

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

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

Plaintiffs,)

Case No: 1:19-cv-01610

v.)

Judge Andrea R. Wood

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

Defendants.)

JOINT STATUS REPORT

Pursuant to the Court’s Order (Docket No. 438), Plaintiffs Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, on behalf of themselves and all others similarly situated (“Plaintiffs”), and Defendants The National Association of REALTORS®, Realogy Holdings Corp. (“Realogy”), HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc. (collectively, “HomeServices”), RE/MAX LLC (“RE/MAX”), and Keller Williams Realty, Inc. (“Defendants”), (collectively, the “Parties”), respectfully submit this Joint Status Report.

Status of Realogy and RE/MAX Settlements

On October 5, 2023, Plaintiffs moved in the *Burnett* case docket for preliminary approval of the *Moehrl* and *Burnett* Plaintiffs’ joint settlements with Defendants Realogy and RE/MAX. ECF No. 1192, *Burnett v. NAR*, 4:19-cv-00332 (W.D.Mo.). Plaintiffs filed supplemental materials, including to address class notice, on November 17, 2023. ECF No. 1319. The *Burnett* court subsequently held a settlement approval hearing and preliminarily approved the settlements on November 20, 2023. ECF No. 1321. For the Court’s convenience, these filings and the *Burnett* court’s preliminary approval order are appended as Exhibits 1-3.

Status of *Burnett* Trial

The court in the *Burnett* suit held a jury trial commencing October 13, 2023. On October 31, 2023, the jury returned a verdict against Defendants The National Association of REALTORS®, HomeServices, and Keller Williams Realty, Inc. and awarded approximately \$1.79 billion to the *Burnett* class.

Dated: November 20, 2023

Respectfully submitted,

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EXHIBIT 1

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENTS WITH ANYWHERE REAL ESTATE AND RE/MAX,
CERTIFICATION OF SETTLEMENT CLASS, AND APPOINTMENT OF
SETTLEMENT CLASS COUNSEL**

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I. INTRODUCTION

After extensive litigation and arms-length negotiations, Plaintiffs Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, and Jeremy Keel (“*Burnett* Plaintiffs”) and Plaintiffs Christopher Moehrl, Daniel Umpa, Jane Ruh, Jack Ramey, Steve Darnell, Michael Cole (“*Moehrl* Plaintiffs”) (collectively “Plaintiffs”), on behalf of themselves and the proposed Settlement Class (defined herein), have reached agreements with Defendants Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”) and RE/MAX LLC (“RE/MAX”) (together the “Settling Defendants”) to settle and resolve on a national basis, Plaintiffs’ claims for damages and injunctive relief against the Settling Defendants for their alleged anticompetitive trade practices within the market for residential real estate brokerage services, including the claims in this case and the *Moehrl* case. The settlements are fair, reasonable, and beneficial to the Settlement Class, and thus Plaintiffs respectfully move this Court for preliminary approval of the Settlements.

As the Court is aware, both the *Burnett* litigation and the *Moehrl* litigation (*Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (Northern District of Illinois)), raise similar claims against the same set of Defendant families. Burnett and Moehrl Plaintiffs worked together to achieve a comprehensive, nationwide resolution.

Burnett Plaintiffs, *Moehrl* Plaintiffs, and the Settling Defendants have entered into settlements that would recover \$138.5 million for the Settlement Class. Specifically, Plaintiffs have entered into a Settlement with Anywhere for \$83.5 million and a Settlement with RE/MAX for \$55 million (together the “Settlement Agreements”). Both Settlements were the product of extensive negotiations over the course of many years, including intensive negotiations over the last many months, facilitated by experienced mediators. The Settlements were informed by the risks, cost, and delay of litigation, and the financial terms were informed by a thorough analysis of each Defendant’s ability to pay. Settling Defendants have also agreed to implement meaningful

Practice Changes and to provide cooperation to Plaintiffs in the litigation against the remaining Defendants.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements; (2) certifying a Settlement Class for settlement purposes only; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) deferring notice of the Settlement Agreements to the Settlement Class until an appropriate future date.

II. BACKGROUND

A. The Litigation

The *Moehrl* class action was filed in the Northern District of Illinois on March 6, 2019, on behalf of home sellers who paid a broker commission in connection with the sale of residential real estate listed on one of 20 Covered Multiple Listing Services (“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).

Plaintiffs in both actions alleged that the National Association of Realtors (“NAR”) and the nation’s largest real estate brokerage firms entered into an unlawful agreement in violation of the Sherman Act, 15 U.S.C. § 1, to artificially inflate the cost of commissions in residential real estate transactions. Specifically, Plaintiffs alleged a longstanding conspiracy among Defendants to agree to NAR rules (a) requiring home sellers to make blanket unilateral offers of compensation to real estate brokers working with buyers; (b) restraining negotiation of those offers; (c) denying buyers information on the commissions being offered; (d) allowing buyer agents to represent that their services are “free;” and (e) incentivizing and facilitating steering by brokers towards high commission listings and away from discounted listings (together, the “Challenged Rules”).

Plaintiffs claim that the Challenged Rules are anticompetitive and caused them to pay artificially inflated broker commissions when they sold their homes. Defendants have denied Plaintiffs' allegations.

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

On April 22, 2022, this Court granted *Burnett* Plaintiffs' motion for class certification; appointed Scott and Rhonda Burnett, Jerod Breit, Ryan Hendrickson, Jeremy Keel, and Scott Trupiano as class representatives¹; and appointed their counsel as co-lead class counsel. (Burnett Doc. 741) Hollee Ellis and Frances Harvey joined as class representatives in *Burnett* with the Third Amended Complaint (Burnett Doc. 759) On March 29, 2023, Judge Wood granted the plaintiffs' motion for class certification in the *Moehrl* action, appointed Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh as class representatives; and appointed Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Susman Godfrey LLP as co-lead class counsel. (Moehrl Doc. 403).

The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed items in order to obtain important evidence to support their claims. The

¹ With the Court's permission, three class representatives were withdrawn from the lawsuit as litigation class representatives: Scott Burnett, Ryan Hendrickson, and Scott Trupiano. They remain absent members of the class.

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 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*. *Burnett* Plaintiffs also briefed summary judgment and began preparing for trial, including against the Settling Defendants. (Berman Decl. ¶ 11; Dameron Decl. ¶¶ 3-6).

B. Settlement Negotiations and Mediation

Plaintiffs' Co-Lead Counsel and counsel for Anywhere engaged in extensive arm's-length settlement negotiations that lasted nearly three and a half years, including several telephonic and in-person mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a mediation with a federal magistrate judge, leading to this Settlement Agreement. Plaintiffs' Co-Lead Counsel and counsel for Anywhere also participated in dozens of one-on-one calls as part of the settlement negotiations. Plaintiffs' Co-Lead Counsel and counsel for RE/MAX further held several mediations over nearly three and a half years, including remote mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a remote mediation with a federal magistrate judge, as well as numerous direct communications. (Berman Decl. ¶ 9; Dameron Decl. ¶ 12).

The Settling Parties reached the Settlement Agreements after considering the risks and costs of litigation. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed to date supports the claims. Plaintiffs and counsel, however, also recognize the myriad risks and delay of further proceedings in a complex case like this, and believe that the

Settlements confer substantial benefits upon the Settlement Class Members. (Berman Decl. ¶¶ 10, 12; Dameron Decl. ¶¶ 9-11).

Moreover, Plaintiffs and counsel conducted a thorough financial analysis of the limited ability to pay of both Anywhere and RE/MAX, and whether Anywhere and RE/MAX could withstand a greater monetary judgment, which directly affected the monetary amounts that it was feasible to recover from both Settling Defendants through settlement. (Berman Decl. ¶ 13; Dameron Decl. ¶ 8).

The Settling Defendants have indicated that they deny Plaintiffs' claims and deny any wrongdoing but wish to avoid the uncertainty and risk attendant with further litigation.

C. Summary of the Settlement Agreements

1. Settlement Class

The proposed Settlement Class in the Settlement Agreements with both Anywhere and RE/MAX is as follows: All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- a. Moehrl MLSs: March 6, 2015 to date of notice;
- b. Burnett MLSs: April 29, 2014 to date of notice;
- c. MLS PIN: December 17, 2016 to date of notice;
- d. All other MLSs: four years prior to (i) the date a new or amended complaint (if any)

is filed in the Actions reflecting any MLSs aside from the Moehrl MLSs, Burnett MLSs, and MLS PIN or (ii) the date of notice, whichever is earlier, up to the date of notice. (Anywhere Agreement ¶ 18; RE/MAX Agreement ¶ 18).

2. Settlement Amounts

The proposed Settlement Agreement provides that Anywhere will pay a Total Settlement Amount of eighty-three million five hundred thousand U.S. dollars (\$83,500,000) for the benefit of the Settlement Class. This amount is inclusive of all costs of settlement, including payments to class members, attorneys' fees and costs, service awards for current and former class representatives (including Settlement Class Representatives), and costs of notice and administration. (Anywhere Agreement ¶ 21).

The proposed Settlement Agreement provides that RE/MAX will pay a total Settlement Amount of fifty-five million U.S. dollars (\$55,000,000) for the benefit of the Settlement Class. This amount is likewise inclusive of all costs of settlement, including payments to class members, attorneys' fees and costs, service awards to current and former class representatives, and costs of notice and administration. (RE/MAX Agreement ¶ 21). Both Total Settlement Amounts are non-reversionary; once the Settlements with Anywhere and RE/MAX are finally approved by the Court and after administrative costs, litigation expenses, and attorneys' fees are deducted, the net funds will be distributed to Settlement Class Members with no amount reverting back to Anywhere or RE/MAX, regardless of the number of Opt-Out Sellers or claims made. (Anywhere Agreement ¶ 40; RE/MAX Agreement ¶ 40).

3. Changes to Business Practices

***a.* Anywhere**

The proposed Settlement provides for Anywhere Real Estate, Inc. and its subsidiaries and company-owned brokerages ("Anywhere") to make the following Practice Changes within six months after the Settlements become effective:

- i. refrain from adopting any Anywhere requirements that company owned brokerages, franchisees, or agents (i) belong to NAR or (ii) follow NAR's Code of Ethics

or MLS Handbook. (This provision automatically terminates if NAR reaches a settlement agreement or is subject through court order to injunctive relief in these matters.);

ii. advise and periodically remind the Anywhere company owned brokerages, franchisees, and their agents that there is no Anywhere 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;

iii. require that any Anywhere 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 Anywhere will require that any company owned brokerages and their agents (and recommend and encourage that any Anywhere franchisees and their agents) include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable;

iv. prohibit the Anywhere 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;

v. to the extent allowed by MLS rules and/or the capabilities of third-party platforms that operate websites for Anywhere, require that the Anywhere company owned brokerages and their agents include, at the earliest possible moment, the listing broker's offer of compensation in each active listing shared with prospective buyers through IDX or VOW displays, or through any other form or format;

vi. prohibit the Anywhere 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);

vii. advise and periodically remind the Anywhere 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;

viii. for Anywhere company owned brokerages eliminate any minimum client commission requirements; and

ix. for each of the above points, for the Anywhere company owned brokerages, franchisees, and their agents, develop training materials consistent with the above relief and eliminate any contrary training materials currently used. (Anywhere Agreement ¶ 51). If not automatically terminated earlier by their own terms, these practice changes will sunset 5 years after the effective date.

***b.* RE/MAX**

The proposed Settlement provides for RE/MAX to make the following Practice Changes within six months after the Settlements become effective:

i. make clear and periodically remind franchisees and agents affiliated with those franchisees that it does not require them to make offers of compensation to or accept offers of compensation from cooperating brokers or that, if made, does not require such offers to be blanket, unconditional, or unilateral;

ii. RE/MAX will make clear that (i) franchisees and affiliated agents must be transparent to prospective home sellers and buyers that broker commissions are not set by law and are negotiable and (ii) buyer-side brokers and agents must be transparent regarding the cooperative compensation offered on any listings for which a client requests information. Toward that end, RE/MAX will 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. RE/MAX will further recommend and encourage that, in the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents is a government or MLS-specified form, 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. make clear that franchisees and affiliated agents acting as buyer-side brokers or agents must be transparent with their clients in accurately disclosing their compensation structure in connection with each transaction and must refrain from advertising or otherwise representing that their services are free (unless they are, in fact, not receiving any compensation for those services from any party);

iv. display offers of compensation made by listing brokers or agents, where such data is available and/or provided to REMAX for all active listings shared on REMAX.com and recommend and encourage that franchisees and agents include cooperative compensation offers (if any) on any listings that they publicly display or share with prospective buyers through IDX or VOW displays, or through any other form or format;

v. not provide software that permits franchisees and affiliated agents 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 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 or 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. expressly advise and periodically remind franchisees and affiliated agents of their obligation to show and market properties regardless of the existence or amount of cooperative compensation offered;

vii. not express or imply a minimum commission requirement in franchise agreements, training materials or other policies;

viii. develop educational materials that reflect and are consistent with each provision in this injunction, and eliminate educational materials, if any, that are contrary to it;

ix. not require franchisees and their affiliated agents to join or be members of the National Association of Realtors or follow NAR's Code of Ethics or MLS Handbook.

(RE/MAX Agreement ¶ 51).

4. Cooperation Requirements

In addition to providing substantial monetary payments and meaningful injunctive relief, the Settlement Agreements obligate the Settling Defendants to cooperate with Plaintiffs in the further prosecution of their claims against the remaining Defendants, which remaining Defendants each remain jointly and severally liable for *all* damages caused by the members of the alleged conspiracy. Both Anywhere and RE/MAX's cooperation includes the following: (1) providing up to three current officers or employees of the Settling Defendant or its subsidiaries to participate as witnesses at trial in *Moehrl* and providing access via counsel to those witnesses prior to trial for up to two hours (if requested by Plaintiffs); (2) withdrawing expert designations and obtaining agreement with any separately retained experts that they will not testify at trial as a retained expert for any other Defendant in the Actions; (3) using reasonable efforts to authenticate documents produced by the Settling Defendants and establish that those documents are admissible; and (4) using reasonable efforts to provide relevant class member data and answer questions about the data to support the provision of class notice. (Anywhere Agreement ¶ 55; RE/MAX Agreement ¶ 55).

5. Release of Claims Against Anywhere and RE/MAX

In exchange for the Settlement Amounts, Practice Changes, and Cooperation commitments from Anywhere and RE/MAX, upon entry of a final judgment approving the Settlement Agreements, Plaintiffs and the Settlement Class will release and discharge Anywhere and RE/MAX, and all of their respective subsidiaries, related entities, affiliated franchisees, and independent contractors, 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.” (Anywhere Agreement ¶¶ 14-15, 30-32; RE/MAX Agreement ¶ 14-15, 30-32). The actual terms of the releases are contained in the Settlement Agreements.

The Settlement Agreements with Anywhere and RE/MAX, however, do nothing to abrogate the rights of any member of the Settlement Class to recover from any other Defendant. (Anywhere ¶ 62; RE/MAX ¶ 62). 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.” (Anywhere Agreement ¶ 32; RE/MAX Agreement ¶ 32).

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

The Settlements authorize Settlement Class Counsel to seek to recover their attorneys’ fees and costs incurred in prosecuting the Actions, as well as to seek service awards for current and former class representatives, including the Settlement Class Representatives. (Anywhere Agreement ¶ 33, 37; RE/MAX Agreement ¶ 33, 37). Following the Court’s preliminary approval of the Settlements, Class Counsel will submit an application to the Court for an award of attorneys’ fees, costs, and potentially for service awards, to be paid out of the Settlement Fund.

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

Certifying a nationwide Settlement Class is appropriate here, where the additional class Members are home sellers who suffered the same or similar harms as *Burnett* and *Moehrl* Plaintiffs from the same defendants—but in other parts of the country.

A. Class Definition

This Court previously certified the following classes pursuant to Rule 23(b)(3):

(1) the “Subject MLS Class,” asserting Count I, defined as:

All persons who, from April 29, 2015 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realogy Holdings Corp., RE/MAX LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a home listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home;

(2) the “Missouri Antitrust Law-Subject MLS Class,” asserting Count III, defined as:

All persons who, from April 29, 2015 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realogy Holdings Corp., RE/MAX LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a home in Missouri listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern

Missouri Regional MLS, and who paid a commission to the buyer's broker in connection with the sale of the home;

and (3) the "MMPA Class," asserting Count II, defined as:²

All persons who, from April 29, 2014 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realty Holdings Corp., RE/MAX LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a residential home in Missouri listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer's broker in connection with the sale of the home. (Burnett Doc. 741).

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

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

Home sellers who paid a commission between March 6, 2015, and December 31, 2020, to a brokerage affiliated with a Corporate Defendant in connection with the sale of residential real estate listed on a Covered MLS and in a covered jurisdiction. Excluded from the class are (i) sales of residential real estate for a price below \$56,500, (ii) sales of residential real estate at auction, and (iii) employees, officers, and directors of defendants, the presiding Judge in this case, and the Judge's staff. (Moehrl Doc. 403).

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

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

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

² With leave of Court, Plaintiffs in *Burnett* recently dismissed the Missouri state law claims in advance of trial as to the non-settling Defendants. (Burnett Doc. 1142, 1144).

The Settlements are conditioned upon the Court certifying a class *for settlement purposes only* that is broader than the litigation classes certified in *Moehrl* and *Burnett*, as to Anywhere and RE/MAX only, including in the following respects: (a) persons who sold homes that were listed on all MLSs in the United States (rather than just a subset); (b) sellers regardless of the broker used (rather than only those affiliated with the Defendants); and (c) a date range that generally extends to the date of notice. The proposed Settlement Class definition, pursuant to Rule 23(b)(3) is as follows:

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

- a. Moehrl MLSs: March 6, 2015 to date of notice;
- b. Burnett MLSs: April 29, 2014 to date of notice;
- c. MLS PIN: December 17, 2016 to date of notice;
- d. All other MLSs: (i) four years prior to the date a new or amended complaint (if any) is filed in the Actions reflecting any MLS aside from the Moehrl MLSs, Burnett MLSs, and MLS PIN, or (ii) the date of notice, whichever is earlier, up to the date of notice.

Excluded from the Settlement Class are those who opt out of the Settlements in a timely manner.

(Anywhere ¶¶ 13 and 18; RE/MAX ¶¶ 13 and 18).

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

B. Legal Standard for Modifying the Class Definition

The Court can amend or alter the class definition at any time before a decision on the merits. Fed. R. Civ. P. 23(c)(1)(C). When analyzing whether to certify a broader class definition than was initially certified, courts conduct the standard Rule 23 class certification analysis. *See,*

e.g., *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-1827, 2011 WL 13152270, at *5 (N.D. Cal. Aug. 24, 2011) (“Rule 23 explicitly empowers a federal court to certify a class in every case that satisfies its criteria.”); *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 364 (D. Ariz. 2009) (a “federal court applying Rule 23 of the Federal Rules of Civil Procedure may certify a nationwide class if the requirements for certification are satisfied.”). If the Rule 23 requirements are met, a nationwide class should be certified, regardless of whether a narrower class was pled or certified earlier in the litigation. *See, e.g.*, *In re TRS Recovery Servs., Inc. & Telecheck Servs., Inc., Fair Debt Collection Pract. Act (FDCPA) Litig.*, No. 2:13-MD-2426, 2016 WL 543137, at *2–5 (D. Me. Feb. 10, 2016) (approving the expansion of a class of Maine residents to a nationwide class where it satisfied the Rule 23 requirements).

Courts around the country acknowledge that to achieve settlement, it is often necessary to broaden the class and/or the scope of the claims. *See, e.g.*, *Hesse v. Sprint Corp.*, 598 F.3d 581 (9th Cir. 2010) (explaining that class settlements that include a broad release of claims are permissible, and that the scope of released claims may exceed those actually brought in the underlying action, and may even exceed the scope of claims that could have been brought in a lawsuit); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106 (2d Cir. 2005) (“Practically speaking, [c]lass action settlements simply will not occur if parties cannot put limits on defendant’s liability.”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 13152270, at *9 (“For the history of class certifications, courts have generally certified settlement classes broader than the previously-certified litigation classes; the claims released are typically more extensive than the claims stated.”).

Courts routinely certify settlement classes that are broader than previously pled or certified in the litigation. *See, e.g.*, *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 661 (E.D. Va.

2001) (certifying settlement class broader than previously certified litigation class); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 172 (same). The interests of fairness, equity, and justice are often better served by a broader class than a narrower class. *See, e.g., Heldt v. Payday Fin., LLC*, No. 3:13-cv-03023, 2016 WL 96156, at *10 (D.S.D. Jan. 8, 2016) (observing that “[i]t would be ideal to include the Intervenors and their counsel in another round of negotiation to get broader class representation to evaluate whether \$7 million is an appropriate settlement fund given the financial standing of the Defendants”); Nancy Morawetz, *Underinclusive Class Actions*, NYU Law Review 402–438 (April–May 1996), <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-71-1-Morawetz.pdf> (“The principal harm caused by defining a class narrowly is the potential of denying similarly situated persons the same opportunity for relief for similar claims.” (p.420) . . . “Inclusion in the class may be expected to be in the interest of the potential class members when it is unlikely that they will be able to litigate their claims independently.” (p.430)).

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

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

1. Numerosity

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

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

2. Commonality

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

question of whether defendants conspired to harm plaintiffs will likely prevail.” *D&M Farms v. Birdsong Corp.*, No. 2:19-cv-463, 2020 WL 7074140, at *3 (E.D. Va. Dec. 1, 2020).

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

3. Typicality

Rule 23(a)(3) requires that the class representatives’ claims be “typical” of Class Members’ claims. “The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.” *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th

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

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

4. Adequacy

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

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

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

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

1. Predominance

“The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation . . . and goes to the efficiency of a class action as an alternative to individual suits.” *Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 479 (8th Cir. 2016) (internal citations omitted). The predominance question at class certification is not whether Plaintiffs have

already proven their claims through common evidence. *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 618 (8th Cir. 2011). Rather it is whether questions of law or fact capable of resolution through common evidence predominate over individual questions. *Id.*

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

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

of property values to the extent possible, and preventive steps to limit the scope of future damage.”
Id.

Here, all Plaintiffs seek to remedy the same shared legal grievance—widespread conduct by Defendants throughout the United States that has resulted in supracompetitive 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 Defendants belong to NAR, participate in both NAR-affiliated and non-NAR affiliated MLSs 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 Class. *See id.* Such evidence comes from Defendants’ own files, statements, policies, contracts, records, and employees, and is not specific to individual Class Members. Also at issue are specific MLS rules, including rules mandating blanket unilateral offers of compensation to cooperating brokers, that are present in MLSs throughout the entire United States—including in MLSs that are not directly or indirectly affiliated with NAR.³ 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.

³ Consistent with this conclusion, Plaintiffs and their experts conducted an extensive analysis of both NAR and non-NAR MLSs throughout the United States, determining that they were subject to the same or similar rules challenged here. *See, e.g.*, Moehrl Doc. 324-6, Redacted Elhauge Class Certification Expert Report, App. C (reflecting that around 97% of the several hundred MLSs nationwide are NAR-affiliated and thus subject to all of the mandatory NAR MLS rules challenged in this litigation, and that even for the few non-NAR MLSs it was “was common among these MLSs to adopt restraints that were identical or similar to those imposed by NAR.”). Moreover, several of the challenged rules are reflected in NAR’s Code of Ethics, which applies to Realtors nationwide, including those operating in non-NAR MLSs. *Id.* ¶ 25 (finding that, “even in non-NAR MLSs, Realtors are—by definition—required to comply with NAR’s Code of Ethics”).

Common issues also predominate for each element that Plaintiffs must prove to prevail in an antitrust case: (1) a violation of the antitrust laws; (2) the impact of the unlawful activity; and (3) measurable damages. *See, e.g., Burnett*, 2022 WL 1203100, at *10. First, as discussed above, all members of the Settlement Class share the same legal grievance—a violation of the antitrust laws by Defendants. Second, this Court has already recognized that “the fact of antitrust impact can be established through common proof” *Burnett*, 2022 WL 1203100, at *11 (quoting *In re Nexium Antitrust Litig.*, 777 F.3d 9, 18 (1st Cir. 2015)). *Burnett* and *Moehrl* Plaintiffs have already “shown the existence of common questions concerning antitrust impact that can be answered with common evidence” (*Moehrl*, 2023 WL 2683199, at *19; *Burnett*, 2022 WL 1203100, at *12), including expert opinions, analysis of residential real estate transactions in foreign benchmark countries, and transaction data from defendants and MLSs. At bottom, evidence of impact from the fact that commissions in the United States are higher than international markets is evidence common to the nationwide settlement class. Third, all members of the Settlement Class have been damaged by paying inflated commissions as a result of the Challenged Rules or other similar rules or by paying any commission to a buyer broker. The experts in *Burnett* and *Moehrl* 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. The same type of methodology could be used for the broader Settlement Class.

2. Superiority of a Class Action

In addition to the predominance of common questions, Rule 23(b)(3) requires a finding that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Factors relevant to the superiority of a class action under Rule 23(b)(3) include: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or

against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3).

In this case, the first three factors weigh heavily in favor of class certification. First, Class Members have little economic incentive to sue individually based on the amount of potential recovery involved, and any Settlement Class Member who wishes to opt out will have an opportunity to do so. Second, there are no known existing *individual* lawsuits filed by Settlement Class Members; no Class Member has demonstrated any interest in litigating 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. at 240.

Moreover, “the expense of individual actions, weighed against the potential individual recovery of the vast majority of class members here, would be prohibitive.” *Temp. Servs. v. Am. Int’l Grp.*, 2012 WL 2370523, at *5 (D.S.C. June 22, 2012); *see also Amchem Prods., Inc.*, 521 U.S. at 617 (stating that certification is especially important in cases with relatively small recoveries per class member “to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights”). Because it would be economically unreasonable for Settlement Class Members to adjudicate their separate claims individually, the superiority of a class action is evident. Proceeding as a class action, rather than a host of separate individual trials, would provide significant economies in time, effort, and expense,

and permit Settlement Class Members to seek damages that would otherwise be too costly to pursue.

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

IV. 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 Settlement 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.

As a general matter, “the law strongly favors settlements. Courts should hospitably receive them.” *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990) (noting it is especially true in “a protracted, highly divisive, even bitter litigation”). Courts adhere to “an initial presumption of fairness when a proposed class settlement, which was negotiated at arm’s length by counsel for the class, is presented for court approval.” 4 Newberg on Class Actions § 11.41; *see also Petrovic*, 200 F.3d at 1148 (8th Cir. 1999) (“A strong public policy

favors [settlement] agreements, and courts should approach them with a presumption in their favor.”); *Marshall v. Nat’l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) (“A settlement agreement is ‘presumptively valid.’” (quoting *In re Uponor, Inc., F1807 Plumbing Fittings Products Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013))); *Sanderson v. Unilever Supply Chain, Inc.*, 10-cv-00775-FJG, 2011 WL 5822413, at *3 (W.D. Mo. Nov. 16, 2011) (crediting the judgment of experienced class counsel that settlement was fair, reasonable, and adequate). The presumption in favor of settlements is particularly strong “in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005).

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

A. The merits of 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 and recovering on the merits at trial, 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).

Against this risk, the Settlements provide for recovery of \$138.5 million from just two of the five defendants in the Actions. As discussed in detail below, these settlements are supported by the financial condition of the Settling Defendants, who lack the ability to pay the cumulative damages alleged and sought in the *Burnett* and *Moehrl* litigations.

The Settlements further provide meaningful changes to the Settling Defendants' business practices to protect Class Members who sell homes in the future. Among other things, the Settling Defendants have committed to take steps to educate their affiliated agents that (a) the companies do not require listing agents to make offers of compensation to buyer agents; (b) commissions are negotiable; (c) buyer agents may not represent that their services are free; (d) offers of compensation to buyer brokers should be disclosed to buyers; (e) buyer agents should not filter listings based on level of compensation offered unless instructed by buyer clients to do so; (f) buyer agents are obligated to show relevant properties to their clients regardless of the level of compensation offered; and (g) that Anywhere company owned brokerages may not require minimum client commissions. (Anywhere ¶ 51(i)–(ix); RE/MAX ¶ 51(i)–(ix)). Crucially, nothing in the Settlements precludes the *Burnett* and *Moehrl* Plaintiffs from obtaining additional injunctive relief—including changes to the rules being challenged in both cases—from NAR or the other non-Settling Defendants through trial or further settlements.

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 from the remaining defendants, including necessary changes to NAR rules. As courts recognize, this is a significant

factor in approving settlements. *See In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (approving settlement in light of settling defendant’s “assistance in the case against [a non-settling defendant]”); *see generally In re IPO Sec. Litig.*, 226 F.R.D. 186, 198–99 (S.D.N.Y. 2005) (recognizing the value of cooperating defendants in complex class action litigation).

Finally, the Settlements’ terms were reached as the product of arm’s length negotiations over a period of multiple years, including nearly a year of intensive negotiations, and involved the assistance of multiple well-respected mediators. Plaintiffs held several in-person mediation sessions with Anywhere over a span of months from December of last year through August of this year. Plaintiffs also held virtual mediation sessions with RE/MAX, which were attended by senior RE/MAX executives including its General Counsel and Chief Financial Officer. (Berman Decl. ¶ 9; Dameron Decl. ¶ 12). “When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.” *Marcus v. Kansas*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002).

B. Defendants’ financial conditions

The Settlements are fair and reasonable in light of the financial condition of Settling Defendants, Anywhere and RE/MAX, and the limited resources available to each to satisfy a settlement as compared to the size of the potential damages. (Berman Decl. ¶ 13; Dameron Decl. ¶¶ 7-9).

With respect to Settling Defendant Anywhere Real Estate, *the settlement of \$83.5 million represents a significant proportion (more than 13%) of the company’s total market capitalization value of approximately \$634 million.*⁴ Further, the company’s June 30, 2023

⁴ <https://finance.yahoo.com/quote/HOUS?p=HOUS&.tsrc=fin-srch> (last viewed Oct. 5, 2023 at 1:50pm).

financial statements (the statements that had been filed with the Securities and Exchange Commission most recently prior to the mediation) further demonstrate that the company is unable to pay a materially higher amount.⁵ These reported financial results show that the company had total cash and equivalents of \$179 million and few other tangible assets that could be used to satisfy a judgment. *Id.* at 8. Any company needs some cash on hand to fund its operations, and the Settlement captures a large proportion of this cash, without depleting the working capital the company requires to operate. The Settlement is also significant in light of Anywhere's lack of total cumulative income. Over the last three years, according to generally accepted accounting principles, Anywhere's total net income has been negative \$297 million. *See* Anywhere Real Estate, Inc. Form 10-K at F-8 (p. 86) (February 24, 2023).

Further, the declining real estate market has caused the company to suffer a decrease in revenues of 32.4% from the first six months of 2022. *Id.* The decrease in revenues led to a loss of \$119 million for the first six months of 2023, when the company had reported a profit of \$111 million for the first six months of the previous year. *Id.* There is no indication that residential real estate sales will increase significantly in the near future, and any continued losses suffered by the company in future periods would only create more risk for the classes in delaying settlement. This is particularly concerning because Anywhere has a significant debt load of more than \$2.8 billion dollars, far in excess of its market capitalization. *See* Anywhere Real Estate, Inc. Form 10-Q at p. 8 (August 4, 2023). In short, the Settlement captures the highest amount that the Class could reasonably expect at the current date, and the company's financial condition makes it unlikely that a higher amount could be paid in the future even if Plaintiffs were to obtain a successful trial verdict against Anywhere.

⁵ Anywhere Real Estate, Inc. Form 10-Q (Aug. 4, 2023).

The Settlement with RE/MAX is similarly fair and reasonable in light of its financial condition. *The settlement of \$55 million represents approximately 14.2% of the company's total market capitalization value of approximately \$386 million.*⁶ Further, the company's June 30, 2023 financial statements (the statements that had been filed with the Securities and Exchange Commission most recently prior to the mediation) further demonstrate that the company is unable to pay a materially higher amount, with the Settlement Amount capturing 56.9% of the company's total cash and equivalents of \$96.8 million.⁷ *Id.* at 8. RE/MAX also has debt covenants that significantly limit the ability of RE/MAX to draw on financing sources, such as their revolver, to fund the Settlement Amount. The Settlement Amount is also fair and reasonable in light of RE/MAX's cumulative total net income over the three years ended December 31, 2022 of approximately \$6.7 million total dollars. The Settlement Amount represents more than eight times RE/MAX's total cumulative net income during that period.

Further, the Settlement captures the entirety of the company's reported net equity (total assets less total liabilities), which was only \$24 million on June 30, 2023. Similar to Anywhere, RE/MAX's net income fell 80.6% from the first six months of 2022 to the first six months of 2023 and its cash position declined from \$108.7 million on December 31, 2022 to \$96.8 million on June 30, 2023. *Id.* at 3–4.

C. The Complexity and Expense of Further Litigation

Plaintiffs' claims raise numerous complex legal and factual issues under antitrust law. This is reflected in the parties' voluminous briefing to date, which includes extensive class certification

⁶ <https://finance.yahoo.com/quote/RMAX?p=RMAX&.tsrc=fin-srch> (last viewed Oct. 5, 2023 at 1:50pm).

⁷ RE/MAX Holdings, Inc., Quarterly Report (Form 10-Q), at 3 (Aug. 2, 2023). A true and correct copy can be downloaded at: <https://www.sec.gov/Archives/edgar/data/1581091/000155837023012941/0001558370-23-012941-index.htm>.

briefing in both *Moehrl* and *Burnett*, as well as summary judgment briefing in *Burnett*. In addition, the parties have engaged in extensive appellate briefing, including (rejected) Rule 23(f) petitions in both *Moehrl* and *Burnett* as well as two separate appeals in the *Burnett* litigation concerning arbitration issues. The *Burnett* litigation is nearing trial, but trial itself promises to be a complex and laborious event. Furthermore, in the event that the *Burnett* Plaintiffs are successful at trial, they anticipate that any remaining Defendants would pursue appellate review of the jury verdict. In *Moehrl*, the Plaintiffs still have to navigate both a complex summary judgment process, including six different experts that may testify on behalf of defendants at trial. By contrast, the Settlement ensures recovery to the Class that will be allocated and distributed in an equitable manner. In light of the many uncertainties still pending in the litigation, an equitable and certain recovery is highly favorable, and weighs in favor of approving the proposed Settlement. (Berman Decl. ¶¶ 8, 12-13; Dameron Decl. ¶ 9).

D. The Amount of Opposition to the Settlement

The Settlement Class Representatives in both *Moehrl* and *Burnett* have been provided the Settlement Agreements for review and approved the terms of the Settlements. (Berman Decl. ¶ 14; Dameron Decl. ¶ 13). 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).⁸

The Settlements also satisfy each of these factors. First, Settlement Class Representatives and Class Counsel have adequately represented the Class. Indeed, both this Court and the *Moehrl* Court previously appointed Settlement Class Counsel as class counsel on behalf of the *Burnett* and *Moehrl* classes at the class certification stage. Both courts have also previously appointed the proposed Settlement Class Representatives as representatives on behalf of the respective classes. (*Burnett*, 2022 WL 1203100; *Moehrl*, 2023 WL 2683199). Second, as discussed above, the Settlements were negotiated at arm's length, with the assistance of professional mediators, over an extended period across multiple mediations. Third, for the reasons stated above, the relief provided to the Class is adequate. The Settlements provide significant financial recovery for the Settlement Class, considering the limited financial resources that both Defendants had available. Furthermore, the Settlements include remedies for the challenged conduct with relief that meaningfully changes Defendants' business practices. Fourth, the Settlements treat Class Members fairly and equitably relative to each other. Furthermore, as part of Final Approval, an allocation plan will be submitted

⁸ See generally *Bishop v. DeLaval Inc.*, No. 5:19-cv-06129, 2022 WL 18957112, at *1 (W.D. Mo. July 20, 2022) (Judge Bough); *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).

for approval by the Court that ensures an equitable distribution of monetary funds amongst the Settlement Class.

V. THE COURT SHOULD APPOINT CO-LEAD CLASS COUNSEL FOR THE CERTIFIED CLASSES IN BURNETT AND MOEHL AS CO-LEAD COUNSEL FOR THE SETTLEMENT CLASS

Fed R. Civ. P. 23(g) requires a court certifying a case as a class action to appoint class counsel. Plaintiffs respectfully request that the Court appoint *Burnett* and *Moehrl* Lead Counsel as Settlement Class Counsel, namely Ketchmark & McCreight, Boulware Law LLC, Williams Dirks Dameron LLC, Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Susman Godfrey LLP.⁹ Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. (Berman Decl. ¶¶ 3-4). Moreover, as detailed above, they have diligently prosecuted this case for over four years, handling, among other things, motions to dismiss, protracted fact discovery from parties and non-parties, review and synthesis of millions of pages of documents, expert discovery, discovery disputes, class certification, and depositions of fact and expert witnesses. (Berman Decl. ¶ 11.; Dameron Decl. ¶¶ 3-7). Both this Court and the *Moehrl* Court have already recognized Lead Counsels' diligent prosecution of their cases by appointing them as Class Counsel for the *Burnett* and *Moehrl* Classes, respectively, as part of their rulings on class certification. Class Counsel have participated in a lengthy mediation process to achieve the best possible result for the classes.

VI. DEFERRING CLASS NOTICE IS APPROPRIATE IN THIS CASE

⁹ This appointment is solely with respect to the Settlement Class. *Moehrl* Lead Counsel are not seeking appointment as Counsel on behalf of the *Burnett* Class in any way with respect to the still pending litigation claims in *Burnett*. *Burnett* Lead Counsel are likewise not seeking appointment as Counsel on behalf of the *Moehrl* Class in any way with respect to the still pending litigation in *Moehrl*.

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.”

Plaintiffs seek to defer formal notice of the Settlement Agreements to the Settlement Class.¹⁰ In light of the proposed nationwide Settlement Class consisting of over 30 million home sellers, Plaintiffs are working to gather additional Class Member contact information from defendants and other sources. (Berman Decl. ¶ 15). As part of the Settlement Agreements, the Settling Defendants have agreed to use reasonable efforts at their expense to provide Class Member data in support of the provision of class notice. (Anywhere Agreement ¶ 55(iii); RE/MAX Agreement ¶ 55(iii)). If necessary, pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), Plaintiffs may also seek permission to serve subpoenas for the limited purpose of collecting Class Member contact information in order to facilitate notice.

After pursuing additional Class Member contact information, Plaintiffs intend to file a motion to direct notice. *See, e.g., McKinney v. U.S. Postal Serv.*, 292 F.R.D. 62, 68 (D.D.C. 2013) (court deferred the issuance of class notice “pending the completion of [an] additional six-month search period” that would “allow [party’s] counsel to locate more accurate information” regarding class members). The proposed notice plan will, pursuant to Rule 23(c)(2)(B), provide the “best notice practicable” to all potential Settlement Class Members who will be bound by the proposed

¹⁰ Plaintiffs and Settling Defendants have agreed that the timing of a request to disseminate notice to the Settlement Class of the Settlement Agreement is at the discretion of proposed Co-Lead Class Counsel, and may be combined with notice of other settlements in this action. (Anywhere ¶ 26; RE/MAX ¶ 26).

Settlement Agreements. Plaintiffs anticipate submitting a proposed notice plan promptly following the completion of the trial in this case against the non-settling Defendants.

VII. CONCLUSION

The Settlement Agreements provide an immediate, substantial, and fair recovery for the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements; (2) certifying the Settlement Class for settlement purposes only; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing *Burnett* Class Counsel and *Moehrl* Class Counsel as Settlement Class Counsel; and (5) deferring notice of the Settlement Agreements to the Settlement Class until an appropriate future date.

Dated: October 5, 2023

Respectfully submitted by:

WILLIAMS DIRKS DAMERON LLC

/s/ Matthew L. Dameron

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of October 2023, the foregoing was electronically filed through the Court's ECF system which will send notification of the same to all counsel of record.

/s/ Matthew L. Dameron

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. 19-CV-00332-SRB

**DECLARATION OF STEVE W. BERMAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENTS WITH ANYWHERE REAL ESTATE AND RE/MAX LLC,
CERTIFICATION OF SETTLEMENT CLASS,
AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

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

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

2. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Settlements with Anywhere Real Estate and RE/MAX, Certification of Settlement Class, and Appointment of Settlement Class Counsel. Based on personal knowledge or discussions with counsel in my firm and co-counsel regarding the matters stated herein, if called upon, I could and would testify competently thereto.

3. I have served as lead or co-lead counsel in antitrust, securities, consumer, products liability, and employment class actions, and other complex litigation matters throughout the country. For example, I have represented thousands of plaintiffs in large antitrust cases and have achieved favorable results for them. I was the lead trial lawyer in *In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, MDL No. 2541 (N.D. Cal.) where the class obtained injunctive relief following a bench trial. As co-lead counsel in *In re Visa Check/Mastercard Antitrust Litigation*, 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 Litigation*, No. 10-md-2143-RS (N.D. Cal.), *In re Electronic Books Antitrust Litigation*, No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-02430 (N.D. Cal.), obtaining court-approved settlements for class members in all three cases. I was approved as co-lead counsel to represent a certified class of thousands of consumers in *In re Broiler Chicken Antitrust Litigation*, No. 1:16-cv-08637 (N.D. Ill. May 27, 2022), ECF No.5644. I have negotiated numerous settlements in class and non-class cases during my decades of practice.

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

5. On behalf of Plaintiffs, other Co-Lead Counsel and I personally conducted intensive settlement negotiations with counsel for Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”) and RE/MAX, LLC (“RE/MAX”) (collectively “Settling Defendants”) over the course of nearly a year.

6. Plaintiffs and Anywhere executed a Settlement Agreement on October 5, 2023. Attached as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and Anywhere.

7. Plaintiffs and RE/MAX likewise executed a Settlement Agreement on October 5, 2023. Attached as Exhibit B is a true and accurate copy of the Settlement Agreement between Plaintiffs and RE/MAX.

8. 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 Class, 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.

9. Plaintiffs' Co-Lead Counsel and counsel for Anywhere engaged in extensive arm's-length settlement negotiations that lasted nearly a year, from December 2022 through August 2023, including several telephonic and in-person mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a mediation with a federal magistrate judge, leading to the Settlement Agreement with Anywhere. Plaintiffs' Co-Lead Counsel and counsel for Anywhere also participated in dozens of one-on-one calls as part of the settlement negotiations. Plaintiffs' Co-Lead Counsel and counsel for RE/MAX further held several mediations over a multi-month process, including a mediation with a nationally recognized and highly experienced mediator, as well as numerous direct communications. The mediation sessions with RE/MAX were attended by senior RE/MAX executives including its general counsel and chief financial officer.

10. 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.

11. When the Settlement Agreements were executed, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed items in order to obtain important evidence to support their claims. The parties conducted over 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six

experts and *Burnett* Plaintiffs engaged five experts to support their claims and to rebut 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 *Burnett* Plaintiffs also briefed summary judgment and began preparing for trial, including against the Settling Defendants. Based on their extensive investigative and analytical efforts, Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements.

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

13. Moreover, Plaintiffs and counsel conducted a thorough financial analysis of the limited ability to pay of both Anywhere and RE/MAX, and whether Anywhere and RE/MAX could withstand a greater monetary judgment, which directly affected the monetary amounts that it was feasible to recover from both Settling Defendants through settlement. In my opinion, the Settlements are fair and reasonable in light of the financial condition of Anywhere and RE/MAX.

14. The Settlement Class Representatives in *Moehrl* have been provided the Settlement Agreements for review and approved the terms of the Settlements.

15. Plaintiffs seek to defer formal notice of the Settlement Agreements to the Settlement Class. In light of the proposed nationwide Settlement Class consisting of over 30 million home sellers, Plaintiffs are working to gather additional Class Member contact information from defendants and other sources. As part of the Settlement Agreements, the Settling Defendants have agreed to use reasonable efforts at their expense to provide Class Member data in support of the provision of class notice. If necessary, Plaintiffs may also seek permission to serve subpoenas for the limited purpose of collecting Class Member contact

information in order to facilitate notice. After pursuing additional Class Member contact information, Plaintiffs intend to file a motion to direct notice with the Court.

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

Executed October 5, 2023, at Seattle, Washington.

/s/ Steve W. Berman
STEVE W. BERMAN

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

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

Plaintiffs,

v.

Case No. 19-CV-00332-SRB

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

Defendants.

DECLARATION OF MATTHEW L. DAMERON

I, Matthew L. Dameron, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I respectfully submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlements.
2. I am a partner at Williams Dirks Dameron LLC. Along with Ketchmark & McCreight P.C. and Boulware Law, my firm was one of three firms appointed as Class Counsel by this Court.
3. The proposed Settlements are the product of protracted, lengthy litigation between the Settlement Class and the Settling Defendants (Anywhere and RE/MAX). During the nearly five years of litigation, the parties have engaged in dozens of depositions and numerous hearings related to discovery and other matters.

4. Moreover, in *Burnett*, the parties have navigated several substantive and significant litigation thresholds, including motions to dismiss, class certification (including an unsuccessful interlocutory appeal under Rule 23(f)), and summary judgment.

5. *Burnett* also implicated the complex issue of arbitration, and the parties in *Burnett* twice engaged in lengthy appellate proceedings related to arbitration—proceedings that required full appellate briefing and oral argument before the U.S. Court of Appeals for the Eighth Circuit.

6. *Burnett* is also on the eve of trial, and the Settling Defendants engaged in lengthy pretrial litigation in *Burnett*, including competing jury instructions, multiple motions in limine, and other trial-related matters.

7. Based on this lengthy and involved litigation background, Class Counsel in *Burnett* can evaluate the value of the proposed Settlements and their multiple benefits to the Settlement Class, particularly where those benefits are weighed against the risks associated with further litigation and the financial wherewithal of the Settling Defendants.

8. Regarding the latter point—the Settling Defendants’ financial ability to pay any judgment—Class Counsel, along with the counsel in *Moehrl*, carefully scrutinized the financial conditions of Anywhere and RE/MAX, including their available funds to pay any settlement, their current and prospective financial conditions, and their ability to withstand a judgment if Plaintiffs prevail at trial.

9. Based on this review and the Settling Defendants’ financial condition, Class Counsel in *Burnett* have concluded that the proposed Settlements represent fair and reasonable Settlements under the circumstances.

10. This is particularly true when the Court considers the non-monetary terms of the proposed Settlements and the meaningful relief those terms offer to consumers on a going-forward basis.

11. Class Counsel in *Burnett* reached these conclusions based on the knowledge we acquired about the real estate industry through the litigation, as well as our knowledge of the issues affecting the potential outcome of the litigation and trial.

12. Moreover, we came to our conclusions based on lengthy and various dispute resolution efforts over the course of the case, including multiple mediations with a nationally recognized mediator; mediations with a retired federal judge; and a mediation with a federal magistrate judge from this District. The parties also engaged in ongoing informal discussions with the mediators, as well as direct conversations.

13. We have provided the proposed Settlement Agreements to the Settlement Class Representatives in *Burnett* and discussed the terms with them; the Settlement Class Representatives approve of the proposed Settlements.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 5, 2023


MATTHEW L. DAMERON

Declaration of Steve W. Berman

Exhibit A

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:19-cv-01610
Judge Andrea R. Wood

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 5th day of October, 2023 (the “Execution Date”), by and between defendant Anywhere Real Estate, Inc. (f/k/a Realty Holdings Corp.) (“Anywhere”) and plaintiffs Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, (collectively “Plaintiffs”), who filed suit in the above captioned actions (“the Actions”), both individually and as representatives of one or more classes of home sellers. Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

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

WHEREAS, Anywhere 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 Anywhere, including several telephonic and in-person mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a mediation with a federal magistrate judge, leading to this Settlement Agreement;

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

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

WHEREAS, Anywhere believes that it is not liable for the claims asserted and has good defenses to Plaintiffs' claims, 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 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, Anywhere, 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 Anywhere and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to Anywhere only, without costs to Plaintiffs, the Settlement Class or Anywhere except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. "Burnett" means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.
2. "Burnett MLSs" means the multiple listing services at issue in Burnett.
3. "Corporate Defendants" means HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX LLC, and Keller Williams Realty, Inc.
4. "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

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

6. “Defendants” means the National Association of Realtors, Realogy Holdings Corp., HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX LLC, and Keller Williams Realty, Inc.

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

8. “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 Anywhere 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-Anywhere Defendant or any person or entity related to the Non-Anywhere 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.

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

10. “Moehrl MLSs” means the multiple listing services at issue in Moehrl.

11. “MLS PIN” means the multiple listing service at issue in District of Massachusetts Case No. 1:20-cv-12244-PBS, which is currently pending.

12. “Non-Anywhere Defendants” means the National Association of Realtors, HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX LLC, and Keller Williams Realty, Inc.

13. “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.

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

15. “Released Parties” means Anywhere 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 (collectively, together with franchisees, the “Anywhere Entities”), 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, and all of the franchisees’ officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, “Released Parties” shall not include the Non-Anywhere Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the Anywhere Entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with the Anywhere Entities and excluded for the periods of time they were associated with a different Corporate Defendant.

16. “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.

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

18. “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:

- a. Moehrl MLSs: March 6, 2015 to date of notice;
- b. Burnett MLSs: April 29, 2014 to date of notice;
- c. MLS PIN: December 17, 2016 to date of notice;
- d. All other MLSs: four years prior to (i) the date a new or amended complaint (if any) is filed in the Actions reflecting any MLSs aside from the Moehrl MLSs, Burnett MLSs, and MLS PIN or (ii) the date of notice, whichever is earlier, up to the date of notice.

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

20. “Settling Parties” means Plaintiffs and Anywhere.

21. “Total Monetary Settlement Amount” means \$83.5 million 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 Anywhere will pay nothing apart from the Total Monetary Settlement Amount.

B. Stipulation to Class Certification

22. The Settling Parties hereby stipulate for purposes of this Settlement only that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes as to Anywhere. 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.

23. 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 Anywhere 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

24. 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 Anywhere; and Anywhere's cooperation by identifying public information reflecting its ability to pay limitations. The Settling Parties further agree that Co-Lead Counsel may seek whatever approvals are required by the court in *Moehrl* related to obtaining approval of and effectuating his Settlement Agreement.

25. By October 5, 2023, Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the “Motion”). The Motion shall include: (a) a proposed form of order preliminarily approving the Settlement; and (b) a proposed form of final judgment order. Within a reasonable time in advance of submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to Anywhere for its review. To the extent that Anywhere 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.

26. After preliminary approval, and subject to approval by the Court, the Settling Parties will agree on a method or methods of providing notice of this Settlement to the Settlement Class and for claim administration that meet the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties will also agree on a claim administrator after receiving multiple competing bids. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel.

27. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, the claims administrator, if one has been selected, or Anywhere if a claims administrator has not yet been selected shall at Anywhere’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.

28. 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 Anywhere:

(a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(3), solely for purposes of this Settlement;

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

(c) directing that, as to Anywhere 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 Anywhere.

29. 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

30. 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. 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 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.

31. 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.

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

E. Payment of the Settlement Amount

33. 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 14 business days after the Escrow

Account has been opened and preliminary approval is granted, Anywhere will deposit \$10 million into the Escrow Account. Within 14 business days after the district court awards fees and costs, Anywhere will deposit into the Escrow Account an additional \$20 million. Anywhere will pay the remaining balance of the Total Monetary Settlement Amount into the Escrow Account within 21 business days after the Effective Date. The Escrow Account will be administered in accordance with the provisions of Section F of this Settlement Agreement.

F. The Settlement Fund

34. 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 Anywhere’s monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

35. 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 Paragraph 55(iii). 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.

36. 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. Anywhere will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$3,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-Anywhere Defendants and notice of one or more other settlements is included in the notice of the Anywhere settlement, then the cost of such notice will be apportioned equitably between (or among) the Anywhere 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 Anywhere in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

37. 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 awards up to the amount specified in Paragraph 33 above for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-Lead Counsel in accordance with and attaching the Court's Order, provided that each Co-Lead Counsel receiving payment signs an assurance, in the form attached hereto as Appendix A, attesting that they will repay all awarded amounts if this Settlement Agreement does not become Effective.

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

39. Anywhere 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. Anywhere's only payment obligation is to pay the Total Monetary Settlement Amount.

40. 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 Anywhere regardless of the claims that are made.

41. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 36 and 37 above and 44 below.

42. 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. Anywhere 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 Stipulation 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 Anywhere 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.

43. 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 Anywhere or the Released Parties.

G. Taxes

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

45. 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 or set aside on appeal, or if the Court does not enter final approval as provided for in Paragraph 28 herein, 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 Anywhere or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed

and served within ten (10) business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of the 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 decision of certain Settlement Class Members to opt out of the Settlement shall not be a basis for Anywhere to rescind or terminate the Settlement Agreement.

46. 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 Anywhere. 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 Anywhere. 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 Anywhere.

47. 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 September 5, 2023. Plaintiffs and Anywhere agree that any rulings or judgments that occur in the Actions after September 5, 2023 and before this Settlement Agreement is rescinded will not bind Plaintiffs, Anywhere or any of the Released Parties. Plaintiffs and Anywhere agree to waive any argument of claim or issue preclusion against Plaintiffs or Anywhere 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. Anywhere and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by Anywhere or the Plaintiffs.

48. Anywhere warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Settlement Agreement is executed. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Total Monetary Settlement Amount, or any portion thereof, by or on behalf of Anywhere 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 Anywhere, then, at the election of Co-Lead Counsel, the Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

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

I. Practice Changes

51. As soon as practicable, and in no event later than six months after the Effective Date, Anywhere (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors, but not franchisees) will implement the following practice changes:

- i. refrain from adopting any Anywhere requirements that Anywhere company owned brokerages, franchisees, or agents (i) belong to NAR or (ii) follow NAR’s Code of Ethics or MLS Handbook. (This provision automatically terminates if NAR reaches a settlement agreement or is subject through court order to injunctive relief in these matters.);
- ii. advise and periodically remind the Anywhere company owned brokerages, franchisees, and their agents that there is no Anywhere 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;

iii. require that any Anywhere 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 Anywhere will require that any company owned brokerages and their agents (and recommend and encourage that any Anywhere franchisees and their agents) include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable.

iv. prohibit the Anywhere 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;

v. to the extent allowed by MLS rules and/or the capabilities of third-party platforms that operate websites for Anywhere, require that the Anywhere company owned brokerages and their agents include, at the earliest possible moment, the listing broker's offer of compensation in each active listing shared with prospective buyers through IDX or VOW displays, or through any other form or format;

vi. prohibit the Anywhere 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);

vii. advise and periodically remind the Anywhere 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;

viii. for Anywhere company owned brokerages eliminate any minimum client commission requirements; and

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

52. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 51 will sunset 5 years after the Effective Date.

53. If a Corporate Defendant settles with the Settlement Class or any similarly situated class of plaintiffs on different practice changes terms than those set forth in Paragraph 51, then Anywhere can choose to adopt the practice changes agreed to by another settling Corporate Defendant instead of the practice changes in this agreement.

54. Anywhere 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

55. Anywhere (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors but not franchisees) will provide valuable cooperation to Plaintiffs as follows:

- i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
- ii. use reasonable efforts to provide the facts necessary to establish that documents and/or things produced by it in the Actions are “business records,” a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;
- iii. use reasonable efforts at Anywhere’s expense to provide relevant class member data and answer questions about that data to support the provision of class notice;
- iv. provide up to three (3) current officers or employees of Anywhere, to be identified and agreed to via a good faith meet and confer process, to participate as witnesses in the *Moehrl* action at *Moehrl* Plaintiffs’ determination, and provide access via counsel to those witnesses prior to trial testimony for up to two (2) hours.
- v. submit a withdrawal of expert designations and obtain agreement with any separately retained experts that they will not testify at trial as a retained expert for any Non-Anywhere Defendant in the Actions;
- vi. decline to waive any conflict that its counsel may have with respect to representing any parties in the Actions aside from Anywhere and their employees;

viii. if a Non-Anywhere Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of Anywhere, Anywhere will cooperate in providing access via counsel to that witness prior to trial testimony.

56. Anywhere's cooperation obligations, as set forth in Paragraph 55, shall be limited to the production of information, testimony, and/or documents that are not protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.

57. Anywhere'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 Anywhere. 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 all 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.

58. Anywhere 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

59. 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. Anywhere 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 Anywhere, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Anywhere in any proceeding.

60. 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 also participated in mediation sessions with two other mediators. The Settling Parties reached the Settlement Agreement after considering the risks and costs of litigation. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. The terms of the settlement continue to be subject to mediation privilege and must be kept strictly confidential until a motion for preliminary approval is filed—except to the extent reflected in the notices of settlement filed in *Burnett* and *Moehrl* or as necessary for Anywhere to meet its securities reporting obligations.

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

62. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-Anywhere 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-Anywhere 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.

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

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

65. Neither Plaintiffs nor Anywhere 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.

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

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

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

69. 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.

70. Each of the undersigned attorneys represents that he or she is fully authorized to

enter into the terms and conditions of, and to execute, this Settlement Agreement.

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Man Belter

Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC


DocuSigned by:

Tim Gustavson

710F8E3F8B488...
Timothy Gustavson

Senior Vice President, Chief Accounting Officer, and Corporate Controller
Anywhere Real Estate, Inc.

enter into the terms and conditions of, and to execute, this Settlement Agreement.



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC


Timothy Gustavson
Senior Vice President, Chief Accounting Officer, and Corporate Controller
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Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP


Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

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Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

B. B. L.

Boulware Law LLC

Matthew Dameron
Williams Dirks Dameron LLC

APPENDIX A

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:19-cv-01610
Judge Andrea R. Wood

Plaintiffs Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, (collectively “Plaintiffs”) and defendant Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”) (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 Anywhere, based upon written instructions provided

by Anywhere, 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 Anywhere any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Anywhere, 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.

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

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

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

B.B.K.

Boulware Law LLC


Williams Dirks Dameron LLC

Declaration of Steve W. Berman

Exhibit B

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:19-cv-01610
Judge Andrea R. Wood

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 5th day of October, 2023 (the “Execution Date”), by and between defendant RE/MAX, LLC (“RE/MAX”) and plaintiffs Rhonda Burnett, Jerod Breit, Jeremy Keel, Hollee Ellis, Frances Harvey, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, (collectively “Plaintiffs”), who filed suit in the above captioned actions (“the Actions”), both individually and as representatives of one or more classes of home sellers. Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

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

WHEREAS, RE/MAX 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 RE/MAX, including several telephonic mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal court judge, and a mediation with a federal magistrate judge, leading to this Settlement Agreement;

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

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

WHEREAS, RE/MAX believes that it is not liable for the claims asserted and has good defenses to Plaintiffs’ claims, 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, RE/MAX, 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 RE/MAX and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to RE/MAX only, without costs to Plaintiffs, the Settlement Class or RE/MAX except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. "Burnett" means Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.
2. "Burnett MLSs" means the multiple listing services at issue in Burnett.
3. "Corporate Defendants" means HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX, LLC, Realogy Holdings Corp. (including its successor Anywhere Real Estate Inc.), and Keller Williams Realty, Inc.

4. "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

5. "Court" means the U.S. District Court for the Western District of Missouri.
6. "Defendants" means the National Association of Realtors, Realogy Holdings Corp. (including its successor Anywhere Real Estate Inc.), HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX, LLC, and Keller Williams Realty, Inc.
7. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.
8. "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 RE/MAX 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-RE/MAX Defendant or any person or entity related to the Non-RE/MAX 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.

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

10. “Moehrl MLSs” means the multiple listing services at issue in Moehrl.

11. “MLS PIN” means the multiple listing service at issue in District of Massachusetts Case No. 1:20-cv-12244-PBS, which is currently pending.

12. “Non-RE/MAX Defendants” means the National Association of Realtors, HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, The Long & Foster Companies, Inc., Realogy Holdings Corp. (including its successor Anywhere Real Estate Inc.), and Keller Williams Realty, Inc.

13. “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.

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

15. “Released Parties” means RE/MAX 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 (collectively, together with franchisees, the “RE/MAX Entities”), and all of their respective franchisees, sub-franchisors, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, and all of the franchisees’ and sub-franchisors’ officers, directors, managing directors, employees, agents, and independent contractors. Notwithstanding this definition, “Released Parties” shall not include the Non-RE/MAX Defendants, or their past, present and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, and successors, and all of their respective franchisees, officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. For the avoidance of doubt, individuals who were members of the National Association of Realtors are not thereby excluded from being Released Parties, and entities and individuals that were sometimes associated with the RE/MAX Entities and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with RE/MAX and excluded for the periods of time they were associated with a different Corporate Defendant.

16. “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.

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

18. “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:

- a. Moehrl MLSs: March 6, 2015 to date of notice;
- b. Burnett MLSs: April 29, 2014 to date of notice;
- c. MLS PIN: December 17, 2016 to date of notice;
- d. All other MLSs: four years prior to (i) the date a new or amended complaint (if any) is filed in the Actions reflecting any MLSs aside from the Moehrl MLSs, Burnett MLSs, and MLS PIN or (ii) the date of notice, whichever is earlier, up to the date of notice.

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

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

20. “Settling Parties” means Plaintiffs and RE/MAX.

21. “Total Monetary Settlement Amount” means \$55.0 million 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 RE/MAX will pay nothing apart from the Total Monetary Settlement Amount.

B. Stipulation to Class Certification

22. 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 RE/MAX. 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.

23. 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 RE/MAX 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

24. 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 RE/MAX; and RE/MAX’s cooperation by providing information reflecting its ability

to pay limitations and, if requested by Co-Lead Counsel, a declaration describing and attesting to those limitations. The Settling Parties further agree that Co-Lead Counsel may seek whatever approvals are required by the court in *Moehrl* related to obtaining approval of and effectuating his Settlement Agreement.

25. On or before October 5, 2023, Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). The Motion shall include: (a) a proposed form of order preliminarily approving the Settlement; and (b) a proposed form of final judgment order. Within a reasonable time in advance of submission to the Court, and no fewer than one court day, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to RE/MAX for its review. To the extent that RE/MAX 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.

26. After preliminary approval, and subject to approval by the Court, the Settling Parties will agree on a method or methods of providing notice of this Settlement to the Settlement Class and for claim administration that meet the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties will also agree on a claim administrator after receiving multiple competing bids. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of co-Lead Counsel.

27. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, the claims

administrator, if one has been selected, or RE/MAX if a claims administrator has not yet been selected, shall at RE/MAX'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.

28. 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 RE/MAX:

(a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), solely for purposes of this Settlement;

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

(c) directing that, as to RE/MAX 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 RE/MAX.

29. 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

30. 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 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.

31. 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.

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

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

E. Payment of the Settlement Amount

33. 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 10 business days after the term sheet already executed by the parties, RE/MAX will deposit twenty-five percent of the Settlement Amount into the qualified settlement fund. Within 10 business days following preliminary approval of the settlement by the district court, RE/MAX will deposit twenty-five percent of the Settlement Amount into the qualified settlement fund. RE/MAX will deposit the remaining fifty percent of the Settlement Amount into the qualified settlement fund within 10 business days after the district court issues final approval of the settlement. 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 RE/MAX.

F. The Settlement Fund

34. 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 RE/MAX’s monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

35. 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 55. 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.

36. 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. RE/MAX will not object to Plaintiffs' counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$3,500,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-RE/MAX Defendants and notice of one or more other settlements is included in the notice of the RE/MAX settlement, then the cost of such notice will be apportioned equitably between (or among) the RE/MAX 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 RE/MAX in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

37. Subject to Co-Lead Counsel's sole discretion as to timing, except that the timing must be consistent with rules requiring that Settlement Class Members be given the opportunity to review fee applications, Co-Lead Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and current and former class representative service awards to be paid out of the Settlement Fund. Within 14 business days after any order by the Court awarding attorneys' fees, expenses, or class representative incentive awards, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award up to the amount specified in Paragraph 21 above for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-Lead Counsel in accordance with and attaching the Court's Order,

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

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

39. RE/MAX 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. RE/MAX's only payment obligation is to pay the Total Monetary Settlement Amount.

40. 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 RE/MAX regardless of the claims that are made.

41. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 36 and 37 above and 44 below.

42. 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. RE/MAX 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 Stipulation 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 RE/MAX 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 modified 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.

43. 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 RE/MAX or the Released Parties.

G. Taxes

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

45. 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 or set aside on appeal, or if the Court does not enter final approval as provided for in Paragraph 28 herein, 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 RE/MAX or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within ten (10) business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of the 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 decision of certain Settlement Class Members to opt out of the Settlement shall not be a basis for RE/MAX to rescind or terminate the Settlement Agreement.

46. 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 RE/MAX. 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 RE/MAX. 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 RE/MAX.

47. 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 September 15, 2023. Plaintiffs and RE/MAX agree that any rulings or judgments that occur in the Actions after September 15, 2023 and before this Settlement

Agreement is rescinded will not bind Plaintiffs, RE/MAX or any of the Released Parties. Plaintiffs and RE/MAX agree to waive any argument of claim or issue preclusion against Plaintiffs or RE/MAX 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. RE/MAX and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by RE/MAX or the Plaintiffs.

48. RE/MAX warrants and represents that it is not “insolvent” within the meaning of applicable bankruptcy laws as of the time the Settlement Agreement is executed. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Total Monetary Settlement Amount, or any portion thereof, by or on behalf of RE/MAX 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 RE/MAX, then, at the election of Co-Lead Counsel, the Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

50. RE/MAX reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Out Sellers.

I. Practice Changes

51. As soon as practicable, and in no event later than six months after the Effective Date, RE/MAX (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors but not

franchisees) will implement the following practice changes:

i. make clear and periodically remind franchisees and agents affiliated with those franchisees that it does not require them to make offers of compensation to or accept offers of compensation from cooperating brokers or that, if made, does not require such offers to be blanket, unconditional, or unilateral;

A. RE/MAX will make clear that (i) franchisees and affiliated agents must be transparent to prospective home sellers and buyers that broker commissions are not set by law and are negotiable and (ii) buyer-side brokers and agents must be transparent regarding the cooperative compensation offered on any listings for which a client requests information. Toward that end, RE/MAX will 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. RE/MAX will further recommend and encourage that, in the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents is a government or MLS-specified form, franchisees and their agents include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable.

ii. make clear that franchisees and affiliated agents acting as buyer-side brokers or agents must be transparent with their clients in accurately disclosing their compensation structure in connection with each transaction and must refrain from advertising or otherwise

representing that their services are free (unless they are, in fact, not receiving any compensation for those services from any party);

iii. display offers of compensation made by listing brokers or agents, where such data is available and/or provided to REMAX for all active listings shared on REMAX.com and recommend and encourage that franchisees and agents include cooperative compensation offers (if any) on any listings that they publicly display or share with prospective buyers through IDX or VOW displays, or through any other form or format;

iv. not provide software that permits franchisees and affiliated agents 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 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 or 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);

v. expressly advise and periodically remind franchisees and affiliated agents of their obligation to show and market properties regardless of the existence or amount of cooperative compensation offered;

vi. not express or imply a minimum commission requirement in franchise agreements, training materials or other policies;

vii. develop educational materials that reflect and are consistent with each provision in this injunction, and eliminate educational materials, if any, that are contrary to it;

viii. not require franchisees and their affiliated agents to join or be members of the National Association of Realtors or follow NAR's Code of Ethics or MLS Handbook.

52. If not automatically terminated earlier by their own terms, the obligations set forth in Paragraph 51 will sunset 5 years after the Effective Date.

53. If a different Corporate Defendant settles with the Settlement Class or any similarly situated class of plaintiffs on different practice changes terms than those set forth in Paragraph 51, then RE/MAX can choose to adopt the practice changes agreed to by another settling Corporate Defendant instead of the practice changes in this agreement.

54. RE/MAX acknowledges that the practice changes set forth here are a material component of this Settlement Agreement and agrees to use its best efforts to implement the practice changes specified in this Section.

J. Cooperation

55. RE/MAX (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors but not franchisees) will provide valuable cooperation to Plaintiffs as follows:

i. use 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;

ii. use 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;

iii. use reasonable efforts at RE/MAX's expense to provide relevant class member data and answer questions about that data to support the provision of class notice;

iv. provide up to three (3) current officers or employees of RE/MAX, to be identified and agreed to via a good faith meet and confer process, to participate as witnesses in the *Moehrl* action at *Moehrl* Plaintiffs' determination, and provide access via counsel to those witnesses prior to trial testimony for up to two (2) hours.

v. submit a withdrawal of expert designations and obtain agreement with any separately retained experts that they will not testify at trial as a retained expert for any Non-RE/MAX Defendant in the Actions;

vi. decline to waive any conflict that its counsel may have with respect to representing any parties in the Actions aside from RE/MAX and its subsidiaries and their employees;

viii. if a Non-RE/MAX Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of RE/MAX or its subsidiaries, RE/MAX will cooperate in providing access via counsel to that witness prior to trial testimony.

56. RE/MAX's cooperation obligations, as set forth in Paragraph 55, 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.

57. RE/MAX'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 RE/MAX. 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-RE/MAX Defendants and the time for appeal or to seek permission to appeal from the from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such

affirmance is no longer subject to further appeal or review.

58. RE/MAX acknowledges that the cooperation set forth here is a material component of this Settlement Agreement and agrees to use its best efforts to provide the cooperation specified in this Section.

K. Miscellaneous

59. 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. RE/MAX 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 RE/MAX, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by RE/MAX in any proceeding.

60. 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 also participated in mediation sessions with two other mediators. The Settling Parties reached the Settlement Agreement after considering the risks and costs of litigation. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. The terms of the settlement continue to be subject to mediation privilege and must be kept strictly confidential until a motion for preliminary approval is filed—except as necessary for RE/MAX to meet its securities reporting obligations.

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

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

any other Settlement Class Member against (a) any Non-RE/MAX 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-RE/MAX 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.

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

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

65. Neither Plaintiffs nor RE/MAX 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.

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

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

68. 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.

69. Any disputes between RE/MAX and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented first to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to the Court.

70. 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.

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

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP




Ketchmark & McCreight PC

69. Any disputes between RE/MAX and Co-Lead Counsel concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be presented first to Greg Lindstrom for his assistance in mediating a resolution and, if a resolution is not reached, to the Court.

70. 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.

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



Hagens Berman Sobol Shapiro LLP



Cohen Milstein Sellers & Toll PLLC



Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

RE/MAX, LLC

By: 

CF0000003F6240A
Karri Callahan
Chief Financial Officer

B. B. L.

Boulware Law LLC

Matthew Damer
Williams Dirks Dameron LLC

APPENDIX A

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:19-cv-01610
Judge Andrea R. Wood

Plaintiffs Rhonda Burnett, Jerod Breit, Jeremy Keel, Hollee Ellis, Frances Harvey,

Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, (collectively “Plaintiffs”) and defendant RE/MAX, LLC (“RE/MAX”) (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 RE/MAX, based upon written instructions provided by RE/MAX, 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 RE/MAX any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of RE/MAX, 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

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

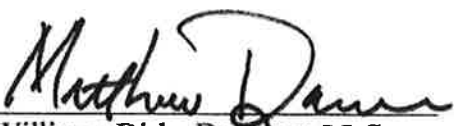
Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC



Boulware Law LLC



Williams Dirks Dameron LLC

EXHIBIT 2

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

**SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS [DOC. 1192]**

On October 5, 2023, Plaintiffs filed their Motion for Preliminary Approval of Settlements with Anywhere Real Estate and RE/MAX [Doc. 1192]. Subsequently, the Court scheduled a hearing for November 20, 2023, to consider the pending Motion. *See* Order [Doc. 1297]. Plaintiffs incorporate herein their Motion for Preliminary Approval of Settlements [Doc. 1192] and respectfully submit these Supplemental Suggestions in Support of the Motion.

Since the initial submission in early October, Plaintiffs’ counsel have been working with Anywhere and RE/MAX to finalize certain aspects of the proposed settlement and notice plan. Specifically, the parties have worked cooperatively to (1) select a proposed notice and claims administrator; (2) develop a notice plan; and (3) draft a proposed long form notice and a proposed claim form for the Court’s consideration. The parties have also submitted a proposed order for the

Court's consideration. In this short statement, Plaintiffs address the plan for notice and claims administration, along with authority certifying a nationwide settlement class in this case.

NOTICE ADMINISTRATOR AND PLAN

The parties have agreed to retain JND Legal Administration ("JND") to administer the proposed notice plan and claims process. JND's qualifications are outlined in the Declaration of Jennifer Keough, attached hereto.

JND anticipates a robust notice plan that achieves at least a 70-95% reach. The notice plan will consist of:

- Direct notice to Settlement Class Members for whom the Settling Defendants provide contact information or for whom contact information is located via other means (e.g., third-party data). The direct notice mechanism will include: email notice for Settlement Class Members for whom an email address is available; postcard notice for Settlement Class Members for whom an email is not available; and a claim stimulation effort consisting of supplemental email notices to Settlement Class Members.
- A targeted digital effort with the leading digital network (Google Display Network – "GDN"), the top social media platform (Facebook), and a respected programmatic partner (OMTD).
- A notice placement in a popular consumer magazine (*Better Homes & Gardens*).
- Additional efforts including an internet search campaign to assist interested Settlement Class Members in finding the case website, the distribution of a national press release, and sponsorships with popular class action websites (TopClassActions.com and ClassAction.org).

- Other digital outreach efforts, including a case-specific website, an established toll-free telephone number, and creation of a case-specific QR Code. The following URL has been reserved for the case-specific website: RealEstateCommissionLitigation.com.

Keough Dec. at ¶¶ 13-64.

Based on her expertise, Keough anticipates that this notice plan will exceed the applicable standards for providing the best practicable notice. *Id.* at ¶¶ 15, 78. Indeed, the proposed media effort alone—even without the benefit of any direct notice—will reach at least 70% of the potential Settlement Class Members, and is “more robust” than other court approved programs. *Id.* at ¶ 65. Thus, the notice plan satisfies Rule 23’s requirements.

Keough advised and provided input on the development of the long form notice (attached as Exhibit B to the Keough Dec.). The long form notice will be available on the case-specific settlement website, and the email and postcard notices will be drafted to be substantially consistent with the long form notice after the Court approves the long form notice.

Keough also advised and provided input on the development of the proposed claim form (attached as Exhibit C to the Keough Dec.), which will be available online on the case-specific website and also available in hard copy to any individual who requests a written form. Keough Dec. at ¶ 71.

JND’s proposed notice plan also provides a mechanism for Settlement Class Members who desire to opt out of or object to the proposed settlements. *Id.* at ¶ 75-77.

In JND’s opinion, the proposed notice program “provides the best notice practicable under the circumstances, is consistent with the requirements of Rule 23, and is consistent with other similar court-approved best notice practicable notice programs.” Keough Dec. at ¶ 78.

JND's proposed notice plan is more than sufficient in a class action like the instant case. *See, e.g., In re Packaged Seafood Prod. Antitrust Litig.*, No. 15MD2670 DMS(MDD), 2023 WL 2483474, at *2 (S.D. Cal. Mar. 13, 2023) (approving notice plan with estimated reach of at least 70% and observing “[c]ourts have repeatedly held that notice plans with similar reach satisfy Rule 23(c)(2)(B)” (citing cases).

Accordingly, the Court should appoint JND as the notice plan administrator and authorize the proposed notice plan contained herein.

SETTLEMENT CLASS CERTIFICATION

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

In the settlement context, courts regularly certify broader classes. *See, e.g., In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, 357 F.3d 800, 805 (8th Cir. 2004) (“There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this.”); *Smith v. Atkins*, 2:18-cv-04004-MDH (W.D. Mo.); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 320 (C.D. Cal. 2016); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-cv-1827, 2011 WL 13152270, at *9 (N.D. Cal.

Aug. 24, 2011) (“For the history of class certifications, courts have generally certified settlement classes broader than the previously-certified litigation classes; the claims released are typically more extensive than the claims stated. Courts have noted that the concerns about manageability and/or the class-wide applicability of proof (which can serve to limit or defeat class certification for trial) are in large part no longer relevant when establishment of a defendant’s liability is replaced by a settlement.”).

Often, broad classes are a practical prerequisite to reaching any settlement because a defendant will not agree to any meaningful settlement unless it can obtain global peace. *See, e.g., Albin v. Resort Sales Missouri, Inc.*, No. 20-03004-CV-S-BP, 2021 WL 5107730, at *5 (W.D. Mo. May 21, 2021) (reasoning that the absence of “a single nationwide class action” would “discourage class action defendants from settling”) (quotation omitted); *accord Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 103 n.5, 106 (2d Cir. 2005) (“Broad class action settlements are common, since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country. Practically speaking, class action settlements simply will not occur if the parties cannot set definitive limits on defendants’ liability” (quotation omitted)) (affirming nationwide settlement in an antitrust case); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 310-11 (3d Cir. 2011) (en banc) (“[Without] global peace . . . there would be no settlements.”) (affirming nationwide settlement in an antitrust case). Conversely, because global peace is most valuable to defendants, defendants will pay more to obtain it, thus benefitting class members. *See, e.g., Rawa v. Monsanto Co.*, 934 F.3d 862, 869 (8th Cir. 2019) (noting that each California class member received more under the nationwide settlement than they sought under the abandoned statewide class); *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 705 (E.D. Mo. 2002)

("[Defendants] paid both classes of plaintiffs more in the instant global settlement out of a desire to obtain 'total peace' than they would have paid either group plaintiffs individually.>").

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

CONCLUSION

As outlined in their initial Motion [Doc. 1192] and herein, Plaintiffs submit that the Settlement Agreements provide fair recovery for the Settlement Class and renew their request for the Court to enter an order granting preliminary approval of the Settlement Agreements consistent with the proposed order submitted to the Court.

Dated: November 17, 2023

Respectfully Submitted,

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Attorneys for Plaintiffs

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 19-CV-00332-SRB

**DECLARATION OF JENNIFER M. KEOUGH
REGARDING PROPOSED NOTICE PLAN**

I, Jennifer M. Keough, declare as follows:

1. I am Chief Executive Officer, President, and Co-Founder of JND Legal Administration LLC (“JND”). I have more than 20 years of legal experience creating and supervising notice and claims administration programs and have personally overseen well over 1000 matters. I am regularly called upon to submit declarations in connection with JND’s notice and administration work. A comprehensive description of my experience is attached as **Exhibit A**.

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

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

RELEVANT EXPERIENCE

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

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

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

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

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

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

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

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

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

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

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

members, as reported by various research and analytics tools. During my career, I have submitted several hundred declarations to courts throughout the country attesting to our role in the creation and launch of various notice programs.

SETTLEMENT CLASS

11. JND has been asked by the Parties to prepare a Notice Program to reach Settlement Class Members and inform them about their rights and options in the proposed Settlements.

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

- a. Moehrl MLSs: March 6, 2015 to date of notice;
- b. Burnett MLSs: April 29, 2014 to date of notice;
- c. MLS PIN: December 17, 2016 to date of notice;
- d. All other MLSs: four years prior to (i) the date of a new or amended complaint (if any) is filed in the Actions reflecting any MLSs aside from the Moehrl MLSs, Burnett MLSs, and MLS PIN or (ii) the date of notice, whichever is earlier, up to the date of notice.

NOTICE PROGRAM SUMMARY

13. The proposed Notice Program has been designed to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice

programs. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a notice plan with a 70%-95% reach effective.²

14. The proposed Notice program consists of the following components:

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

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

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

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

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

f. An established case-specific Settlement website where information about the Settlements, as well as copies of relevant case documentation, including but not limited to the Settlement Agreements, the Plan of Distribution, the Long Form Notice

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

(attached as **Exhibit B**), and the Claim Form (attached as **Exhibit C**), will be accessible to Settlement Class Members. Settlement Class Members will also be encouraged to file claims online through a secure portal on the website.

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

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

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

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

DIRECT NOTICE

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

18. As a result, at my direction, JND staff will effectuate direct individual notice to all members of the Settlement Class for whom Settling Defendants provide contact information or for whom we are able to obtain such information through other means. We have also researched what information might be available from third-parties to assist in effectuating direct notice.

19. After receiving potential Settlement Class Member contact data, JND will promptly load the information into a secure, case-specific database for this matter. JND employs robust administrative, technical, and physical controls to protect confidential Settlement Class Member data and safeguard against the risk of loss, misuse, unauthorized access, disclosure, or modification of the data.

20. Once the data is loaded, JND will scrub the data and utilize a number of advanced level research tools to ensure that it has the most up-to-date email addresses available. This includes performing what is called an email append process with relevant credit bureaus. The email append is, in effect, a reverse look-up so that we can derive email address for those Settlement Class Members for whom we only have U.S. mail addresses. We will also identify any undeliverable addresses or duplicate records from the data and assign a unique identification number to each Settlement Class Member to identify them throughout the settlement administration process. Email notice will be sent to all Settlement Class Members for whom an email address can be located.

21. Courts have approved notice programs in which email is the primary method of delivering notice to class members.

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

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

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

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

Email Notice

26. Prior to sending the Email Notice, JND will evaluate the email for potential spam language to improve deliverability. This process includes running the email through spam testing software, DKIM³ for sender identification and authorization, and hostname evaluation. Additionally, we will check the send domain against the 25 most common IPv4 blacklists.⁴

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

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

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

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

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

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

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

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

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

Postcard Notice

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

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

MEDIA NOTICE

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

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

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

Media Resources

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

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

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

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

over a hundred complex algorithms will be used to spot bad traffic as it happens to prevent invalid clicks, impressions, views, or interactions. These efforts prevent impressions from being served and counted when they have not been loaded onto a person's screen.

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

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

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

audio and OTT (over-the-top) inventory. Through The Trade Desk’s countless partnerships with data providers, JND also has access to leading technology to target and reach audiences based on criteria such as recent/frequent browsing habits, purchase data, recent and frequent geo locations, and more.

Target Analysis

44. JND analyzed the demographics and media usage of potential Settlement Class Members to determine how best to reach them. MRI data is available for adults 18 years of age or older (Adults 18+) who used a real estate agent to sell a property (“Home Sellers”).

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

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

Digital Effort

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

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

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

of Realtors, RealogyMLSs, RE/MAX, RE/MAX Settlement, Anywhere Real Estate or people who browse websites similar to www.anywhere.re, www.remax.com or use apps similar to RE/MAX Real Estate. A portion of the Facebook impressions will specifically target users who recently moved or expressed an interest in homeowner association, moving company, real estate, and/or RE/MAX. All of the programmatic impressions on OMTD will target users based on “length of residency” being between 3-10 years and those who are likely homeowners or anyone who sold a house one or more years ago to narrow our focus on potential Settlement Class Members.

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

- a. Predictive Targeting (GDN only) uses multiple data points (search queries, sites visited, and digital behavior trends) to make inferences regarding future behavior/performance for a given campaign.
- b. Audience Targeting optimizes efforts based on demographics, behavior, and interests of potential Settlement Class Members.
- c. Geotargeting optimizes efforts based on the location of potential Settlement Class Members.
- d. Keyword Targeting allows targeting to users based on their search queries, recent social media posts or engagement with websites or posts that feature specific keywords.
- e. Machine Learning will be used across all digital media platforms in order to optimize campaigns in real time based on placements, times of day and sub-targets within the larger demo and geo target that are likely to drive claim form submissions.

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

Print Effort

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

ADDITIONAL EFFORTS

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

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

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

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

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

CLAIMS STIMULATION EFFORT

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

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

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

SETTLEMENT WEBSITE

59. An informational, interactive Settlement website will be developed at my direction by JND staff so that potential Settlement Class Members can obtain more information about their rights and options under the Settlements and submit claims. The website, www.RealEstateCommissionLitigation.com, will have an easy-to-navigate design and will be formatted to emphasize important information and deadlines. The Settlement website will contain, among other things, information about the Settlements, a Frequently Asked Questions section, a list of Important Dates and Important Documents, the ability to download a Long Form Notice and Claim Form in both English and Spanish, the ability to submit claims electronically through a secure claims filing portal, and information about how Settlement Class Members can access the toll-free telephone number.

60. The Settlement website will be mobile-enabled and ADA compliant, and will undergo significant penetration testing to make sure that the site cannot be breached as well as load testing to make sure that the site will be able to accommodate the expected traffic from a class this large. It will also be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the site's metadata to maximize search engine rankings.

DEDICATED TOLL-FREE NUMBER

61. JND will establish and maintain a dedicated toll-free telephone number with an automated IVR, available 24 hours a day, seven days a week, which will provide Settlement-related information to Settlement Class Members, and the ability to request and receive the notices and the claim form by mail.

62. The Settlement website and IVR recordings will be designed to be comprehensive, answering all common questions; however, if operators become desired, JND will accommodate that need by providing an option to speak with a Customer Service Representative. JND has multiple call center sites, all in the United States, and can ensure enough staffing and redundancy to handle any volume of calls we receive on this matter.

DEDICATED POST OFFICE BOXES

63. JND will establish two separate United States Post Office Boxes: one dedicated for Settlement Class Members to submit letters, inquiries, and claim forms; and one dedicated strictly to receive exclusion requests.

QR CODE

64. JND will create a QR Code (a matrix barcode) that will allow quick and direct access to the Settlement website through mobile devices. The QR Code is included, where practicable, in printed notice documents (i.e., the email, postcard, and print publication notices).

REACH

65. The proposed media effort alone is designed to reach at least 70% of potential Settlement Class Members. The extensive direct notice effort, internet search campaign, distribution of the national press release, class action sponsorship opportunities, and claims stimulation effort will extend reach further. The proposed Notice Program is similar to and, indeed, more robust than that of other court approved programs and meets the high reach standard set forth by the FJC.

NOTICE DESIGN AND CONTENT

66. I have reviewed and provided input to the Parties on the form and content for each of the attached notice document exhibits. Based on my experience designing court approved class

notice programs, in my opinion, each of these notice documents complies with Rule 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law, or rule, as well as the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

67. Each of these notice documents contain easy-to-read summaries of the Settlements and the options that are available to Settlement Class Members. Additionally, the notice documents provide instructions on how to obtain more information about the Settlements.

68. The Long Form Notice will be posted on the Settlement website and will be available by mail if requested. It provides details regarding, among other things, the nature of the action; who is in the Settlement Class; general descriptions of the claims asserted and references the defenses of Settling Defendants; the monetary relief afforded by the Settlement Agreements; the right of Settlement Class Members to obtain counsel, object to the Settlements, or exclude themselves from the Settlements; and the binding effect of the Settlement on Settlement Class Members. The Long Form Notice also provides, inter alia, details on when claims and objections are due, how and when to opt-out, how and where to seek additional information, and how to submit a claim.

69. The Long Form Notice was used as the basis to create the summary forms of notice: Email Notice and Postcard Notice. These short-form notices provide, among other things, a summary of what the lawsuit is about, who is affected, what a Settlement Class Member may receive from the Settlements, the deadline by which a claim should be submitted, other options (opting out and objecting), and how and where to obtain more information.

70. To the extent that some Class Members may speak Spanish as their primary language, the print notice documents include a subheading in Spanish at the top directing Spanish speaking Settlement Class Members to visit the Settlement website for a notice in Spanish.

CLAIM FORM

71. The Claim Form explains the claims process, is designed to ensure that filing a claim is as simple as possible and will be sent to any individual who requests a written form. However, the direct notice portion of the Notice Program is designed to drive claimants to the Settlement website where they can utilize an interactive process for claims submission. Online claim forms not only save substantial money in postage but are generally favored by claimants since the wizard feature of the process will walk them through the form step by step and will be very user-friendly. The online claim form process will prevent claimants from submitting an electronic claim without clicking necessary verifications such as signature. Electronic claims also eliminate the step of manual data entry and generally make processing easier and less expensive.

72. The interactive Claim Form will be accessed through a secure portal and will request the same information from claimants that is set forth in the printed Claim Form. The interactive Claim Form will also be designed to ensure that required information is provided before a claimant can move onto the next step of the Claim Form.

73. Broadly stated, to complete the Claim Form, the claimant will provide its name and contact information as well as identify, to the extent possible, information about the home sale, such as the address of the home sold, date of sale, amount of the total commission paid, and any documents to support the proof of payment.

74. All claimants may submit Claim Forms electronically through the Settlement website or physically by mail to the established Settlement P.O. Box.

OBJECTIONS AND OPT-OUTS

75. Members of either Settlement Class may object to the Settlements. Settlement Class Members may also exclude themselves (“opt-out”) entirely. The Long Form Notice explains these legal rights (and others) to Settlement Class Members.

76. Any member of either Settlement Class who wishes to object to any aspect of the Settlements must send to Class Counsel, Defendants’ Counsel, and file with the Court, a written statement of its objection. The objection must include the case name and number (*Burnett, et al., v. National Ass’n of Realtors, et al.*, Case No. 19-CV-00332-SRB (W.D. Mo.)), the Settlement Class Member’s name, address, telephone number, signature, and the reasons that they object to the Settlement.

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

CONCLUSION

78. In my opinion, the Notice Program provides the best notice practicable under the circumstances, is consistent with the requirements of Rule 23, and is consistent with other similar court-approved best notice practicable notice programs. The Notice Program is designed to reach as many Settlement Class Members as possible and inform them about the Settlements and their

rights and options, and provide them with the opportunity to review a plain language notice with the ability to easily take the next step and learn more about the Settlements.

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

Executed on November 17, 2023, in Seattle, Washington.



JENNIFER M. KEOUGH

- EXHIBIT A -

JENNIFER KEOUGH

CHIEF EXECUTIVE OFFICER AND CO-FOUNDER



I.

INTRODUCTION

Jennifer Keough is Chief Executive Officer and Co-Founder of JND Legal Administration (“JND”). She is the *only* judicially recognized expert in all facets of class action administration - from notice through distribution. With more than 20 years of legal experience, Ms. Keough has directly worked on hundreds of high-profile and complex administration engagements, including such landmark matters as the \$20 billion Gulf Coast Claims Facility, \$10 billion BP Deepwater Horizon Settlement, \$3.4 billion Cobell Indian Trust Settlement (the largest U.S. government class action settlement ever), \$3.05 billion VisaCheck/MasterMoney Antitrust Settlement, \$2.67 billion Blue Cross Blue Shield antitrust settlement, \$1.5 billion Mercedes-Benz Emissions Settlements, \$1.3 billion Equifax Data Breach Settlement, \$1 billion Stryker Modular Hip Settlement, \$600 million Engle Smokers Trust Fund, \$240 million Signet Securities Settlement, \$215 million USC Student Health Center Settlement, and countless other high-profile matters.

Ms. Keough has been appointed notice expert in many notable cases and has testified on settlement matters in numerous courts and before the Senate Committee for Indian Affairs. She was appointed in 2022 as a Board member of the RAND Corporation’s “Kenneth R. Feinberg Center for Catastrophic Risk Management and

Compensation (the Feinberg Center).” Among the Feinberg Center’s missions is to identify and promote laws, programs, and institutions that reduce the adverse social and economic effects of natural and manmade catastrophes by:

- Improving incentives to reduce future losses
- Providing just compensation to those suffering losses while appropriately allocating liability to responsible parties
- Helping affected individuals, businesses, and communities to recover quickly
- Avoiding unnecessary legal, administrative, and other transaction costs

Ms. Keough is honored to be included on the Board, which consists of only 18 people, three of whom are federal district court judges. She is the only person from the legal administration industry on the Board.

Ms. Keough is also the only female CEO/Co-Founder in the field. She oversees more than 200 employees at JND’s Seattle headquarters, as well as other office locations around the country. She manages all aspects of JND’s class action business from day-to-day processes to high-level strategies. Her comprehensive expertise with noticing, claims processing, Systems and IT work, call center, data analytics, recovery calculations, check distribution, and reporting gained her the reputation with attorneys on both sides of the aisle as the most dependable consultant for all legal administration needs. Ms. Keough also applies her knowledge and skills to other divisions of JND, including mass tort, lien resolution, government services, and eDiscovery. Given her extensive experience, Ms. Keough is often called upon to consult with parties prior to settlement, is frequently invited to speak on class action issues and has authored numerous articles in her multiple areas of expertise.

Ms. Keough launched JND with her partners in early 2016. Just a few months later she was named as the Independent Claims Administrator (“ICA”) in a complex BP Solar Panel Settlement. Ms. Keough also started receiving numerous appointments as notice expert and in 2017 was chosen to oversee a restitution program in Canada where every adult in the country was eligible to participate. Also, in 2017,

Ms. Keough was named a female entrepreneur of the year finalist in the 14th annual Stevie Awards for Women in Business. In 2015 and 2017, she was recognized as a “Woman Worth Watching” by Profiles in Diversity Journal.

Since JND’s launch, Ms. Keough has also been featured in numerous news sources. In 2019, she was highlighted in an Authority Magazine article, “5 Things I wish someone told me before I became a CEO,” and a Moneyish article, “This is exactly how rampant ‘imposter syndrome’ is in the workforce.” In 2018, she was featured in several Fierce CEO articles, “JND Legal Administration CEO Jennifer Keough aids law firms in complicated settlements,” “Special Report—Women CEOs offer advice on defying preconceptions and blazing a trail to the top,” and “Companies stand out with organizational excellence,” as well as a Puget Sound Business Journal article, “JND Legal CEO Jennifer Keough handles law firms’ big business.” In 2013, Ms. Keough appeared in a CNN article, “What Changes with Women in the Boardroom.”

Prior to forming JND, Ms. Keough was Chief Operating Officer and Executive Vice President for one of the then largest legal administration firms in the country, where she oversaw operations in several offices across the country and was responsible for all large and critical projects. Previously, Ms. Keough worked as a class action business analyst at Perkins Coie, one of the country’s premier defense firms, where she managed complex class action settlements and remediation programs, including the selection, retention, and supervision of legal administration firms. While at Perkins she managed, among other matters, the administration of over \$100 million in the claims-made Weyerhaeuser siding case, one of the largest building product class action settlements ever. In her role, she established a reputation as being fair in her ability to see both sides of a settlement program.

Ms. Keough earned her J.D. from Seattle University. She graduated from Seattle University with a B.A. and M.S.F. with honors.

II

LANDMARK CASES

Jennifer Keough has the distinction of personally overseeing the administration of more large class action programs than any other notice expert in the field. Some of her largest engagements include the following:

1. *Allagas v. BP Solar Int'l, Inc.*

No. 14-cv-00560 (N.D. Cal.)

Ms. Keough was appointed by the United States District Court for the Northern District of California as the Independent Claims Administrator (“ICA”) supervising the notice and administration of this complex settlement involving inspection, remediation, and replacement of solar panels on homes and businesses throughout California and other parts of the United States. Ms. Keough and her team devised the administration protocol and built a network of inspectors and contractors to perform the various inspections and other work needed to assist claimants. She also built a program that included a team of operators to answer claimant questions, a fully interactive dedicated website with online claim filing capability, and a team trained in the very complex intricacies of solar panel mechanisms. In her role as ICA, Ms. Keough regularly reported to the parties and the Court regarding the progress of the case’s administration. In addition to her role as ICA, Ms. Keough also acted as mediator for those claimants who opted out of the settlement to pursue their claims individually against BP. Honorable Susan Illston, recognized the complexity of the settlement when appointing Ms. Keough the ICA (December 22, 2016):

The complexity, expense and likely duration of the litigation favors the Settlement, which provides meaningful and substantial benefits on a much shorter time frame than otherwise possible and avoids risk to class certification and the Class’s case on the merits...The Court appoints Jennifer Keough of JND Legal Administration to serve as the Independent Claims Administrator (“ICA”) as provided under the Settlement.

2. *Chester v. The TJX Cos.*

No. 15-cv-01437 (C.D. Cal.)

As the notice expert, Ms. Keough proposed a multi-faceted notice plan designed to reach over eight million class members. Where class member information was available, direct notice was sent via email and via postcard when an email was returned as undeliverable or for which there was no email address provided. Additionally, to reach the unknown class members, Ms. Keough's plan included a summary notice in eight publications directed toward the California class and a tear-away notice posted in all TJ Maxx locations in California. The notice effort also included an informational and interactive website with online claim filing and a toll-free number that provided information 24 hours a day. Additionally, associates were available to answer class member questions in both English and Spanish during business hours. Honorable Otis D. Wright, II approved the plan (May 14, 2018):

...the Court finds and determines that the Notice to Class Members was complete and constitutionally sound, because individual notices were mailed and/or emailed to all Class Members whose identities and addresses are reasonably known to the Parties, and Notice was published in accordance with this Court's Preliminary Approval Order, and such notice was the best notice practicable.

3. *Cobell v. Salazar*

No. 96 CV 1285 (TFH) (D. D.C.)

As part of the largest government class action settlement in our nation's history, Ms. Keough worked with the U.S. Government to implement the administration program responsible for identifying and providing notice to the two distinct but overlapping settlement classes. As part of the notice outreach program, Ms. Keough participated in multiple town hall meetings held at Indian reservations located across the country. Due to the efforts of the outreach program, over 80% of all class members were provided notice. Additionally, Ms. Keough played a role in creating the processes for evaluating claims and ensuring the correct distributions were made. Under Ms. Keough's supervision,

the processing team processed over 480,000 claims forms to determine eligibility. Less than one half of one percent of all claim determinations made by the processing team were appealed. Ms. Keough was called upon to testify before the Senate Committee for Indian Affairs, where Senator Jon Tester of Montana praised her work in connection with notice efforts to the American Indian community when he stated: “Oh, wow. Okay... the administrator has done a good job, as your testimony has indicated, [discovering] 80 percent of the whereabouts of the unknown class members.” Additionally, when evaluating the Notice Program, Judge Thomas F. Hogan concluded (July 27, 2011):

...that adequate notice of the Settlement has been provided to members of the Historical Accounting Class and to members of the Trust Administration Class.... Notice met and, in many cases, exceeded the requirements of F.R.C.P. 23(c)(2) for classes certified under F.R.C.P. 23(b)(1), (b)(2) and (b)(3). The best notice practicable has been provided class members, including individual notice where members could be identified through reasonable effort. The contents of that notice are stated in plain, easily understood language and satisfy all requirements of F.R.C.P. 23(c)(2)(B).

4. FTC v. Reckitt Benckiser Grp. PLC

No. 19CV00028 (W.D. Va.)

Ms. Keough and her team designed a multi-faceted notice program for this \$50 million settlement resolving charges by the FTC that Reckitt Benckiser Group PLC violated antitrust laws by thwarting lower-priced generic competition to its branded drug Suboxone.

The plan reached 80% of potential claimants nationwide, and a more narrowed effort extended reach to specific areas and targets. The nationwide effort utilized a mix of digital, print, and radio broadcast through Sirius XM. Extended efforts included local radio in areas defined as key opioid markets and an outreach effort to medical professionals approved to prescribe Suboxone in the U.S., as well as to substance abuse centers; drug abuse and addiction info and treatment centers; and addiction treatment centers nationwide.

5. *Gulf Coast Claims Facility (GCCF)*

The GCCF was one of the largest claims processing facilities in U.S. history and was responsible for resolving the claims of both individuals and businesses relating to the Deepwater Horizon oil spill. The GCCF, which Ms. Keough helped develop, processed over one million claims and distributed more than \$6 billion within the first year-and-a-half of its existence. As part of the GCCF, Ms. Keough and her team coordinated a large notice outreach program which included publication in multiple journals and magazines in the Gulf Coast area. She also established a call center staffed by individuals fluent in Spanish, Vietnamese, Laotian, Khmer, French, and Croatian.

6. *Health Republic Ins. Co. v. United States*

No. 16-259C (F.C.C.)

For this \$1.9 billion settlement, Ms. Keough and her team used a tailored and effective approach of notifying class members via Federal Express mail and email. Opt-in notice packets were sent via Federal Express to each potential class member, as well as the respective CEO, CFO, General Counsel, and person responsible for risk corridors receivables, when known. A Federal Express return label was also provided for opt-in returns. Notice Packets were also sent via electronic-mail. The informational and interactive case-specific website posted the notices and other important Court documents and allowed potential class members to file their opt-in form electronically.

7. *In re Air Cargo Shipping Servs. Antitrust Litig.*

No. 06-md-1775 (JG) (VVP) (E.D.N.Y.)

This antitrust settlement involved five separate settlements. As a result, many class members were affected by more than one of the settlements, Ms. Keough constructed the notice and claims programs for each settlement in a manner which allowed affected class members the ability to compare the claims data. Each claims administration program included claims processing, review of supporting evidence, and a deficiency notification process. The deficiency

notification process included mailing of deficiency letters, making follow-up phone calls, and sending emails to class members to help them complete their claim. To ensure accuracy throughout the claims process for each of the settlements, Ms. Keough created a process which audited many of the claims that were eligible for payment.

8. *In re Blue Cross Blue Shield Antitrust Litig.*

Master File No.: 13-CV-20000-RDP (N.D. Ala.)

JND was appointed as the notice and claims administrator in the \$2.67 billion Blue Cross Blue Shield proposed settlement. To notify class members, we mailed over 100 million postcard notices, sent hundreds of millions of email notices and reminders, and placed notice via print, television, radio, internet, and more. The call center was staffed with 250 agents during the peak of the notice program. More than eight million claims were received. In approving the notice plan designed by Jennifer Keough and her team, United States District Court Judge R. David Proctor, wrote:

After a competitive bidding process, Settlement Class Counsel retained JND Legal Administration LLC (“JND”) to serve as Notice and Claims Administrator for the settlement. JND has a proven track record and extensive experience in large, complex matters... JND has prepared a customized Notice Plan in this case. The Notice Plan was designed to provide the best notice practicable, consistent with the latest methods and tools employed in the industry and approved by other courts...The court finds that the proposed Notice Plan is appropriate in both form and content and is due to be approved.

9. *In re Classmates.com*

No. C09-45RAJ (W.D. Wash.)

Ms. Keough managed a team that provided email notice to over 50 million users with an estimated success rate of 89%. When an email was returned as undeliverable, it was re-sent up to three times in an attempt to provide notice to the entire class. Additionally, Ms. Keough implemented a claims administration

program which received over 699,000 claim forms and maintained three email addresses in which to receive objections, exclusions, and claim form requests. The Court approved the program when it stated:

The Court finds that the form of electronic notice... together with the published notice in the Wall Street Journal, was the best practicable notice under the circumstances and was as likely as any other form of notice to apprise potential Settlement Class members of the Settlement Agreement and their rights to opt out and to object. The Court further finds that such notice was reasonable, that it constitutes adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of Due Process...

10. *In re Equifax Inc. Customer Data Sec. Breach Litig.*

No. 17-md-2800-TWT (N.D. Ga.)

JND was appointed settlement administrator, under Ms. Keough's direction, for this complex data breach settlement valued at \$1.3 billion with a class of 147 million individuals nationwide. Ms. Keough and her team oversaw all aspects of claims administration, including the development of the case website which provided notice in seven languages and allowed for online claim submissions. In the first week alone, over 10 million claims were filed. Overall, the website received more than 200 million hits and the Contact Center handled well over 100,000 operator calls. Ms. Keough and her team also worked closely with the Notice Provider to ensure that each element of the media campaign was executed in the time and manner as set forth in the Notice Plan.

Approving the settlement on January 13, 2020, Judge Thomas W. Thrash, Jr. acknowledged JND's outstanding efforts:

JND transmitted the initial email notice to 104,815,404 million class members beginning on August 7, 2019. (App. 4, ¶¶ 53-54). JND later sent a supplemental email notice to the 91,167,239 class members who had not yet opted out, filed a claim, or unsubscribed from the initial email notice. (Id., ¶¶ 55-56). The notice plan also provides for JND to perform two additional supplemental email notice campaigns. (Id., ¶ 57)...JND has also developed

specialized tools to assist in processing claims, calculating payments, and assisting class members in curing any deficient claims. (Id., ¶¶ 4, 21). As a result, class members have the opportunity to file a claim easily and have that claim adjudicated fairly and efficiently...The claims administrator, JND, is highly experienced in administering large class action settlements and judgments, and it has detailed the efforts it has made in administering the settlement, facilitating claims, and ensuring those claims are properly and efficiently handled. (App. 4, ¶¶ 4, 21; see also Doc. 739-6, ¶¶ 2-10). Among other things, JND has developed protocols and a database to assist in processing claims, calculating payments, and assisting class members in curing any deficient claims. (Id., ¶¶ 4, 21). Additionally, JND has the capacity to handle class member inquiries and claims of this magnitude. (App. 4, ¶¶ 5, 42). This factor, therefore, supports approving the relief provided by this settlement.

11. *In re General Motors LLC Ignition Switch Litig.*

No. 2543 (MDL) (S.D.N.Y.)

GM Ignition Switch Compensation Claims Resolution Facility

Ms. Keough oversaw the creation of a Claims Facility for the submission of injury claims allegedly resulting from the faulty ignition switch. The Claims Facility worked with experts when evaluating the claim forms submitted. First, the Claims Facility reviewed thousands of pages of police reports, medical documentation, and pictures to determine whether a claim met the threshold standards of an eligible claim for further review by the expert. Second, the Claims Facility would inform the expert that a claim was ready for its review. Ms. Keough constructed a database which allowed for a seamless transfer of claim forms and supporting documentation to the expert for further review.

12. *In re General Motors LLC Ignition Switch Litig.*

No. 2543 (MDL) (S.D.N.Y.)

Ms. Keough was appointed the class action settlement administrator for the \$120 million GM Ignition Switch settlement. On April 27, 2020, Honorable

Jesse M. Furman approved the notice program designed by Ms. Keough and her team and the notice documents they drafted with the parties:

The Court further finds that the Class Notice informs Class Members of the Settlement in a reasonable manner under Federal Rule of Civil Procedure 23(e)(1)(B) because it fairly apprises the prospective Class Members of the terms of the proposed Settlement and of the options that are open to them in connection with the proceedings.

The Court therefore approves the proposed Class Notice plan, and hereby directs that such notice be disseminated to Class Members in the manner set forth in the Settlement Agreement and described in the Declaration of the Class Action Settlement Administrator...

Under Ms. Keough's direction, JND mailed notice to nearly 30 million potential class members.

On December 18, 2020, Honorable Jesse M. Furman granted final approval:

The Court confirms the appointment of Jennifer Keough of JND Legal Administration ("JND") as Class Action Settlement Administrator and directs Ms. Keough to carry out all duties and responsibilities of the Class Action Settlement Administrator as specified in the Settlement Agreement and herein...The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rules of Civil Procedure 23(c)(2)(b) and 23(e), and fully comply with all laws, including the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.

13. In re Mercedes-Benz Emissions Litig.

No. 16-cv-881 (D.N.J.)

JND Legal Administration was appointed as the Settlement Administrator in this \$1.5 billion settlement wherein Daimler AG and its subsidiary Mercedes-Benz USA reached an agreement to settle a consumer class action alleging that the

automotive companies unlawfully misled consumers into purchasing certain diesel type vehicles by misrepresenting the environmental impact of these vehicles during on-road driving. As part of its appointment, the Court approved Jennifer Keough's proposed notice plan and authorized JND Legal Administration to provide notice and claims administration services.

The Court finds that the content, format, and method of disseminating notice, as set forth in the Motion, Declaration of JND Legal Administration, the Class Action Agreement, and the proposed Long Form Notice, Short Form Notice, and Supplemental Notice of Class Benefits (collectively, the "Class Notice Documents") - including direct First Class mailed notice to all known members of the Class deposited in the mail within the later of (a) 15 business days of the Preliminary Approval Order; or (b) 15 business days after a federal district court enters the US-CA Consent Decree - is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B). The Court approves such notice, and hereby directs that such notice be disseminated in the manner set forth in the Class Action Settlement to the Class under Rule 23(e)(1)...JND Legal Administration is hereby appointed as the Settlement Administrator and shall perform all duties of the Settlement Administrator set forth in the Class Action Settlement.

On July 12, 2021, the Court granted final approval of the settlement:

The Court has again reviewed the Class Notice Program and finds that Class Members received the best notice practicable under the circumstances.

14. In re MyFord Touch Consumer Litig.

No. 13-cv-3072 (EMC) (N.D. Cal.)

Ms. Keough was retained as the Notice Expert in this \$17 million automotive settlement. Under her direction, the JND team created a multi-faceted website with a VIN # lookup function that provided thorough data on individual car repair history. To assure all of the data was safeguarded, JND hired a third-party to attempt to hack it, demonstrating our commitment to ensuring the security of all client and claimant data. Their attempts were unsuccessful.

In his December 17, 2019 final approval order Judge Edward M. Chen remarked on the positive reaction that the settlement received:

The Court finds that the Class Notice was the best practicable notice under the circumstances, and has been given to all Settlement Class Members known and reasonably identifiable in full satisfaction of the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process... The Court notes that the reaction of the class was positive: only one person objected to the settlement although, by request of the objector and in the absence of any opposition from the parties, that objection was converted to an opt-out at the hearing.

15. *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*

No. 2179 (MDL) (E.D. La.)

Following the closure of the Gulf Coast Claims Facility, the Deepwater Horizon Settlement claims program was created. There were two separate legal settlements that provided for two claims administration programs. One of the programs was for the submission of medical claims and the other was for the submission of economic and property damage claims. Ms. Keough played a key role in the formation of the claims program for the evaluation of economic and property damage claims. Additionally, Ms. Keough built and supervised the back-office mail and processing center in Hammond, Louisiana, which was the hub of the program. The Hammond center was visited several times by Claims Administrator Pat Juneau -- as well as by the District Court Judge and Magistrate -- who described it as a shining star of the program.

16. *In re Stryker Rejuvenate and ABG II Hip Implant Prods. Liab. Litig.*

No. 13-2441 (MDL) (D. Minn.)

Ms. Keough and her team were designated as the escrow agent and claims processor in this \$1 billion settlement designed to compensate eligible U.S. Patients who had surgery to replace their Rejuvenate Modular-Neck and/or ABG II Modular-Neck hip stems prior to November 3, 2014. As the claims processor, Ms. Keough

and her team designed internal procedures to ensure the accurate review of all medical documentation received; designed an interactive website which included online claim filing; and established a toll-free number to allow class members to receive information about the settlement 24 hours a day. Additionally, she oversaw the creation of a deficiency process to ensure claimants were notified of their deficient submission and provided an opportunity to cure. The program also included an auditing procedure designed to detect fraudulent claims and a process for distributing initial and supplemental payments. Approximately 95% of the registered eligible patients enrolled in the settlement program.

17. *In re The Engle Trust Fund*

No. 94-08273 CA 22 (Fla. 11th Jud. Cir. Ct.)

Ms. Keough played a key role in administering this \$600 million landmark case against the country's five largest tobacco companies. Miles A. McGrane, III, Trustee to the Engle Trust Fund recognized Ms. Keough's role when he stated:

The outstanding organizational and administrative skills of Jennifer Keough cannot be overstated. Jennifer was most valuable to me in handling numerous substantive issues in connection with the landmark Engle Trust Fund matter. And, in her communications with affected class members, Jennifer proved to be a caring expert at what she does.

18. *In re Washington Mut. Inc., Sec. Litig.*

No. 08-md-1919 MJP (W.D. Wash.)

Ms. Keough supervised the notice and claims administration for this securities class action, which included three separate settlements with defendants totaling \$208.5 million. In addition to mailing notice to over one million class members, Ms. Keough managed the claims administration program, including the review and processing of claims, notification of claim deficiencies, and distribution. In preparation for the processing of claims, Ms. Keough and her team established a unique database to store the proofs of claim and supporting documentation; trained staff to the particulars of this settlement; created multiple computer

programs for the entry of class member's unique information; and developed a program to calculate the recognized loss amounts pursuant to the plan of allocation. The program was designed to allow proofs of claim to be filed by mail or through an online portal. A deficiency process was established in order to reach out to class members who submitted incomplete proof of claims. The deficiency process involved reaching out to claimants via letters, emails, and telephone calls.

19. *King v. Bumble Trading Inc*

No. 18-cv-06868-NC (N.D. Cal.)

Ms. Keough served as the notice expert in this \$22.5 million settlement that alleged that Bumble's Terms & Conditions failed to notify subscribers nationwide of their legal right to cancel their Boost subscription and obtain a refund within three business days of purchase, and for certain users in California, that Bumble's auto-renewal practices violated California law.

JND received two files of class member data containing over 7.1 million records. Our team analyzed the data to identify duplicates and then we further analyzed the unique records, using programmatic techniques and manual review, to identify accounts that had identical information in an effort to prevent multiple notices being sent to the same class member. Through this process, JND was able to reduce the number of records to less than 6.3 million contacts.

Approving the settlement on December 18, 2020, Judge Nathanael M. Cousins, acknowledged the high success of our notice efforts:

Pursuant to the Court's Preliminary Approval Order, the Court appointed JND Settlement Administrators as the Settlement Administrator... JND sent court-approved Email Notices to millions of class members...Overall, approximately 81% of the Settlement Class Members were successfully sent either an Email or Mailed Notice...JND supplemented these Notices with a Press Release which Global Newswire published on July 18, 2020... In sum, the Court finds that, viewed as a whole, the settlement is sufficiently "fair, adequate, and reasonable" to warrant approval.

20. *Linneman v. Vita-Mix Corp.*

No. 15-cv-748 (S.D. Ohio)

Ms. Keough was hired by Plaintiff Counsel to design a notice program regarding this consumer settlement related to allegedly defective blenders. The Court approved Ms. Keough's plan and designated her as the notice expert for this case. As direct notice to the entire class was impracticable due to the nature of the case, Ms. Keough proposed a multi-faceted notice program. Direct notice was provided by mail or email to those purchasers identified through data obtained from Vita-Mix and third parties, such as retailers, dealers, distributors, or restaurant supply stores. To reach the unknown class members, Ms. Keough oversaw the design of an extensive media plan that included: published notice in *Cooking Light*, *Good Housekeeping*, and *People* magazine and digital notice; placements through Facebook/Instagram, Twitter, and Conversant; and paid search campaign through Google and Bing. In addition, the program included an informational and interactive website where class members could submit claims electronically, and a toll-free number that provided information to class members 24 hours a day. When approving the plan, Honorable Susan J. Dlott stated (May 3, 2018):

JND Legal Administration, previously appointed to supervise and administer the notice process, as well as oversee the administration of the Settlement, appropriately issued notice to the Class as more fully set forth in the Agreement, which included the creation and operation of the Settlement Website and more than 3.8 million mailed or emailed notices to Class Members. As of March 27, 2018, approximately 300,000 claims have been filed by Class Members, further demonstrating the success of the Court-approved notice program.

21. *Loblaw Card Program*

Jennifer Keough was selected by major Canadian retailer Loblaw and its counsel to act as program administrator in its voluntary remediation program. The program was created as a response to a price-fixing scheme perpetrated by some employees of the company involving bread products. The program

offered a \$25 gift card to all adults in Canada who purchased bread products in Loblaw stores between 2002 and 2015. Some 28 million Canadian residents were potential claimants. Ms. Keough and her team: (1) built an interactive website that was capable of withstanding hundreds of millions of “hits” in a short period of time; (2) built, staffed and trained a call center with operators available to take calls twelve hours a day, six days a week; (3) oversaw the vendor in charge of producing and distributing the cards; (4) was in charge of designing and overseeing fraud prevention procedures; and (5) handled myriad other tasks related to this high-profile and complex project.

22. *McWilliams v. City of Long Beach*

No. BC261469 (Cal. Super. Ct.)

Ms. Keough and her team designed and implemented an extensive notice program for the City of Long Beach telephone tax refund settlement. In addition to sending direct notice to all addresses within the City of Long Beach utility billing system and from its GIS provider, and to all registered businesses during the class period, JND implemented a robust media campaign that alone reached 88% of the Class. The media effort included leading English and Spanish magazines and newspapers, a digital effort, local cable television and radio, an internet search campaign, and a press release distributed in both English and Spanish. The 12% claims rate exceeded expectations.

Judge Maren E. Nelson acknowledged the program’s effectiveness in her final approval order on October 30, 2018:

It is estimated that JND’s Media Notice plan reached 88% of the Class and the overall reach of the Notice Program was estimated to be over 90% of the Class. (Keough Decl., at ¶12.). Based upon the notice campaign outlined in the Keough Declaration, it appears that the notice procedure was aimed at reaching as many class members as possible. The Court finds that the notice procedure satisfies due process requirements.

23. *New Orleans Tax Assessor Project*

After Hurricane Katrina, the City of New Orleans began to reappraise properties in the area which caused property values to rise. Thousands of property owners appealed their new property values and the City Council did not have the capacity to handle all the appeals in a timely manner. As a result of the large number of appeals, the City of New Orleans hired Ms. Keough to design a unique database to store each appellant's historical property documentation. Additionally, Ms. Keough designed a facility responsible for scheduling and coordinating meetings between the 5,000 property owners who appealed their property values and real estate agents or appraisers. The database that Ms. Keough designed facilitated the meetings between the property owners and the property appraisers by allowing the property appraisers to review the property owner's documentation before and during the appointment with them.

24. *USC Student Health Ctr. Settlement*

No. 18-cv-04258-SVW (C.D. Cal.)

JND was approved as the Settlement Administrator in this important \$215 million settlement that provides compensation to women who were sexually assaulted, harassed and otherwise abused by Dr. George M. Tyndall at the USC Student Health Center during a nearly 30-year period. Ms. Keough and her team designed a notice effort that included: mailed and email notice to potential Class members; digital notices on Facebook, LinkedIn, and Twitter; an internet search effort; notice placements in USC publications/eNewsletters; and a press release. In addition, her team worked with USC staff to ensure notice postings around campus, on USC's website and social media accounts, and in USC alumni communications, among other things. Ms. Keough ensured the establishment of an all-female call center, whose operators were fully trained to handle delicate interactions, with the goal of providing excellent service and assistance to every woman affected. She also worked with the JND staff handling lien resolution for this case. Preliminarily approving the settlement, Honorable Stephen V. Wilson stated (June 12, 2019):

The Court hereby designates JND Legal Administration (“JND”) as Claims Administrator. The Court finds that giving Class Members notice of the Settlement is justified under Rule 23(e)(1) because, as described above, the Court will likely be able to: approve the Settlement under Rule 23(e)(2); and certify the Settlement Class for purposes of judgment. The Court finds that the proposed Notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23 and provides the best notice practicable under the circumstances.

25. Williams v. Weyerhaeuser Co.

Civil Action No. 995787 (Cal. Super. Ct.)

This landmark consumer fraud litigation against Weyerhaeuser Co. had over \$100 million in claims paid. The action involved exterior hardboard siding installed on homes and other structures throughout the United States from January 1, 1981 to December 31, 1999 that was alleged to be defective and prematurely fail when exposed to normal weather conditions.

Ms. Keough oversaw the administration efforts of this program, both when she was employed by Perkins Coie, who represented defendants, and later when she joined the administration firm handling the case. The claims program was extensive and went on for nine years, with varying claims deadlines depending on when the class member installed the original Weyerhaeuser siding. The program involved not just payments to class members, but an inspection component where a court-appointed inspector analyzed the particular claimant’s siding to determine the eligibility and award level. Class members received a check for their damages, based upon the total square footage of damaged siding, multiplied by the cost of replacing, or, in some instances, repairing, the siding on their homes. Ms. Keough oversaw the entirety of the program from start to finish.

III.

JUDICIAL RECOGNITION

Courts have favorably recognized Ms. Keough's work as outlined above and by the sampling of judicial comments from JND programs listed below.

1. Judge Edward J. Davila

In re MacBook Keyboard Litig., (May 25, 2023)

No. 18-cv-02813-EDJ (N.D. Cal.):

The Settlement Agreement is being administered by JND Legal Administration ("JND")...the Settlement Administrator provided direct and indirect notice through emails, postcards, and the settlement website, in addition to the press and media coverage the settlement received...the Court finds that the Settlement Class has been provided adequate notice.

2. Honorable David O Carter

Gutierrez, Jr. v. Amplify Energy Corp., (April 24, 2023)

21-cv-01628-DOC-JDE (C.D. Cal.):

The Court finds that the Notice set forth in Article VI of the Settlement Agreement, detailed in the Notice Plan attached to the Declaration of Jennifer Keough of JND Legal Administration, and effectuated pursuant to the Preliminary Approval Order: (a) constitutes the best notice practicable under the circumstances of this Action; (b) constitutes due and sufficient notice to the Classes of the terms of the Settlement Agreement and the Final Approval Hearing; and (c) fully complied with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law, including the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

3. Honorable Joseph C. Spero

Shuman v. Squaretrade Inc., (March 1, 2023)

No. 20-cv-02725-JCS (N.D. Cal.):

As of February 10, 2023, 703,729 Class Members were mailed or emailed at least one Notice that was not returned as undeliverable, representing over 99.76% of the total Class Member population. Supplemental Declaration of Jennifer Keough Regarding Notice Administration (dkt. no. 140-2) (“Keough Supp. Decl.”), ¶ 7. The Court finds that notice was provided in the best practicable manner to class members and fulfills the requirements of due process.

4. Honorable David O Carter

Gutierrez, Jr. v. Amplify Energy Corp., (December 7, 2022)

21-cv-01628-DOC-JDE (C.D. Cal.):

The Court appoints JND Legal Administration as the Settlement Administrator in this Action...The Court approves, as to form and content, the Direct Notices, Long Form Notices, and Email notices substantially in the forms attached as Exhibits B-J to the Declaration of Jennifer Keough In Support of Motion for Preliminary Approval of Class Action Settlement and Direction of Notice (“Keough Declaration”).

5. Honorable Charles R. Breyer

In re Volkswagen “Clean Diesel” Mktg., Sales Practice and Prods. Liab. Litig., (November 9, 2022)

MDL 2672 CRB (N.D. Cal.):

The Settlement Administrator has also taken the additional step to allow potential class members to submit claims without any documentation on the settlement website, allowing the settlement administrator to seek out the documentation independently (which can often be found without further aid from the class member). Id. at 5; Third Keough Decl. (dkt. 8076) ¶ 3. On October 6, 2022, the Settlement Administrator also sent reminder notices to the class members who have not yet submitted a claim, stating that they may file a claim without documentation, and their claim will be verified based on the information they provide. Third Keough Decl.

¶ 4. In any case, Lochridge's concerns about the unavailability of documentation have not been borne out by the majority of claimants: According to the Settlement Administrator, of the 122,467 claims submitted, 100,657 have included some form of documentation. *Id.* ¶ 6. Lochridge's objection on this point is thus overruled... Additionally, the claims process has been unusually successful—as of October 20, 122,467 claim forms have been submitted, covering 22% of the estimated eligible Class vehicles. Third Keough Decl. ¶ 6. This percentage rises to 24% when the Sport+ Class vehicles that have already received a software update (thus guaranteeing their owners a \$250 payment without submission of a claim form) are included. *Id.* This reaction strongly favors approval of the settlement.

6. Honorable Joseph C. Spero

Shuman v. Squaretrade Inc., (October 17, 2022)
No. 20-cv-02725-JCS (N.D. Cal.):

JND Legal Administration is appointed to serve as the Settlement Administrator and is authorized to email and mail the approved Notice to members of the Settlement Class and further administer the Settlement in accordance with the Amended Agreement and this Order.

7. Judge Stephen V. Wilson

LSIMC, LLC v. Am. Gen. Life Ins. Co., (September 21, 2022)
No. 20-cv-11518 (C.D. Cal.):

JND Legal Administration LLC (“JND”) shall be appointed to serve as Class Notice Administrator...

8. Judge Valerie Figueredo

Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of New York, (August 19, 2022)
No. 19-cv-06004 (S.D.N.Y.):

The Court approves the retention of JND Legal Administration LLC (“JND”) as the Notice Administrator.

9. Honorable Dana M. Sabraw

In re Packaged Seafood Prods. Antitrust Litig. (EPP Class), (July 15, 2022)
No. 15-md-02670 (S.D. Cal.):

An experienced and well-respected claims administrator, JND Legal Administration LLC (“JND”), administered a comprehensive and robust notice plan to alert Settlement Class Members of the COSI Settlement Agreement...The Notice Plan surpassed the 85% reach goal...The Court recognizes JND’s extensive experience in processing claim especially for millions of claimants...The Court finds due process was satisfied and the Notice Program provided adequate notice to settlement class members in a reasonable manner through all major and common forms of media.

10. Honorable Charles R. Breyer

In re Volkswagen “Clean Diesel” Mktg., Sales Practice and Prods. Liab. Litig., (July 8, 2022)
MDL 2672 CRB (N.D. Cal.):

As applied here, the Court finds that the content, format, and method of disseminating Notice—set forth in the Motion, the Declaration of Jennifer Keough on Settlement Notice Plan, and the Settlement Agreement and Release—is state of the art and satisfies Rule 23(c)(2) and all contemporary notice standards. The Court approves the notice program, and hereby directs that such notice be disseminated in the manner set forth in the proposed Settlement Agreement and Declaration of Jennifer Keough on Settlement Notice Plan to Class Members under Rule 23(e)(1).

11. Judge Fernando M. Olguin

Gupta v. Aeries Software, Inc., (July 7, 2022)
No. 20-cv-00995 (C.D. Cal.):

Under the circumstances, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and complies with the requirements of due process...The court appoints JND as settlement administrator.

12. Judge Cormac J. Carney

Gifford v. Pets Global, Inc., (June 24, 2022)

No. 21-cv-02136-CJC-MRW (C.D. Cal.):

The Settlement also proposes that JND Legal Administration act as Settlement Administrator and offers a provisional plan for Class Notice...

The proposed notice plan here is designed to reach at least 70% of the class at least two times. The Notices proposed in this matter inform Class Members of the salient terms of the Settlement, the Class to be certified, the final approval hearing and the rights of all parties, including the rights to file objections or to opt-out of the Settlement Class...This proposed notice program provides a fair opportunity for Class Members to obtain full disclosure of the conditions of the Settlement and to make an informed decision regarding the Settlement.

13. Judge David J. Novak

Brighton Tr. LLC, as Tr. v. Genworth Life & Annuity Ins. Co., (June 3, 2022)

No. 20-cv-240-DJN (E.D. Va.):

The Court appoints JND Legal Administration LLC ("JND"), a competent firm, as the Settlement Administrator.

14. Judge Donovan W. Frank

Advance Trust & Life Escrow Serv., LTA v. ReliaStar Life Ins. Co., (June 2, 2022)

No. 18-cv-2863-DWF-ECW (D. Minn.):

The Court approves the retention of JND Legal Administration LLC ("JND") as the Notice Administrator.

15. Honorable Philip S. Gutierrez

Andrews v. Plains All Am. Pipeline, L.P., (May 25, 2022)

No. 15-cv-04113-PSG-JEM (C.D. Cal.):

Court appoints JND Legal Administration as the Settlement Administrator in this Action...The Court approves, as to form and content, the Mail Notice and the

Publication Notice, substantially in the forms attached as Exhibits D, E, and F to the Declaration of Jennifer Keough In Support of Motion for Preliminary Approval of Class Action Settlement and Direction of Notice (“Keough Declaration”).

16. Judge Victoria A. Roberts

Graham v. Univ. of Michigan, (March 29, 2022)

No. 21-cv-11168-VAR-EAS (E.D. Mich.):

The Court has received and reviewed...the proposed notice plan as described in the Declaration of Jennifer Keough...The Court finds that the foregoing program of Class Notice and the manner of its dissemination is sufficient under the circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of this Action and their right to object to the Settlement. The Court further finds that the Class Notice program is reasonable; that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and that it meets the requirements of due process and Federal Rule of Civil Procedure 23.

17. Honorable Michael Markman

DC 16 v. Sutter Health, (March 11, 2022)

No. RG15753647 (Cal. Super. Ct.):

The Court approves and appoints JND Legal Administration (“JND”) to serve as the notice provider and directs JND to carry out all duties and responsibilities of providing notice and processing requests for exclusion.

18. Honorable P. Kevin Castel

Hanks v. Lincoln Life & Annuity Co. of New York, (February 23, 2022)

No. 16-cv-6399 PKC (S.D.N.Y.):

The Court appoints JND Legal Administration LLC (“JND”), a competent firm, as the Settlement Administrator...The form and content of the notices, as well as the manner of dissemination described below, meet the requirements of Rule 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

19. Judge David G. Campbell

In re Arizona Theranos, Inc. Litig., (February 2, 2022)
No. 16-cv-2138-DGC (D. Ariz.):

The Court appoints JND Legal Administration (“JND”) to serve as Class Administrator and directs JND to carry out all duties and responsibilities of the Class Administrator as specified in the Notice Plan...This approval includes the proposed methods of providing notice, the proposed forms of notice attached as Exhibits B through D to the Declaration of Jennifer M. Keough (Doc. 445-1 – “Keough Decl.”), and the proposed procedure for class members to opt-out.

20. Judge William M. Conley

Bruzek v. Husky Oil Operations Ltd., (January 31, 2022)
No. 18-cv-00697 (W.D. Wis.):

The claims administrator estimates that at least 70% of the class received notice... the court concludes that the parties’ settlement is fair, reasonable and adequate under Rule 23(e).

21. Honorable Dana M. Sabraw

In re Packaged Seafood Prods. Antitrust Litig. (DPP Class), (January 26, 2022)
No. 15-md-02670 (S.D. Cal.):

The rigorous notice plan proposed by JND satisfies requirements imposed by Rule 23 and the Due Process clause of the United States Constitution. Moreover, the contents of the notice satisfactorily informs Settlement Class members of their rights under the Settlement.

22. Honorable Dana M. Sabraw

In re Packaged Seafood Prods. Antitrust Litig. (EPP Class), (January 26, 2022)
No. 15-md-02670 (S.D. Cal.):

Class Counsel retained JND, an experienced notice and claims administrator, to serve as the notice provider and settlement claims administrator. The Court approves and appoints JND as the Claims Administrator. EPPs and JND have

developed an extensive and robust notice program which satisfies prevailing reach standards. JND also developed a distribution plan which includes an efficient and user-friendly claims process with an effective distribution program. The Notice is estimated to reach over 85% of potential class members via notice placements with the leading digital network (Google Display Network), the top social media site (Facebook), and a highly read consumer magazine (People)... The Court approves the notice content and plan for providing notice of the COSI Settlement to members of the Settlement Class.

23. Judge Alvin K. Hellerstein

Leonard v. John Hancock Life Ins. Co. of NY, (January 10, 2022)
No. 18-CV-04994 (S.D.N.Y.):

The Court finds that the manner of distribution of the Notices constitutes the best practicable notice under the circumstances as well as valid, due and sufficient notice to the Class and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

24. Honorable Justice Edward Belobaba

Kalra v. Mercedes-Benz Canada Inc., (December 9, 2021)
No. 15-MD-2670 (Ont. Super. Ct.):

THIS COURT ORDERS that JND Legal Administration is hereby appointed the Settlement Administrator to implement and oversee the Notice Program, the Claims Program, the Honorarium Payment to the Class Representative, and the payment of the Levy to the Class Proceedings Fund.

25. Judge Timothy J. Corrigan

Levy v. Dolgencorp, LLC, (December 2, 2021)
No. 20-cv-01037-TJC-MCR (M.D. Fla.):

No Settlement Class Member has objected to the Settlement and only one Settlement Class Member requested exclusion from the Settlement through the opt-out process approved by this Court...The Notice Program was the best notice practicable under

the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice. The Notice Program fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

26. Honorable Nelson S. Roman

Swetz v. GSK Consumer Health, Inc., (November 22, 2021)

No. 20-cv-04731 (S.D.N.Y.):

The Notice Plan provided for notice through a nationwide press release; direct notice through electronic mail, or in the alternative, mailed, first-class postage prepaid for identified Settlement Class Members; notice through electronic media—such as Google Display Network and Facebook—using a digital advertising campaign with links to the dedicated Settlement Website; and a toll-free telephone number that provides Settlement Class Members detailed information and directs them to the Settlement Website. The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order.

27. Honorable James V. Selna

Herrera v. Wells Fargo Bank, N.A., (November 16, 2021)

No. 18-cv-00332-JVS-MRW (C.D. Cal.):

On June 8, 2021, the Court appointed JND Legal Administration (“JND”) as the Claims Administrator... JND mailed notice to approximately 2,678,266 potential Non-Statutory Subclass Members and 119,680 Statutory Subclass Members. *Id.* ¶ 5. 90% of mailings to Non-Statutory Subclass Members were deemed delivered, and 81% of mailings to Statutory Subclass Members were deemed delivered. *Id.* ¶ 9. Follow-up email notices were sent to 1,977,514 potential Non-Statutory Subclass Members and 170,333 Statutory Subclass Members, of which 91% and 89% were deemed delivered, respectively. *Id.* ¶ 12. A digital advertising campaign generated an additional 5,195,027 views. *Id.* ¶ 13...Accordingly, the Court finds that the notice to the Settlement Class was fair, adequate, and reasonable.

28. Judge Mark C. Scarsi

Patrick v. Volkswagen Grp. of Am., Inc., (September 18, 2021)

No. 19-cv-01908-MCS-ADS (C.D. Cal.):

The Court finds that, as demonstrated by the Declaration of Jennifer M. Keough and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with Fed. R. Civ. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

29. Judge Morrison C. England, Jr.

Martinelli v. Johnson & Johnson, (September 27, 2021)

No. 15-cv-01733-MCE-DB (E.D. Cal.):

The Court appoints JND, a well-qualified and experienced claims and notice administrator, as the Settlement Administrator.

30. Honorable Nathanael M. Cousins

Malone v. Western Digital Corp., (July 21, 2021)

No. 20-cv-03584-NC (N.D. Cal.):

The Court hereby appoints JND Legal Administration as Settlement Administrator... The Court finds that the proposed notice program meets the requirements of Due Process under the U.S. Constitution and Rule 23; and that such notice program—which includes individual direct notice to known Settlement Class Members via email, mail, and a second reminder email, a media and Internet notice program, and the establishment of a Settlement Website and Toll-Free Number—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Court further finds that the proposed form and content of the forms of the notice are adequate and will give the Settlement Class Members sufficient information to enable them to make informed decisions as to the Settlement Class, the right to object or opt-out, and the proposed Settlement and its terms.

31. Judge Mark H. Cohen

Pinon v. Mercedes-Benz USA, LLC and Daimler AG, (March 29, 2021)

No. 18-cv-3984 (N.D. Ga.):

The Court finds that the content, format, and method of disseminating the Notice Plan, as set forth in the Motion, the Declaration of the Settlement Administrator (Declaration of Jennifer M. Keough Regarding Proposed Notice Plan) [Doc. 70-7], and the Settlement Agreement, including postcard notice disseminated through direct U.S. Mail to all known Class Members and establishment of a website: (a) constitutes the best notice practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed Settlement Agreement, and their rights under the proposed Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfies all requirements provided Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designated to be readily understandable by the Settlement Class.

32. Honorable Daniel D. Domenico

Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co., (January 29, 2021)

No. 18-cv-01897-DDD-NYW (D. Colo.):

The court approves the form and contents of the Short-Form and Long Form Notices attached as Exhibits A and B, respectively, to the Declaration of Jennifer M. Keough, filed on January 26, 2021...The proposed form and content of the Notices meet the requirements of Federal Rule of Civil Procedure 23(c)(2)(B)...The court approves the retention of JND Legal Administration LLC as the Notice Administrator.

33. Honorable Virginia A. Phillips

Sonner v. Schwabe N. Am., Inc., (January 25, 2021)

No. 15-cv-01358 VAP (SPx) (C.D. Cal.):

Following preliminary approval of the settlement by the Court, the settlement administrator provided notice to the Settlement Class through a digital media

campaign. (Dkt. 203-5). The Notice explains in plain language what the case is about, what the recipient is entitled to, and the options available to the recipient in connection with this case, as well as the consequences of each option. (*Id.*, Ex. E). During the allotted response period, the settlement administrator received no requests for exclusion and just one objection, which was later withdrawn. (Dkt. 203-1, at 11).

Given the low number of objections and the absence of any requests for exclusion, the Class response is favorable overall. Accordingly, this factor also weighs in favor of approval.

34. Honorable R. Gary Klausner

A.B. v. Regents of the Univ. of California, (January 8, 2021)
No. 20-cv-09555-RGK-E (C.D. Cal.):

The parties intend to notify class members through mail using UCLA's patient records. And they intend to supplement the mail notices using Google banners and Facebook ads, publications in the LA times and People magazine, and a national press release. Accordingly, the Court finds that the proposed notice and method of delivery sufficient and approves the notice.

35. Judge Vernon S. Broderick, Jr.

In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig., (December 16, 2020)
No. 14-md-02542 (S.D.N.Y.):

I further appoint JND as Claims Administrator. JND's principals have more than 75 years-worth of combined class action legal administration experience, and JND has handled some of the largest recent settlement administration issues, including the Equifax Data Breach Settlement. (Doc. 1115 ¶ 5.) JND also has extensive experience in handling claims administration in the antitrust context. (*Id.* ¶ 6.) Accordingly, I appoint JND as Claims Administrator.

36. Honorable Laurel Beeler

Sidibe v. Sutter Health, (November 5, 2020)

No. 12-cv-4854-LB (N.D. Cal.):

Class Counsel has retained JND Legal Administration (“JND”), an experienced class notice administration firm, to administer notice to the Class. The Court appoints JND as the Class Notice Administrator. JND shall provide notice of pendency of the class action consistent with the procedures outlined in the Keough Declaration.

37. Judge Carolyn B. Kuhl

Sandoval v. Merlex Stucco Inc., (October 30, 2020)

No. BC619322 (Cal. Super. Ct.):

Additional Class Member class members, and because their names and addresses have not yet been confirmed, will be notified of the pendency of this settlement via the digital media campaign outlined by the Keough/JND Legal declaration...the Court approves the Parties selection of JND Legal as the third-party Claims Administrator.

38. Honorable Louis L. Stanton

Rick Nelson Co. v. Sony Music Ent., (September 16, 2020)

No. 18-cv-08791 (S.D.N.Y.):

The parties have designated JND Legal Administration (“JND”) as the Settlement Administrator. Having found it qualified, the Court appoints JND as the Settlement Administrator and it shall perform all the duties of the Settlement Administrator as set forth in the Stipulation...The form and content of the Notice, Publication Notice and Email Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process. and any other applicable law, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

39. Judge Steven W. Wilson

Amador v Baca, (August 11, 2020)

No. 10-cv-1649 (C.D. Cal.):

Class Counsel, in conjunction with JND, have also facilitated substantial notice and outreach to the relatively disparate and sometimes difficult to contact class of more than 94,000 individuals, which has resulted in a relatively high claims rate of between 33% and 40%, pending final verification of deficient claims forms. Their conduct both during litigation and after settlement was reached was adequate in all respects, and supports approval of the Settlement Agreement.

40. Judge Stephanie M. Rose

Swinton v. SquareTrade, Inc., (April 14, 2020)

No. 18-CV-00144-SMR-SBJ (S.D. Iowa):

This publication notice appears to have been effective. The digital ads were linked to the Settlement Website, and Google Analytics and other measures indicate that, during the Publication Notice Period, traffic to the Settlement Website was at its peak.

41. Judge Joan B. Gottschall

In re Navistar MaxxForce Engines Mktg., Sales Practices and Prods., (January 3, 2020)

No. 14-cv-10318 (N.D. Ill.):

WHEREAS, the Parties have agreed to use JND Legal Administration (“JND”), an experienced administrator of class action settlements, as the claims administrator for this Settlement and agree that JND has the requisite experience and expertise to serve as claims administrator; The Court appoints JND as the claims administrator for the Settlement.

42. Honorable Steven I. Locke

Donnenfield v. Petro, Inc., (December 4, 2019)

No. 17-cv-02310 (E.D.N.Y.):

WHEREAS, the Parties have agreed to use JND Legal Administration (“JND”), an experienced administrator of class action settlements, as the claims administrator

for this Settlement and agree that JND has the requisite experience and expertise to serve as claims administrator; The Court appoints JND as the claims administrator for the Settlement.

43. Honorable Amy D. Hogue

Trepte v. Bionaire, Inc., (November 5, 2019)

No. BC540110 (Cal. Super. Ct.):

The Court appoints JND Legal Administration as the Class Administrator... The Court finds that the forms of notice to the Settlement Class regarding the pendency of the action and of this settlement, and the methods of giving notice to members of the Settlement Class... constitute the best notice practicable under the circumstances and constitute valid, due, and sufficient notice to all members of the Settlement Class. They comply fully with the requirements of California Code of Civil Procedure section 382, California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

44. Judge Barbara Jacobs Rothstein

Wright v. Lyft, Inc., (May 29, 2019)

No. 17-cv-23307-MGC 14-cv-00421-BJR (W.D. Wash.):

The Court also finds that the proposed method of distributing relief to the class is effective. JND Legal Administration (“JND”), an experienced claims administrator, undertook a robust notice program that was approved by this Court...

45. Judge J. Walton McLeod

Boskie v. Backgroundchecks.com, (May 17, 2019)

No. 2019CP3200824 (S.C. C.P.):

The Court appoints JND Legal Administration as Settlement Administrator...The Court approves the notice plans for the HomeAdvisor Class and the Injunctive Relief Class as set forth in the declaration of JND Legal Administration. The Court finds the class notice fully satisfies the requirements of due process, the South Carolina Rules of Civil Procedure. The notice plan for the HomeAdvisor Class and Injunctive Relief Class constitutes the best notice practicable under the circumstances of each Class.

46. Honorable James Donato

In re Resistors Antitrust Litig., (May 2, 2019)

No. 15-cv-03820-JD (N.D. Cal.):

The Court approves as to form and content the proposed notice forms, including the long form notice and summary notice, attached as Exhibits B and D to the Second Supplemental Declaration of Jennifer M. Keough Regarding Proposed Notice Program (ECF No. 534-3). The Court further finds that the proposed plan of notice – including Class Counsel’s agreement at the preliminary approval hearing for the KOA Settlement that direct notice would be effectuated through both U.S. mail and electronic mail to the extent electronic mail addresses can be identified following a reasonable search – and the proposed contents of these notices, meet the requirements of Rule 23 and due process, and are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Court appoints the firm of JND Legal Administration LLC as the Settlement Administrator.

47. Honorable Leigh Martin May

Bankhead v. First Advantage Background Serv. Corp., (April 30, 2019)

No. 17-cv-02910-LMM-CCB (N.D. Ga.):

The Court appoints JND Legal Administration as Settlement Administrator... The Court approves the notice plans for the Class as set forth in the declaration of the JND Legal Administration. The Court finds that class notice fully satisfies the requirements of due process of the Federal Rules of Civil Procedure. The notice plan constitutes the best notice practicable under the circumstances of the Class.

48. Honorable P. Kevin Castel

Hanks v. Lincoln Life & Annuity Co. of New York, (April 23, 2019)

No. 16-cv-6399 PKC (S.D.N.Y.):

The Court approves the form and contents of the Short-Form Notice and Long-Form Notice (collectively, the “Notices”) attached as Exhibits A and B, respectively, to the Declaration of Jennifer M. Keough, filed on April 2, 2019, at Docket No. 120...The form and content of the notices, as well as the manner of dissemination described below, therefore meet the requirements of Rule 23 and due process, constitute

the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto...the Court approves the retention of JND Legal Administration LLC ("JND") as the Notice Administrator.

49. Judge Kathleen M. Daily

Podawiltz v. Swisher Int'l, Inc., (February 7, 2019)

No. 16CV27621 (Or. Cir. Ct.):

The Court appoints JND Legal Administration as settlement administrator...The Court finds that the notice plan is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, ORCP 32, and any other applicable laws.

50. Honorable Kenneth J. Medel

Huntzinger v. Suunto Oy, (December 14, 2018)

No. 37-2018-27159 (CU) (BT) (CTL) (Cal. Super. Ct.):

The Court finds that the Class Notice and the Notice Program implemented pursuant to the Settlement Agreement and Preliminary Approval Order constituted the best notice practicable under the circumstances to all persons within the definition of the Class and fully complied with the due process requirement under all applicable statutes and laws and with the California Rules of Court.

51. Honorable Thomas M. Durkin

In re Broiler Chicken Antitrust Litig., (November 16, 2018)

No. 16-cv-8637 (N.D. Ill.):

The notice given to the Class, including individual notice to all members of the Class who could be identified through reasonable efforts, was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

52. Judge Maren E. Nelson

Granados v. Cnty. of Los Angeles, (October 30, 2018)

No. BC361470 (Cal. Super. Ct.):

JND's Media Notice plan is estimated to have reached 83% of the Class. The overall reach of the Notice Program was estimated to be over 90% of the Class. (Keough Decl., at ¶12.). Based upon the notice campaign outlined in the Keough Declaration, it appears that the notice procedure was aimed at reaching as many class members as possible. The Court finds that the notice procedure satisfies due process requirements.

53. Judge Cheryl L. Pollak

Dover v. British Airways, PLC (UK), (October 9, 2018)

No. 12-cv-5567 (E.D.N.Y.), in response to two objections:

JND Legal Administration was appointed as the Settlement Claims Administrator, responsible for providing the required notices to Class Members and overseeing the claims process, particularly the processing of Cash Claim Forms...the overwhelmingly positive response to the Settlement by the Class Members, reinforces the Court's conclusion that the Settlement is fair, adequate, and reasonable.

54. Judge Edward J. Davila

In re Intuit Data Litig., (October 4, 2018)

No. 15-CV-1778-EJD (N.D. Cal.):

The Court appoints JND Legal Administration ("JND") to serve as the Settlement Administrator...The Court approves the program for disseminating notice to Class Members set forth in the Agreement and Exhibit A thereto (herein, the "Notice Program"). The Court approves the form and content of the proposed forms of notice, in the forms attached as Attachments 1 through 3 to Exhibit A to the Agreement. The Court finds that the proposed forms of notice are clear and readily understandable by Class Members. The Court finds that the Notice Program, including the proposed forms of notice, is reasonable and appropriate and satisfies any applicable due process and other requirements, and is the only notice to the Class Members of the Settlement that is required.

55. Judge Ann D. Montgomery

In re Wholesale Grocery Prod. Antitrust Litig., (November 16, 2017)
No. 9-md-2090 (ADM) (TNL) (D. Minn.):

Notice provider and claims administrator JND Legal Administration LLC provided proof that mailing conformed to the Preliminary Approval Order in a declaration filed contemporaneously with the Motion for Final Approval of Class Settlement. This notice program fully complied with Fed. R. Civ. P. 23, satisfied the requirements of due process, is the best notice practicable under the circumstances, and constituted due and adequate notice to the Class of the Settlement, Final Approval Hearing and other matters referred to in the Notice.

56. Honorable David O. Carter

Hernandez v. Experian Info. Sols., Inc., (April 6, 2018)
No. 05-cv-1070 (C.D. Cal.):

The Court finds, however, that the notice had significant value for the Class, resulting in over 200,000 newly approved claims—a 28% increase in the number of Class members who will receive claimed benefits—not including the almost 100,000 Class members who have visited the CCRA section of the Settlement Website thus far and the further 100,000 estimated visits expected through the end of 2019. (Dkt. 1114-1 at 3, 6). Furthermore, the notice and claims process is being conducted efficiently at a total cost of approximately \$6 million, or \$2.5 million less than the projected 2009 Proposed Settlement notice and claims process, despite intervening increases in postage rates and general inflation. In addition, the Court finds that the notice conducted in connection with the 2009 Proposed Settlement has significant ongoing value to this Class, first in notifying in 2009 over 15 million Class members of their rights under the Fair Credit Reporting Act (the ignorance of which for most Class members was one area on which Class Counsel and White Objectors' counsel were in agreement), and because of the hundreds of thousands of claims submitted in response to that notice, and processed and validated by the claims administrator, which will be honored in this Settlement.

IV.

CASE EXPERIENCE

Ms. Keough has played an important role in hundreds of matters throughout her career. A partial listing of her notice and claims administration case work is provided below.

CASE NAME	CASE NUMBER	LOCATION
<i>Aaland v. Contractors.com and One Planet Ops</i>	19-2-242124 SEA	Wash. Super. Ct.
<i>A.B. v. Regents of the Univ. of California</i>	20-cv-09555-RGK-E	C.D. Cal.
<i>Achziger v. IDS Prop. Cas. Ins.</i>	14-cv-5445	W.D. Wash.
<i>Adair v. Michigan Pain Specialist, PLLC</i>	14-28156-NO	Mich. Cir.
<i>Adkins v. EQT Prod. Co.</i>	10-cv-00037-JPJ-PMS	W.D. Va.
<i>Advance Trust & Life Escrow Serv. LTA, v. N. Am. Co. for Life and Health Ins.</i>	18-CV-00368	S.D. Iowa
<i>Advance Trust & Life Escrow Serv., LTA v. ReliaStar Life Ins. Co.</i>	18-cv-2863-DWF-ECW	D. Minn.
<i>Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co.</i>	18-cv-01897-DDD-NYW	D. Colo.
<i>Ahmed v. HSBC Bank USA, NA</i>	15-cv-2057-FMO-SPx	N.D. Ill.
<i>Allagas v. BP Solar Int'l, Inc.</i>	14-cv-00560 (SI)	N.D. Cal.
<i>Allen v. Apache Corp.</i>	22-cv-00063-JAR	E.D. Okla.
<i>Amador v. Baca</i>	10-cv-1649	C.D. Cal.
<i>Amin v. Mercedes-Benz USA, LLC</i>	17-cv-01701-AT	N.D. Ga.
<i>Armstead v. VGW Malta Ltd.</i>	2022-CI-00553	Ky. Cir. Ct.
<i>Andrews v. Plains All Am. Pipeline, L.P.</i>	15-cv-04113-PSG-JEM	C.D. Cal.
<i>Anger v. Accretive Health</i>	14-cv-12864	E.D. Mich.
<i>Arnold v. State Farm Fire and Cas. Co.</i>	17-cv-148-TFM-C	S.D. Ala.
<i>Arthur v. Sallie Mae, Inc.</i>	10-cv-00198-JLR	W.D. Wash.
<i>Atkins v. Nat'l. Gen. Ins. Co.</i>	16-2-04728-4	Wash. Super. Ct.
<i>Atl. Ambulance Corp. v. Cullum & Hitti</i>	MRS-L-264-12	N.J. Super. Ct.
<i>Backer Law Firm, LLC v. Costco Wholesale Corp.</i>	15-cv-327 (SRB)	W.D. Mo.
<i>Baker v. Equity Residential Mgmt., LLC</i>	18-cv-11175	D. Mass.
<i>Bankhead v. First Advantage Background Servs. Corp.</i>	17-cv-02910-LMM-CCB	N.D. Ga.
<i>Barbanell v. One Med. Grp., Inc.</i>	CGC-18-566232	Cal. Super. Ct.
<i>Barrios v. City of Chicago</i>	15-cv-02648	N.D. Ill.

CASE NAME	CASE NUMBER	LOCATION
<i>Beaucage v. Ticketmaster Canada Holdings, ULC</i>	CV-20-00640518-00CP	Ont. Super. Ct.
<i>Belanger v. RoundPoint Mortg. Servicing</i>	17-cv-23307-MGC	S.D. Fla.
<i>Belin v. Health Ins. Innovations, Inc.</i>	19-cv-61430-AHS	S.D. Fla.
<i>Beltran v. InterExchange, Inc.</i>	14-cv-3074	D. Colo.
<i>Benson v. DoubleDown Interactive, LLC</i>	18-cv-00525-RSL	W.D. Wash.
<i>Bland v. Premier Nutrition Corp.</i>	RG19-002714	Cal. Super. Ct.
<i>Blankenship v. HAPO Cmty. Credit Union</i>	19-2-00922-03	Wash. Super. Ct.
<i>Blasi v. United Debt Serv., LLC</i>	14-cv-0083	S.D. Ohio
<i>Bollenbach Enters. Ltd. P'ship. v. Oklahoma Energy Acquisitions</i>	17-cv-134	W.D. Okla.
<i>Boskie v. Backgroundchecks.com</i>	2019CP3200824	S.C. C.P.
<i>Botts v. Johns Hopkins Univ.</i>	20-cv-01335-JRR	D. Md.
<i>Boyd v. RREM Inc., d/b/a Winston</i>	2019-CH-02321	Ill. Cir. Ct.
<i>Bradley v. Honecker Cowling LLP</i>	18-cv-01929-CL	D. Or.
<i>Brasch v. K. Hovnanian Enter. Inc.</i>	30-2013-00649417-CU-CD-CXC	Cal. Super. Ct.
<i>Brighton Tr. LLC, as Tr. v. Genworth Life & Annuity Ins. Co.</i>	20-cv-240-DJN	E.D. Va.
<i>Brna v. Isle of Capri Casinos</i>	17-cv-60144 (FAM)	S.D. Fla.
<i>Bromley v. SXSW LLC</i>	20-cv-439	W.D. Tex.
<i>Browning v. Yahoo!</i>	C04-01463 HRL	N.D. Cal.
<i>Bruzek v. Husky Oil Operations Ltd.</i>	18-cv-00697	W.D. Wis.
<i>Careathers v. Red Bull N. Am., Inc.</i>	13-cv-369 (KPF)	S.D.N.Y.
<i>Carillo v. Wells Fargo Bank, N.A.</i>	18-cv-03095	E.D.N.Y.
<i>Carmack v. Amaya Inc.</i>	16-cv-1884	D.N.J.
<i>Cavallaro v USAA</i>	20-CV-00414-TSB	S.D. Ohio
<i>Cecil v. BP Am. Prod. Co.</i>	16-cv-410 (RAW)	E.D. Okla.
<i>Chapman v. GEICO Cas. Co.</i>	37-2019-00000650-CU-CR-CTL	Cal. Super. Ct.
<i>Chester v. TJX Cos.</i>	15-cv-1437 (ODW) (DTB)	C.D. Cal.
<i>Chieftain Royalty Co. v. BP Am. Prod. Co.</i>	18-cv-00054-JFH-JFJ	N.D. Okla.
<i>Chieftain Royalty Co. v. Marathon Oil Co.</i>	17-cv-334	E.D. Okla.
<i>Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.</i>	17-cv-00336-KEW	E.D. Okla.
<i>Chieftain Royalty Co. v. SM Energy Co.</i>	18-cv-01225-J	W.D. Okla.

CASE NAME	CASE NUMBER	LOCATION
<i>Chieftain Royalty Co. v. XTO Energy, Inc.</i>	11-cv-00029-KEW	E.D. Okla.
<i>Christopher v. Residence Mut. Ins. Co.</i>	CIVDS1711860	Cal. Super. Ct.
<i>City of Los Angeles v. Bankrate, Inc.</i>	14-cv-81323 (DMM)	S.D. Fla.
<i>Cline v Sunoco, Inc.</i>	17-cv-313-JAG	E.D. Okla.
<i>Cline v. TouchTunes Music Corp.</i>	14-CIV-4744 (LAK)	S.D.N.Y.
<i>Cobell v. Salazar</i>	96-cv-1285 (TFH)	D.D.C.
<i>Common Ground Healthcare Coop. v. United States</i>	17-877C	F.C.C.
<i>Cooper Clark Found. v. Oxy USA</i>	2017-CV-000003	D. Kan.
<i>Corker v. Costco Wholesale Corp.</i>	19-cv-00290-RSL	W.D. Wash.
<i>Corona v. Sony Pictures Entm't Inc.</i>	14-CV-09600-RGK-E	C.D. Cal.
<i>Courtney v. Avid Tech., Inc.</i>	13-cv-10686-WGY	D. Mass.
<i>Cowan v. Devon Energy Corp.</i>	22-cv-00220-JAR	E.D. Okla.
<i>DC 16 v. Sutter Health</i>	RG15753647	Cal. Super. Ct.
<i>D'Amario v. Univ. of Tampa</i>	20-cv-03744	S.D.N.Y.
<i>Dahy v. FedEx Ground Package Sys., Inc.</i>	GD-17-015638	C.P. Pa.
<i>Dargoltz v. Fashion Mkting & Merch. Grp.</i>	2021-009781-CA-01	Fla. Cir. Ct.
<i>DASA Inv., Inc. v. EnerVest Operating LLC</i>	18-cv-00083-SPS	E.D. Okla.
<i>Davis v. Carfax, Inc.</i>	CJ-04-1316L	D. Okla.
<i>Davis v. State Farm Ins.</i>	19-cv-466	W.D. Ky.
<i>DeCapua v. Metro. Prop. and Cas. Ins. Co.</i>	18-cv-00590	D.R.I.
<i>DeFrees v. Kirkland and U.S. Aerospace, Inc.</i>	CV 11-04574	C.D. Cal.
<i>Deitrich v. Enerfin Res. I Ltd. P'ship</i>	20-cv-084-KEW	E.D. Okla.
<i>de Lacour v. Colgate-Palmolive Co.</i>	16-cv-8364-KW	S.D.N.Y.
<i>Delkener v. Cottage Health Sys.</i>	30-2016-847934 (CU) (NP) (CXC)	Cal. Super. Ct.
<i>DeMarco v. AvalonBay Communities, Inc.</i>	15-cv-00628-JLL-JAD	D.N.J.
<i>Diel v Salal Credit Union</i>	19-2-10266-7 KNT	Wash. Super. Ct.
<i>Djoric v. Justin Brands, Inc.</i>	BC574927	Cal. Super. Ct.
<i>Doan v. CORT Furniture Rental Corp.</i>	30-2017-00904345-CU-BT-CXC	Cal. Super. Ct.
<i>Doan v. State Farm Gen. Ins. Co.</i>	1-08-cv-129264	Cal. Super. Ct.
<i>Dobbins v. Bank of Am., N.A.</i>	17-cv-00540	D. Md.
<i>Donnenfeld v. Petro, Inc.</i>	17-cv-02310	E.D.N.Y.
<i>Dougherty v. Barrett Bus. Serv., Inc.</i>	17-2-05619-1	Wash. Super. Ct.

CASE NAME	CASE NUMBER	LOCATION
<i>Doughtery v. QuickSIUS, LLC</i>	15-cv-06432-JHS	E.D. Pa.
<i>Dover v. British Airways, PLC (UK)</i>	12-cv-5567	E.D.N.Y.
<i>Dwyer v. Snap Fitness, Inc.</i>	17-cv-00455-MRB	S.D. Ohio
<i>Dye v. Richmond Am. Homes of California, Inc.</i>	30-2013-00649460-CU-CD-CXC	Cal. Super. Ct.
<i>Edwards v. Arkansas Cancer Clinic, P.A.</i>	35CV-18-1171	Ark. Cir. Ct.
<i>Edwards v. Hearst Commc'ns., Inc.</i>	15-cv-9279 (AT) (JLC)	S.D.N.Y.
<i>Elec. Welfare Trust Fund v. United States</i>	19-353C	Fed. Cl.
<i>Engquist v. City of Los Angeles</i>	BC591331	Cal. Super. Ct.
<i>Expedia Hotel Taxes & Fees Litig.</i>	05-2-02060-1 (SEA)	Wash. Super. Ct.
<i>Family Med. Pharmacy LLC v. Impax Labs., Inc.</i>	17-cv-53	S.D. Ala.
<i>Family Med. Pharmacy LLC v. Trxade Grp. Inc.</i>	15-cv-00590-KD-B	S.D. Ala.
<i>Farmer v. Bank of Am.</i>	11-cv-00935-OLG	W.D. Tex.
<i>Farris v. Carlinville Rehab and Health Care Ctr.</i>	2019CH42	Ill. Cir. Ct.
<i>Ferrando v. Zynga Inc.</i>	22-cv-00214-RSL	W.D. Wash.
<i>Fielder v. Mechanics Bank</i>	BC721391	Cal. Super. Ct.
<i>Finerman v. Marriott Ownership Resorts, Inc.</i>	14-cv-1154-J-32MCR	M.D. Fla.
<i>Fishon v. Premier Nutrition Corp.</i>	16-CV-06980-RS	N.D. Cal.
<i>Fitzgerald v. Lime Rock Res.</i>	CJ-2017-31	Okla. Dist. Ct.
<i>Folweiler v. Am. Family Ins. Co.</i>	16-2-16112-0	Wash. Super. Ct.
<i>Fosbrink v. Area Wide Protective, Inc.</i>	17-cv-1154-T-30CPT	M.D. Fla.
<i>Franklin v. Equity Residential</i>	651360/2016	N.Y. Super. Ct.
<i>Frederick v. ExamSoft Worldwide, Inc.</i>	2021L001116	Ill. Cir. Ct.
<i>Frost v. LG Elec. MobileComm U.S.A., Inc.</i>	37-2012-00098755-CU-PL-CTL	Cal. Super. Ct.
<i>FTC v. AT&T Mobility, LLC</i>	14CV4785	N.D. Cal.
<i>FTC v. Consumerinfo.com</i>	SACV05-801 AHS (MLGx)	C.D. Cal.
<i>FTC v. Reckitt Benckiser Grp. PLC</i>	19CV00028	W.D. Va.
<i>Gehrich v. Howe</i>	37-2018-00041295-CU-SL-CTL	N.D. Ga.
<i>Gifford v. Pets Global, Inc.</i>	21-cv-02136-CJC-MRW	C.D. Cal.
<i>Gomez v. Mycles Cycles, Inc.</i>	37-2015-00043311-CU-BT-CTL	Cal. Super. Ct.
<i>Gonzalez v. Banner Bank</i>	20-cv-05151-SAB	E.D. Wash.
<i>Gonzalez-Tzita v. City of Los Angeles</i>	16-cv-00194	C.D. Cal.
<i>Graf v. Orbit Machining Co.</i>	2020CH03280	Ill. Cir. Ct.

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<i>Gragg v. Orange Cab Co.</i>	C12-0576RSL	W.D. Wash.
<i>Graham v. Univ. of Michigan</i>	21-cv-11168-VAR-EAS	E.D. Mich.
<i>Granados v. Cnty. of Los Angeles</i>	BC361470	Cal. Super., Ct.
<i>Gudz v. Jemrock Realty Co., LLC</i>	603555/2009	N.Y. Super. Ct.
<i>Gupta v. Aeries Software, Inc.</i>	20-cv-00995	C.D. Cal.
<i>Gutierrez, Jr. v. Amplify Energy Corp.</i>	21-cv-01628-DOC-JDE	C.D. Cal.
<i>Hahn v. Hanil Dev., Inc.</i>	BC468669	Cal. Super. Ct.
<i>Haines v. Washington Trust Bank</i>	20-2-10459-1	Wash. Super. Ct.
<i>Halperin v. YouFit Health Clubs</i>	18-cv-61722-WPD	S.D. Fla.
<i>Hanks v. Lincoln Life & Annuity Co. of New York</i>	16-cv-6399 PKC	S.D.N.Y.
<i>Harrington v. Wells Fargo Bank NA</i>	19-cv-11180-RGS	D. Mass.
<i>Harris v. Chevron U.S.A., Inc.</i>	15-cv-00094	W.D. Okla.
<i>Hartnett v. Washington Fed., Inc.</i>	21-cv-00888-RSM-MLP	W.D. Wash.
<i>Hawker v. Pekin Ins. Co.</i>	20-cv-00830	S.D. Ohio
<i>Hay Creek Royalties, LLC v Mewbourne Oil Co.</i>	CIV-20-1199-F	W.D. Okla.
<i>Hay Creek Royalties, LLC v. Roan Res. LLC</i>	19-cv-00177-CVE-JFJ	N.D. Okla.
<i>Health Republic Ins. Co. v. United States</i>	16-259C	F.C.C.
<i>Heathcote v. SpinX Games Ltd.</i>	20-cv-01310	W.D. Wis.
<i>Henry Price Trust v Plains Mktg</i>	19-cv-00390-RAW	E.D. Okla.
<i>Hernandez v. Experian Info. Sols., Inc.</i>	05-cv-1070 (DOC) (MLGx)	C.D. Cal.
<i>Hernandez v. Wells Fargo Bank, N.A.</i>	18-cv-07354	N.D. Cal.
<i>Herrera v. Wells Fargo Bank, N.A.</i>	18-cv-00332-JVS-MRW	C.D. Cal.
<i>Hicks v. State Farm Fire and Cas. Co.</i>	14-cv-00053-HRW-MAS	E.D. Ky.
<i>Hill v. Valli Produce of Evanston</i>	2019CH13196	Ill. Cir. Ct.
<i>Hill-Green v. Experian Info. Solutions, Inc.</i>	19-cv-708-MHL	E.D. Va.
<i>Holmes v. LM Ins. Corp.</i>	19-cv-00466	M.D. Tenn.
<i>Holt v. Murphy Oil USA, Inc.</i>	17-cv-911	N.D. Fla.
<i>Hoog v. PetroQuest Energy, L.L.C.</i>	16-cv-00463-KEW	E.D. Okla.
<i>Horton v. Cavalry Portfolio Serv., LLC and Krejci v. Cavalry Portfolio Serv., LLC</i>	13-cv-0307-JAH-WVG and 16-cv-00211-JAH-WVG	C.D. Cal.
<i>Howell v. Checkr, Inc.</i>	17-cv-4305	N.D. Cal.
<i>Hoyte v. Gov't of D.C.</i>	13-cv-00569	D.D.C.

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<i>Hufford v. Maxim Inc.</i>	19-cv-04452-ALC-RWL	S.D.N.Y.
<i>Huntzinger v. Suunto Oy</i>	37-2018-27159 (CU) (BT) (CTL)	Cal. Super. Ct.
<i>In re Air Cargo Shipping Servs. Antitrust Litig.</i>	06-md-1775 (JG) (VVP)	E.D.N.Y.
<i>In re Am. Express Fin. Advisors Sec. Litig.</i>	04 Civ. 1773 (DAB)	S.D.N.Y.
<i>In re AMR Corp. (Am. Airlines Bankr.)</i>	1-15463 (SHL)	S.D.N.Y.
<i>In re Arizona Theranos, Inc. Litig.</i>	16-cv-2138-DGC	D. Ariz.
<i>In re Auction Houses Antitrust Litig.</i>	00-648 (LAK)	S.D.N.Y.
<i>In re AXA Equitable Life Ins. Co. COI Litig.</i>	16-cv-740	S.D.N.Y.
<i>In re Banner Health Data Breach Litig.</i>	16-cv-02696	D. Ariz.
<i>In re Blue Cross Blue Shield Antitrust Litig.</i>	13-CV-20000-RDP	N.D. Ala.
<i>In re Broiler Chicken Antitrust Litig.</i>	16-cv-08637	N.D. Ill.
<i>In re Chaparral Energy, Inc.</i>	20-11947 (MFW)	D. Del. Bankr.
<i>In re Classmates.com</i>	C09-45RAJ	W.D. Wash.
<i>In re Equifax Inc. Customer Data Sec. Breach Litig.</i>	17-md-2800-TWT	N.D. Ga.
<i>In re Farm-raised Salmon and Salmon Prod. Antitrust Litig.</i>	19-cv-21551-CMA	S.D. Fla.
<i>In re General Motors LLC Ignition Switch Litig.</i>	14-md-2543	S.D.N.Y.
<i>In re Glob. Tel*Link Corp. Litig.</i>	14-CV-5275	W.D. Ark.
<i>In re Guess Outlet Store Pricing</i>	JCCP No. 4833	Cal. Super. Ct.
<i>In re Intuit Data Litig.</i>	15-CV-1778-EJD	N.D. Cal.
<i>In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig. (Indirect-Purchasers)</i>	14-md-02542	S.D.N.Y.
<i>In re LIBOR-Based Fin. Instruments Antitrust Litig.</i>	11-md-2262 (NRB)	S.D.N.Y.
<i>In re MacBook Keyboard Litig.</i>	18-cv-02813-EDJ	N.D. Cal.
<i>In re Mercedes-Benz Emissions Litig.</i>	16-cv-881 (KM) (ESK)	D.N.J.
<i>In re MyFord Touch Consumer Litig.</i>	13-cv-3072 (EMC)	N.D. Cal.
<i>In re Navistar MaxxForce Engines Mktg., Sales Practices and Prods. Liab. Litig.</i>	14-cv-10318	N.D. Ill.
<i>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010</i>	2179 (MDL)	E.D. La.
<i>In re Packaged Seafood Products Antitrust Litig. (DPP and EPP Class)</i>	15-md-02670	S.D. Cal.
<i>In re PHH Lender Placed Ins. Litig.</i>	12-cv-1117 (NLH) (KMW)	D.N.J.
<i>In re Pokémon Go Nuisance Litig.</i>	16-cv-04300	N.D. Cal.

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<i>In re Polyurethane Foam Antitrust Litig.</i>	10-md-196 (JZ)	N.D. Ohio
<i>In re Pre-Filled Propane Tank Antitrust Litig.</i>	14-md-02567	W.D. Mo.
<i>In re Processed Egg Prod. Antitrust Litig.</i>	08-MD-02002	E.D. Pa.
<i>In re Resistors Antitrust Litig.</i>	15-cv-03820-JD	N.D. Cal.
<i>In re Rockwell Med. Inc. Stockholder Derivative Litig.</i>	19-cv-02373	E.D. N.Y.
<i>In re Sheridan Holding Co. I, LLC</i>	20-31884 (DRJ)	Bankr. S.D. Tex.
<i>In re Stryker Rejuvenate and ABG II Hip Implant Prods. Liab. Litig.</i>	13-md-2441	D. Minn.
<i>In re: Subaru Battery Drain Prods. Liab. Litig.</i>	20-cv-03095-JHR-MJS	D.N.J.
<i>In re The Engle Trust Fund</i>	94-08273 CA 22	Fla. 11th Cir. Ct.
<i>In re Unit Petroleum Co.</i>	20-32738 (DRJ)	Bankr. S.D. Tex.
<i>In re Volkswagen "Clean Diesel" Mktg., Sales Practice and Prods. Liab. Litig.</i>	MDL 2672 CRB	N.D. Cal.
<i>In re Washington Mut. Inc. Sec. Litig.</i>	8-md-1919 (MJP)	W.D. Wash.
<i>In re Webloyalty.com, Inc. Mktg. & Sales Practices Litig.</i>	06-11620-JLT	D. Mass.
<i>In re Wholesale Grocery Prod. Antitrust Litig.</i>	9-md-2090 (ADM) (TNL)	D. Minn.
<i>In re Yahoo! Inc. Sec. Litig.</i>	17-cv-373	N.D. Cal.
<i>In the Matter of the Complaint of Dordellas Finance Corp.</i>	22-cv-02153-DOC-JDE	C.D. Cal.
<i>James v. PacifiCorp.</i>	20cv33885	Or. Cir. Ct.
<i>Jerome v. Elan 99, LLC</i>	2018-02263	Tx. Dist. Ct.
<i>Jet Capital Master Fund L.P. v. HRG Grp. Inc.</i>	21-cv-552-jdp	W.D. Wis.
<i>Jeter v. Bullseye Energy, Inc.</i>	12-cv-411 (TCK) (PJC)	N.D. Okla.
<i>Johnson v. Hyundai Capital Am.</i>	BC565263	Cal. Super. Ct.
<i>Johnson v. MGM Holdings, Inc.</i>	17-cv-00541	W.D. Wash.
<i>Johnston v. Camino Natural Res., LLC</i>	19-cv-02742-CMA-SKC	D. Colo.
<i>Jones v. USAA Gen. Indem. Co.</i>	D01CI200009724	D. Neb.
<i>Jordan v. WP Co. LLC, d/b/a The Washington Post</i>	20-cv-05218	N.D. Cal.
<i>Kain v. The Economist Newspaper NA, Inc.</i>	21-cv-11807-MFL-CI	E.D. Mich.
<i>Kalra v. Mercedes-Benz Canada Inc.</i>	CV-16-550271-00CP	Ont. Super. Ct.
<i>Kennedy v. McCarthy</i>	16-cv-2010-CSH	D. Conn.
<i>Kent v. R.L. Vallee, Inc.</i>	617-6-15	D. Vt.

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<i>Kernen v. Casillas Operating LLC</i>	18-cv-00107-JD	W.D. Okla.
<i>Khona v. Subaru of Am., Inc.</i>	19-cv-09323-RMB-AMD	D.N.J.
<i>Kin-Yip Chun v. Fluor Corp.</i>	8-cv-01338-X	N.D. Tex.
<i>King v. Bumble Trading Inc.</i>	18-cv-06868-NC	N.D. Cal.
<i>Kissel v. Code 42 Software Inc.</i>	15-1936 (JLS) (KES)	C.D. Cal.
<i>Kokoszki v. Playboy Enter., Inc.</i>	19-cv-10302	E.D. Mich.
<i>Komesar v. City of Pasadena</i>	BC 677632	Cal. Super. Ct.
<i>Kommer v. Ford Motor Co.</i>	17-cv-00296-LEK-DJS	N.D.N.Y.
<i>Konecky v Allstate</i>	CV-17-10-M-DWM	D. Mont.
<i>Krueger v. Ameriprise Fin., Inc.</i>	11-cv-02781 (SRN/JSM)	D. Minn.
<i>Kunneman Props. LLC v. Marathon Oil Co.</i>	17-cv-00456-GKF-JFJ	N.D. Okla.
<i>Lambert v. Navy Fed. Credit Union</i>	19-cv-00103-LO-MSN	E.D. Va.
<i>Langan v. Johnson & Johnson Consumer Co.</i>	13-cv-01471	D. Conn.
<i>Langer v. CME Grp.</i>	2014CH00829	Ill. Cir. Ct.
<i>Larson v. Allina Health Sys.</i>	17-cv-03835	D. Minn.
<i>Lee v. Hertz Corp., Dollar Thrifty Auto. Grp. Inc.</i>	CGC-15-547520	Cal. Super. Ct.
<i>Lee v. PetroQuest Energy, L.L.C.</i>	16-cv-00516-KEW	E.D. Okla.
<i>Leonard v. John Hancock Life Ins. Co. of NY</i>	18-CV-04994	S.D.N.Y.
<i>Lerman v. Apple Inc</i>	15-cv-07381	E.D.N.Y.
<i>Levy v. Dolgencorp, LLC</i>	20-cv-01037-TJC-MCR	M.D. Fla.
<i>Linderman v. City of Los Angeles</i>	BC650785	Cal. Super. Ct.
<i>Linneman v. Vita-Mix Corp.</i>	15-cv-748	S.D. Ohio
<i>Liotta v. Wolford Boutiques, LLC</i>	16-cv-4634	N.D. Ga.
<i>Lippert v. Baldwin</i>	10-cv-4603	N.D. Ill.
<i>Lloyd v. CVB Fin. Corp.</i>	10-cv-6256 (CAS)	C.D. Cal.
<i>Loblaw Card Program</i>	Remediation Program	
<i>Loftus v. Outside Integrated Media, LLC</i>	21-cv-11809-MAG-DRG	E.D. Mich.
<i>LSIMC, LLC v. Am. Gen. Life Ins. Co.</i>	20-cv-11518	C.D. Cal.
<i>Mabrey v. Autovest</i>	CGC-18-566617	Cal. Super. Ct.
<i>Macias v. Los Angeles County Dept. of Water and Power</i>	BC594049	Cal. Super. Ct.
<i>Malin v. Ambry Genetics Corp.</i>	30-2018-00994841-CU-SL-CXC	Cal. Super. Ct.

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<i>Malone v. Western Digital Corp.</i>	20-cv-03584-NC	N.D. Cal.
<i>Marical v. Boeing Employees' Credit Union</i>	19-2-20417-6	Wash. Super. Ct.
<i>Markson v. CRST Int'l, Inc.</i>	17-cv-01261-SB (SPx)	C.D. Cal.
<i>Martin v. Lindenwood Univ.</i>	20-cv-01128	E.D. Mo.
<i>Martinelli v. Johnson & Johnson</i>	15-cv-01733-MCE-DB	E.D. Cal.
<i>McCall v. Hercules Corp.</i>	66810/2021	N.Y. Super. Ct.
<i>McClellan v. Chase Home Fin.</i>	12-cv-01331-JGB-JEM	C.D. Cal.
<i>McClintock v. Continuum Producer Serv., LLC</i>	17-cv-00259-JAG	E.D. Okla.
<i>McClintock v Enter.</i>	16-cv-00136-KEW	E.D. Okla.
<i>McGann v. Schnuck Markets Inc.</i>	1322-CC00800	Mo. Cir. Ct.
<i>McGraw v. Geico Gen. Ins. Co.</i>	15-2-07829-7	Wash. Super. Ct.
<i>McKibben v. McMahon</i>	14-2171 (JGB) (SP)	C.D. Cal.
<i>McKnight Realty Co. v. Bravo Arkoma, LLC</i>	17-CIV-308 (KEW); 20-CV-428-KEW	E.D. Okla.
<i>McNeill v. Citation Oil & Gas Corp.</i>	17-CIV-121 (KEW)	E.D. Okla.
<i>McWilliams v. City of Long Beach</i>	BC361469	Cal. Super. Ct.
<i>Messner v. Cambridge Real Estate Servs., Inc.</i>	19CV28815	Or. Cir. Ct.
<i>Metzner v. Quinnipiac Univ.</i>	20-cv-00784	D. Conn.
<i>Mid Is. LP v. Hess Corp.</i>	650911/2013	N.Y. Super. Ct.
<i>Miller Revocable Trust v DCP Operating Co., LP</i>	18-cv-00199-JH	E.D. Okla.
<i>Miller v. Carrington Mortg. Serv., LLC</i>	19-cv-00016-JDL	D. Me.
<i>Miller v. Guenther Mgmt. LLC</i>	20-2-02604-32	Wash. Super. Ct.
<i>Miller v. Mut. of Enumclaw Ins. Co.</i>	19-2-12357-1	Wash. Super. Ct.
<i>Milstead v. Robert Fiance Beauty Sch., Inc.</i>	CAM-L-328-16	N.J. Super. Ct.
<i>Mitchell v Red Bluff Res. Operating, LLC</i>	CJ-2021-323	D. Ok.
<i>Moeller v. Advance Magazine Publishers, Inc.</i>	15-cv-05671 (NRB)	S.D.N.Y.
<i>Mojica v. Securus Techs., Inc.</i>	14-cv-5258	W.D. Ark.
<i>Molnar v. 1-800-Flowers Retail, Inc.</i>	BC 382828	Cal. Super. Ct.
<i>Monteleone v. Nutro Co.</i>	14-cv-00801-ES-JAD	D.N.J.
<i>Moodie v. Maxim HealthCare Servs.</i>	14-cv-03471-FMO-AS	C.D. Cal.
<i>Muir v. Early Warning Servs., LLC</i>	16-cv-00521	D.N.J.
<i>Mylan Pharm., Inc. v. Warner Chilcott Pub. Ltd.</i>	12-3824	E.D. Pa.

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<i>Nasseri v. Cytosport, Inc.</i>	BC439181	Cal. Super. Ct.
<i>Nesbitt v. Postmates, Inc.</i>	CGC-15-547146	Cal. Super. Ct.
<i>New Orleans Tax Assessor Project</i>	Tax Assessment Program	
<i>NMPA Late Fee Program Grps. I-IVA</i>	Remediation Program	CRB
<i>Noble v. Northland</i>	UWY-CV-16-6033559-S	Conn. Super. Ct.
<i>Novoa v. The GEO Grp., Inc.</i>	17-cv-02514-JGB-SHK	C.D. Cal.
<i>Nozzi v. Housing Auth. of the City of Los Angeles</i>	CV 07-0380 PA (FFMx)	C.D. Cal.
<i>Nwabueza v. AT&T</i>	C 09-01529 SI	N.D. Cal.
<i>Nwauzor v. GEO Grp., Inc.</i>	17-cv-05769	W.D. Wash.
<i>O'Donnell v. Fin. Am. Life Ins. Co.</i>	14-cv-01071	S.D. Ohio
<i>Ostendorf v. Grange Indem. Ins. Co.</i>	19-cv-01147-ALM-KAJ	S.D. Ohio
<i>Paetzold v. Metro. Dist. Comm'n</i>	X07-HHD-CV-18-6090558-S	Conn. Super. Ct.
<i>Palmer v City of Anaheim</i>	30-2017-00938646	Cal. Super. Ct.
<i>Parker v. Time Warner Entm't Co.</i>	239 F.R.D. 318	E.D.N.Y.
<i>Parker v. Universal Pictures</i>	16-cv-1193-CEM-DCI	M.D. Fla.
<i>Patrick v. Volkswagen Grp. of Am., Inc.</i>	19-cv-01908-MCS-ADS	C.D. Cal.
<i>Pauper Petroleum, LLC v. Kaiser-Francis Oil Co.</i>	19-cv-00514-JFH-JFJ	N.D. Okla.
<i>Pemberton v. Nationstar Mortg. LLC</i>	14-cv-1024-BAS (MSB)	S.D. Cal.
<i>Pena v. Wells Fargo Bank</i>	19-cv-04065-MMC-TSH	N.D. Cal.
<i>Perchlak v. Liddle & Liddle</i>	19-cv-09461	C.D. Cal.
<i>Perez v. DIRECTV</i>	16-cv-01440-JLS-DFM	C.D. Cal.
<i>Perez v. Wells Fargo Co.</i>	17-cv-00454-MMC	N.D. Cal.
<i>Peterson v. Apria Healthcare Grp., Inc.</i>	19-cv-00856	M.D. Fla.
<i>Petersen v. Costco Wholesale Co.</i>	13-cv-01292-DOC-JCG	C.D. Cal.
<i>Phillips v. Hobby Lobby Stores, Inc.</i>	18-cv-01645-JHE; 16-cv-837-JHE	N.D. Ala.
<i>Pierce v Anthem Ins. Cos.</i>	15-cv-00562-TWP-TAB	S. D. Ind.
<i>Pine Manor Investors v. FPI Mgmt., Inc.</i>	34-2018-00237315	Cal. Super. Ct.
<i>Pinon v. Mercedes-Benz USA, LLC and Daimler AG</i>	18-cv-3984	N.D. Ga.
<i>Podawiltz v. Swisher Int'l, Inc.</i>	16CV27621	Or. Cir. Ct.
<i>Press v. J. Crew Grp., Inc.</i>	56-2018-512503 (CU) (BT) (VTA)	Cal. Super. Ct.
<i>Pruitt v. Par-A-Dice Hotel Casino</i>	2020-L-000003	Ill. Cir. Ct.
<i>Purcell v. United Propane Gas, Inc.</i>	14-CI-729	Ky. 2nd Cir.

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<i>Quezada v. Arbitersports, LLC</i>	20-cv-05193-TJS	E.D. Pa.
<i>Ramos v. Hopele of Fort Lauderdale, LLC</i>	17-cv-62100	S.D. Fla.
<i>Rayburn v. Santander Consumer USA, Inc.</i>	18-cv-1534	S.D. Ohio
<i>RCC, P.S. v. Unigard Ins. Co.</i>	19-2-17085-9	Wash. Super. Ct.
<i>Reed v. Scientific Games Corp.</i>	18-cv-00565-RSL	W.D. Wash.
<i>Reirdon v. Cimarex Energy Co.</i>	16-CIV-113 (KEW)	E.D. Okla.
<i>Reirdon v. XTO Energy Inc.</i>	16-cv-00087-KEW	E.D. Okla.
<i>Rhea v. Apache Corp.</i>	14-cv-00433-JH	E.D. Okla.
<i>Rice v. Insync</i>	30-2014-00701147-CU-NP-CJC	Cal. Super. Ct.
<i>Rice-Redding v. Nationwide Mut. Ins. Co.</i>	18-cv-01203	N.D. Ga.
<i>Rich v. EOS Fitness Brands, LLC</i>	RIC1508918	Cal. Super. Ct.
<i>Rick Nelson Co. v. Sony Music Ent.</i>	18-cv-08791	S.D.N.Y.
<i>Rocchio v. Rutgers, The State Univ. of New Jersey</i>	MID-L-003039-20	N.J. Super. Ct.
<i>Rollo v. Universal Prop. & Cas. Ins.</i>	2018-027720-CA-01	Fla. Cir. Ct.
<i>Rosado v. Barry Univ., Inc.</i>	20-cv-21813	S.D. Fla.
<i>Rosenberg, D.C., P.A. v. Geico Gen. Ins. Co.</i>	19-cv-61422-CANNON/Hunt	S.D. Fla.
<i>Roth v. GEICO Gen. Ins. Co. and Joffe v. GEICO Indem. Co.</i>	16-cv-62942	S.D. Fla.
<i>Rounds v. FourPoint Energy, LLC</i>	CIV-20-00052-P	W.D. Wis.
<i>Routh v. SEIU Healthcare 775NW</i>	14-cv-00200	W.D. Wash.
<i>Ruppel v. Consumers Union of United States, Inc.</i>	16-cv-2444 (KMK)	S.D.N.Y.
<i>Russett v. Nw. Mut. Life Ins. Co.,</i>	19-cv-07414-KMK	S.D.N.Y.
<i>Saccoccio v. JP Morgan Chase</i>	13-cv-21107	S.D. Fla.
<i>Salgado v. UPMC Jameson</i>	30008-18	C.P. Pa.
<i>Sanders v. Glob. Research Acquisition, LLC</i>	18-cv-00555	M.D. Fla.
<i>Sandoval v. Merlex Stucco Inc.</i>	BC619322	Cal. Super. Ct.
<i>Santa Barbara Channelkeeper v. State Water Res. Control Bd.</i>	37-2020-00005776	Cal. Super. Ct.
<i>Schlesinger v. Ticketmaster</i>	BC304565	Cal. Super. Ct.
<i>Schulte v. Liberty Ins. Corp.</i>	19-cv-00026	S.D. Ohio
<i>Schwartz v. Intimacy in New York, LLC</i>	13-cv-5735 (PGG)	S.D.N.Y.
<i>Seegert v. P.F. Chang's China Bistro</i>	37-2017-00016131-CU-MC-CTL	Cal. Super. Ct.
<i>Shumacher v. Bank of Hope</i>	18STCV02066	Cal. Super. Ct.

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<i>Sidibe v. Sutter Health</i>	12-cv-4854-LB	N.D. Cal.
<i>Smith v. Pulte Home Corp.</i>	30-2015-00808112-CU-CD-CXC	Cal. Super. Ct.
<i>Soderstrom v. MSP Crossroads Apartments LLC</i>	16-cv-233 (ADM) (KMM)	D. Minn.
<i>Solorio v. Fresno Comty. Hosp.</i>	15CECG03165	Cal. Super. Ct.
<i>Solberg v. Victim Serv., Inc.</i>	14-cv-05266-VC	N.D. Cal.
<i>Sonner v. Schwabe N. Am., Inc.</i>	15-cv-01358 VAP (SPx)	C.D. Cal.
<i>Speed v. JMA Energy Co., LLC</i>	CJ-2016-59	Okla. Dist. Ct.
<i>Staats v. City of Palo Alto</i>	2015-1-CV-284956	Cal. Super. Ct.
<i>Stanley v. Capri Training Ctr.</i>	ESX-L-1182-16	N.J. Super. Ct.
<i>Stanton Lodge No. 177 v. Pekin Ins. Co.</i>	2020-L-001297	Ill. Cir. Ct.
<i>Steele v. PayPal, Inc.</i>	05-CV-01720 (ILG) (VVP)	E.D.N.Y.
<i>Stewart v. Early Warning Serv., LLC</i>	18-cv-3277	D.N.J.
<i>Stier v. PEMCO Mut. Ins. Co.</i>	18-2-08153-5	Wash. Super. Ct.
<i>Stillman v. Clermont York Assocs. LLC</i>	603557/09E	N.Y. Super. Ct.
<i>Strano v. Kiplinger Washington Editors, Inc.</i>	21-cv-12987-TLL-PTM	E.D. Mich.
<i>Strickland v. Carrington Mortg. Servs., LLC</i>	16-cv-25237	S.D. Fla.
<i>Strohm v. Missouri Am. Water Co.</i>	16AE-CV01252	Mo. Cir. Ct.
<i>Stuart v. State Farm Fire & Cas. Co.</i>	14-cv-04001	W.D. Ark.
<i>Sullivan v Wenner Media LLC</i>	16-cv-00960-JTN-ESC	W.D. Mich.
<i>Swafford v. Ovintiv Exploration Inc.</i>	21-cv-00210-SPS	E.D. Okla.
<i>Swetz v. GSK Consumer Health, Inc.</i>	20-cv-04731	S.D.N.Y.
<i>Swinton v. SquareTrade, Inc.</i>	18-CV-00144-SMR-SBJ	S.D. Iowa
<i>Sylvain v. Longwood Auto Acquisitions, Inc.</i>	2021-CA-009091-O	Fla. Cir. Ct.
<i>Terrell v. Costco Wholesale Corp.</i>	16-2-19140-1-SEA	Wash. Super. Ct.
<i>Timberlake v. Fusione, Inc.</i>	BC 616783	Cal. Super. Ct.
<i>Tkachyk v. Traveler's Ins.</i>	16-28-m (DLC)	D. Mont.
<i>T-Mobile Remediation Program</i>	Remediation Program	
<i>Townes, IV v. Trans Union, LLC</i>	04-1488-JJF	D. Del.
<i>Townsend v. G2 Secure Staff</i>	18STCV04429	Cal. Super. Ct.
<i>Trepte v. Bionaire, Inc.</i>	BC540110	Cal. Super. Ct.
<i>Tyus v. Gen. Info. Sols. LLC</i>	2017CP3201389	S.C. C.P.
<i>Udeen v. Subaru of Am., Inc.</i>	10-md-196 (JZ)	D.N.J.

CASE NAME	CASE NUMBER	LOCATION
<i>Underwood v. NGL Energy Partners LP</i>	21-CV-0135-CVE-SH	N.D. Okla.
<i>United States v. City of Austin</i>	14-cv-00533-LY	W.D. Tex.
<i>United States v. City of Chicago</i>	16-c-1969	N.D. Ill.
<i>United States v. Greyhound Lines, Inc.</i>	16-67-RGA	D. Del.
<i>USC Student Health Ctr. Settlement</i>	18-cv-04258-SVW	C.D. Cal.
<i>Van Jacobs v. New World Van Lines, Inc.</i>	2019CH02619	Ill. Cir. Ct.
<i>Vasquez v. Libre by Nexus, Inc.</i>	17-cv-00755-CW	N.D. Cal.
<i>Vassalle v. Midland Funding LLC</i>	11-cv-00096	N.D. Ohio
<i>Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of New York</i>	19-cv-06004	S.D.N.Y.
<i>Viesse v. Saar's Inc.</i>	17-2-7783-6 (SEA)	Wash. Super. Ct.
<i>Wahl v. Yahoo! Inc.</i>	17-cv-2745 (BLF)	N.D. Cal.
<i>Wake Energy, LLC v. EOG Res., Inc.</i>	20-cv-00183-ABJ	D. Wyo.
<i>Watson v. Checkr, Inc.</i>	19-CV-03396-EMC	N.D. Cal.
<i>Weimar v. Geico Advantage Ins. Co.</i>	19-cv-2698-JTF-tmp	W.D. Tenn.
<i>Weiner v. Ocwen Fin. Corp.</i>	14-cv-02597-MCE-DB	E.D. Cal.
<i>Welsh v. Prop. and Cas. Ins. Co. of Hartford</i>	20-2-05157-3	Wash. Super. Ct.
<i>White Family Minerals, LLC v. EOG Res., Inc.</i>	19-cv-409-KEW	E.D. Okla.
<i>Williams v. Children's Mercy Hosp.</i>	1816-CV 17350	Mo. Cir. Ct.
<i>Williams v. Weyerhaeuser Co.</i>	995787	Cal. Super. Ct.
<i>Wills v. Starbucks Corp.</i>	17-cv-03654	N.D. Ga.
<i>Wilner v. Leopold & Assoc,</i>	15-cv-09374-PED	S.D.N.Y.
<i>Wilson v. Santander Consumer USA, Inc.</i>	20-cv-00152	E.D. Ark.
<i>Wornicki v. Brokerpriceopinion.com, Inc.</i>	13-cv-03258 (PAB) (KMT)	D. Colo.
<i>Wright v. Lyft, Inc.</i>	14-cv-00421-BJR	W.D. Wash.
<i>Wright v. Southern New Hampshire Univ.</i>	20-cv-00609	D.N.H.
<i>Yamagata v. Reckitt Benckiser, LLC</i>	17-cv-03529-CV	N.D. Cal.
<i>Yates v. Checkers</i>	17-cv-09219	N.D. Ill.
<i>Yeske v. Macoupin Energy</i>	2017-L-24	Ill. Cir. Ct.
<i>Z.B. v. Birmingham Cmty. Charter High Sch.</i>	19STCV17092	Cal. Super. Ct.

- EXHIBIT B -

**RESIDENTIAL REAL ESTATE BROKER COMMISSIONS ANTITRUST
SETTLEMENTS**

NOTICE OF PROPOSED SETTLEMENTS

**If you sold a home and paid a commission to a real estate agent,
then you *may* be a part of class action settlements.**

Please read this Notice carefully because it may affect your legal rights.

A federal court has ordered this Notice. It is not from a lawyer, and you are not being sued.

- The Settlements resolve claims against Anywhere Real Estate, Inc. f/k/a Realogy Holdings Corp. (“Anywhere”) and RE/MAX LLC (RE/MAX) in a lawsuit that alleges the existence of an anticompetitive agreement that resulted in home sellers paying inflated commissions to real estate brokers or agents in violation of antitrust law.
- To be eligible to receive the benefits of the Settlements, you must have: (1) sold a home during the Eligible Date Range (see below); (2) listed the home that was sold on a multiple listing service (“MLS”) anywhere in the United States; and (3) paid a commission to any real estate brokerage in connection with the sale of the home. The Eligible Date Range depends on what MLS you listed your home for sale on.

What Eligible Date Ranges apply to me?	
Where was my home listed?	Applicable Date Range
Heartland MLS (encompassing the Kansas City metropolitan area, counties in eastern Kansas, counties in southwest Missouri, and counties in northwest Missouri); MARIS MLS (encompassing the St. Louis metropolitan area, counties in eastern Missouri, and counties in western Illinois); Columbia Board of Realtors MLS (encompassing Columbia, Missouri and its surrounding areas); <i>or</i> Southern Missouri Regional MLS (encompassing Springfield and Joplin, Missouri and their surrounding areas).	April 29, 2014 through the date of this Notice
Bright MLS (Delaware, Baltimore, Maryland area, District of Columbia, parts of New Jersey, Philadelphia,	March 6, 2015 through the date of this Notice

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

<p>Pennsylvania area, Richmond, Virginia areas, parts of West Virginia);</p> <p>Carolina/Canopy MLS (Charlotte, North Carolina area, including portions of South Carolina);</p> <p>Triangle MLS (Research Triangle Area, North Carolina);</p> <p>Stellar MLS (Tampa, Orlando, and Sarasota, Florida areas);</p> <p>Miami MLS (Miami, Florida area);</p> <p>Florida Gulf Coast (Fort Myers, Florida area);</p> <p>Metro MLS (parts of Wisconsin, including the Milwaukee areas);</p> <p>Yes MLS/MLS Now (Cleveland, Ohio, Eastern Ohio, and parts of West Virginia);</p> <p>Columbus Realtors MLS (Columbus, Ohio areas);</p> <p>Northstar MLS (Minnesota, Wisconsin);</p> <p>Wasatch Front/Utah Real Estate (Salt Lake City, Utah area);</p> <p>REcolorado/Metrolist (Denver, Colorado area);</p> <p>Pikes Peak MLS (Colorado Springs, Colorado area);</p> <p>GLVAR MLS (Las Vegas, Nevada area);</p> <p>SABOR (San Antonio, Texas area);</p> <p>ACTRIS/ABOR (Austin, Texas area);</p> <p>HAR MLS (Houston, Texas area);</p>	
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Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

NTREIS (Dallas, Texas area); ARMLS (Phoenix, Arizona area); and Realcomp II (Detroit, Michigan area)	
MLS PIN (Massachusetts)	December 17, 2016 through the date of this Notice
Any MLS in the United States other than the MLSs listed above	Four years prior to the date of notice through the date of this Notice

Your Legal rights are affected whether or not you act. *Please read this Notice carefully*

YOUR LEGAL RIGHTS AND OPTIONS IN THESE SETTLEMENTS:	
SUBMIT A CLAIM FORM	The only way to get a payment. [CLAIM FORM DEADLINE TO BE INSERTED]
ASK TO BE EXCLUDED BY DATE	If you do not want to be included in the case and the Settlements, you must exclude yourself. This is called “opting out.” This is the only option that allows you to sue either Anywhere or RE/MAX for these same issues again.
OBJECT BY DATE	You may write to the Court about why you don’t like the proposed Settlements. You cannot object if you opt-out.
GO TO A HEARING ON DATE	You may ask to speak in Court about the fairness of the proposed Settlements.
DO NOTHING	If you do nothing and the Court approves the proposed Settlements, you will get no payment. You will not be able to sue Anywhere or RE/MAX for these same issues again.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the proposed Settlements. Payments will be made if the Court approves the Settlements and after appeals are resolved. Please be patient.

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

BASIC INFORMATION

1. Why did I get this notice?

This Notice has been posted for the benefit of potential members of the Settlement Class. If you are uncertain about whether you are a member of the Settlement Class, you may contact the Settlement Administrator at 888-995-0207.

This Notice has been posted because members of the Settlement Class have a right to know about proposed settlements of a class action lawsuit in which they are class members, and about all of their options, before the Court decides whether to approve the Settlements. If the Court approves the Settlements, and after objections or appeals relating to the Settlements are resolved, the benefits provided by the Settlements will be available to members of the Class.

This Notice explains the lawsuits, the Settlements, your legal rights, what benefits are available, who is eligible for them, and how to get them. A full copy of the Settlement Agreements may be viewed at the settlement website: www.RealEstateCommissionLitigation.com. This Notice contains only a summary of the Settlements.

The Court in charge of the Settlements is the United States District Court for the Western District of Missouri. The case before this Court is known as *Burnett et al. v. National Association of Realtors, et al.*, Case No. 19-CV-003322-SRB. The people who filed this lawsuit are called the Plaintiffs. The people being sued are called the Defendants. Defendants include The National Association of Realtors (“NAR”) and the following large real estate brokerage firms: Anywhere, RE/MAX, Keller Williams, and Berkshire Hathaway HomeServices. Of these Defendants, the Settlements concern only Anywhere and RE/MAX.

The Settlements also resolve claims against Anywhere and RE/MAX raised in at least two other lawsuits: *Moehrl et al. v. National Association of Realtors et al.*, Case No. 1:19-cv-01610-ARW (Northern District of Illinois); and *Nosalek v. MLS Property Information Network, Inc., et al.*, Case No. 1:20-cv-12244-PBS (District of Massachusetts).

2. What is this lawsuit about?

The lawsuits claim that Defendants created and implemented rules that require home sellers to pay commissions to the broker or agent representing the buyer and that caused home sellers to pay total commissions at inflated rates. They also allege that Defendants enforced these rules through anticompetitive and unlawful practices.

The lawsuits claim that these rules are anticompetitive and unfair, and that they violate antitrust laws. You can read Plaintiffs’ complaints at www.RealEstateCommissionLitigation.com.

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

Specifically, the lawsuits allege violations of the Sherman Act (a federal antitrust statute found at 15 U.S.C. § 1 *et seq.*).

The Sherman Act claims apply to home sales that occurred anywhere in the United States during the Eligible Date Range.

3. Has the Court decided who is right?

Although the Court has authorized notice to be given of the proposed Settlements, this Notice does not express the opinion of the Court on the merits of the claims or defenses asserted by either side of the lawsuit.

Anywhere and RE/MAX dispute Plaintiffs' allegations and deny all liability to Plaintiffs and the Class. You can read the Answers filed by Anywhere and RE/MAX here: www.RealEstateCommissionLitigation.com

4. Why is this case a class action?

In a class action, one or more people called Class Representatives sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The consumers who sued Defendants — and all the Class Members like them — are called Plaintiffs. The companies they sued are called the Defendants. One court resolves the issues for everyone in the Class — except for those who choose to exclude themselves from the Class.

Here, the Court decided that this lawsuit can be a class action for settlement purposes because it preliminarily meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that: (1) there are numerous people who fit the class definition; (2) there are legal questions and facts that are common to each of them; (3) the Plaintiffs' claims are typical of the claims of the rest of the Class; (4) Plaintiffs, and the lawyers representing the Class, will fairly and adequately represent the Class Members' interests; (5) the common legal questions and facts are more important than questions that affect only individuals; and (6) this class action will be more efficient than having individual lawsuits.

5. Why are there settlements?

The Court did not decide this case in favor of the Plaintiffs or Defendants. Instead, Counsel for the Settlement Class investigated the facts and applicable law regarding Plaintiffs' claims and Defendants' defenses. The parties engaged in lengthy arms-length negotiations to reach the Settlements. Plaintiffs and Counsel for the Settlement Class believe that the proposed Settlements are fair, reasonable, and adequate, and in the best interest of the Class.

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

Both sides agree that by settling, Anywhere and RE/MAX are not admitting any liability or that they did anything wrong. Both sides want to avoid the uncertainties and expense of further litigation.

WHO IS IN THE SETTLEMENT?

6. How do I know if I am a part of the Settlements?

You are a part of the Settlement Class if you: (1) sold a home during the Eligible Date Range; (2) listed the home that was sold on a multiple listing service anywhere in the United States; and (3) paid a commission to a real estate brokerage in connection with the sale of the home.

If you are uncertain as to whether you are a member of the Settlement Class, you may contact the Settlement Administrator at 888-995-0207 to find out.

THE SETTLEMENT BENEFITS

7. What do the Settlements provide?

If you are a member of the Settlement Class, you are eligible to receive a benefit under the Settlements.

Anywhere and RE/MAX have agreed to pay, collectively, \$138,500,000 into settlement funds. The funds will be distributed to qualifying Settlement Class members who submit an approved claim form, after any awarded attorneys' fees, expenses, settlement administration costs, and service awards have been deducted.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8. How can I get a benefit?

To receive a benefit, a Settlement Class Member must submit a claim form with information pertaining to and/or evidence of your home sale and commissions paid to the Notice and Claims Administrator. The Notice and Claims Administrator will be responsible for reviewing all claim forms and evidence of purchase to determine whether a claim is an approved claim. The Notice and Claims Administrator will reject any claim that is not: (a) submitted timely and in accordance with the directions on the claim form, the provisions of this Settlement Agreement, and the Preliminary Approval Order; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; and (c) signed by the Settlement Class Member. Claims that cannot be confirmed by the Settlement Administrator may be subject to challenge, nonpayment, or a reduced share of the available funds.

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

You can submit a claim form by clicking this link, or by printing off the claim form from this website and returning it to the Settlement Administrator via mail or email **[CLAIM FORM DEADLINE TO BE INSERTED]**

Burnett et al. v. The National Association of Realtors et al.
c/o JND Legal Administration
PO Box 91479
Seattle, WA 98111

Email: info@RealEstateCommissionLitigation.com

9. When would I get my benefit?

The Court will hold a final Fairness Hearing at **TIME** on **DATE** in the United States District Court for the Western District of Missouri, 400 E. 9th St., Courtroom 7B, Kansas City, Missouri 64106, to decide whether to finally approve the Settlements. If the Settlements are approved, there may be appeals. Payments to members of the Settlement Class will be made only if the Settlements are approved and after any appeals are resolved. This may take some time, so please be patient.

10. What am I giving up to get a benefit?

Upon the Court's approval of the proposed Settlements, all members of the Settlement Class who do not exclude themselves (as well as their spouses, heirs, and any other individual who may possess rights on their behalf) will release Anywhere and RE/MAX (and their affiliates, subsidiaries, employees, and others who may be subject to claims with respect to Anywhere and RE/MAX as specified in the Settlement Agreements).

This release may affect your rights, and may carry obligations, in the future. To view terms of the release, review the Settlement Agreements, which are available at www.RealEstateCommissionLitigation.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from one or both of the Settlements, and you want to keep the right to sue or continue to sue Anywhere or RE/MAX, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as opting out of the Settlement Class.

11. How do I ask to be excluded?

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

To ask to be excluded, you must execute and submit a Request for Exclusion to the Court postmarked on or before the end of the **Opt-Out Period Date**. A Request for Exclusion must be personally signed by each potential Settlement Class Member requesting exclusion. Additionally, a Request for Exclusion must include the potential Settlement Class Member's present name and address, a clear and unequivocal statement that the potential Settlement Class Member wishes to be excluded from the Settlement Class as to Anywhere, RE/MAX, or both, and the signature of the putative Settlement Class Member or, in the case of a potential Settlement Class Member who is deceased or incapacitated only, the signature of the legally authorized representative of the putative Settlement Class Member.

If the request is not postmarked on or before **Opt-Out Period Date**, your exclusion will be invalid, and you will be bound by the terms of the Settlements approved by the Court, including without limitation, the judgment ultimately rendered in the case, and you will be barred from bringing any claims against Anywhere or RE/MAX which arise out of or relate in any way to the claims in the case as specified in the release referenced in paragraph 10 above.

12. If I don't exclude myself, can I sue Anywhere or RE/MAX for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Anywhere and/or RE/MAX for the claims that the Settlements resolve. If you have a pending lawsuit against Anywhere or RE/MAX, speak to your lawyer in that case immediately. You may have to exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is **DATE**.

13. If I exclude myself, can I get benefits from the Settlements?

No. If you exclude yourself as to both Anywhere and RE/MAX, do not send in a claim form to ask for any money. If you exclude yourself only as to Anywhere, you may still ask for money from the Settlement with RE/MAX, and if you exclude yourself only as to RE/MAX, you may still ask for money from the Settlement with Anywhere. If you exclude yourself as to Anywhere or RE/MAX, you may sue, continue to sue, or be a part of a different lawsuit against Anywhere or RE/MAX.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The Court decided that the law firms Ketchmark and McCreight P.C.; Williams Dirks Dameron LLC; Boulware Law LLC; Hagens Berman Sobal Shapiro LLP; Cohen Milstein Sellers & Toll PLLC; and Susman Godfrey LLP, are qualified to represent you and all other Settlement Class Members. These lawyers are called "Class Counsel." You will not be charged for these lawyers. They are experienced in handling similar cases against other entities. More information about the law firms, their practices, and their lawyers' experience is available at:

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

www.kansascitylawoffice.com, www.williamsdirks.com, www.boulware-law.com,
www.hbsslaw.com, www.cohenmilstein.com, and www.susmangodfrey.com.

Class Counsel represent the interests of the Settlement Class. You may hire your own attorney to advise you, but if you hire your own attorney, you will be responsible for paying that attorney's fees.

15. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees, in an amount not to exceed one-third (33.3%) of the settlement fund, plus out-of-pocket expenses incurred during the case. The Court may award less. Class Counsel will also seek compensation for each current and/or former class representative in the actions captioned *Burnett et al. v. The National Association of Realtors et al.*, Case No. 19-CV-00332-SRB, pending in the Western District of Missouri; and *Moehrl et al. v. The National Association of Realtors*, Case No. 19-CV-01610-ARW, pending in the Northern District of Illinois.

The Class Representatives will make their request for attorneys' fees, costs, and service awards on or before **INSERT DATE**, and that request will be published on this website.

Anywhere and RE/MAX will pay the fees and expenses that the Court awards from the settlement fund. You are not responsible for any fees or expenses that the Court awards.

OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you don't agree with the Settlements or some part of them.

16. How do I tell the Court that I don't like the Settlements?

If you are a Class Member, you can object to one or both of the Settlements if you do not like any part of them, including the forthcoming motion for attorneys' fees, costs and service awards. You can give reasons why you think the Court should not approve them. The Court will consider your view. To object, you must file or send a written objection to the Court, **in accordance with any instructions ordered by the Court**, by **Objection Deadline** or you will be deemed to have waived all objections and shall be foreclosed from making any objection (whether in opposition to the motion for Preliminary Approval, motion for attorneys' fees, costs and service awards, motion for Final Approval, on appeal, or otherwise) to the Settlements. Be sure to include the case name and number (*Burnett et al. v. The National Association of Realtors et al.*, Case No. 19-CV-00332-SRB), your name, address, telephone number, your signature, and the reasons you object to the Settlements.

You must file any objection with the Clerk of the Court at the address below by **DATE:**

United States District Court for the Western District of Missouri
400 E. 9th St., Room 7462, Kansas City, Missouri 64106

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

Burnett et al. v. The National Association of Realtors et al., Case No. 19-CV-00332-SRB

You must also send your objection by first class mail, postmarked on or before **DATE,** to Class Counsel and Defendants' Counsel. These documents should be mailed to Class Counsel at:

[INSERT]

and to Anywhere and RE/MAX Counsel at:

[Insert Defendants' counsel]

Any member of the Settlement Class who does not file and serve an objection in the time and manner described above will not be permitted to raise that objection later.

17. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlements. You can object to a Settlement only if you stay in it. Excluding yourself is telling the Court that you do not want to be part of a Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlements?

There will be a final Fairness Hearing to consider approval of the proposed Settlements at **TIME** on **DATE** at the United State District Court for the Western District of Missouri, 400 E. 9th St., Courtroom 7B, Kansas City, Missouri 64106. The hearing may be postponed to a later date without further notice but any such postponements will be posted on the settlement website at www.RealEstateCommissionLitigation.com. The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of the Settlements, whether the Settlement Class is adequately represented by the Plaintiffs and Class Counsel, and whether an order and final judgment should be entered approving the proposed Settlements. The Court will also consider Class Counsel's application for an award of attorneys' fees and expenses, and any class representative service awards.

You will be represented by Class Counsel at the Fairness Hearing unless you choose to enter an appearance in person or through your own counsel. The appearance of your own attorney is not necessary to participate in the Fairness Hearing.

19. Do I have to come to the hearing?

No. Class Counsel will represent the Settlement Class at the Fairness Hearing, but you are welcome to come at your own expense. If you send any objection, you do not have to come to Court to talk

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend if you wish.

20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *Burnett et al. v. The National Association of Realtors et al.*, Case No. 19-CV-00332-SRB.” Be sure to include your name, address, telephone number and your signature. Your Notice of Intention to Appear must be postmarked no later than **DATE**, and be sent to the Clerk of the Court, Class Counsel and Counsel for Anywhere and RE/MAX, at the addresses on pages **?-?**, in Section 16. You cannot speak at the hearing if you excluded yourself.

ARE THERE OTHER REAL ESTATE COMMISSIONS LAWSUITS OR OTHER DEFENDANTS?

21. Are there other similar cases?

There are other class actions involving similar claims that are related to the Settlements: *Burnett et al. v. The National Association of Realtors et al.*, Case No. 19-CV-00332-SRB, pending in the Western District of Missouri; *Moehrl et al. v. The National Association of Realtors et al.*, Case No. 19-CV-01610-ARW, pending in the Northern District of Illinois; and *Nosalek v. MLS Property Information Network, Inc. et al.*, Case No. 20-CV-12244-PBS, pending in the district of Massachusetts, among others. The Settlements will settle the claims against Anywhere and RE/MAX that were brought in those cases, but it will not settle the claims against other Defendants in those cases.

GETTING MORE INFORMATION

22. Are there more details available?

This Notice is only a summary. For a more detailed statement of the matters involved in the lawsuit or the Settlements, you may refer to the papers filed in this case during regular business hours at the office of the Clerk of Court, United States District Court for the Western District of Missouri, 400 E. 9th St, Kansas City, Missouri 64106: *Burnett et al. v. The National Association of Realtors et al.*, Case No. 19-CV-00332-SRB. The full Settlement Agreements and certain pleadings filed in the case are also available at www.RealEstateCommissionLitigation.com, or can be requested from **[Class Counsel, identified above / or Settlement Administrator, at contact information from question 9]**.

Questions? Call 888-995-0207 or visit www.RealEstateCommissionLitigation.com to learn more.

- EXHIBIT C -

REAL ESTATE BROKER COMMISSION CLAIM FORM

You may be eligible to receive compensation if you (1) sold a home during the Eligible Date Range; (2) listed the home on a multiple listing service anywhere in the United States; and (3) paid a commission to a real estate agent or broker in connection with the sale of the home. Please refer to the Settlement Notice or visit www.RealEstateCommissionLitigation.com to determine the Eligible Date Ranges.

The Easiest Way to File is Online at www.RealEstateCommissionLitigation.com.

INSTRUCTIONS FOR COMPLETING THIS CLAIM FORM

1. Before completing this Claim Form, please review the Settlement Notice, which is available at www.RealEstateCommissionLitigation.com.
2. Please complete all information requested below. If the information you provide is incomplete, your claim may be rejected.
3. If you sold multiple homes during the Eligible Date Ranges, you will need to submit multiple forms.
4. Please complete all portions of Section A – Claim Information.
5. Please complete all portions of Section B regarding the sale of your home.
6. [If applicable. In online version – documentation won't be necessary unless the transaction does not appear in database or there is another reason for the request of documentation, i.e. fraudulent or competing claims]. Please complete all portions of Section C if you have documentation to support the sale of your home.
7. For Section C, Proof of Payment means originals, copies, or images of closing documents reflecting (i) the sale of your home during the Eligible Date Range where your home was listed on an MLS and (ii) the fees paid to all real estate agent(s) or broker(s) involved in the transaction.
8. Please complete and sign the Attestation at Section D.
9. Timing – Your Claim Form must be mailed to the Settlement Administrator, or submitted online, by **[INSERT CLAIM DEADLINE]**. Any claims postmarked or electronically submitted after **[INSERT CLAIM DEADLINE]** will be ineligible for a payment. If you are submitting your claim by mail, please send to:

Burnett et al. v. The National Association of Realtors et al.
c/o JND Legal Administration
PO Box 91479
Seattle, WA 98111

10. Privacy – The information you provide in the Claim Form will not be disclosed to anyone other than the Settlement Administrator, the Court, and the Parties in this case, and it will be used only for purposes of administering this Settlement (such as to review a claim for completeness, truth, and accuracy).

Questions? Visit www.RealEstateCommissionLitigation.com or call 888-995-0207.

To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

SECTION A - CLAIMANT INFORMATION

First Name	M.I.	Last Name
Current Address (<i>Street, City, State, Zip Code</i>)		
Email Address		Phone Number
Mark the box stating your preferred method of payment: <input type="checkbox"/> Payment via Debit Card - <i>If selecting this option, please double-check that the <u>email address</u> provided above is correct and current. If you select a pre-paid debit card, the card never expires.</i> <input type="checkbox"/> Payment via a Settlement Check - <i>If selecting this option, please double-check that the <u>address information</u> above is correct and current.</i>		

SECTION B - SALE INFORMATION

Please complete the following information to the best of your knowledge. Claim forms with more complete and accurate information are more likely to be approved and paid.	
Address of home sold: (include city, state and zip)	
Date of Sale*:	
Listing Brokerage:	
Amount of total Commission paid:	
Amount of commission paid to buyer-side broker:	

*The Date of Sale may be found on your closing statement, settlement statement, HUD statement, settlement letter, or other transaction documents included during the sale and closing of your home. If you are unsure of the precise date, you may enter your best estimate of the Date of Sale, date range, or month and year of sale.

Questions? Visit www.RealEstateCommissionLitigation.com or call 888-995-0207.

To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

[If applicable] SECTION C – DOCUMENTARY SUPPORT OF SALE

Please list in the space below any document(s) you have to support your Proof of Payment. Documents that support your Proof of Payment may include your closing statement, settlement statement, HUD statement, settlement letter, or other transaction documents included during the sale and closing of your home.

If you are mailing your Claim Form, be sure to enclose your Proof(s) of Purchase.

SECTION D - ATTESTATION

By submitting this Claim Form and signing below, I hereby affirm that I am at least 18 years of age and that the information provided above, and in any enclosed Proof of Payment, is true and correct.

Signature: _____ Date: _____

Print Name: _____

Your claim will be submitted to the Settlement Administrator for review. If you are eligible for a Cash Award, and the proposed settlement is approved, you will be provided payment in the manner you requested above. This process takes time; please be patient.

Reminder Checklist:

- ✓ Please complete all the information requested above and sign the Claim Form.
- ✓ Enclose your Proof of Payment, if you have it, along with the Claim Form.
- ✓ Keep a copy of your Claim Form and supporting documentation for your records.
- ✓ Your claim must be submitted electronically or postmarked by **[INSERT CLAIM DEADLINE]**
- ✓ Your claim must be submitted electronically at www.RealEstateCommissionLitigation.com or mailed to: *Burnett et al. v. The National Association of Realtors et al.*, c/o JND Legal Administration, PO Box 91479, Seattle, WA 98111. [The easiest way to file your claim is online.](#)
- ✓ If you have any questions, please visit the website at www.RealEstateCommissionLitigation.com; or call 888-995-0207
- ✓ Please note that the settlement administrator may contact you to request additional information to process your claim.

Questions? Visit www.RealEstateCommissionLitigation.com or call 888-995-0207.

To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

EXHIBIT 3

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

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

Plaintiffs,)

v.)

Case No. 4:19-CV-00332-SRB

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

Defendants.)

ORDER

Before the Court is Plaintiffs’¹ Motion for Preliminary Settlements with Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) (“Anywhere”) and RE/MAX LLC (“RE/MAX” and together with Anywhere and Plaintiffs, “Settling Parties”). (Doc. #1192.) Upon review, the motion is GRANTED.

The Court hereby ORDERS the following:

1. The Court finds that preliminary approval is appropriate and hereby grants preliminary approval of the Settlements subject to final determination following notice and hearing.

2. The Court finds that the proposed Settlements with Anywhere and RE/MAX, as set forth in the Settlement Agreements, are fair, reasonable and adequate, the class representatives

¹ Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh, (collectively “Plaintiffs”).

have adequately represented the class, the Settlement Agreements were negotiated at arm's-length by experienced counsel acting in good faith, including mediation with a nationally recognized and highly experienced mediator, and the Settlement Agreements were reached as a result of those negotiations; there has been adequate opportunity for discovery for experienced counsel to evaluate the claims and risks at this stage of the litigation; and the Court will likely be able to approve the Settlements pursuant to Rule 23(e)(2).

3. For purposes of the settlement of the claims against Anywhere and RE/MAX, the Court provisionally certifies the following class (the "Settlement Class"):

- a. 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. Moehrl MLSs: March 6, 2015 to date of notice;
 - ii. Burnett MLSs: April 29, 2014 to date of notice;
 - iii. MLS PIN: December 17, 2016 to date of notice;
 - iv. All other MLSs: four years prior to the date a new or amended complaint (if any) is filed in the Actions² or the date of notice, whichever is earlier, up to the date of notice.

4. The Court finds that provisional certification of the Settlement Class is warranted in light of the proposed Settlement under the prerequisites of Federal Rule of Civil Procedure 23(a) because: (1) the members of the Settlement Class are so numerous that joinder is impracticable; (2) there are issues of law and fact common to the Settlement Class; (3) Plaintiffs' claims are

² The "Actions" are *Burnett et al. v. National Association of Realtors, et al.*, Case No. 19-CV-003322-SRB and *Moehrl et al. v. National Association of Realtors et al.*, Case No. 1:19-cv-01610-ARW (Northern District of Illinois).

typical of the claims of the Settlement Class Members; and (4) Plaintiffs and Co-Lead Counsel will fairly and adequately represent the interests of the Settlement Class Members.

5. The Court finds that provisional certification of the Settlement Class is warranted in light of the proposed Settlements under Federal Rule of Civil Procedure 23(b)(3) because common issues, including whether Anywhere and RE/MAX entered into any conspiracy, predominate over any questions affecting only individual members of the Settlement Class, and settlement of this action on a class basis is superior to other means of resolving the Action as to Anywhere and RE/MAX.

6. The Court hereby appoints Plaintiffs Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, and Jane Ruh as the Settlement Class Representatives. The Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class because: (1) the interests of the Settlement Class Representatives are consistent with those of Settlement Class Members; (2) there appear to be no conflicts between or among the Settlement Class Representatives and the other Settlement Class Members; (3) the Settlement Class Representatives have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of this litigation; and (4) the Settlement Class Representatives and Settlement Class Members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action cases, including those concerning violation of the antitrust laws.

7. In making these preliminary findings, the Court has considered, *inter alia*, (1) the interests of the Settlement Class Members in individually controlling the prosecution or defense of separate actions; (2) the impracticality or inefficiency of prosecuting or defending separate

actions; (3) the extent and nature of any litigation concerning these claims already commenced; and (4) the desirability of concentrating the litigation of the claims in a particular forum. The Court has also specifically considered that the settlement class is broader than the class alleged in the complaint. In the settlement context, courts in this district and elsewhere regularly certify broader classes. *See, e.g., In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, 357 F.3d 800, 805 (8th Cir. 2004) (“There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this.”); *Smith v. Atkins*, 2:18-cv-04004-MDH (W.D. Mo.). Here, the Court finds that certifying a nationwide class is warranted, including because plaintiffs have conducted extensive discovery into the alleged nationwide conspiracy and have thoroughly litigated the claims, providing a robust factual record on which to assess the claims and base negotiations, plaintiffs could have made nationwide allegations in this matter, a nationwide settlement was a necessary condition of obtaining any settlement for the benefit of the class, a nationwide settlement will conserve judicial and private resources, and class members will be fully apprised of the settlement class definition through the notice process.

8. The requirements of Rule 23(g) of the Federal Rules of Civil Procedure are met, and the Court hereby appoints the law firms of Ketchmark and McCreight P.C., Boulware Law LLC, Williams Dirks Dameron LLC, Hagens Berman Sobol Shapiro LLP, Cohen, Milstein, Sellers & Toll, PLLC, and Susman Godfrey LLP as Co-Lead Counsel for the Settlement Class.

9. JND Legal Administration (“JND”) is hereby APPOINTED as the Settlement Administrator to implement the terms of the proposed Settlement Agreement. The Settlement Administrator is authorized to implement the parties’ Class Notice Plan as outlined in the Declaration of Jennifer M. Keough. The Court also authorizes the Settlement Administrator to

carry out other such responsibilities as are provided for in the Settlement Agreement or as may be agreed to by counsel for the Parties. The Settlement Administrator is directed to establish a settlement website and to issue notice as outlined in Paragraph 14 of the Declaration of Jennifer M. Keough. The Court finds the notice plan to constitute the best notice practicable and satisfies the requirements of due process.

10. The Court approves the establishment of the Escrow Accounts under the Settlement Agreements as qualified settlement funds (“QSF”) as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations and retains continuing jurisdiction as to any issue that may arise in connection with the formation or administration of the QSFs. Co-Lead Counsel are, in accordance with the Settlement Agreements, authorized to submit a request as part of the Settling Parties’ notice plan to be submitted to the Court to withdraw up to the amounts allowed by the Settlement Agreements out of the Escrow Accounts upon the Court’s approval of the notice plan to pay the costs of notice.

11. Any Settlement Class Member who complies with the requirements of this paragraph may object to any aspect of the proposed Settlement Agreement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who objects to the proposed Settlement Agreement must file with the Court, and serve on Class Counsel and Counsel for Anywhere and RE/MAX at the addresses set forth in the Settlement Agreement, a written statement of objection postmarked no later than sixty (60) calendar days after the Notice is mailed to the Settlement Class and posted to the Settlement Administrator’s website.

12. The written objection must include: (a) the full name, address, telephone number and email address, if any, of the Settlement Class Member; (b) the address of the home sold, the date of the sale, the listing broker, and the Buyer’s broker; (c) a specific statement of all grounds

for the objection and, if applicable, any legal support for the objection; (d) a statement whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; (f) a list of all class action settlements to which the Settlement Class Member has objected in the past five (5) years, if any; (g) copies of any papers, briefs, or other documents upon which the objection is based; (h) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing either personally or through counsel; and (i) the signature of the Settlement Class Member.

13. Any Class Member shall have the right to opt out of the Settlement Class. In order to exercise this right, a Class Member must timely deliver a written request for exclusion to the Settlement Administrator's address, which will be listed in the Mailed Notice and on the Settlement Website. The written request must be postmarked no later than the Opt-Out/Objection Deadline, which deadline shall be specified in the Mailed Notice and on the Settlement Website. No person shall be deemed opted-out of the Class through any purported "mass" or "class" opt-outs. So-called "mass" or "class" opt-outs shall not be allowed. To be effective, the Request for Exclusion must include the name of the class member, the address of the home sold, the approximate date of sale and signature of the class member.

14. Any Class Member who properly requests to be excluded from the Class shall not: (a) be bound by any orders or judgments entered in the case relating to the Settlement Agreement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Any Class Member who obtains relief pursuant to the terms of this Settlement

Agreement after the receipt of the Notice gives up the right to exclude him or herself from this Settlement.

15. Plaintiffs shall file their motions for attorneys' fees, costs and service awards within 28 days after the commencement of notice and shall post such motion on the Settlement Administrator's website.

16. On or before December 22, 2023, the parties shall contact the Court to schedule a final approval hearing to be held in Courtroom 7B, at the U.S. District Court for the Western District of Missouri, 400 East Ninth Street, Kansas City, Missouri 64106.

17. In the event that a Settlement is validly terminated as provided for in the Settlement Agreement, all proceedings had in connection with that Settlement and any orders regarding that Settlement shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the Plaintiffs, Anywhere, RE/MAX, and Settlement Class Members.

18. In the event that a Settlement does not become final and effective for any reason, nothing in that Settlement Agreement, this Order, or proceedings or orders regarding that Settlements shall be construed to prejudice any position that any of the parties may assert in any aspect of this litigation.

19. The Actions are stayed as to Anywhere and RE/MAX except as provided for in the Settlement Agreements and to the extent necessary to obtain final approval of the Settlements.

20. Members of the Settlement Class, unless they exclude themselves from the Settlement Class, are hereby temporarily enjoined from filing, commencing, prosecuting, intervening in, or pursuing as a plaintiff or class member any claims against Anywhere and RE/MAX that arise from or relate 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, pending completion of the notice and claims process (including the opportunity for members of the Settlement Class to opt out of the Settlements) and this Court’s ruling on a motion for final approval of the Settlements. *See* 28 U.S.C. § 1651; *Bank of Am., N.A. v. UMB Fin. Servs., Inc.*, 618 F.3d 906, 914 (8th Cir. 2010) (noting that “the district court has the inherent ability to protect its own jurisdiction over the dispute pending before it”); *Miles v. Mediacredit, Inc.*, 2022 WL 3643669, at *4 (E.D. Mo. Aug. 23, 2022) (entering injunction “[p]ending determination of whether final approval of the Settlement Agreement”); *Hartley v. Sig Sauer, Inc.*, No. 4:18-CV-00267-SRB, 2020 WL 3473652, at *5 (W.D. Mo. June 25, 2020); *Cleveland v. Whirlpool Corp.*, 2021 WL 5937403, at *9 (D. Minn. Dec. 16, 2021) (entering injunction “[p]ending final approval”).

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: November 20, 2023