IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MYA BATTON, AARON BOLTON, MICHAEL BRACE, DO YEON IRENE KIM, ANNA JAMES, JAMES MULLIS, THEODORE BISBICOS, and DANIEL PARSONS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, ANYWHERE REAL ESTATE, INC. FORMERLY KNOWN AS REALOGY HOLDINGS CORP., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC.,

Defendants.

Case No. 1:21-cv-00430 (LAH)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH KELLER WILLIAMS REALTY, LLC

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INTRODUCTION

For five years, Plaintiffs[1] have vigorously prosecuted their claims that Defendants engaged in a decades-long conspiracy to fix real estate broker commissions and inflate home prices. Now, after multiple motions to dismiss, extensive document, data, and written discovery, detailed analysis by highly regarded economic and industry experts, and months of settlement negotiation with the assistance of a mediator, Plaintiffs have successfully resolved their claims against Keller Williams Realty, LLC. This ice-breaker settlement of $20 million not only provides Settlement Class Members with guaranteed monetary compensation in the face of continued litigation risk, it also provides for highly valuable cooperation in the form of deposition testimony, trial testimony, and documents.

The history of this litigation, the Settlement negotiations, and the Settlement terms, summarized above, are further detailed in the Briganti/Ewing Decl. Each demonstrates that Plaintiffs and their counsel, Lowey Dannenberg, P.C. and Korein Tillery LLC ("Proposed Class Counsel"), have gone above and beyond to ensure the required procedural and substantive fairness of the Settlement. The Settlement is procedurally fair because Plaintiffs' interests are aligned with those of the Settlement Class Members and because Plaintiffs and Proposed Class Counsel have devoted the time and resources necessary to vigorously represent the proposed classes to date. The Settlement itself resulted from lengthy negotiations among experienced counsel fully informed of the merits and risks of their cases, after motion practice and discovery. The Settlement terms are also substantively fair, providing substantial relief to all Settlement Class Members and resolving the Action as to Keller Williams. Further, the Court may certify

[1] Unless otherwise defined herein, all capitalized terms have the same meaning as in the Stipulation and Agreement of Settlement with Keller Williams (the "Agreement") attached to the Declaration of Vincent Briganti & Randall Ewing ("Briganti/Ewing Decl.") as Exhibit A, filed herewith. Unless otherwise indicated, "Ex." refers to exhibits attached to the Briganti/Ewing Declaration.

the Settlement Class under Federal Rules of Civil Procedure 23(a) and (b)(3), and Proposed Class Counsel have prepared a robust notice program comprised of direct notice and a sweeping media campaign that will fully apprise Settlement Class Members of their rights and options. The Settlement therefore fully satisfies the requirements for preliminary approval and the Court should grant this motion.

ARGUMENT

I. The Proposed Settlement Is Highly Likely to Receive Approval Under Rule 23(e)(2).

Class action settlements are strongly encouraged. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980) (class action settlements "minimize[] the litigation expenses" and "reduce[] the strain such litigation imposes upon already scarce judicial resources").[2] The court's approval "inquiry is limited" to "whether the proposed settlement is lawful, fair, reasonable, and adequate." *Isby*, 75 F.3d at 1196.

At preliminary approval, the court determines whether it is likely to grant final approval such that there is "reason to notify the class members of the proposed settlement and to proceed with a fairness hearing[.]" *In re TikTok, Inc., Consumer Privacy Litig.*, 565 F. Supp. 3d 1076, 1083 (N.D. Ill. 2021). To make this determination, the court looks to the factors set forth in Fed. R. Civ. P. 23 ("Rule 23"). *Nistra v. Reliance Trust Co.* , No. 1:16-cv-04773, 2020 WL 13645290, at *1 (N.D. Ill. Mar. 12, 2020). These factors are "(A) the class representatives and counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate []; and (D) the proposal treats class members

[2] All citations cleaned up unless otherwise indicated.

equitably relative to each other." Fed. R. Civ. P. 23(e)(2). Rules 23(e)(2)(A) and (B) focus on procedural fairness, i.e., the "conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 committee notes, 2018 amendment. Rules 23(e)(2)(C)-(D) focus on substantive fairness, which evaluates the "relief that the settlement is expected to provide to class members" compared with "the cost and risk" of continued litigation. *Id*. An analysis of the Settlement and its formation confirm that the Court will likely find the Settlement procedurally and substantively fair.

A. The Settlement Is Procedurally Fair Under Rules 23(e)(2)(A)-(B).

1. The Settlement Class has been adequately represented.

Rule 23(e)(2)(A) requires that class representatives' interests be aligned with the interests of the class. *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 215 (N.D. Ill. 2019) ("A class is not fairly and adequately represented if class members have antagonistic or conflicting claims."), *aff'd sub nom. Walker v. Nat'l Collegiate Athletic Ass'n*, No. 19-2638, 2019 WL 8058082, at *1 (7th Cir. Oct. 25, 2019). Here, the proposed Settlement Class is defined as "all persons (including entities) who purchased residential real estate in the United States, from the beginning of the State Statutory Period through the date of class Notice, that was listed on a MLS." Settlement ¶ 1(gg). Each Plaintiff and Settlement Class Member purchased at least one home listed on an MLS during the relevant period. Plaintiffs and Settlement Class Members seek the same relief for the same injury: compensation for amounts they overpaid for homes as a result of Defendants' alleged conspiracy. Plaintiffs' and Settlement Class Members' interests are therefore entirely aligned. *See In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 344 (N.D. Ill. 2010) ("Plaintiffs have claims that are typical of those brought by other class members, and their interests appear to be entirely consistent with those of the other class members because they—

like the other class members—seek relief from AT&T's allegedly-unlawful tax collections."). Plaintiffs' efforts to support the prosecution of this Action by responding to interrogatories, producing documents, assisting counsel with facts, and sitting for depositions, additionally warrant a finding of adequacy. *See In re College Athlete NIL Litig.*, No. 20-cv-03919, 2023 WL 8372787, at *7 (N.D. Cal. Nov. 3, 2023) (finding similar efforts supported adequacy).

The Court must also consider the adequacy of counsel by evaluating "counsel's work on the case to date, ... class action experience,... knowledge of the applicable law, and the resources counsel will commit to the case." *Van v. Ford Motor Co.*, 332 F.R.D. 249, 286 (N.D. Ill. 2019). Lowey and Korein Tillery have served as counsel in this Action from its inception, led the prosecution of the claims here, vigorously advocated for Plaintiffs' homebuyer claims by appealing the final approval of home seller settlements that purport to release homebuyer claims in the Eighth Circuit,[3] and negotiated the proposed Settlement. Both firms have decades of experience leading complex class actions and recovering billions for antitrust plaintiffs. *See* Briganti/Ewing Decl., Firm Resumes, Exs. B & C.

2. The Settlement is the product of arm's length negotiations.

Counsel engaged in settlement discussions only after multiple motions to dismiss and significant discovery. Briganti/Ewing Decl. ¶¶ 16-35, 43. They enlisted the assistance of an experienced mediator, and reached an agreement-in-principle only after an initial mediation that did not result in resolution. *Id.* ¶ 43-45. It took additional months to reach agreement on the terms of the Settlement. *Id.* ¶ 45. These circumstances evidence good-faith and legitimate

[3] These settlements were reached in litigation including *Burnett, et al. v. Nat'l Ass'n of REALTORS®, et al.*, No. 4:19-cv-00332 (W.D. Mo.) ("*Burnett*"); *Moehrl, et al. v. Nat'l Ass'n of REALTORS®, et al.*, No. 1:19-cv-01610 (N.D. Ill.) ("*Moehrl*"); and *Umpa v. Nat'l Ass'n of REALTORS®*, No. 4:23-CV-00945 (W.D. Mo.). Plaintiff Mullis objected to the settlements in these cases and, when those settlements were finally approved, appealed to the Eighth Circuit. That appeal is pending. Briganti/Ewing Decl. ¶ 42.

negotiations. *Boyzo v. United Serv. Cos., Inc.*, No. 1:18-cv-06854, 2020 WL 13505349, at *2 (N.D. Ill. Aug. 3, 2020) (granting preliminary approval where "settlement followed contested litigation and ... [parties] were represented by qualified, skilled counsel, and the settlement also was a product of a mediation in which the parties negotiated at arms-length before an experienced mediator"); William B. Rubenstein, 4 *NEWBERG ON CLASS ACTIONS* § 13:50 (5th ed. 2020) ("Evidence of a truly adversarial bargaining process helps assuage this concern [of collusive settlements] and there appears to be no better evidence of such a process than the presence of a neutral third party mediator"). As discussed further below, these negotiations also resulted in a Settlement that is substantively fair on its terms, which further evidences arm's length negotiations. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2025 WL 2201610, at *2 (N.D. Ill. June 30, 2025) (granting preliminary approval where "[t]here are no terms in the settlement that would suggest collusion.").

B. The settlement is substantively fair.

To ensure the substantive fairness, Rule 23(e)(2)(C) focuses on whether "the relief provided for the class is adequate," accounting for: "(i) the costs, risks, and delay of trial and appeal;" (ii) "the effectiveness of any proposed method of distributing relief to the class" and "the method of processing class-member claims;" (iii) attorneys' fees; and (iv) "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). Courts in this Circuit additionally consider factors that overlap with Rule 23(e)(2)(C)(i):[4] "(1) the strength of the plaintiffs' case compared against the amount of the defendants' settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the

[4] "[T]he factors articulated by the Seventh Circuit subsume most of [the Rule 23(e)(2)(C)] factors" *Charvat v. Valente,* No. 12-cv-05746, 2019 WL 5576932, at *6 (N.D. Ill. Oct. 28, 2019). Plaintiffs address both sets of factors together here.

settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed." *Charvat*, 2019 WL 5576932, at *5 (citing *Synfuel Techs., Inc. v. DHL Express, Inc.*, 463 F.3d 646 (7th Cir. 2006)).

1. The substantial relief provided by the Settlement and the complexity, costs, risks, and delay of trial and appeal favor the Settlement.

If not for the Settlement, Plaintiffs would face the potential of an adverse ruling on their upcoming motion for class certification and the release of a significant portion of their claims with potentially no compensation in the Eighth Circuit. While Plaintiffs believe they will prevail, additional discovery, class certification, summary judgment, expert reports and challenges, and trial—each phase with its attendant risks—still lie ahead. As is apparent from the history of this Action (Briganti/Ewing Decl. ¶¶ 32-35), "class certification . . . would . . . be hotly-contested and followed by an inevitable appeal" by whichever party lost. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). Moreover, given that a central question is whether inflated commissions resulted in inflated home prices, this Action largely focuses on a battle of experts. *See Heekin v. Anthem, Inc.*, No. 1:05-cv-01908-TWP-TAB, 2012 WL 5472087, at *5 (S.D. Ind. Nov. 9, 2012) ("the [damages] issue would be both complex and hotly contested, requiring expert testimony on sophisticated methodologies with uncertain results"); *accord Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (expert battles are "lengthy and expensive . . . with the costs of such ...battle[s] borne by the class").

The proposed Settlement exchanges these costs and a lengthy litigation timeline with financial recovery, certainty, and the preservation of Court resources. Moreover, since the risk of non-recovery would persist as the litigation continued, the Settlement Class receives a substantial benefit from receiving this recovery now. *Schulte*, 805 F. Supp. 2d at 583 ("a dollar today is worth a great deal more than a dollar ten years from now" and "a major benefit of the settlement

is that Class Members may obtain these benefits much more quickly than had the parties not settled."). Accordingly, the "most important factor" is met. *Schulte*, 805 F. Supp. 2d at 579 ("the strength of plaintiff's case on the merits balanced against the amount offered in the settlement" is the "most important factor").

2. It is premature to consider the amount of potential opposition to the Settlement.

As to opposition to the Settlement, it is too early to evaluate. If the Court grants preliminary approval, Settlement Class Members will have the opportunity to object or exclude themselves. Agreement, ¶ 1(gg); Declaration of Justin Parks ("Parks Decl.") ¶ 18. Nevertheless, courts in this Circuit "are entitled to rely heavily on the opinion of competent counsel" when evaluating the fairness, reasonableness, and adequacy of a settlement. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-cv-0660-DRH, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018). Proposed Class Counsel, both of whom have extensive experience litigating similar claims (Exs. B & C), strongly support the approval of this Settlement as fair, reasonable, and adequate and in the Settlement Class's best interests. Briganti/Ewing Decl. ¶ 49. (in determining weight of counsel's opinion, court considers counsel's experience litigating similar claims, their efforts, and their depth of knowledge about the claims and issues in the case).

3. The stage of the proceedings and the amount of discovery completed confirm that the Settlement is appropriate.

A court may approve settlements where "the discovery and investigation conducted by class counsel prior to entering into settlement negotiations was extensive and thorough[.]" *Isby*, 75 F.3d at 1200. Here, where the parties have engaged in substantial party and third-party discovery for years, involving more than half a million documents, data exceeding a terabyte, written discovery responses, and Plaintiff depositions (Briganti/Ewing Decl. ¶¶ 27-30), "[t]his factor weighs in favor of settlement." *Charvat*, 2019 WL 5576932, at *8 (granting final approval

where "the parties engaged in a substantial amount of discovery over the course of multiple years" such that they could "place a reasoned value on their respective positions and litigation risk.").[5]

4. The allocation of funds will be reasonable and equitable.

The allocation of funds must also be reasonable and equitable. *Lucas v. Vee Pak, Inc.*, No. 12-cv-09672, 2017 WL 6733688, at *13 (N.D. Ill. Dec. 20, 2017). At the preliminary approval stage, a distribution plan is not required. *See*, *e.g.*, *In re Domestic Airline Travel Antitrust Litig.,* 378 F. Supp. 3d 10, 22 (D.D.C. 2019) (granting *final* approval without allocation and distribution plan, finding settlement adequate based on proposed means of distribution and processing claims); *In re Wachovia Equity Secs. Litig.,* No. 08-cv-6171 (RJS), 2012 WL 2774969, at *5 (S.D.N.Y. June 12, 2012) (approving plan of allocation after preliminary approval). However, Plaintiffs will submit a Distribution Plan to the Court on or before February 26, 2026 that will detail their methodology for distributing the Settlement Fund, net fees, and costs. Briganti/Ewing Decl. ¶¶ 56-58. Pursuant to this plan, each Settlement Class Member with an approved claim will receive a pro rata share of the Net Settlement Fund. *Id.* ¶ 56. The pro rata share will be based on a calculation of the applicable overcharge using a formula developed by Proposed Class Counsel's world-class experts. *Id.* Allocation programs like this that are developed by "competent and experienced counsel" and that distribute settlement proceeds according to an estimate of each class member's harm are generally considered reasonable. *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-cv-815-PPS-MGG, 2020 WL 5627171, at *6, *13 (N.D. Ind. Sept. 18, 2020).

[5] *See also Leung v. XPO Logistics, Inc.,* 326 F.R.D. 185, 198 (N.D. Ill. 2018) (a case is at a "stage where the parties [could] appropriately value the litigation, and arrive at a fair settlement" where "parties conducted early discovery on the merits and class certification, including taking fact and expert depositions, and seeking discovery from several non-parties").

Plaintiffs' proposed Distribution Plan will also discuss details of how allocation of the Settlement Fund might take account of risks for certain Settlement Class Members who are also members of a home seller settlement and whose claims here could be extinguished by the pending Eighth Circuit appeal. Briganti/Ewing Decl. ¶ 57. Proposed Class Counsel has engaged independent counsel for these purposes. *Id*. Although Plaintiffs will present further details in its forthcoming Distribution Plan, Plaintiffs anticipate that allocation counsel will present a plan for allocation of the Settlement Fund that will propose a legal discount to account for risks of members of a home seller settlement class and those who are not. Involvement of independent allocation counsel will ensure that each group of Settlement Class Members is adequately represented in allocating funds (*id.*). *Schulte*, 805 F. Supp. 2d at 589 (concluding that a settlement that allocated benefits according to "the facts and law at issue in this case . . . is fair, reasonable and adequate"); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 22, 38 (D.D.C. 2011) (approving use of allocation counsel for distribution plan); *In re Lease Oil Antitrust Litig.,* 186 F.R.D. 403, 424–25 (S.D. Tex. 1999) (same). Rules 23(e)(2)(C)(ii) and (D) are fully satisfied.

5. The requested attorneys' fees and other awards are limited to ensure that the Settlement Class receives adequate relief.

Plaintiffs' Counsel will separately file their request for fees and expenses. Proposed Class Counsel will request up to one-third (33.33%) of the gross Settlement Fund in fees and costs. Agreement ¶ 29. Such a request is well within the range of fees regularly approved in cases of similar size and complexity. *See*, *e.g.*, *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022) ("A one-third flat fee ...is routine for class action settlements in similarly complex fields, such as antitrust litigation."); *Charvat*, 2019 WL 5576932, at *11 (collecting cases). In addition to the request for attorneys' fees, Proposed Class Counsel will ask

for reimbursement of costs and expenses already incurred (up to $4.5 million) and may ask for an award up to $500,000 for expenses associated with continued prosecution of these claims against other Defendants (Agreement ¶ 29). *See, e.g., In re Turkey Antitrust Litig.,* No. 19-CV-08318, 2022 WL 122943, at *1 (N.D. Ill. Jan. 10, 2022) (awarding class counsel over $1,000,000 to cover "ongoing litigation expenses"); *Spicer v. Chicago Bd. Options Exch., Inc.,* 844 F. Supp. 1226, 1256, 1266 (N.D. Ill. 1993) (awarding amount that "covers any future fees expended in the remaining administration of the [settlement] fund" and legitimate future expenses). Finally, Proposed Class Counsel will seek a modest service award of no more than $5,000 to compensate each Plaintiff for their significant contributions to the Action. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2021 WL 5709250, at *5 (N.D. Ill. Dec. 1, 2021) ("Empirical evidence shows that incentive awards are now paid in most class suits and average between $10-$15,000 per class representative.").

6. There are no unidentified agreements that impact adequacy of relief for the Settlement Class.

Rule 23(e)(3) requires parties to identify "any agreement made in connection with" the settlement. *See* Fed. R. Civ. P. 23(e)(3). There are no such agreements here. Briganti/Ewing Decl. ¶ 46.

II. The Court Should Conditionally Certify The Proposed Settlement Class.

If the preliminary approval criteria are met (they are), the Court must determine that it is likely to certify the Settlement Class for settlement purposes. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii). The settlement class must satisfy Rule 23(a)'s requirements: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 460 (2013). Since this Settlement includes monetary relief, the class must also satisfy Rule 23(b)(3): (i) common questions of law or fact must predominate over

individual issues and (ii) a class action must be the superior device to resolve the claims. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615–16 (1997). A certified class must also be defined "clearly and based on objective criteria." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). The Settlement again readily meets these standards.

Rule 23(a)(1): Numerosity. The class must be so numerous as to make joinder of its members "impracticable." "[A] class of more than 40 members is generally believed to be sufficiently numerous for Rule 23 purposes." *Schmidt v. Smith & Wollensky, LLC*, 268 F.R.D. 323, 326 (N.D. Ill. 2010). Based on Plaintiffs' investigation, millions of people purchased homes during the Class Period. Briganti/Ewing Decl. ¶ 11. Joinder would be impracticable.

Rule 23(a)(2): Commonality. To certify the settlement class, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (a single common question suffices). The critical common questions in this case are whether a conspiracy existed among Defendants to restrain competition over buyer agent commissions and whether this conspiracy caused inflated home prices. These questions are central to Plaintiffs' claims and will be decided by evidence, such as documents, communications and expert analysis, common to the class. *Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 594 (N.D. Ill. 2015), *aff'd sub nom.*, 831 F.3d 919 (7th Cir. 2016) ("The issues is whether … the evidence either proving or disproving a conspiracy will be common to the entire class"); *accord Suchanek v. Sturm Foods, Inc*., 764 F.3d 750, 756 (7th Cir. 2014). Indeed, "[w]here an antitrust conspiracy has been alleged, courts have consistently held that the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist." *Moehrl*, 2023 WL 2683199, at *11. The same is true here.

Rule 23(a)(3): Typicality. Next, the class representatives' claims must be "typical" of

class members' claims. "[T]ypicality is closely related to commonality and should be liberally construed." *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 479 (N.D. Ill. 2009). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory." *Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003, 1011 (N.D. Ill. 2020). Plaintiffs here were injured when they overpaid for their homes as a result of Defendants' conspiracy to enforce anticompetitive rules that inflated broker commissions. Every Settlement Class Member was injured in this same way by this same course of conduct. Thus, Rule 23(a)(3) is satisfied.

Rule 23(a)(4): Adequacy of Representation. For a case to proceed as a class action, class representatives and counsel must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *Kohen v. Pac. Inv. Mgmt. Co. LLC.*, 571 F.3d 672, 679 (7th Cir. 2009). As described, *supra* at p. 4, Plaintiffs and Proposed Class Counsel amply satisfy this requirement.

Rule 23(b)(3): Predominance. To satisfy Rule 23(b)(3), Plaintiffs must establish that common questions predominate over individual ones and that a class action is the superior method for adjudicating the case. Fed. R. Civ. P. 23(b)(3). "A finding of commonality will likely satisfy a finding of predominance because, like commonality, predominance is found where there exists a common nucleus of operative facts." *Saltzman*, 257 F.R.D. at 484. Here, the existence and scope of the alleged conspiracy and Plaintiffs' injury, and the applicable evidence required to prove the conspiracy are common issues capable of classwide resolution that will predominate over individual issues. *See, e.g.*, *Moehrl*, 2023 WL 2683199, at *3, *13 (certifying seller classes, finding evidence of defendants' policies and representations "is undoubtedly common across the class"); *accord Burnett*, 2022 WL 1203100, at *20. The predominance requirement is satisfied.

Superiority is evaluated by four considerations: (A) the interest of the members of the class in individually controlling separate actions; (B) the extent and nature of any litigation already commenced; (C) the desirability or undesirability of concentrating the litigation in the particular forum; and (D) the difficulties likely to be encountered in the management of the class action. Fed. R. Civ. P. 23(b)(3). Where, as here, "common questions are found to predominate in an antitrust action" then "courts generally have ruled that the superiority [requirement] is satisfied." 7AA Charles Alan Wright et al., Federal Practice & Procedure § 1781 (3d ed. 2021). Moreover, "the large number of potential class members indicates the superiority of the class action device here." *Moehrl*, 2023 WL 2683199, at *22. Individual damages are small compared to the high cost of maintaining a complex antitrust suit like this one. *Mullins*, 795 F.3d at 658 (the class device is often essential "to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights."); *In re Currency Conversion Fee Antitrust Litig*., 264 F.R.D. 100, 117 (S.D.N.Y. 2010) ("A class action is the superior method of adjudicating these [types of] claims.").

As to whether any existing litigation impacts the superiority of this litigation, as mentioned *supra* at p. 4, home sellers pursued separate litigation against Keller Williams and the other Defendants based on the same conspiracy. The seller litigation has largely settled. However, while some Settlement Class Members who sold homes are eligible to receive compensation for their home sales from the seller settlements, it is not clear what, if any, compensation individuals will receive for their home*buying* claims. This Settlement guarantees compensation for Settlement Class Members' homebuying claims.

The Class is Defined by Objective Criteria. A class must "be defined clearly and based on objective criteria." *Mullins*, 795 F.3d at 659. Whether a class is ascertainable depends on "the

adequacy of the class definition itself" rather than whether "it would be difficult to identify particular members of the class." *Toney v. Quality Res., Inc*., 323 F.R.D. 567, 581 (N.D. Ill. 2018). The Settlement defines the Settlement Class as consisting of persons who purchased homes in specific states during specific time periods, and which homes were listed on any MLS within the United States. Because these criteria are objective, the Settlement Class is readily ascertainable.

III. The Court Should Appoint Counsel as Proposed Class Counsel.

Rule 23(g) separately requires this Court to appoint class counsel. Fed. R. Civ. P. 23(g). Proposed Class Counsel have extensive experience in successfully prosecuting antitrust class actions, and have committed the resources necessary to represent the Class over the past five years of litigation. Briganti/Ewing Decl. ¶¶ 50-55; 16-42. Plaintiffs therefore request the appointment of Lowey and Korein Tillery as Class Counsel.

IV. The Court Should Approve The Proposed Class Notice Plan And A.B. Data, Ltd. As Settlement Administrator.

Upon preliminary approval, the Court must direct to class members the "best notice practicable under the circumstances[.]" *Mangone v. First USA Bank*, 206 F.R.D. 222, 231 (S.D. Ill. 2001). Plaintiffs' proposed notice forms (Exs. D & E) describe in plain language the nature of the Action, the Settlement Class definition, Class Members' right to file a claim, request exclusion from or object to the Settlement, and the binding effect of a class judgment—all the necessary information to apprise Settlement Class Members of the Settlement. *See* Fed. R. Civ. P. 23(c)(2).

The notice plan includes both direct notice via email (where available from transaction data) and media notice published across applications like Facebook, YouTube, and Instagram. Parks Decl. ¶¶ 8-14. The notice plan is carefully designed to reach over 70% of the class. *Id.* ¶

29. Such notice is frequently found to be the best notice practicable. *See, e.g.*, *Kaufman v. Am. Express Travel Related Servs. Co., Inc*., 877 F.3d 276, 287 (7th Cir. 2017) ("[N]otice was provided to this massive class in a reasonable and effective manner, reaching approximately 70% of the members."); *T.K., et al.v. Bytedance Tech. Co.,* No. 19-cv-7915, 2022 WL 888943, at *7 (N.D. Ill. Mar. 25, 2022) (media only notice plan that reached 72% of target audience best notice practicable under the circumstances).

Proposed Class Counsel recommends that A.B. Data, Ltd. be appointed as Claims Administrator. Proposed Class Counsel solicited competitive bids from three claims administrators and selected A.B. Data because A.B. Data offered competitive pricing, depth of experience, and a resumé of highly successful notice programs that have not been subject to litigation. Briganti/Ewing Decl. ¶¶ 59-60; Parks Decl. ¶¶ 3-4; Ex. A.

V. The Court Should Appoint Citibank, N.A. As Escrow Agent.

Lowey has designated Citibank, N.A. to serve as Escrow Agent. Citibank has served as escrow agent in a number of large antitrust settlements, including *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD). Citibank has agreed to provide its services at market rates.

VI. Proposed Schedule Of Events.

Plaintiffs propose the schedule in Appendix A for preliminary approval of a distribution plan, notice, and final approval.

CONCLUSION

For the foregoing reasons, the proposed Settlement warrants the Court's preliminary approval. Plaintiffs respectfully request that the Court enter an Order (i) granting preliminary approval of the Settlement, (ii) certifying the proposed Settlement Class, (iii) approving the form and content of the notice, (iv) appointing Plaintiffs as Class Representatives, (v) appointing

Lowey and Korein Tillery as Class Counsel, (vi) appointing A.B. Data as Claims Administrator, (vii) appointing Citibank as Escrow Agent; (viii) entering a schedule for final approval.

Dated: February 2, 2026

Respectfully submitted,

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APPENDIX A

Event	Timing
Deadline to file for preliminary approval of plan of distribution	February 26, 2026
Begin distribution of Notice and launch of Settlement Website ("Notice Date")	No later than 60 days after entry of this Order
Complete initial distribution of direct and publication notices	49 days after the Notice Date
Deadline to file declaration re implementation of notice plan	56 days after the Notice Date
Deadline to file motions for final approval of the Settlement, an award of attorneys' fees and expenses, and service awards.	14 days prior to the deadline for objections/56 days after the Notice Date
Objection Deadline	70 days after the Notice Date
Exclusion Bar Date	70 days after the Notice Date
Deadline to file Opt-Out List and Declaration	14 days after Exclusion Bar Date
Deadline to file opposition to objections and reply papers in support of final approval of the Settlement, request for an award of attorneys' fees and expenses, and request for service awards.	7 days prior to the Settlement Hearing
Settlement Hearing	At the Court's convenience, but no earlier than 105 days after the Notice Date
Claims Deadline	133 days after the Notice Date or such other time as set by the Court

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, a true and correct copy of the foregoing was filed electronically through the Court's CM/ECF system, which will send notification of the same to all counsel of record in this matter.

/s/ Noelle Forde
Noelle Forde