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 SETTLEMENT WITH HOMESERVICES DEFENDANTS, CERTIFICATION OF SETTLEMENT CLASS, AND APPOINTMENT OF CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

After five years of hard-fought litigation, a jury trial, and extensive arm's-length settlement negotiations, Plaintiffs and the HomeServices Defendants, HomeServices of America, Inc., BHH Affiliates, LLC, Long & Foster Companies, Inc., and HSF Affiliates, LLC (together, "HomeServices" or "HSA") reached a global Settlement that provides substantial monetary relief—including a total monetary settlement amount of $250 million—to a nationwide class of home sellers as well as practice changes that will ultimately benefit future home sellers and buyers.

The Settlement resolves on a nationwide basis Plaintiffs' claims for damages and injunctive relief against HSA for its alleged anticompetitive practices in the market for residential real estate brokerage services, including Plaintiffs' claims in *Burnett v. National Association. of Realtors*, Case No. 4:19-cv-00332-SRB (W.D. Mo.) ("*Burnett*"), *Moehrl v National Association of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. Ill.) ("*Moehrl*"), *Daniel Umpa v. The National Association of Realtors, et al.*, No. 23-cv-945 (W.D. Mo.) ("*Umpa*"), and *Don Gibson v. The National Association of Realtors, et al*., No. 23-cv-00788 (W.D. Mo.) ("*Gibson*") (collectively, "the Actions"). The Settlement is fair, adequate, reasonable, and beneficial to the Settlement Class, and thus Plaintiffs respectfully move this Court for preliminary approval.

The Settlement creates a non-reversionary settlement fund consisting of $250 million in payments from HSA plus any interest accrued on HSA's payments after they are deposited into the escrow account (for a total of over $980 million in proposed settlements thus far in the Actions); and requires consumer friendly practice changes.

The Settlement was the product of a half-decade of litigation and extensive settlement negotiations. The Settlement was informed by weighing the substantial monetary and practice change relief against the risks, cost, and delay of further litigation (including appeals), as well as limitations on HSA's ability to pay the full amount of any trial judgment entered against it.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) certifying a Settlement Class; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) ordering notice to the class.[1]

BACKGROUND

I. THE LITIGATION

After five years of hard-fought litigation in *Burnett* and *Moehrl*, including multiple appeals, a jury trial and intensive settlement negotiations, Plaintiffs in the Actions have reached global settlements that provide monetary relief totaling at least $987.1 million and require historic practice changes that will ultimately benefit future home sellers and buyers. Economists and other market experts have predicted that the Settlements could ultimately save consumers billions of dollars per year.[2]

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

The plaintiffs in both actions alleged that NAR and the nation's largest real estate brokerage firms entered into an unlawful agreement in violation of the Sherman Act, 15 U.S.C. § 1, to artificially inflate the cost of commissions in residential real estate transactions. *Moehrl* and

[1] The Settlement Agreement is attached as Exhibit A to the Declaration of Steve Berman (Ex. 1).
[2] *See, e.g.*, Julian Mark, Aaron Gregg & Rachel Kurzius, *Realtors' Settlement Could Dramatically Change Cost of Housing Sales*, WASH. POST (Mar. 15, 2024), https://www.washingtonpost.com/business/2024/03/15/nar-real-estate-commissions-settlement/.

Burnett Plaintiffs alleged a longstanding conspiracy among Defendants to agree to NAR rules (a) requiring home sellers to make blanket unilateral offers of compensation to real estate brokers working with buyers, (b) restraining negotiation of those offers, (c) denying buyers information on the commissions being offered, (d) allowing buyer agents to represent that their services are "free," and (e) incentivizing and facilitating steering by brokers towards high commission listings and away from discounted listings (together, the "Challenged Rules"). *Moehrl* and *Burnett* Plaintiffs claimed that the Challenged Rules are anticompetitive and caused them to pay artificially inflated broker commissions when they sold their homes. Defendants have denied the allegations.

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

On April 22, 2022, this Court granted the *Burnett* Plaintiffs' motion for class certification; appointed Scott and Rhonda Burnett, Jerod Breit, Ryan Hendrickson, Jeremy Keel, and Scott Trupiano as class representatives; and appointed Ketchmark & McCreight, Boulware Law LLC, and Williams Dirks Dameron LLC as Co-Lead Class Counsel. (*Burnett* Doc. 741). Shelly Dreyer, Hollee Ellis, and Frances Harvey joined as class representatives in the *Burnett* action with the Third Amended Complaint (*Burnett* Doc. 759).

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

The parties in both actions completed over four years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. *Moehrl* and *Burnett* Plaintiffs briefed numerous discovery motions and other disputes relevant to obtaining evidence supporting their claims. The parties conducted around 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts supporting their claims and in rebuttal to the nine experts retained by Defendants in each case. Moreover, most experts were deposed in connection with the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The plaintiffs in both cases have also briefed summary judgment, and the Plaintiffs in *Burnett* proceeded to trial, including against HSA, and briefed post-trial motions. (Berman Decl. ¶ 14; Dirks Decl., Ex. 2 at ¶¶ 11–13). Much of the discovery focused on the nationwide rules and practices of NAR and its members. Class Counsel and experts in *Burnett* and *Moehrl* analyzed rules, policies, practices, and transaction data, including on a nationwide basis. (Berman Decl. ¶ 15; Dirks Decl. ¶ 12). They also evaluated whether those policies and practices differed among the various MLSs. The information and data were not limited to the *Burnett* and *Moehrl* Defendants, but rather focused on the entire industry. *Id.* After Plaintiffs obtained a verdict in *Burnett*, HSA filed multiple post-trial motions, and, if those motions were unsuccessful, was mounting its merits appeal in addition to its writ of certiorari on arbitration issues. (Dirks Decl. at ¶ 13).

After years of aggressive litigation and settlement negotiations, *Moehrl* and *Burnett* Plaintiffs, and the defendants in those cases, entered into settlement Agreements that require those

defendants to make important Practice Changes, provide Cooperation in the ongoing litigation, and pay the following amounts:

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

(Berman Decl. ¶ 16; Dirks Decl. ¶ 8). This Court granted final approval of the settlements with Anywhere, RE/MAX, and Keller Williams,[3] and preliminary approval of the Settlement with NAR.[4] In connection with all of these settlements, this Court appointed the following firms Co-Lead Class Counsel:

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

II. SETTLEMENT NEGOTIATIONS AND MEDIATION

Class Counsel and counsel for HSA engaged in extensive arm's-length settlement negotiations that lasted nearly four years. These included 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. Although these

[3] *See Burnett* Doc. 1487.
[4] *See Burnett* Doc. 1460.
[5] *See Burnett* Docs. 1460 and 1487.

mediations did not directly result in a Settlement, the Parties continued to engage directly through multiple intensive in-person and telephonic negotiations over many months, when they ultimately reached an agreement on the Settlement. (Berman Decl. ¶¶ 7; Dirks Decl. ¶ 14).

The Settling Parties reached the Settlement Agreement after considering the risks and costs of continued litigation, including appeals and a potential bankruptcy. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed supports their claims. Plaintiffs and counsel, however, also recognize the myriad of risks and delay of further proceedings in a complex case like this, and believe that the Settlement confers substantial benefits upon the Settlement Class Members. (Berman Decl. ¶ 9; Dirks Decl. ¶¶ 6, 15-17). Moreover, Plaintiffs and counsel conducted a thorough financial analysis of HSA's ability to pay, which reflected limits on the monetary recovery feasible through either settlement or continued litigation. (Berman Decl. ¶ 11; Dirks Decl. ¶¶ 14-15).

III. SUMMARY OF THE SETTLEMENT AGREEMENT

A. Settlement Class

The proposed Settlement Class in the Settlement Agreement includes 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: October 31, 2019 to date of notice.

(Agreement ¶ 17).

B. Settlement Amount

The Settlement provides that HSA will pay a Total Settlement Amount of $250 million for the benefit of the Settlement Class. The total Settlement Amount is paid in five installments and is inclusive of interest. Interest earned on the payments once deposited into the escrow accounts is for the benefit of the class. The Total Settlement 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. (Agreement ¶ 20).

The Total Settlement Amount is non-reversionary; once the Settlement is finally approved by the Court and after administrative costs, litigation expenses, and attorneys' fees are paid, the net funds will be distributed to Settlement Class Members with no amount reverting back to HSA, regardless of the number of claims made. (Agreement ¶ 40).

C. Changes to Business Practices

The Settlement requires HSA (and its affiliates, as a condition of any release) to make several significant practice changes.

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

ii. require that any HomeServices company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents) disclose to prospective home sellers and buyers and state in conspicuous language that

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

iii. prohibit all HomeServices 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 (unless they are, in fact, not receiving any compensation for those services from any party);

iv. require that HomeServices company-owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;

v. prohibit HomeServices company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents refrain) from utilizing any technology or taking manual actions to filter out or restrict MLS listings that are searchable by and displayed to consumers based on the level of

compensation offered to any cooperating broker, unless directed to do so by the client (and eliminate any internal systems or technological processes that may currently facilitate such practices);

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

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

viii. display offers of compensation made by listing brokers or agents, where such compensation data is available and/or provided by HomeServices own brokerages for all active listings by HomeServices on its own brokerage website(s), and shared on bhhs.com or that brokerage's associated HomeServices regional franchise network website(s), and require company owned brokerages (and recommend and encourage that franchisees and agents) include their 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. For purposes of this paragraph, "HomeServices own brokerage" includes HomeServices' subsidiary-owned brokerages and its franchisees. (Agreement ¶ 51)

D. Release of Claims Against HSA, its Members, and Participating Entities

Upon the Effective Date, Plaintiffs and the Settlement Class will release and discharge HSA and its respective subsidiaries, affiliated franchisees, independent contractors, and certain other representatives from any and all claims arising from or relating to "conduct that was alleged or could have been alleged in the Actions based on any or all of the same factual predicates for the claims alleged in the Actions, including but not limited to commissions negotiated, offered, obtained, or paid to brokerages in connection with the sale of any residential home." (Agreement ¶¶ 7, 13-15, 29–31). The complete terms of the releases are contained in the Settlement Agreement.

The Settlement Agreement, however, does nothing to abrogate the rights of any member of the Settlement Class to recover from any other Defendant, including Berkshire Hathaway Energy. (Agreement ¶ 63). The Settlement Agreement also expressly excludes 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." (Agreement ¶ 31).

E. Application for Award of Attorneys' Fees, Costs, and Class Representative Service Awards

The Settlement authorizes 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. (Agreement ¶ 37). Following the Court's preliminary approval of the Settlement and issuance of notice, Class

Counsel will apply to the Court for an award of attorneys' fees, costs, and potentially for service awards, to be paid out of the Settlement Fund. (Agreement ¶ 37)

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

Certifying a nationwide Settlement Class is appropriate here, where the Settlement Class members are all home sellers who allegedly suffered the same or similar harms as those alleged in the *Burnett* and *Moehrl* cases from the same defendants.

A. Class Definition

This Court previously certified under Rule 23(b)(3) the following class antitrust claim class:

> 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;

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.

The *Gibson* case asserted nationwide classes on behalf of: all persons in the United States who, from October 31, 2019, through the present, used a listing broker affiliated with any Corporate Defendant in the sale of a home listed on an MLS, and who paid a commission to the buyer's broker in connection with the sale of the home. *Gibson* Doc. 1.

The Settlement is conditioned upon the Court certifying a class for settlement purposes only that is slightly broader than the litigation classes certified in *Burnett* and *Moehrl*, as to this Settlement only, including in the following respects: (a) the class is nationwide in scope, while *Burnett* and *Moerhl* were limited to specific MLSs; (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:
>
> e. Moehrl MLSs: March 6, 2015 to date of notice;
>
> f. Burnett MLSs: April 29, 2014 to date of notice;
>
> g. MLS PIN: December 17, 2016 to date of notice
>
> h. All other MLSs: October 31, 2019 to date of notice.

(Agreement ¶ 17).

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.

B. Legal Standard for Modifying the Class Definition

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."); *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).

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-cv-03004, 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 (and, in fact, did make such allegations in the *Gibson* case). 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."). Fifth, class members will be fully apprised of the settlement class definition through the notice process.

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 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 Settlement is finally approved, to object to and/or be heard on the Settlement's fairness at the Fairness Hearing, or to opt out.

1. Numerosity

As set forth in *Burnett* Plaintiffs' previous class certification briefing before this Court, Rule 23(a)(1) requires that "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, the Settlement Class Members number in the millions, dispersed across the United States. Moreover, this Court and the *Moehrl* Court previously held that litigation classes that are smaller than the Settlement Class at issue here satisfy 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) ("The rule does not require that every question of law or fact be common to every member of the class"). "In the antitrust context, courts have generally held that an alleged conspiracy or monopoly is a common issue that will satisfy Rule 23(a)(2) as the singular question of whether defendants conspired to harm plaintiffs will likely prevail." *D&M Farms v. Birdsong Corp.*, No. 2:19-cv-463, 2020 WL 7074140, at *3 (E.D. Va. Dec. 1, 2020).

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 NAR and brokerages such as HSA that is being challenged generally centers on rules adopted nationwide and applying to Realtors nationwide.

3. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical" of Class Members' claims. "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995); *Burnett*, 2022 WL 1203100, at *6. Rule 23(a)(3) "requires a demonstration that there are other members of the class who have the same or similar grievances as the plaintiff." *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 830 (8th Cir. 1977). "In the antitrust context, typicality is established when the named plaintiffs and all class members alleged the same antitrust violations by defendants. Specifically, named plaintiffs' claims are typical in that they must prove a conspiracy, its effectuation, and damages therefrom – precisely what the absent class members

must prove to recover." *Hyland v. Homeservices of Am., Inc.*, No. 3:05-cv-612, 2008 WL 4858202, at *4 (W.D. Ky. Nov. 7, 2008) (internal citations and quotations omitted); *Burnett*, 2022 WL 1203100, at *6.

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; they all paid a commission when they sold their homes that was inflated by Defendants' conduct. As such, Rule 23(a)(3) is satisfied.

4. Adequacy

Rule 23(a)(4) requires that, for a case to proceed as a class action, the court must find that "the representative parties will fairly and adequately protect the interests of the class." 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 and the most effective practice changes from HSA. *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 HSA exposed to litigation involving claims exceeding its 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 grievance—widespread conduct by NAR and brokerages throughout the United States that has resulted in supracompetitive broker commission rates. This conduct includes nationwide policies enacted by NAR and carried out by brokerages, including nationwide MLS rules that mandate blanket unilateral offers of compensation to

cooperating brokers that, before the NAR Settlement, existed in MLSs throughout the United States. All Plaintiffs seek the same relief—compensation for the higher broker rates that they have had to pay, as well as systemic reforms that address the underlying conduct.

Common issues also predominate for each element that Plaintiffs must prove to prevail in an antitrust case: (1) a violation of the antitrust laws; (2) the impact of the unlawful activity; and (3) measurable damages. *See, e.g.*, *Burnett*, 2022 WL 1203100, at *10. First, as discussed above, all members of the Settlement 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, analyses 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 common to the nationwide settlement class. Third, all or nearly 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 both the *Burnett* and *Moehrl* actions presented reliable methods of measuring damages as the difference between the amount Class Members paid for buyer broker commissions in the actual world versus what they would have paid in the but-for world. The same type of methodology can 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 few known existing individual lawsuits filed by Settlement Class Members. Third, judicial efficiency is served by approving the Settlement. 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.

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 HSA, and thus questions concerning that trial's manageability are irrelevant. Accordingly, the Court should certify the Settlement Class.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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 a 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 Plaintiffs' Cases, Weighed Against the Terms of the Settlement

The parties naturally dispute the strength of their claims and defenses. The Settlement reflects 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 in *Moehrl*, *Gibson, and Umpa*, and upholding their award on appeal in those cases, as well as in this case. But "experience proves that, no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict, particularly in complex antitrust litigation." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 523 (E.D. Mich. 2003). The same is true for post-trial motions and appeals. And being liable alone for the full amount of alleged damages in any one of these cases would bankrupt HSA.

Against this risk, the Settlement provides for a recovery of $250 Million from HSA. As discussed in detail below, the Settlement is supported by the financial condition of HSA, which lacks the ability to pay the full damages sought in any one of the Actions.

The Settlement's terms were reached following arm's-length negotiations that occurred over a period of multiple years, including nearly six months of intensive negotiations, and involved the assistance of multiple well-respected mediators. Plaintiffs held several mediation sessions with HSA as well as several intensive direct negotiations, several of which were attended by senior HSA executives including its General Counsel and CEO. (Dirks Decl. ¶ 14). "When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable." *Marcus v. Kansas*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002).

B. HSA's Financial Condition

The Settlement is fair and reasonable in light of HSA's financial condition and its inability to satisfy even the *Burnett* judgment. (Berman Decl. ¶ 11; Dirks Decl. ¶¶ 14-15). Pursuant to Federal Rule of Evidence 408, Plaintiffs received and carefully analyzed HSA's financial records, including performing an analysis by one of Plaintiffs' counsel, a certified public accountant with training in financial forensics. (Berman Decl. ¶ 11; Dirks Decl. ¶ 14). The monetary settlement was reached with due consideration for HSA's limited ability to pay. (*Id.*) Furthermore, the entire real estate industry has faced significant financial headwinds over the past 2 years due to challenging financial conditions including high interest rates. In 2023, just 4.09 million existing homes were sold in the United States, the lowest number since 1995.[6] This has caused

[6] Brooklee Han, *Just 4.09 million existing homes were sold in 2023*, HOUSINGWIRE (Jan. 19, 2024), https://www.housingwire.com/articles/just-4-09-million-existing-homes-were-sold-in-

understandable financial difficulties for Defendants, including HSA, whose businesses are directly tied to the number of home sales.

C. The Complexity and Expense of Further Litigation

Plaintiffs' claims raise numerous complex legal and factual issues under antitrust law. This is reflected in the parties' voluminous briefing to date, which includes extensive class certification and summary judgment briefing in both *Moehrl* and *Burnett*, as well as post-trial 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. Furthermore, even after the *Burnett* trial, HSA was poised to mount a strenuous appeal. In *Moehrl*, trial against HSA was imminent. By contrast, the Settlement ensures a 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. ¶¶ 9-11; Dirks Decl. ¶¶ 6, 14-17).

D. The Amount of Opposition to the Settlement

The Settlement Class Representatives in both *Moehrl* and *Burnett* have approved the terms of the Settlement. (Berman Decl. ¶ 12, 19; Dirks Decl. ¶ 18). Notice regarding the Settlement has not yet been distributed. In the event any objections are received after notice is issued, they will be addressed by Plaintiffs' counsel as part of the final approval process.

2023/#:~:text=Existing%20home%20sales%20dropped%20to,sold%2C%20the%20fewest%20since%201995.

E. The Settlement Also Satisfies the Rule 23(e) Factors

In addition to the *Van Horn* factors used 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).

The Settlement satisfies 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 Settlement was negotiated at arm's length over a lengthy period of time. Third, for the reasons stated above, the relief provided to the Class is adequate. The Settlement provides for a significant financial recovery for the Settlement Class, especially considering HSA's limited financial resources. Furthermore, the Settlement includes practice changes that benefit consumers. Fourth, the Settlement treats Class Members fairly and equitably relative to each other.

VI. THE COURT SHOULD APPOINT CO-LEAD CLASS COUNSEL FOR THE CERTIFIED CLASSES IN *BURNETT* AND *MOEHRL* 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. Proposed Settlement Class Counsel are highly experienced in the areas of antitrust and class action litigation. They have tried antitrust class actions to verdict and prosecuted and settled numerous others. (Berman Decl. ¶¶ 4-6; Dirks Decl. ¶¶ 2-3). Moreover, as detailed above, they have diligently prosecuted this case for five years, handling, among other things, motions to dismiss, protracted fact discovery from parties and non-parties, review and synthesis of millions of pages of documents, expert discovery, discovery disputes, class certification, and depositions of fact and expert witnesses, and prevailed in the *Burnett* trial. (Berman Decl. ¶ 14-15; Dirks Decl. ¶¶ 4, 11-13). 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 negotiation process to achieve the best possible result for the classes.

VII. CLASS NOTICE SHOULD PROCEED IN A SUBSTANTIALLY SIMILAR MANNER AS THE EARLIER SETTLEMENTS

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."

When notice is sent, the process will be substantially similar to the notice provided with

the Anywhere, RE/MAX and Keller Williams Settlements—which the Court already approved. (See Keough Declaration ¶ 11); *see also Burnett* ECF Doc. 1321 (approving notice plan)). As this Court previously held, JND's proposed notice plan provides for the "best notice practicable and satisfies the requirements of due process." Doc. 1321; s*ee also In re Packaged Seafood Prod. Antitrust Litig.*, No. 15-MD-2670, 2023 WL 2483474, at *2 (S.D. Cal. Mar. 13, 2023) (approving notice plan with estimated reach of at least 70% and observing that "[c]ourts have repeatedly held that notice plans with similar reach satisfy Rule 23(c)(2)(B)" (citing cases)). This plan, pursuant to Rule 23(c)(2)(B), provides the "best notice practicable" to all potential Settlement Class Members who will be bound by the proposed Settlement. Accordingly, the Court should appoint JND as the notice administrator and authorize the proposed notice plan contained herein.

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 Settlement; (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) ordering that notice be directed to the Class in a manner substantially similar to that issued in conjunction with the Anywhere, RE/MAX and Keller Williams Settlements.

August 7, 2024

Respectfully Submitted,

/s/ Robert A. Braun

Benjamin D. Brown (*pro hac vice*)
Robert A. Braun (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005
(202) 408-4600
bbrown@cohenmilstein.com
rbraun@cohenmilstein.com

Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
(206) 623-7292
steve@hbsslaw.com

Rio S. Pierce (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
(510) 725-3000
riop@hbsslaw.com

Marc M. Seltzer (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
(310) 789-3100
mseltzer@susmangodfrey.com
ssklaver@susmangodfrey.com

/s/ Eric L. Dirks

Eric L. Dirks MO #54921
Matthew L. Dameron MO #52093
WILLIAMS DIRKS DAMERON LLC
1100 Main Street, Suite 2600
Kansas City, Missouri 64105
Tel: (816) 945-7110
Fax: (816) 945-7118
dirks@williamsdirks.com
matt@williamsdirks.com

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

Michael Ketchmark MO # 41018
Scott McCreight MO # 44002
KETCHMARK AND MCCREIGHT P.C.
11161 Overbrook Rd. Suite 210
Leawood, KS 66211
Tel: (913) 266-4500
mike@ketchmclaw.com
smccreight@ketchmclaw.com

Attorneys for the Settlement Class

Exhibit 1

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 STEVE W. BERMAN IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENTS WITH HOMESERVICES DEFENDANTS; CERTIFICATION OF SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

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

1. I am the Managing Partner of Hagens Berman Sobol Shapiro LLP ("Hagens Berman"). The Court in *Moehrl v Nat'l Ass'n of Realtors*, Case No. 1:19-cv-01610-ARW (N.D. 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. (*See Moehrl* Doc. 403). This Court appointed Ketchmark & McCreight, P.C. ("Ketchmark & McCreight"), Boulware Law LLC ("Boulware Law") and Williams Dirks Dameron LLC ("Williams Dirks Dameron") as Co-Lead Class Counsel in this action. (*See Burnett* Doc. 741).

2. Hagens Berman, Cohen Milstein, and Susman Godfrey also served as co-counsel for Plaintiffs in *Umpa v Nat'l Ass'n of Realtors*, Case No. 4:23-cv-00945-FJG (W.D. Missouri)

until that case was consolidated with *Gibson v Nat'l Ass'n of Realtors*, Case No. 23-CV-788-SRB (W.D. Missouri). ("*Gibson*") on April 23, 2024. (*Gibson* Doc. 145, *Umpa* Docs. 245–246). Our three firms, together with Ketchmark & McCreight, Boulware Law, and Williams Dirks Dameron now serve as co-counsel for Plaintiffs in the consolidated *Gibson* action. (*Gibson* Doc. 146). The Court appointed these six firms as Interim Co-Lead Class Counsel in *Gibson*, with responsibility "for any settlement negotiations with Defendants." (*Gibson* Doc. 180). The Court also appointed the six firms as Co-Lead Counsel for the Settlement Classes in the first nine *Gibson* Settlements. (*See Gibson* Docs. 163, 297, 348).

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

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

In re Electronic Books Antitrust Litig., No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02430 (N.D. Cal.), obtaining court-approved settlements for class members in all three cases. I was approved as co-lead counsel to represent a certified class of thousands of consumers in *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill. May 27, 2022), ECF No.5644. I have negotiated numerous settlements in class and non-class cases during my decades of practice.

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

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

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

7. On behalf of Plaintiffs, other Co-Lead Counsel and I personally participated in extensive settlement negotiations with counsel for Defendants HomeServices of America, Inc.; BHH Affiliates, LLC; Long & Foster Companies, Inc.; and HSF Affiliates, LLC (together, "the HomeServices Defendants" or "HomeServices") over the course of nearly four years. These negotiations included 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. The parties then continued to engage directly through multiple intensive in-person and telephonic negotiations over many months, before reaching an agreed settlement.

8. Plaintiffs and HomeServices executed a Settlement Agreement on August 7, 2024. Attached as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and HomeServices.

9. In my opinion, and in that of highly experienced Co-Lead Counsel, the proposed Settlement Agreement is fair, reasonable, and adequate. It provides substantial monetary and non-monetary benefits to the Settlement Class, and it avoids the risks, costs, and delay of continuing protracted litigation against HomeServices. Details of the agreed monetary relief, changes to HomeServices' business practices, and cooperation in the Actions are set forth in the Settlement Agreement attached as Exhibits A.

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

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

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

13. 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.

14. When the Settlement Agreement was executed with HomeServices in this action, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. Plaintiffs and HomeServices reached this Settlement after extensive litigation and settlement negotiations in this action and the related *Moehrl* and *Gibson* actions. The parties in this action (*Burnett*) and *Moehrl* completed over five years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed

items in order to obtain important evidence to support their claims. The parties conducted over 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts to support their claims and to rebut claims from the nine experts retained by Defendants in each case. Most experts in the case were deposed after the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The Plaintiffs in both cases have also briefed summary judgment, and the Plaintiffs in *Burnett* prevailed at trial, including against NAR, and briefed post-trial motions.

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

16. During the course of the *Burnett* and *Moehrl* litigation, Plaintiffs' counsel engaged in extensive arm's-length settlement negotiations with defendants in these cases that lasted nearly four years. This work resulted in Settlement Agreements that required NAR and several of the largest real estate brokerage firms to abolish the challenged rules, provide cooperation in litigation against non-settling defendants, and pay the following amounts:

a. National Association of Realtors ("NAR"): at least $418 million.
b. HomeServices Defendants: $250 million;
c. Anywhere Real Estate, Inc. (f/k/a Realogy Holdings Corp.) ("Anywhere"): $83.5 million,
d. RE/MAX LLC ("RE/MAX"): $55 million, and
e. Keller Williams Realty, Inc. ("Keller Williams"): $70 million.

17. Proposed Settlement Class Counsel for the settlement with the HomeServices Defendants are the same attorneys who successfully represented home sellers in the *Burnett* and *Moehrl* actions—prevailing at trial in *Burnett*, and achieving favorable settlements with the other Defendants in those actions. Building on their work in those actions, Plaintiffs then filed the *Gibson* and *Umpa* actions alleging a nationwide class against additional Defendants. Based on their extensive investigative and analytical efforts in *Burnett, Moehrl*, *Gibson*, and Umpa, Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements.

18. Proposed Settlement Class Counsel have continued to work diligently on behalf of home sellers to advance the related litigation in *Gibson* and *Umpa*. They worked with *Gibson* and *Umpa* Plaintiffs to file detailed complaints against the Defendants and have diligently prosecuted those actions through their early stages to date. Plaintiffs' counsel have worked cooperatively, including moving to consolidate the *Gibson* and *Umpa* complaints for purposes of efficiency. Plaintiffs' counsel have further negotiated a scheduling order, ESI order, and protective order; served and responded to requests for production of documents, and begun the process of briefing Plaintiffs' oppositions to Defendants' motions to dismiss.

19. In my opinion, Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners ("Plaintiffs") are ably representing the proposed Settlement Class.

20. Plaintiffs propose that the form and manner of notice of the proposed Settlement with HomeServices be substantially similar to the notice provided with the Anywhere, RE/MAX, and Keller Williams Settlements in connection with this action—which this Court approved. Based on investigation of Class Counsel, and in consultation with the Claims Administrator appointed

by the Court in *Burnett* and *Moehrl*, I believe the proposed notice plan provides for the best notice practicable to Settlement Class Members and satisfies the requirements of due process.

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

Executed August 7, 2024, at Seattle, Washington.

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DON GIBSON, LAUREN CRISS, JOHN MEINERS, and DANIEL UMPA, individually and on behalf of all others similarly situated, Plaintiffs, v. NATIONAL ASSOCIATION OF REALTORS, HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., BERKSHIRE HATHAWAY ENERGY COMPANY, KELLER WILLIAMS REALTY, INC., COMPASS, INC., EXP WORLD HOLDINGS, INC., EXP REALTY, LLC, REDFIN CORPORATION, WEICHERT REALTORS, FIVE D I, LLC d/b/a UNITED REAL ESTATE, HANNA HOLDINGS, INC., DOUGLAS ELLIMAN, INC., DOUGLAS ELLIMAN REALTY, LLC, AT WORLD PROPERTIES, LLC, THE REAL BROKERAGE, INC., REAL BROKER, LLC, REALTY ONE GROUP, INC., HOMESMART INTERNATIONAL, LLC, ENGEL & VÖLKERS, ENGEL & VÖLKERS AMERICAS, INC., NEXTHOME, INC., EXIT REALTY CORP. INTERNATIONAL, EXIT REALTY USA CORP., WINDERMERE REAL ESTATE SERVICES COMPANY, INC., LYON REAL ESTATE, WILLIAM RAVEIS REAL ESTATE, INC., JOHN L. SCOTT REAL ESTATE AFFILIATES, INC., THE KEYES COMPANY, ILLUSTRATED PROPERTIES, LLC, PARKS PILKERTON VILLAGE REAL ESTATE, CRYE-LEIKE REAL ESTATE SERVICES, BAIRD & WARNER REAL ESTATE, INC., REAL ESTATE ONE FAMILY OF COMPANIES, LOKATION REAL ESTATE LLC Defendants.	Case No. 4:23-cv-00788-SRB [Consolidated with 4:23-cv-00945-SRB]

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into this 6th day of August, 2024 (the "Execution Date"), by and between defendants HomeServices of America, Inc., BHH Affiliates, LLC, Long & Foster Companies, Inc., and HSF Affiliates, LLC (together, "HomeServices") and plaintiffs Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners who filed suit in the above captioned Actions both individually and as representatives of one or more classes of home sellers ("Plaintiffs"). Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

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

WHEREAS, HomeServices denies Plaintiffs' allegations in the Actions and has asserted defenses to Plaintiffs' claims;

WHEREAS, HomeServices filed post-trial motions in Burnett pursuant to Rules 50 and 59, and has re-filed post-trial motions originally filed by the National Association of REALTORS and Keller Williams Realty, Inc., which were denied as moot and without prejudice in light of the parties' Notice of Pending Settlement and Joint Motion to Stay the Case,

WHEREAS, extensive arm's-length settlement negotiations have taken place between Plaintiffs' Co-Lead Counsel and counsel for HomeServices, including several mediations with both a federal magistrate judge and a nationally recognized and highly experienced mediator, leading to this Settlement Agreement;

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

WHEREAS, for the avoidance of doubt, for the purposes of this agreement, the defined term "HomeServices" does not include and does not release Berkshire Hathaway Energy Company, Berkshire Hathaway Inc., or any other corporate parent of HomeServices of America, Inc.

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 HomeServices according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, HomeServices believes that it is not liable for the claims asserted and that it has good defenses to Plaintiffs' claims and meritorious pre-trial and post-trial motions, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distractions of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that Plaintiffs and Settlement Class Members have or could have asserted against the Released Parties, as defined below; and

WHEREAS, HomeServices, 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 HomeServices and the Plaintiffs that the Actions be settled, compromised, and dismissed with prejudice as to HomeServices only, without costs to Plaintiffs, the Settlement Class or HomeServices except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. "Actions" means W.D. Missouri Case No. 19-cv-00332-SRB ("Burnett"); W.D. Missouri Case No. 4:23-cv-00788-SRB ("Gibson"); W.D. Missouri Case No. 4:23-cv-00945-SRB ("Umpa"); N.D. Illinois Case No. 1:19-cv-01610-ARW ("Moehrl").

2. "Corporate Defendants" means any defendant aside from the National Association of Realtors named in the Actions.

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

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

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

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

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

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

SUSMAN GODFREY LLP
1900 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067

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

5. "Defendants" means all defendants named in the Actions.

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

7. "Effective Date" means the date when: (a) the Court has entered a final judgment

order approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Actions against HomeServices 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-HomeServices Defendant or any person or entity related to the Non-HomeServices Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this section; nor shall this section be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.

8. "Moehrl MLSs" means the multiple listing services at issue in Moerhl.

9. "Burnett MLSs" means the multiple listing services at issue in Burnett.

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

11. "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.

12. "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, joint venture, unincorporated association, government or any political subdivision or agency thereof, any business

or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates and assignees. For the avoidance of doubt, Persons include all real estate brokerages.

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

14. "Released Parties" means HomeServices and its officers, directors, and employees, solely in their capacity as such, direct or indirect subsidiaries, successors or assigns, joint ventures, franchisees, independent contractors, and legal, financial and other representatives. Notwithstanding this definition, "Released Parties" shall not include and this Settlement Agreement shall not release Berkshire Hathaway Energy Company ("BHE") or any of BHE's or HomeServices of America Inc.'s direct or indirect parents, or HomeServices of America Inc.'s direct or indirect parents' officers, directors or employees, in their capacity as such, from any claims or alleged liability for any of the claims asserted or that could have been asserted by Plaintiffs in the Actions on any theory or basis whatsoever. BHE and any of BHE's direct or indirect corporate parents, and the officers and directors of each, are not third-party beneficiaries of this Settlement or Settlement Agreement. This Settlement Agreement does not settle or compromise any claim or potential claim by Plaintiffs or any other Settlement Class Member against any alleged co-conspirator or other Person or entity other than the Released Parties, including but not limited to the non-HomeServices Defendants in the Actions. Notwithstanding the foregoing, Plaintiffs agree that they shall not assert any derivative claims that belong to HomeServices against HomeServices' direct and indirect parents and that Plaintiffs shall not assert that this Settlement Agreement provides the basis to

pursue any such claims. The Parties agree that such derivative claims do not include Sherman Antitrust Act claims asserted by the Plaintiffs against HomeServices' direct and indirect parents. 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 HomeServices and other times associated with a different Corporate Defendant are included as Released Parties for the periods of time they were associated with HomeServices and excluded for the periods of time they were associated with a different Corporate Defendant. For the avoidance of doubt, the foregoing release is not intended to and does not release HomeServices or any other Person for any claims based on the conduct of any real estate brokerage acquired by HomeServices or any other Person affiliated with such an acquired brokerage that becomes affiliated with HomeServices after the Execution Date for conduct that took place before the Execution Date.

15. "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).

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

17. "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: October 31, 2019 to date of notice.

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

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

19. "Settling Parties" means Plaintiffs and HomeServices.

20. "Total Monetary Settlement Amount" means $250 million, inclusive of all interest. For the avoidance of doubt, "Total Settlement Amount" does not include interest accrued on that portion of the Total Monetary Settlement Amount that is held in the Escrow Account. 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 HomeServices will pay nothing apart from the Total Monetary Settlement Amount.

B. Stipulation to Class Certification

21. 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 HomeServices. 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.

22. Neither this Settlement Agreement, nor any statement, transactions, or proceeding in connection with the negotiation, execution, or implementation of this Settlement Agreement should be intended to be, construed as, or deemed to be evidence of an admission or concession by HomeServices 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

23. 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 HomeServices; and HomeServices'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.

24. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). The Motion shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this Settlement. The proposed form of the preliminary approval order shall be acceptable to HomeServices provided that it is substantially in the form of the orders proposed in connection with the Keller Williams, Anywhere, and RE/MAX settlements. At least 24 hours before submission to the Court, the papers in support of the Motion for preliminary approval shall be provided by Co-Lead Counsel to HomeServices for its review. To the extent that HomeServices 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 or another mediator, mutually chosen by the parties, and will endeavor to resolve any issues to the satisfaction of the Court.

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

26. Within ten (10) calendar days after the filing with the Court of this Settlement Agreement and the accompanying motion papers seeking its preliminary approval, JND, the notice administrator, shall at HomeServices's expense to be credited against the Total Monetary Settlement

Amount cause notice of the Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Actions Fairness Act, 28 U.S.C. § 1715.

27. 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 HomeServices:

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

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

c) directing that, as to HomeServices 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 HomeServices.

28. 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

29. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, Actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs,

expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the date of preliminary approval of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Actions, and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (i) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of preliminary approval of the Settlement; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

30. 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.

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

E. Payment of the Settlement Amount

32. 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"). All accrued interest shall be for the benefit of the Settlement Class Members unless the Settlement is not approved, in which case the interest shall be for the benefit of HomeServices. Within 30 days following preliminary approval of the Settlement Agreement by the Court (and notwithstanding the exhaustion of any appellate rights), HomeServices will deposit $10 million (the "First Settlement Payment") into an interest-bearing Escrow Account to be established by the Parties. Within 90 days following final approval of the Settlement Agreement by the Court (and notwithstanding the exhaustion of any appellate rights), HomeServices will deposit $57.5 million (the "Second Settlement Payment") into the Escrow Account. No later than one year after the Second Settlement Payment, HomeServices will deposit $62.5 million (the "Third Settlement Payment") into the Escrow Account. No later than two years after the Second Settlement Payment, HomeServices will deposit another $62.5 million (the "Fourth Settlement Payment") into the Escrow Account. No later than three years after the Second Settlement Payment, HomeServices will deposit the final $57.5 million (the "Final Settlement Payment") into the Escrow Account.

33. HomeServices may extend the date of payment of each of the Fourth Settlement Payment and the Final Settlement Payment by up to one year from its respective payment date (each, an "Extension") in the event that after exercising good faith reasonable efforts (i) HomeServices is unable to pay (x) the Fourth Settlement Payment and/or the Final Settlement Payment, as applicable and (y) the current term note balloon payment due in September 2026 and (ii) HomeServices is unable to refinance the current term note balloon payment due in September 2026 to September 2028 or beyond on commercially acceptable terms. As a condition to invoking an Extension, seven days prior to the time of invoking such Extension, HomeServices will provide Plaintiffs on a confidential

basis with a certification signed by an officer of HomeServices documenting (i) HomeServices' inability to pay the Fourth Settlement Payment and/or the Final Settlement Payment, as applicable, and the current term note balloon payment due in September 2026 including relevant financial information and (ii) Home Services' efforts to refinance the current term note balloon payment due in September 2026 to September 2028, including having requested such refinancing from the existing lender syndicate (consisting of seven lenders) and at least two other reasonably comparable lenders and such lenders' denial to so refinance. In the event any Extension is invoked, HomeServices (excluding independently-owned franchisees) will pay any cash on the balance sheet in excess of $200 million, net of any outstanding checks, tested on a monthly basis as calculated at month end ("Excess Cash") to pay down the Fourth Settlement Payment and/or the Final Settlement Payment, as applicable, from the time that the payment was originally due until the date that it is paid in full (each, an "Installment Payment"). Installment Payments will be made within 10 business days of each month-end in which a balance of the Fourth Settlement Payment and/or the Final Settlement Payment remains outstanding. HomeServices will provide Plaintiffs with express warranties and representations related to the calculation of the Excess Cash. If HomeServices exercises an Extension, HomeServices agrees that it shall not make any dividends or distributions to shareholders or acquisitions until the Fourth Settlement Payment and/or the Final Settlement Payment, as applicable, is paid in full. For the avoidance of doubt, HomeServices' existing credit facility contains a prohibition on (i) dividends and (ii) acquisitions for over $10 million in the aggregate.

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 HomeServices'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 36. 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. HomeServices will not object to Co-Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $5,000,000 to pay the costs for notice. If Plaintiffs settle with one (or more) Non-HomeServices Corporate Defendants and notice of one or more other settlements is included in the notice of this settlement, then the cost of such notice will be apportioned equitably between (or among) this 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 HomeServices 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 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. HomeServices 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. HomeServices'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 HomeServices 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. HomeServices will have no participatory or

approval rights with respect to the Plan of Allocation. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation, including, but not limited to, any adjustments to an authorized claimant's claim, is completely independent of and is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement. The Settlement Class, Plaintiffs, and HomeServices 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 HomeServices 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. HomeServices 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 HomeServices. In the event the Settlement

does not become Effective and any funds including interest or other income are returned to HomeServices, HomeServices will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. HomeServices 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 in or set aside on appeal in any material respects, or if the Court does not enter final approval, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Settlement Agreement may be rescinded by HomeServices or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within 10 business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order.

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 HomeServices. 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 HomeServices. 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 HomeServices.

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 April 24, 2024. Plaintiffs and HomeServices agree that any rulings or judgments that occur in the Actions on or after April 24, 2024 and before this Settlement Agreement is rescinded will not bind Plaintiffs, HomeServices or any of the Released Parties. Plaintiffs and HomeServices agree to waive any argument of claim or issue preclusion against Plaintiffs or HomeServices 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. HomeServices and Plaintiffs expressly reserve all rights if the Settlement Agreement does not become Effective or if it is rescinded by HomeServices or the Plaintiffs, including HomeServices' rights to appeal any judgment entered in Burnett on any available ground. The Settling Parties agree that pending deadlines for motions not yet filed, and all deadlines (whether pending or past) for motions that will be withdrawn pursuant to this Settlement Agreement, shall be tolled for the period from April 24, 2024, until the date this Settlement or Settlement Agreement is rescinded, and no Settling Party shall contend that filing or renewal of such motions was rendered untimely by or was waived by the operation of this Settlement Agreement.

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

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

50. HomeServices 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, HomeServices (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, predecessors, and successors but not franchisees) will implement the following practice changes:

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

ii. require that any HomeServices company-owned brokerages and their agents (and recommend and encourage that any franchisees and their agents) disclose to prospective home sellers and buyers and state in conspicuous language that broker commissions are not set by law and are fully negotiable (i) in their listing agreement if it is not a government or MLS-specified form, (ii) in their buyer representation agreement if there is one and it is not a government or MLS-

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

iii. prohibit all HomeServices 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 (unless they are, in fact, not receiving any compensation for those services from any party);

iv. require that HomeServices company-owned brokerages and their agents disclose at the earliest moment possible any offer of compensation made in connection with each home marketed to prospective buyers in any format;

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

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

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

viii. display offers of compensation made by listing brokers or agents, where such compensation data is available and/or provided by HomeServices own brokerages for all active listings by HomeServices on its own brokerage website(s), and shared on bhhs.com or that brokerage's associated HomeServices regional franchise network website(s), and require company owned brokerages (and recommend and encourage that franchisees and agents) include their 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. For purposes of this paragraph, "HomeServices own brokerage" includes HomeServices' subsidiary-owned brokerages and its franchisees.

52. Nothing in this Settlement Agreement requires that HomeServices' owned brokerages eliminate minimum commission requirements, nor shall anything in this Settlement Agreement constitute approval by Plaintiffs or their counsel of any minimum commission requirements employed by HomeServices or HomeSevices' owned brokerages.

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

54. If in an action brought against the National Association of REALTORS® or HomeServices by the United States Department of Justice, United States Federal Trade Commission, or any State Attorney General and a final judgment is entered by a court (with all stay rights exhausted) which requires HomeServices to adopt any practice changes that are inconsistent with the practice changes required by this Settlement Agreement, HomeServices may comply with the terms of such judgment, unless the judgment is reversed or vacated, notwithstanding the practice changes specified in this Settlement Agreement. In such circumstance, HomeServices will continue to be obligated to observe the practice changes specified in this Settlement Agreement that are not affected by such judgment.

55. HomeServices 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

56. HomeServices (defined for purposes of this paragraph to include present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors but not franchisees) will provide valuable cooperation to Plaintiffs as follows in the Actions, including to the extent that it is consolidated with other actions, including but not limited to the following. Provided, however, that nothing in this paragraph is intended to limit either Plaintiffs' right to seek discovery from HomeServices or HomeServices' right to resist any such discovery from Plaintiffs.

i. HomeServices agrees that it will not take the position that the protective orders in *Burnett* or *Moehrl* preclude the use in *Gibson* and *Umpa* of documents produced and other discovery conducted in *Burnett* and *Moehrl*;

ii. HomeServices will 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;

iii. HomeServices will use reasonable efforts to provide the facts necessary to establish, where applicable, that documents and/or things produced by it in the Actions are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary; and

iv. HomeServices will use commercially reasonable efforts at its expense to provide relevant class member data and answer questions about that data to support the provision of class notice, administration of any settlements, or the litigation of the Actions.

57. HomeServices's cooperation obligations, as set forth in Paragraph 56 above, 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.

58. HomeServices'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 HomeServices. 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-HomeServices 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.

59. HomeServices 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

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

61. This Settlement Agreement was reached after arm's length negotiations. The Settling Parties reached the Settlement Agreement after considering the risks and costs of litigation. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and non-public materials exchanged during the settlement negotiation.

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

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

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

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

66. Neither Plaintiffs nor HomeServices 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.

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

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

69. 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.

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 transactions and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement and was not fraudulently or otherwise wrongfully induced to enter into this Settlement Agreement.

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.

CO-LEAD COUNSEL

Hagens Berman Sobol Shapiro LLP

Cohen Milstein Sellers & Toll PLLC

Susman Godfrey LLP

Ketchmark & McCreight PC

Boulware Law LLC

Williams Dirks Dameron LLC

HomeServices of America, Inc., BHH Affiliates, LLC, Long & Foster Companies, Inc., and HSF Affiliates, LLC

By:
Dana D. Strandmo
Secretary for HomeServices of America, Inc., BHH Affiliates, LLC, Long & Foster Companies, Inc., and HSF Affiliates, 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 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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Rhonda Burnett, Jerod Breit, Hollee Ellis, Frances Harvey, Jeremy Keel, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners ("Plaintiffs") and defendants HomeServices of America, Inc., BHH Affiliates, LLC, Long & Foster Companies, Inc., and HSF Affiliates, LLC ("HomeServices") (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 HomeServices, based upon written instructions

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

Exhibit 2

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

RHONDA BURNETT, JEROD BRIET, 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 AMERICAN, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC., Defendants.	)	Case No. 19-CV-00332-SRB

DECLARATION OF ERIC L. DIRKS IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENT WITH HOMESERVICES DEFENDANTS

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

1. I am a partner at the law firm of Williams Dirks Dameron LLC in Kansas City, Missouri, and counsel for the Plaintiff and the Class in the *Burnett* and *Gibson* actions. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of the Settlement with the HomeServices Defendants ("the Settlement"). I make this statement of my own personal knowledge, and if called to testify, would testify competently thereto.

2. The following is a brief description of my professional background. I am a founding partner of the law firm of Williams Dirks Dameron LLC, in Kansas City, Missouri where I focus my practice on complex litigation, including nationwide class actions. Before my involvement in these actions, I acted as counsel on over four dozen class and collective actions, I have settled numerous class actions, tried a class action to verdict and through appeal in federal court (prior to the *Burnett* trial), and successfully argued the issue of class certification before the Missouri

Supreme Court. As the Court is aware, my firm and our co-counsel successfully navigated the *Burnett* case from its infancy to a $1.785 billion jury verdict.

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

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

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

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

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

8. After we reached Settlements with Anywhere and RE/MAX, we continued litigating against HomeServices and other defendants. In *Burnett,* we litigated all the way through trial against HomeServices, NAR and Keller Williams, and in *Moehrl,* trial was imminent. The Defendants in *Burnett* and *Moehrl* have now all settled. But we did not stop there. We filed *Gibson* in order to continue to seek monetary and practice change relief on behalf of the Class from additional brokerages

in the residential real estate industry who we alleged also followed and enforced the Mandatory Offer of Compensation Rule.

9. The excellent result from this Settlement and all the Settlements before the Court did not just happen. They are a result of over five years of litigation addressing the Mandatory Offer of Compensation Rule in *Burnett* and *Moehrl* and then filing suit in *Gibson*.

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

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

12. We reviewed more than 5 million pages of documents and we isolated and reviewed unique documents, which culminated in the parties marking hundreds of deposition and trial exhibits. Both sides issued numerous third-party subpoenas to multiple MLSs and real estate brokerages. Much of the data provided was not limited to the *Burnett* and *Moehrl* MLSs, but included data and policies nationwide.

13. Even after trial, HomeServices filed numerous post-trial motions, and, if those motions were unsuccessful, was mounting its merits appeal in addition to its writ of certiorari on arbitration issues. *See* Docs. 1349-50, 1355-56, 1357-58, 1367, 1379-80, 1381-82.

14. We mediated with HomeServices on multiple occasions. After trial, we had an unsuccessful mediation with Greg Lindstrom followed by multiple adversarial and arms-length negotiations that took many months to result in a settlement. The negotiations included

HomeServices' officers. We did so only after receiving HomeServices' financial information. We were able to make a determination of HomeServices' ability to realistically pay a reasonable settlement amount. This was one factor we considered in reaching this Settlement.

15. In determining that the Settlement was in the best interest of the Class, Plaintiffs used a forensic accountant to evaluate the internal financial documents of HomeServices.

16. In my opinion, and based on my experience, the Settlement is fair, reasonable and adequate.

17. I also believe the Settlement is in the best interests of the Settlement Class given the risks and delay of further litigation and the prospective relief obtained. Moreover, due to the nature of joint and several liability, the Settlement Class Members' recovery is not limited to the amount paid here, but also includes the previous settlements in this case. Indeed, we continue to strenuously litigate on behalf of this Settlement Class.

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

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

Executed this 7th day of August 2024.

Eric L. Dirks