 20, 1980) (“The obvious question of fact common to the entire class is whether or not a conspiracy existed. This question will most probably predominate the entire lawsuit.”). In particular, the conduct of Redfin and Engel & Völkers that is being challenged in *Gibson* generally centers on rules adopted nationwide and applying to Realtors nationwide.

3. Typicality

Rule 23(a)(3) requires that the class representatives’ claims be “typical” of class members’ claims. “The burden of demonstrating typicality is fairly easily met so long as other class members

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

In the related *Burnett* case, this Court previously held that *Burnett* Plaintiffs’ claims are typical of members of the *Burnett* classes. Likewise, in prior settlements in this case, the Court found that *Gibson* Plaintiffs’ claims are typical of members of the proposed Settlement Classes. (See Doc. 163). Each Settlement Class Member sold a home that was listed on a multiple listing service in the United States. Settlement Class Members’ claims arise out of a common course of misconduct by Defendants; they all paid a commission when they sold their homes that was inflated by Defendants’ conduct. As such, Rule 23(a)(3) is satisfied.

4. Adequacy

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

to the heart of the litigation.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430–31 (4th Cir. 2003) (citation omitted).

As with the settlement classes earlier certified in this action (Doc. 163) and the related *Burnett* and *Moehrl* actions, *Burnett*, 2022 WL 1203100, at *1, *7; *Moehrl*, 2023 WL 2683199, at *11, there is no conflict here; the interests of Plaintiffs are aligned with those of Settlement Class Members. Plaintiffs, like all Settlement Class Members, share an overriding interest in obtaining the largest possible monetary recovery, the most effective practice changes, and the most helpful cooperation from Redfin and Engel & Völkers. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) (“[S]o long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes.”). Moreover, because a narrower settlement would have left the Settling Defendants exposed to litigation involving claims exceeding their ability to pay, the only feasible means for Plaintiffs to obtain *any settlement at all* was to settle on a comprehensive basis on behalf of the entire Settlement Classes. Finally, Plaintiffs are not afforded any special or unique compensation by the proposed Settlement Agreements. As such, Rule 23(a)(4) is satisfied.

D. The Proposed Settlement Classes Satisfy Rule 23(b)(3)

Once Rule 23(a)’s four prerequisites are met, Plaintiffs must demonstrate that the proposed Settlement Classes satisfy Rule 23(b)(3). Specifically, Plaintiffs must show that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Plaintiffs have done so.

1. Predominance

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

“[W]hether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019). “[T]he predominance requirement is relaxed in the settlement context[.]” *In re Pre-Filled Propane Tank Antitrust Litig.*, No. 14-02567, 2019 WL 7160380, at *4 (W.D. Mo. Nov. 18, 2019); *see also Holt v. CommunityAmerica Credit Union*, No. 4:19-cv-00629, 2020 WL 12604383, at *4 (W.D. Mo. Sept. 4, 2020). When a class is being certified for settlement, “a district court need not inquire whether the case, if tried, would present intractable management problems[.]” *Amchem*, 521 U.S. 591 at 620. Therefore, as courts in this circuit recognize, “When a class is being certified for settlement, the Court need only analyze the predominance of common questions of law and the superiority of class action for fairly and effectively resolving the controversy; it need not examine Rule 23(b)(3)(A–D) manageability issues, because it will not be managing a class action trial.” *In re Zurn Pex Plumbing Prod. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088, at *5 (D. Minn. Feb. 27, 2013). For example, in *Zurn Pex*, the district court found that common issues predominated because class representatives and members of the settlement class all sought to remedy a “shared legal grievance[.]” *Id.*

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

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

Common issues also predominate for each element that Plaintiffs must prove to prevail in an antitrust case: (1) a violation of the antitrust laws; (2) the impact of the unlawful activity; and (3) measurable damages. *See, e.g., Gibson* Doc. 163 at ¶ 5; *Burnett*, 2022 WL 1203100, at *10. First, as discussed above, all members of the Settlement Classes share the same legal grievance—a violation of the antitrust laws by Defendants. Second, as in the *Burnett* action, “the fact of antitrust impact can be established through common proof” *Burnett*, 2022 WL 1203100, at *11 (quoting *In re Nexium Antitrust Litig.*, 777 F.3d 9, 18 (1st Cir. 2015)). *Burnett* and *Moehrl* Plaintiffs have “shown the existence of common questions concerning antitrust impact that can be answered with common evidence” (*Moehrl*, 2023 WL 2683199, at *19; *Burnett*, 2022 WL 1203100, at *10–12, *18), including expert opinions, analysis of residential real estate transactions in foreign benchmark countries, and transaction data from defendants and MLSs. The same common questions are at issue in *Gibson*. At bottom, evidence of impact from the fact that commissions in the United States are higher than international markets is evidence common to the nationwide Settlement Classes in *Gibson*. Third, all members of the proposed Settlement Classes have been damaged by paying inflated commissions as a result of the Challenged Rules or other similar rules or by paying any commission to a buyer broker. Experts in the *Burnett* and *Moehrl* actions presented reliable methods of measuring damages as the difference between the amount class members paid for buyer agent commissions in the actual world versus what they would have paid in the but-for world. (*Moehrl* Doc. 403; *Burnett* Doc. 741) The same type of methodology could be used for the broader Settlement Classes in *Gibson*.

2. Superiority of a Class Action

In addition to the predominance of common questions, Rule 23(b)(3) requires a finding that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Factors relevant to the superiority of a class action under

Rule 23(b)(3) include: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” *Id.*

In this case, the first three factors weigh heavily in favor of class certification. First, class members have little economic incentive to sue individually based on the amount of potential recovery involved, and any Settlement Class Member who wishes to opt out will have an opportunity to do so. Second, there is just a small handful of other lawsuits filed by individual Settlement Class Members, all of which were filed after the initial *Gibson* complaint and none of which have made significant progress in litigation to date. Settlement Class Members will retain the ability to opt out of the Settlement Classes if they wish to pursue their claims individually. Third, judicial efficiency is served by approving the Settlements. It would be inefficient—for both the Court and the parties—to engage in millions of individual trials involving similar claims. “Requiring individual Class Members to file their own suits would cause unnecessary, duplicative litigation and expense, with parties, witnesses and courts required to litigate time and again the same issues, possibly in different forums.” *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 240 (S.D. W.Va. 2005).

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

Finally, the Supreme Court has found that when certifying a settlement class “a district court need not inquire whether the case, if tried, would present intractable management problems,

see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. Such is the case here. If approved, the Settlement Agreements would obviate the need for a trial against the Settling Defendants, and thus questions concerning that trial’s manageability are irrelevant. Accordingly, the Court should certify the Settlement Classes.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS

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

As a general matter, “the law strongly favors settlements. Courts should hospitably receive them.” *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990). Courts adhere to “an initial presumption of fairness when a proposed class settlement, which was negotiated at arm’s length by counsel for the class, is presented for court approval.” 4 Newberg on Class Actions § 11.41; *see also Petrovic*, 200 F.3d at 1148 (8th Cir. 1999) (“A strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.”); *Marshall v. Nat’l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) (“A settlement agreement is ‘presumptively valid.’” (quoting *In re Uponor, Inc., F1807 Plumbing Fittings Products Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013))); *Sanderson v. Unilever Supply Chain, Inc.*, 10-cv-00775-FJG, 2011 WL 5822413, at *3 (W.D. Mo. Nov. 16, 2011) (crediting the

judgment of experienced class counsel that settlement was fair, reasonable, and adequate). The presumption in favor of settlements is particularly strong “in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (quotation and citation omitted).

The standard for reviewing a proposed settlement of a class action is whether it is “fair, reasonable, and adequate.” *In re Wireless Telephone Federal Cost Recover Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). The Eighth Circuit has set forth four factors that a court should review in determining whether to approve a proposed class action settlement: “(1) the merits of the plaintiff’s case, weighed against the terms of the settlement; (2) the defendant’s financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.” *Id.* (citing *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975); *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988)). “The views of the parties to the settlement must also be considered.” *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995).

A. The Merits of the Plaintiffs’ Cases, Weighed Against the Terms of the Settlements

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

Against this risk, the Settlements provide for a recovery of \$16.15 million from just two of many Defendants, for a combined total of relief from all Settling Defendants of over \$978 million, to date. As discussed in detail below, these settlements are supported by the financial condition of the Settling Defendants, who lack the ability to pay the damages alleged.

The Settlements further provide important changes to the Settling Defendants' business practices to protect class members who sell homes in the future. Among other things, the Settling Defendants have committed to take steps to educate their affiliated agents that, among other things, the companies do not require listing agents to make offers of compensation to buyer agents and commissions are negotiable. *Gibson* Plaintiffs, along with *Burnett* and *Moehrl* Plaintiffs, have entered into a separate proposed settlement with NAR to achieve additional injunctive relief—including changes to the challenged rules. And the Settlements do not preclude Plaintiffs from obtaining additional relief from the non-settling Defendants.

Toward that end, Plaintiffs further secured cooperation from the Settling Defendants to assist Plaintiffs with prosecuting their claims against the remaining defendants at trial—where Plaintiffs will strive to secure additional monetary and non-monetary relief. As courts recognize, this is a factor in approving settlements. *See In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (approving settlement in light of settling defendant's "assistance in the case against [a non-settling defendant]"); *see generally In re IPO Sec. Litig.*, 226 F.R.D. 186, 198–99 (S.D.N.Y. 2005) (recognizing the value of cooperating defendants in complex class action litigation).

Finally, the Settlement terms were reached as the product of arm's length negotiations over a period of over a month, facilitated by a well-respected mediator, following over four years of hard-fought litigation and settlement negotiations in the related *Burnett* and *Moehrl* actions. (Berman Decl. ¶ 7; Dirks Decl. ¶ 14). "When a settlement is reached by experienced counsel after

negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.” *Marcus v. Kansas*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002).

B. Defendants’ Financial Conditions

The Settlements are fair and reasonable in light of the financial condition of Redfin and Engel & Völkers, and the limited resources available to each to satisfy a settlement as compared to the size of the potential damages. Pursuant to Federal Rule of Evidence 408, Plaintiffs received and carefully reviewed analyzed financial records from each of the Settling Defendants, including analysis by one of Plaintiffs’ counsel, a certified public accountant with training in financial forensics. (Berman Decl. ¶ 12; Dirks Decl. ¶¶ 14–16). The monetary settlements were reached with due consideration for the Defendants’ limited ability to pay. (*Id.*) Furthermore, the entire real estate industry has faced significant financial headwinds over the past 2 years due to challenging financial conditions including high interest rates. In 2023, just 4.09 million existing homes were sold in the United States, the lowest number since 1995.⁸ This has caused understandable financial difficulties for Defendants, whose businesses are directly tied to the number of home sales.

C. The Complexity and Expense of Further Litigation

Plaintiffs’ claims raise numerous complex legal and factual issues under antitrust law. This is reflected in the voluminous briefing to date in the related cases, including extensive class certification and summary judgment briefing in *Moehrl* and *Burnett*, as well as post-trial briefing in *Burnett*. In addition, the parties in those actions have engaged in extensive appellate briefing, including (rejected) Rule 23(f) petitions in both *Moehrl* and *Burnett* as well as two separate appeals in the *Burnett* litigation concerning arbitration issues. Litigation in *Gibson* could prove to be

⁸ Brooklee Han, *Just 4.09 million existing homes were sold in 2023*, HOUSINGWIRE (Jan. 19, 2024), <https://www.housingwire.com/articles/just-4-09-million-existing-homes-were-sold-in-2023/#:~:text=Existing%20home%20sales%20dropped%20to,sold%2C%20the%20fewest%20since%201995>.

similarly arduous and costly as Plaintiffs must pursue discovery and prove their claims against a different and larger set of Defendants.

By contrast, the Settlements ensure a recovery to the Settlement Classes that will be allocated and distributed in an equitable manner. In light of the many uncertainties of litigation, an equitable and certain recovery is highly favorable, and weighs in favor of approving the proposed Settlements. (Berman Decl. ¶¶ 10-11; Dirks Decl. ¶ 17).

D. The Amount of Opposition to the Settlements

Class Counsel have discussed the Settlement Agreements with the Class Representatives, who have approved them. (Berman Decl. ¶ 13; Dirks Decl. ¶ 18). Notice regarding the Settlements has not yet been distributed. In the event any objections are received after notice is issued, they will be addressed by counsel as part of the final approval process.

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

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

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

Fed. R. Civ. P. 23(e)(2).⁹

The Settlements satisfy each of these factors. First, Settlement Class Representatives and Class Counsel have adequately represented the classes. Settlement Class Representatives approved the terms of each settlement. Settlement Class Representatives also approved the filing of the *Gibson* and *Umpa* complaints and are prepared to represent the consolidated *Gibson* class as litigation continues against the remaining Defendants. (Berman Decl. ¶¶ 13, 20; Dirks Decl. ¶ 18). Indeed, both this Court, in *Burnett*, and the *Moehrl* Court previously appointed proposed Settlement Class Counsel as class counsel on behalf of the related *Burnett* and *Moehrl* classes at the class certification stage. And this Court has appointed them as Co-Lead Counsel for the Settlement Classes in the first five *Gibson* Settlements as well as Interim Co-Lead Class Counsel in the ongoing *Gibson* litigation. *See Gibson*, Docs. 163, 180. Second, as discussed above, the Settlements were negotiated at arm's length. Third, for the reasons stated above, the relief provided to the Classes is adequate. The Settlements provide for a significant financial recovery for the Settlement Classes, especially considering Settling Defendants' limited financial resources. Furthermore, the Settlements include practice changes that benefit consumers. Fourth, the Settlements treat Class Members fairly and equitably relative to each other. An allocation plan that ensures an equitable distribution of monetary funds amongst the Settlement Classes will be submitted to the Court for approval in due course.

⁹ *See generally* *Bishop v. DeLaval Inc.*, No. 5:19-cv-06129, 2022 WL 18957112, at *1 (W.D. Mo. July 20, 2022) (Bough, J.); *Holt v. CommunityAmerica Credit Union*, No. 4:19-cv-00629, 2020 WL 12604383, at *2 (W.D. Mo. Sept. 4, 2020); *In re Pre-Filled Propane Tank Antitrust Litig.*, No. 14-02567, 2019 WL 7160380, at *1–2 (W.D. Mo. Nov. 18, 2019).

VI. THE COURT SHOULD APPOINT INTERIM CO-LEAD CLASS COUNSEL IN THIS CASE AS CO-LEAD COUNSEL FOR THE SETTLEMENT CLASSES

Fed R. Civ. P. 23(g) requires a court certifying a case as a class action to appoint class counsel. Plaintiffs respectfully request that the Court appoint the law firms who currently serve as Interim Co-Lead Class Counsel in this case, as Settlement Class Counsel—namely Ketchmark & McCreight, Boulware Law LLC, Williams Dirks Dameron LLC, Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Susman Godfrey LLP. Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. (Berman Decl. ¶¶ 4–6; Dirks Decl. ¶¶ 2–3).

Moreover, as detailed above, Proposed Settlement Class Counsel are the same attorneys who originally brought the *Moehrl* and *Burnett* actions in early 2019. They have diligently prosecuted those cases for over five years, handling, among other things, motions to dismiss, protracted fact discovery from parties and non-parties, review and synthesis of millions of pages of documents, expert discovery, discovery disputes, class certification, depositions of fact and expert witnesses; and they prevailed in the *Burnett* trial. (Berman Decl. ¶¶ 15-16,18, 21; Dirks Decl. ¶¶ 4, 7, 11–12). Both the *Burnett* and *Moehrl* Courts have already recognized Lead Counsel’s effective prosecution of those cases by appointing them as Class Counsel for the *Burnett* and *Moehrl* Classes, respectively, as part of their rulings on class certification.

Proposed Settlement Class Counsel later filed the *Gibson* and *Umpa* actions to encompass additional defendants and a broader class, in order to maximize the monetary and injunctive relief available for home sellers who allegedly overpaid for real estate commissions. (Berman Decl. ¶ 18; Dirks Decl. ¶ 8). Proposed Settlement Class Counsel have worked hard to manage the litigation. (Berman Decl. ¶ 19; Dirks Decl. ¶¶ 13–14) And they have participated in a lengthy

settlement negotiation process with Redfin and Engel & Völkers to achieve the best possible result for the Settlement Classes. (Berman Decl. ¶¶ 7–14; Dirks Decl. ¶¶ 14–15).

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

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

Plaintiffs propose that the form of notice of the proposed Settlements with Redfin and Engel & Völkers be substantially similar to the notice provided with the Anywhere, RE/MAX and Keller Williams Settlements in connection with the *Burnett* action—which this Court approved. (See *Gibson* Doc. 163 (approving notice plan); *Gibson* Doc. 161 (motion to approve notice plan); *Gibson* Doc. 161-8 (Keough Declaration in support of proposed notice plan); see also *Burnett* Doc. 1321 (approving notice plan); *Burnett* Doc. 1319-1 (Keough Declaration in support of proposed notice plan); *Burnett* Doc. 1365 and 1371 (motions to approve form of notices)).¹⁰ As this Court previously held in this case and in *Burnett*, JND’s proposed notice plan provides for the “best notice practicable and satisfies the requirements of due process.” *Burnett* Doc. 1321; see also *Gibson* Doc. 163; *In re Packaged Seafood Prod. Antitrust Litig.*, No. 15-MD-2670, 2023 WL 2483474, at *2 (S.D. Cal. Mar. 13, 2023) (approving notice plan with estimated reach of at least

¹⁰ Plaintiffs and Settling Defendants have agreed that the timing of a request to disseminate notice to the Settlement Classes of the Settlement Agreements is at the discretion of proposed Co-Lead Settlement Class Counsel and may be combined with notice of other settlements in the *Gibson* actions and/or the *Burnett* and *Moehrl* actions. Plaintiffs intend to notice these two Settlements with the previous five *Gibson* settlements for which the Court has already granted preliminary approval (Doc. 163). If they are unable to provide notice simultaneously, they will provide notice in similar fashion and augment postcard notice with any new contact information obtained from these Settling Defendants.

70% and observing that “[c]ourts have repeatedly held that notice plans with similar reach satisfy Rule 23(c)(2)(B)” (citing cases)). This plan, pursuant to Rule 23(c)(2)(B), provides the “best notice practicable” to all potential Settlement Class Members who will be bound by the proposed Settlements. Accordingly, the Court should appoint JND as the notice administrator and authorize the proposed notice plan.

VIII. CONCLUSION

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

DATED: July 12, 2024

Respectfully submitted by:

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LLP**

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Attorneys for Plaintiffs and the Class

Exhibit 1

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

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

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

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

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

JURY TRIAL DEMANDED

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PRELIMINARY
APPROVAL OF SETTLEMENTS WITH REDFIN AND ENGEL & VÖLKERS;
CERTIFICATION OF SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS
REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL**

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

1. I am the Managing Partner of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”). The Court in *Moehrl v Nat’l Ass’n of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.) (“*Moehrl*”) appointed my firm, together with Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”), and Susman Godfrey LLP (“Susman Godfrey”), as Co-Lead Class Counsel in the *Moehrl* litigation.

2. Hagens Berman, Cohen Milstein, and Susman Godfrey also served as co-counsel for Plaintiffs in *Umpa v Nat’l Ass’n of Realtors*, Case No. 4:23-cv-00945-FJG (W.D. Mo.) until that case was consolidated with this case (“*Gibson*”) on April 23, 2024. (*Gibson* Doc. 145, *Umpa* Docs. 245–246). Our three firms, together with Ketchmark & McCreight, P.C. (“Ketchmark & McCreight”), Boulware Law LLC (“Boulware Law”) and Williams Dirks Dameron LLC (“Williams Dirks Dameron”) now serve as co-counsel for Plaintiffs in the consolidated *Gibson* action. (*Gibson* Doc. 146). The Court appointed these six firms as Interim Co-Lead Class Counsel

in this case, with responsibility “for any settlement negotiations with Defendants.” (*Gibson* Doc. 180). The Court also appointed the six firms as Co-Lead Counsel for the Settlement Classes in the first five *Gibson* Settlements. (*See Gibson* Doc. 163).

3. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Settlements with Redfin and Engel & Völkers; Certification of Settlement Classes; and Appointment of Class Representatives and Settlement Class Counsel. Based on personal knowledge or discussions with counsel in my firm and co-counsel regarding the matters stated herein, if called upon, I could and would testify competently thereto.

4. I have served as lead or co-lead counsel in antitrust, securities, consumer, products liability, and employment class actions, and other complex litigation matters throughout the country. For example, I have represented thousands of plaintiffs in large antitrust cases and have achieved favorable results for them. I was the lead trial lawyer in *In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litig.*, MDL No. 2541 (N.D. Cal.) where the class obtained injunctive relief following a bench trial. As co-lead counsel in *In re Visa Check/Mastercard Antitrust Litig.*, No. 96-cv-05238 (E.D.N.Y.), I obtained the then largest antitrust settlement in history for consumers while challenging alleged anti-competitive agreements among U.S. banks, Visa, and Mastercard, regarding ATM fees. I also represented consumers in *In re Optical Disk Drive Products Antitrust Litig.*, No. 10-md-2143-RS (N.D. Cal.), *In re Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02430 (N.D. Cal.), obtaining court-approved settlements for class members in all three cases. I was approved as co-lead counsel to represent a certified class of thousands of consumers in *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.

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

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

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

6. Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. Hagens Berman, Cohen Milstein, and Susman Godfrey—Co-Lead Class Counsel in *Moehrl*—each have extensive antitrust class action experience and have successfully prosecuted some of the most complex private antitrust cases in the last two decades. Each has a history of winning landmark verdicts and negotiating favorable settlements for their clients. Their collective and individual litigation experience—discussed in the memorandum of law and exhibits filed in Support of Plaintiffs’ Motion for Appointment of Interim Co-Lead Class Counsel—amply demonstrates that all six firms have extensive knowledge of the relevant law, as well as the resources for effective representation of Settlement Class Plaintiffs, and the proven ability to reach superior results for parties injured by anticompetitive practices. (*Gibson* Doc. 156).

7. On behalf of Plaintiffs, other Co-Lead Counsel and I personally participated in intensive settlement negotiations with counsel for Defendants Redfin Corporation (“Redfin”), and Engel & Völkers GmbH and Engel & Völkers Americas, Inc., and their affiliate Engel & Völkers New York Real Estate LLC (together “Engel & Völkers”) (collectively “Settling

Defendants”) over the course of over a month. Each Settlement was achieved through extensive negotiations. For both settlements, the parties engaged in negotiations facilitated by a well-respected mediator, Greg Lindstrom, who has worked on numerous settlement-related matters for these cases. To reach each settlement, the parties had an all-day mediation, attended by lead counsel for Plaintiffs and the relevant Defendant, at which Mr. Lindstrom acted as the mediator. For each settlement, the parties reached agreement only after numerous hours of negotiation. As part of the negotiations, the parties exchanged mediation briefs and statements.

8. Plaintiffs and Redfin executed a Settlement Agreement on June 26, 2024. Attached as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and Redfin.

9. Plaintiffs and Engel & Völkers likewise executed a Settlement Agreement on July 12, 2024. Attached as Exhibit B is a true and accurate copy of the Settlement Agreement between Plaintiffs and Engel & Völkers.

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

11. Plaintiffs and Class Counsel reached the Settlement Agreements after arms-length negotiations and considering the risk and cost of litigation. Plaintiffs and Class Counsel believe the claims asserted are meritorious and that the evidence developed to date supports the claims,

but also recognize the risk and delay of further proceedings in a complex case like this, and believe that the Settlements confer substantial benefits upon the Settlement Class Members.

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

13. Class Counsel have discussed the Settlement Agreements with the Class Representatives, and they have approved them.

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

15. When the Settlement Agreements were executed with Redfin and Engel & Völkers in this action, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. Extensive litigation and settlement negotiations in the related actions *Moehrl* and *Burnett v. Nat'l Ass'n of Realtors*, Case No. 1:19-cv-00332-SRB (W.D. Missouri) ("*Burnett*"), as well as litigation and negotiations with other settling defendants in this action, laid the foundation

for expeditiously achieving favorable settlements with Redfin and Engel & Völkers in this action. The parties in *Burnett* and *Moehrl* completed over five years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed items in order to obtain important evidence to support their claims. The parties conducted over 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts to support their claims and to rebut claims from the nine experts retained by Defendants in each case. Most experts in the case were deposed after the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The Plaintiffs in both cases have also briefed summary judgment, and the Plaintiffs in *Burnett* prevailed at trial, including against NAR, and briefed post-trial motions.

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

17. During the course of the *Burnett* and *Moehrl* litigation, Plaintiffs' counsel engaged in extensive arm's-length settlement negotiations with various defendants in those cases that lasted nearly four years, including several in-person and telephonic mediations with a nationally recognized and highly experienced mediator, mediations with a retired federal court judge and a federal magistrate judge, and dozens of one-on-one calls and direct communications. This work

resulted in Settlement Agreements in those actions that required NAR and several of the largest real estate brokerage firms to abolish the challenged rules, provide cooperation in litigation against non-settling defendants, and pay the following amounts:

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

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

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

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

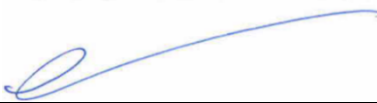
action with Defendants Compass, Real Brokerage, Realty ONE, @properties, and Douglas Elliman, for which the Court granted preliminary approval. (*Gibson* Doc. 163).

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

21. Plaintiffs propose that the form and manner of notice of the proposed Settlements with Redfin and Engel & Völkers be substantially similar to the notice provided with the Anywhere, RE/MAX, and Keller Williams Settlements in connection with the *Burnett* action—which this Court approved. Based on investigation of Class Counsel, and in consultation with the Claims Administrator appointed by the Court in *Burnett* and *Moehrl*, I believe the proposed notice plan provides for the best notice practicable to Settlement Class Members and satisfies the requirements of due process.

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

Executed July 12, 2024, at Seattle, Washington.



STEVE W. BERMAN

Exhibit A

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,
HOMESERVICES OF AMERICA, INC., BHH AFFILIATES,
HSF AFFILIATES, LLC, THE LONG & FOSTER
COMPANIES, INC., BERKSHIRE HATHAWAY ENERGY
COMPANY, KELLER WILLIAMS REALTY, INC.,
COMPASS, INC., EXP WORLD HOLDINGS, INC., EXP
REALTY, LLC, REDFIN CORPORATION, WEICHERT
REALTORS, FIVE D I, LLC d/b/a UNITED REAL ESTATE,
HANNA HOLDINGS, INC., DOUGLAS ELLIMAN, INC.,
DOUGLAS ELLIMAN REALTY, LLC, AT WORLD
PROPERTIES, LLC, THE REAL BROKERAGE, INC., REAL
BROKER, LLC, REALTY ONE GROUP, INC.,
HOMESMART INTERNATIONAL, LLC, ENGEL &
VÖLKERS, ENGEL & VÖLKERS AMERICAS, INC.,
NEXTHOME, INC., EXIT REALTY CORP.
INTERNATIONAL, EXIT REALTY USA CORP.,
WINDERMERE REAL ESTATE SERVICES COMPANY,
INC., LYON REAL ESTATE, WILLIAM RAVEIS REAL
ESTATE, INC., JOHN L. SCOTT REAL ESTATE
AFFILIATES, INC., THE KEYES COMPANY,
ILLUSTRATED PROPERTIES, LLC, PARKS PILKERTON
VILLAGE REAL ESTATE, CRYE-LEIKE REAL ESTATE
SERVICES, BAIRD & WARNER REAL ESTATE, INC.,
REAL ESTATE ONE FAMILY OF COMPANIES,
LOKATION REAL ESTATE LLC

Defendants.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 26th day of June, 2024 (the “Execution Date”), by and between Defendant Redfin Corporation (“Redfin”) and

Plaintiffs Daniel Umpa, Don Gibson, Lauren Criss, and John Meiners, who filed suit in the now-consolidated above captioned Actions (“Plaintiffs”). Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

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

WHEREAS, Redfin denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

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

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

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

WHEREAS, Redfin believes that it is not liable for the claims asserted and that it has good defenses to Plaintiffs’ claims but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distractions 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, Redfin, in addition to the settlement payments set forth below, has agreed to cooperate with Plaintiffs and to certain practices, 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 Redfin and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Redfin only, without costs to Plaintiffs, the Settlement Class or Redfin except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. “Actions” means Gibson v. NAR, (W.D. Mo. Case No. 23-CV-788-SRB) and Umpa v. NAR, (W.D. Mo. Case No. 23-CV-945-SRB)

2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Gibson, Umpa, Burnett v. NAR, (W.D. Mo. Case No. 19-CV-0332-SRB) (“Burnett”), or Moehrl v. NAR, (N.D. Ill. Case No. 1:19-cv-01610).

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

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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 Redfin 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-Redfin Defendant or any person or entity related to the non-Redfin 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 the now-consolidated 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 Redfin and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective 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. Notwithstanding this definition, “Released Parties” shall not include the non-Redfin Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. For the avoidance of doubt, individuals who were

members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with Redfin and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with Redfin 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 Redfin or any other Person for any claims based on the conduct of any real estate brokerage acquired by Redfin or any other Person who becomes affiliated with Redfin after the execution date for conduct which took place before the execution date.

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

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

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

- Homes in Nevada: January 15, 2018 to the date of Class Notice;
- Homes in California: October 2, 2019 to date of Class Notice; and

- For all other homes: October 31, 2019 to date of Class Notice.

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

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

17. “Settling Parties” means Plaintiffs and Redfin.

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

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which is now 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 Redfin. 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, transactions, 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 Redfin 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 Redfin; and Redfin'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"). The Motion shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this Settlement. The proposed form of the preliminary approval order shall be acceptable to Redfin provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, RE/MAX and Compass settlements. At least 48 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Redfin for its review. To the extent that Redfin objects to any aspect of the Motion, it shall communicate such objection to Co-Lead Counsel and the Settling Parties shall meet and confer to resolve any such objection. The Settling Parties shall take all reasonable Actions as may be necessary to obtain preliminary approval of the Settlement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Settling Parties will negotiate in good faith to modify the Settlement

Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

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

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

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

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

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

c) directing that, as to Redfin 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 Redfin.

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 Actions, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of preliminary approval of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer

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

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

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

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction, including but not limited to Section 20-7-11 of the South Dakota Codified Laws, which provides that

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

30. The Releasing Parties intend by this Settlement Agreement to settle with and release only the Released Parties, and the Settling Parties do not intend this Settlement Agreement, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in these 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 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, Redfin will deposit \$9.25 million into the Escrow Account. All accrued

interest shall be for the benefit of the plaintiff classes unless the Settlement is not approved, in which case the interest shall be for the benefit of Redfin.

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 Redfin’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 as provided in Paragraphs 34 and 52. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance of the Settlement Fund shall be disbursed to Settlement Class Members as provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

34. After preliminary approval of the Settlement and approval of a class notice plan, Co-Lead Counsel may utilize a portion of the Settlement Fund to provide notice of the Settlement to potential members of the Settlement Class. Redfin will not object to Plaintiffs’ counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) non-Redfin Corporate Defendants and notice of one or more other settlements is included in the notice of the Redfin settlement, then the cost of such

notice will be apportioned equitably between (or among) the Redfin 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 Redfin in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

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

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

37. Redfin 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. Redfin'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 Redfin 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. Redfin 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 Redfin 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 Redfin 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. Redfin 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 Redfin. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Redfin, Redfin will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Redfin 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 Redfin or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within 10 business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order. The Settling Parties have agreed in a Confidential

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

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

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 May 03, 2024. Plaintiffs and Redfin agree that any rulings or judgments that occur in the Actions on or after May 03, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Redfin or any of the Released Parties. Plaintiffs and Redfin agree to waive any argument of claim or issue preclusion against Plaintiffs or Redfin arising from such rulings or judgments. In the event of rescission, the Actions will proceed as if this Settlement Agreement had never been executed and this Settlement Agreement, and representations made in conjunction with this Settlement Agreement, may not be used in the Actions or otherwise for any purpose. Redfin and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Redfin or the Plaintiffs. The Settling Parties agree that pending deadlines for motions not yet filed, and all deadlines (whether pending or past) for motions that will be withdrawn pursuant to this Settlement Agreement, shall be tolled for the period from May 03, 2024, until the date this Settlement or Settlement Agreement is rescinded, and no Settling

Party shall contend that filing or renewal of such motions was rendered untimely by or was waived by the operation of this Settlement Agreement.

46. Redfin warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Redfin to be a preference, voidable transfer, fraudulent transfer or similar transactions under Title 11 of the U.S. Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of Redfin, 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. Redfin reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practices

49. Redfin (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, predecessors, and successors but not franchisees) will implement or, to the extent already implemented, will maintain the following practices:

- i. advise and periodically remind Redfin’s company-owned brokerages, franchisees (if any), and their agents that there is no Redfin requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer

representatives or that, if made, such offers must be blanket, unconditional, or unilateral;

- ii. require that any Redfin 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 Redfin will require that any company-owned brokerages and their agents (and recommend and encourage that any Redfin 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 Redfin 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 misrepresenting that their services are free;
- iv. require that Redfin owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;

- v. prohibit Redfin 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 Redfin 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, use training materials consistent with the above relief and eliminate any contrary training materials.

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. Redfin acknowledges that the practices set forth here are a material component of this Settlement Agreement and agrees to use its best efforts to implement the practices specified in this Section to the extent not yet fully implemented as soon as practicable, and in no event later than six months after the Effective Date.

J. Cooperation

52. Redfin (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors) will

provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that any is consolidated with other actions, and 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. Redfin will make available up to three (3) then-current officers or employees, to be identified and agreed to via a good faith meet and confer process, who will sit for a Rule 30(b)(1) deposition in the Actions. Upon agreement by the Parties, up to two of these deponents may be senior executives (e.g., Chief, Senior Vice President, Vice President or Director-level executives).
- ii. Redfin will make available one or more officers or employees, the selection of whom will be identified and agreed to via a good faith meet and confer process, who will sit for a Rule 30(b)(6) deposition in the Actions.
- iii. Redfin will provide up to three (3) then-current officers or employees of Redfin or its subsidiaries, to be identified and agreed to via a good faith meet and confer process, to participate as witnesses at each trial at Plaintiffs' determination, and provide access via counsel to those witnesses prior to trial testimony for up to two (2) hours.
- iv. Redfin will use reasonable best efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
- v. Redfin will use reasonable best efforts to provide the facts necessary to establish that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are

otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;

- vi. Redfin agrees to produce in the Actions nonprivileged documents in Redfin's possession, custody, or control from its central files and up to five (5) then-current or former employees or officers ("Custodians"), that are returned by a reasonable and agreed upon list of search parameters. Redfin will produce those documents, subject to a confidentiality agreement, within 150 days of the later of (a) the Date of Preliminary Approval or (b) the date by which the parties meet and confer on a good faith basis and agree on search parameters, whichever is later. If the Parties are unable to reach agreement on a final list of search parameters after good faith negotiations, they will submit any dispute for mediation by an agreed mediator. For any documents that are withheld on the basis of privilege or as attorney work product, Redfin will produce a privilege log according to the requirements of the ESI Order that will be entered in Gibson. Any disputes over privilege or as attorney work product will be governed by the procedure reflected in the ESI Order entered in Gibson. The document discovery at issue will include but is not limited to any evidence of retaliation against Redfin by other brokers and agents, steering by other brokers and agents based on cooperative compensation, the challenged restraints (including their purpose and effect, as well as any efforts to modify them), and relevant data analyses and market research.
- vii. use reasonable best efforts at Redfin's expense to provide comprehensive public, class member, and listing data and answer questions about that data to support the provision of class notice, administration of any settlements, and the litigation of the Actions;

- viii. if another Defendant includes a witness on a witness list who is then a current officer or employee of Redfin or its subsidiaries, Redfin will cooperate in providing access via counsel to that witness prior to trial testimony;
- ix. Redfin agrees not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Redfin'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. Redfin'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 Redfin. 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-Redfin Defendants and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

55. Redfin 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. Redfin denies the material allegations of the complaints in the Actions. Neither this Settlement Agreement, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Redfin, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Redfin 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 non-public materials exchanged during the settlement negotiation, unless otherwise required by law.

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

59. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any non-Redfin 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-Redfin 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 Redfin pertaining to the Settlement of the Actions against Redfin. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Redfin.

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

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

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

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

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

66. Any disputes between Redfin and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to binding arbitration with Greg Lindstrom. If Greg Lindstrom is unavailable, the Settling Parties will present any dispute to another mediator, mutually chosen by the Parties, and, if a resolution is not reached, to binding arbitration with an agreed upon arbitrator.

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 transactions 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



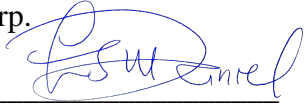
Boulware Law LLC



Williams Dirks Dameron LLC

Redfin Corp.

By: _____

A handwritten signature in blue ink, appearing to read "J. S. [unclear]", is written over the signature line.

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,
HOMESERVICES OF AMERICA, INC., BHH AFFILIATES,
HSF AFFILIATES, LLC, THE LONG & FOSTER
COMPANIES, INC., BERKSHIRE HATHAWAY ENERGY
COMPANY, KELLER WILLIAMS REALTY, INC.,
COMPASS, INC., EXP WORLD HOLDINGS, INC., EXP
REALTY, LLC, REDFIN CORPORATION, WEICHERT
REALTORS, FIVE D I, LLC d/b/a UNITED REAL ESTATE,
HANNA HOLDINGS, INC., DOUGLAS ELLIMAN, INC.,
DOUGLAS ELLIMAN REALTY, LLC, AT WORLD
PROPERTIES, LLC, THE REAL BROKERAGE, INC., REAL
BROKER, LLC, REALTY ONE GROUP, INC.,
HOMESMART INTERNATIONAL, LLC, ENGEL &
VÖLKERS, ENGEL & VÖLKERS AMERICAS, INC.,
NEXTHOME, INC., EXIT REALTY CORP.
INTERNATIONAL, EXIT REALTY USA CORP.,
WINDERMERE REAL ESTATE SERVICES COMPANY,
INC., LYON REAL ESTATE, WILLIAM RAVEIS REAL
ESTATE, INC., JOHN L. SCOTT REAL ESTATE
AFFILIATES, INC., THE KEYES COMPANY,
ILLUSTRATED PROPERTIES, LLC, PARKS PILKERTON
VILLAGE REAL ESTATE, CRYE-LEIKE REAL ESTATE
SERVICES, BAIRD & WARNER REAL ESTATE, INC.,
REAL ESTATE ONE FAMILY OF COMPANIES,
LOKATION REAL ESTATE LLC

Defendants.

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

Plaintiffs Daniel Umpa, Don Gibson, Lauren Criss, and John Meiners, who filed suit in the now-consolidated above captioned Actions, both individually and as representatives of one or more classes of home sellers (“Plaintiffs”) and Defendant Redfin Corporation (“Redfin”) (collectively,

“the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

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

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

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

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

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

In the event that the Settlement Agreement does not receive final approval or any part of the final approval is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Co-Lead Counsel shall, within thirty (30) days repay to Redfin, based upon written instructions provided by Redfin, the full amount of the attorneys’ fees and costs paid to Co-Lead Counsel from the Settlement Fund, including any accrued interest.

In the event the Settlement Agreement becomes Effective, but the attorneys’ fees, costs, and expenses awarded by the Court or any part of them are vacated, overturned, modified, reversed, or

rendered void as a result of an appeal, Co-Lead Counsel shall within thirty (30) days repay to the Settlement Fund, based upon written instructions provided by the settlement administrator, the attorneys' fees and costs paid to Co-Lead Counsel from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

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

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

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

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

Signatures by facsimile shall be as effective as original signatures.

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

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408


CO-LEAD COUNSEL



Ketchmark & McCreight PC



Susman Godfrey LLP



Boulware Law LLC



Cohen Milstein Sellers & Toll PLLC



Hagens Berman Sobol Shapiro LLP



Williams Dirks Dameron LLC

Redfin Corp.

By: _____



Exhibit B

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,
HOMESERVICES OF AMERICA, INC., BHH AFFILIATES,
HSF AFFILIATES, LLC, THE LONG & FOSTER
COMPANIES, INC., BERKSHIRE HATHAWAY ENERGY
COMPANY, KELLER WILLIAMS REALTY, INC.,
COMPASS, INC., EXP WORLD HOLDINGS, INC., EXP
REALTY, LLC, REDFIN CORPORATION, WEICHERT
REALTORS, FIVE D I, LLC d/b/a UNITED REAL ESTATE,
HANNA HOLDINGS, INC., DOUGLAS ELLIMAN, INC.,
DOUGLAS ELLIMAN REALTY, LLC, AT WORLD
PROPERTIES, LLC, THE REAL BROKERAGE, INC., REAL
BROKER, LLC, REALTY ONE GROUP, INC.,
HOMESMART INTERNATIONAL, LLC, ENGEL &
VÖLKERS, ENGEL & VÖLKERS AMERICAS, INC.,
NEXTHOME, INC., EXIT REALTY CORP.
INTERNATIONAL, EXIT REALTY USA CORP.,
WINDERMERE REAL ESTATE SERVICES COMPANY,
INC., LYON REAL ESTATE, WILLIAM RAVEIS REAL
ESTATE, INC., JOHN L. SCOTT REAL ESTATE
AFFILIATES, INC., THE KEYES COMPANY,
ILLUSTRATED PROPERTIES, LLC, PARKS PILKERTON
VILLAGE REAL ESTATE, CRYE-LEIKE REAL ESTATE
SERVICES, BAIRD & WARNER REAL ESTATE, INC.,
REAL ESTATE ONE FAMILY OF COMPANIES,
LOKATION REAL ESTATE LLC

Defendants.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 12th day of July, 2024 (the “Execution Date”), by and between defendants Engel & Völkers GmbH and Engel & Völkers Americas, Inc., and their affiliate Engel & Völkers New York Real Estate LLC (collectively, “Engel & Völkers”), and Plaintiffs Daniel Umpa, Don Gibson, Lauren Criss, and John Meiners, who filed suit in the above captioned Actions, both individually and as representatives of one or more classes of home sellers (“Plaintiffs”). Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, in the Actions Plaintiffs allege that Engel & Völkers participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act;

WHEREAS, Engel & Völkers denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

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

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

WHEREAS, Engel & Völkers believes that it is not liable for the claims asserted and that it has good defenses to Plaintiffs’ claims and meritorious pre-trial and post-trial motions, but

nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that Plaintiffs and Settlement Class Members have or could have asserted against the Released Parties, as defined below; and

WHEREAS, Engel & Völkers, in addition to the settlement payments set forth below, has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in this Settlement Agreement.

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

A. Definitions

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

1. “Actions” means Gibson v. NAR (W.D. Mo.), Case No. 4:23-cv-00788 and Umpa v. NAR, (W.D. Mo.), Case No. 23-CV-945-SRB.
2. “Corporate Defendants” means any defendant aside from the National Association of Realtors named in Umpa, Gibson, Burnett v. NAR (W.D. Mo.), Case No. 19-CV-0332-SRB, or Moehrl v. NAR (N.D. Ill.), Case No. 1:19-cv-01610.
3. “Co-Lead Counsel” means the following law firms:

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

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

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

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

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

SUSMAN GODFREY LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101

4. “Court” means the U.S. District Court for the Western District of Missouri.
5. “Defendants” means all defendants named in either Gibson and Umpa.
6. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.
7. “Effective Date” means the date when: (a) the Court has entered a final judgment order approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Actions against Engel & Völkers 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-Engel & Völkers Defendant or any person or entity related to the

Non-Engel & Völkers Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.

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

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

10. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, affiliates and assignees. For the avoidance of doubt, Persons include all real estate brokerages.

11. “Released Claims” means any and all manner of federal and state claims regardless of the cause of action arising from or relating to conduct that was alleged or could have been alleged in the 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 Engel & Völkers and all of its respective past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the

Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-franchisees, sub-franchisors, and all of their 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', sub-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-Engel & Völkers Corporate Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, sub-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 Engel & Völkers or any other Person for any claims based on the conduct of any real estate brokerage acquired by Engel & Völkers or any other Person who becomes affiliated with Engel & Völkers after the Execution Date for conduct which took place before the Execution Date.

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

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

15. “Settlement Class” means the class of persons that will be certified by the Court for settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges: i) Homes in Arkansas, Kentucky, and Missouri: October 31, 2018 to the date of class notice; ii) Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of class notice; and iii) For all other homes: October 31, 2019 to date of Class Notice. For the avoidance of doubt, Plaintiffs and Engel & Völkers 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 Engel & Völkers.

18. “Total Monetary Settlement Amount” means \$6.9 million (Six Million Nine Hundred Thousand Dollars) in United States currency. All costs of settlement, including all payments to class members, all attorneys’ fees and costs, all service awards to current and former class representatives, and all costs of notice and administration, will be paid out of the Total Monetary Settlement Amount, and Engel & Völkers will pay nothing apart from the Total Monetary Settlement Amount.

19. “Umpa” means Western District of Missouri Case No. 23-cv-00945, which was 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 Engel & Völkers. 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 Engel & Völkers 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 Engel & Völkers; and Engel & Völkers'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"). Plaintiffs shall file the Motion within 30 days of the Execution Date. The Motion shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this Settlement. The proposed form of the preliminary approval order shall be acceptable to Engel & Völkers provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 48 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Engel & Völkers for its review. To the extent that Engel & Völkers objects to any aspect of the Motion, it shall communicate such objection to Co-Lead Counsel and the Settling Parties shall meet and confer to resolve any such objection. The Settling Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the Settlement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Settling Parties will negotiate in good faith to modify the Settlement Agreement directly or with the assistance of mediator Greg Lindstrom and will endeavor to resolve any issues to the satisfaction of the Court.

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

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

26. If the Settlement is preliminarily approved by the Court, the Settling Parties and their counsel will use reasonable efforts to obtain final approval of the Settlement at the same time as or prior to final approval of the settlement of the National Association of Realtors regarding the Actions. To that end, Plaintiffs shall timely seek final approval of the Settlement and entry of a final judgment order as to Engel & Völkers:

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

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

(c) directing that, as to Engel & Völkers 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 Engel & Völkers.

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 the Agreement.

30. The Releasing Parties intend by this Settlement Agreement to settle with and release only the Released Parties, and the Settling Parties do not intend this Settlement Agreement, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in these 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 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, Engel & Völkers will deposit 25% of the Total Monetary Settlement Amount into the qualified settlement fund. Within one year of preliminary approval, Engel & Völkers will deposit an additional twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. Within two years of preliminary approval, Engel & Völkers will deposit an additional twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. Within three years of preliminary approval, Engel & Völkers will deposit the final twenty-five percent of the Total Monetary Settlement Amount into the qualified settlement fund. All accrued interest shall be for the benefit of the plaintiff class unless the Settlement is not approved, in which case the interest shall be for the benefit of Engel & Völkers.

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 Engel & Völkers’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. Engel & Völkers will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$1,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Engel & Völkers Corporate Defendants and notice of one or more other settlements is included in the notice of the Engel & Völkers settlement, then the cost of such notice will be apportioned equitably between (or among) the Engel & Völkers 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 Engel & Völkers in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

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

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

37. Engel & Völkers 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. Engel & Völkers'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 Engel & Völkers 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. Engel & Völkers 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 Engel & Völkers 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 Engel & Völkers 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. Engel & Völkers 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 Engel & Völkers. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Engel & Völkers, Engel & Völkers will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Engel & Völkers 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 Engel & Völkers or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within 10 business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order. The Settling Parties have agreed in a Confidential Supplemental Agreement that, after the deadline for filing timely Opt-Out requests has passed, Plaintiffs will provide to Engel & Völkers a list of exclusion requests. In its sole discretion, Engel & Völkers shall have the right to rescind or terminate this Settlement Agreement if Opt-Out requests for exclusion exceed the threshold specified in the Confidential Supplemental Agreement.

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

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 18, 2024. Plaintiffs and Engel & Völkers agree that

any rulings or judgments that occur in the Actions on or after June 18, 2024, and before this Settlement Agreement is rescinded will not bind Plaintiffs, Engel & Völkers or any of the Released Parties. Plaintiffs and Engel & Völkers agree to waive any argument of claim or issue preclusion against Plaintiffs or Engel & Völkers arising from such rulings or judgments. In the event of rescission, the Actions will proceed as if this Settlement Agreement had never been executed and this Settlement Agreement, and representations made in conjunction with this Settlement Agreement, may not be used in the Actions or otherwise for any purpose. Engel & Völkers and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Engel & Völkers or the Plaintiffs, including, but not limited to, any defenses concerning the Court's lack of personal jurisdiction over Engel & Völkers or any Released Parties. The Settling Parties agree that pending deadlines for motions not yet filed, and all deadlines (whether pending or past) for motions that will be withdrawn pursuant to this Settlement Agreement, shall be tolled for the period from June 18, 2024, until the date this Settlement or Settlement Agreement is rescinded, and no Settling Party shall contend that filing or renewal of such motions was rendered untimely by or was waived by the operation of this Settlement Agreement.

46. Engel & Völkers warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Term Sheet is executed, and, will warrant and represent, that it is not “insolvent” within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Engel & Völkers to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the U.S. Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of Engel & Völkers, 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. Engel & Völkers 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, Engel & Völkers (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, sub-franchisors, or sub-franchisees) will implement the following practice changes in the United States:

- i. advise and periodically remind Engel & Völkers's company-owned brokerages, franchisees (if any), and their agents that there is no Engel & Völkers requirement that they must make offers to or must accept offers of compensation from buyer brokers or other buyer representatives or that, if made, such offers must be blanket, unconditional, or unilateral;
- ii. require that any Engel & Völkers 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 Engel & Völkers will require that any company-owned brokerages and their agents (and recommend and encourage that any Engel & Völkers 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 Engel & Völkers 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 Engel & Völkers owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;
- v. prohibit Engel & Völkers 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 Engel & Völkers company owned brokerages and their agents of their obligation to (and recommend and encourage that any franchisees and their agents) show properties regardless of the existence or

amount of compensation offered to buyer brokers or other buyer representatives provided that each such property meets the buyer's articulated purchasing priorities;

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

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

51. Engel & Völkers 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. Engel & Völkers (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, sub-franchisors, or sub-franchisees) will provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that it is consolidated pursuant to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100), 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. Engel & Völkers will use reasonable best efforts to produce relevant summary-level, companywide, transactional data limited to the class period. To the extent possible, this data will be (i) aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state-by-

state basis and (ii) sufficient to show volume of commerce and the average commission percentage. The data will be produced at a similar time to when other Defendants produce transactional data in Gibson. The data will be produced only for transactions in the United States, the UK, and the Netherlands. The data shall not be used or disclosed for any purpose whatsoever other than the prosecution or defense of claims in, or the settlement of, Gibson. Upon conclusion of Gibson, Plaintiffs and their representatives promptly shall destroy the data and certify to Engel & Völkers that they have done so.

- ii. Engel & Völkers will use reasonable best efforts to produce documents sufficient to show (to the extent such documents exist) its and its officers, employees, and agents' membership and participation in NAR; and that it was subject to, and whether Engel & Völkers complied with, the challenged NAR rules during the class period, including whether and how Engel & Völkers accepted, adopted and implemented the challenged NAR rules, if at all.
- iii. Engel & Völkers will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony across no more than two 30(b)(1) witnesses. The time only includes Plaintiff questioning and does not include questioning by any other party. Notwithstanding anything to the contrary in this Paragraph, no Engel & Völkers deposition witness will sit for more than seven hours on the record of questioning, including questioning from Plaintiffs and any other party, provided that Plaintiffs get up to 4.5 hours. Engel & Völkers will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours.

- iv. Engel & Völkers will use reasonable best efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
- v. Engel & Völkers will use reasonable best efforts to provide the facts necessary to establish that documents and/or things produced by it in the Actions are “business records,” a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, if any of those exceptions are applicable, by declarations or affidavits if possible, or at hearings or trial if necessary;
- vi. Engel & Völkers will use reasonable best efforts at its expense to provide relevant class member and listing data and answer questions about that data, to support the provision of class notice, administration of any settlements, or the litigation of the Actions;
- vii. if another Defendant includes a witness on a witness list who is then a current officer or employee of Engel & Völkers or its subsidiaries, Engel & Völkers will cooperate in providing access via counsel to that witness prior to trial testimony;
and
- viii. Engel & Völkers agrees not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

53. Engel & Völkers’s cooperation obligations, as set forth in Paragraph 52, shall not require the production of information, testimony, and/or documents that are:

- i. protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine;
- ii. protected from disclosure by the General Data Protection Regulation (“GDPR”) or other applicable information privacy laws and regulations; and/or
- iii. outside the possession, custody, or control of Engel & Völkers.

54. Engel & Völkers’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 Engel & Völkers. 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-Engel & Völkers Defendants and the time for appeal or to seek permission to appeal from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

55. Engel & Völkers acknowledges that the cooperation set forth here is a material component of this Settlement Agreement and agrees to use its reasonable best efforts to provide the cooperation specified in this Section.

K. Miscellaneous

56. This Settlement Agreement and any action taken to carry out the Settlement are not intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any party. Engel & Völkers denies the material allegations of the complaints in the Actions. Neither this Settlement Agreement, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be (a) used as an admission (i) of any fault or omission by Engel & Völkers, (ii) that Engel & Völkers is subject to personal jurisdiction in Missouri (except for purposes

of interpreting, approving, or enforcing the Settlement), or (iii) that Engel & Völkers GmbH is subject to personal jurisdiction in the United States (except for purposes of interpreting, approving, or enforcing the Settlement), or (b) offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Engel & Völkers in any proceedings.

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.

58. Any disputes relating to this Settlement Agreement will be governed by Missouri law without regard to conflicts of law provisions. The Parties stipulate that Engel & Völkers will be subject to the Court's jurisdiction for purposes of interpreting, approving, and enforcing the Settlement Agreement but will not use that stipulation or Engel & Völkers's agreement to be governed by Missouri law as grounds for personal jurisdiction in any litigation unrelated to the interpretation, approval, or enforcement of this Settlement Agreement, including, but not limited to, continued litigation in the event that the Settlement is not finally approved. For the avoidance of doubt, Engel & Völkers 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-Engel & Völkers 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-Engel & Völkers 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 Engel & Völkers pertaining to the Settlement of the Actions against Engel & Völkers. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Engel & Völkers.

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

62. Neither Plaintiffs nor Engel & Völkers 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 exclusive jurisdiction over the implementation and enforcement of this Settlement Agreement and the Settlement.

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

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

67. Each Settling Party acknowledges that he, she or it has been and is being fully advised

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

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

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

Engel & Völkers GmbH

By: _____

Engel & Völkers Americas, Inc.

By: _____

Engel & Völkers New York Real Estate LLC

By: _____

CO-LEAD COUNSEL




Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



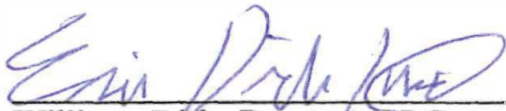
Susman Godfrey LLP



Ketchmark & McCreight PC



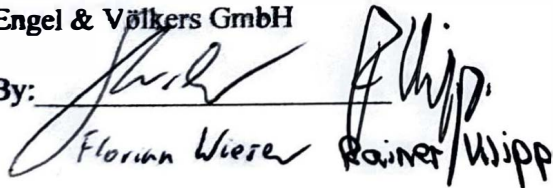
Boulware Law LLC



Williams Dirks Dameron LLC

Engel & Völkers GmbH

By:



Florian Wieser Rainer Wipp

Engel & Völkers Americas, Inc.

By: _____

Engel & Völkers New York Real Estate LLC

By: _____

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

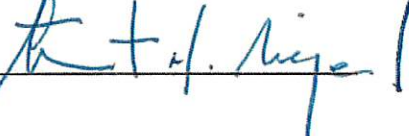
Engel & Völkers GmbH

By: _____

Engel & Völkers Americas, Inc.

By: 

Engel & Völkers New York Real Estate LLC

By: 



APPENDIX A

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,
HOMESERVICES OF AMERICA, INC., BHH AFFILIATES,
HSF AFFILIATES, LLC, THE LONG & FOSTER
COMPANIES, INC., BERKSHIRE HATHAWAY ENERGY
COMPANY, KELLER WILLIAMS REALTY, INC.,
COMPASS, INC., EXP WORLD HOLDINGS, INC., EXP
REALTY, LLC, REDFIN CORPORATION, WEICHERT
REALTORS, FIVE D I, LLC d/b/a UNITED REAL ESTATE,
HANNA HOLDINGS, INC., DOUGLAS ELLIMAN, INC.,
DOUGLAS ELLIMAN REALTY, LLC, AT WORLD
PROPERTIES, LLC, THE REAL BROKERAGE, INC., REAL
BROKER, LLC, REALTY ONE GROUP, INC.,
HOMESMART INTERNATIONAL, LLC, ENGEL &
VÖLKERS, ENGEL & VÖLKERS AMERICAS, INC.,
NEXTHOME, INC., EXIT REALTY CORP.
INTERNATIONAL, EXIT REALTY USA CORP.,
WINDERMERE REAL ESTATE SERVICES COMPANY,
INC., LYON REAL ESTATE, WILLIAM RAVEIS REAL
ESTATE, INC., JOHN L. SCOTT REAL ESTATE
AFFILIATES, INC., THE KEYES COMPANY,
ILLUSTRATED PROPERTIES, LLC, PARKS PILKERTON
VILLAGE REAL ESTATE, CRYE-LEIKE REAL ESTATE
SERVICES, BAIRD & WARNER REAL ESTATE, INC.,
REAL ESTATE ONE FAMILY OF COMPANIES,
LOKATION REAL ESTATE LLC

Defendants.

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

Plaintiffs Daniel Umpa, Don Gibson, Lauren Criss, and John Meiners (“Plaintiffs”) and defendants Engel & Völkers GmbH, Engel & Völkers New York Real Estate LLC, and Engel & Völkers Americas, Inc. (together, “Engel & Völkers”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

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

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

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

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

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

In the event that the Settlement Agreement does not receive final approval or any part of the final approval is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Co-Lead Counsel shall, within thirty (30) days repay to Engel & Völkers, based upon written instructions provided by Engel & Völkers, the full amount of the attorneys’ fees and costs paid to Co-Lead Counsel from the Settlement Fund, including any accrued interest.

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

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

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

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

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

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP


Ketchmark & McCreight PC

Boulware Law LLC


Williams Dirks Dameron LLC

Pillsbury Winthrop Shaw Pittman LLP


The undersigned declare under penalty of perjury under the laws of the United States and the State of Missouri that they have read and understand the foregoing and that it is true and correct. IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



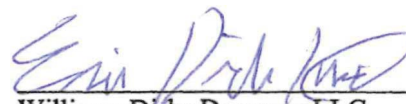
Susman Godfrey LLP




Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC



Pillsbury Winthrop Shaw Pittman LLP

Exhibit 2

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

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

Plaintiffs,

v.

NATIONAL ASSOCIATION OF
REALTORS, et al.

Defendants.

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

JURY TRIAL DEMANDED

**DECLARATION OF ERIC L. DIRKS IN SUPPORT OF
PRELIMINARY APPROVAL OF SETTLEMENT WITH REDFIN AND ENGEL &
VÖLKERS**

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

1. I am a partner at the law firm of Williams Dirks Dameron LLC in Kansas City, Missouri, and counsel for the Plaintiff and the Class in the *Burnett* and *Gibson* actions. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of the Settlements with Defendant Redfin Corporation ("Redfin"), and Defendants Engel & Völkers GmbH and Engel & Völkers Americas, Inc., and their affiliate Engel & Völkers New York Real Estate LLC (collectively "Engel & Völkers") ("the Settlements"). I make this statement of my own personal knowledge, and if called to testify, would testify competently thereto.

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

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

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

4. I spent the majority of my time over the past three years working on these real estate commission antitrust actions and am intimately familiar with all aspects of the cases.

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

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

7. Our firm and co-counsel filed *Burnett* in 2019 and have collectively dedicated more resources to the prosecution of the actions than any other case in our firms' history. To my knowledge, prior to *Moehrl* and *Burnett*, there had never been a significant public or private prosecution or settlement of the current Mandatory Offer of Compensation Rule. Throughout the litigation Defendants took the position that their conduct was lawful and that the cases lacked merit.

8. After we reached Settlements with Anywhere and RE/MAX, we continued litigating against NAR and other defendants. In *Burnett*, we litigated all the way through trial and in *Moehrl*, trial was imminent. The Defendants in *Burnett* and *Moehrl* have all settled. But we did not stop there. We filed the above-captioned case in order to continue to seek monetary and practice change relief on behalf of the Class from additional brokerages in the residential real estate industry who we alleged also followed and enforced the Mandatory Offer of Compensation Rule.

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

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

11. The issues presented in *Burnett* and *Moehrl* were identical to the issues in this case. In *Burnett* and *Moehrl*, we defeated two motions to dismiss, three motions to compel arbitration, 5 motions for summary judgment, three appeals, and took and defended over 80 depositions in *Burnett*. The cases involved at least 20 different experts on liability and damages who submitted numerous reports and sat for depositions. Damages experts analyzed huge data sets including millions of rows of data. Expert testimony covered a broad array of subject matters. All of this work assisted the parties here in assessing the Settlements.

12. We reviewed more than 5 million pages of documents that applied not only to *Burnett*, but also to the nationwide class at issue here, and we isolated and reviewed unique documents, which culminated in the parties marking hundreds of deposition and trial exhibits. Both sides issued numerous third-party subpoenas to multiple MLSs and real estate

brokerages. Much of the data provided was not limited to the *Burnett* and *Moehrl* MLSs, but included data and policies nationwide.

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

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

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

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

17. I also believe the Settlements are in the best interests of the Settlement Class given the risks and delay of further litigation and the prospective relief obtained. Moreover, due to the

nature of joint and several liability, the Settlement Class Members' recovery is not limited to the amount paid here, but also includes the over \$900 million in relief obtained in the *Burnett* and *Moehrl* cases and previous settlements in this case. Indeed, we continue to strenuously litigate on behalf of this Settlement Class.

18. The *Gibson* class representatives have approved this Settlement.

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

Executed this 12th day of July 2024.



Eric L. Dirks