

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

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

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

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

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

Hon. Stephen R. Bough

JURY TRIAL DEMANDED

JEREMY KEEL, JEROD BREIT, HOLLEE
ELLIS, FRANCES HARVEY, RHONDA
BURNETT, DON GIBSON, LAUREN CRISS,
JOHN MEINERS, DANIEL UMPA,
CHRISTOPHER MOEHRL, MICHAEL COLE,
STEVE DARNELL, JACK RAMEY, and JANE
RUH, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CHARLES RUTENBERG REALTY, INC.,
TIERRA ANTIGUA REALTY, LLC, WEST
USA REALTY, INC., MY HOME GROUP
REAL ESTATE, LLC, Defendants.

Civil Action No. 25-cv-00759

JURY TRIAL DEMANDED

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL**

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

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

2. Hagens Berman, Cohen Milstein, and Susman Godfrey also served as co-counsel for Plaintiffs in *Umpa v. Nat’l Ass’n of Realtors*, Case No. 4:23-cv-00945-FJG (W.D. Mo.) until that case was consolidated with this case (“Gibson”) on April 23, 2024. (Gibson Doc. 145, Umpa Docs. 245–246). Our three firms, together with Ketchmark & McCreight, P.C. (“Ketchmark & McCreight”), Boulware Law LLC (“Boulware Law”) and Williams Dirks Dameron LLC (“Williams Dirks Dameron”) now serve as co-counsel for Plaintiffs in the consolidated *Gibson* action. (Gibson Doc. 146). The Court appointed these six firms as Interim Co-Lead Class Counsel in this case, with responsibility “for any settlement negotiations with Defendants.” (Gibson Doc. 180). The Court also appointed the six firms as Co-Lead Counsel for the Settlement Classes in the first nine *Gibson* Settlements. (See Gibson Docs. 163, 297, and 348).

3. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Settlements with Hanna Holdings, Inc., William Raveis Real Estate, Inc., EXIT Realty Corp. International and EXIT Realty Corp., USA; and Windermere Real Estate Services Company, Inc. and William L. Lyon & Associates, Inc.; and Plaintiffs’ Motion for Preliminary Approval of Settlements with West USA Realty, Inc., My Home Group Realty, LLC, Tierra Antigua Realty, LLC, and Charles Rutenberg Realty, Inc. Based on personal knowledge or discussions with

counsel in my firm and co-counsel regarding the matters stated herein, if called upon, I could and would testify competently thereto.

4. I have served as lead or co-lead counsel in antitrust, securities, consumer, products liability, and employment class actions, and other complex litigation matters throughout the country. For example, I have represented thousands of plaintiffs in large antitrust cases and have achieved favorable results for them. I was the lead trial lawyer in *In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litig.*, MDL No. 2541 (N.D. Cal.) where the class obtained injunctive relief following a bench trial. As co-lead counsel in *In re Visa Check/Mastercard Antitrust Litig.*, No. 96-cv-05238 (E.D.N.Y.), I obtained the then largest antitrust settlement in history for consumers while challenging alleged anti-competitive agreements among U.S. banks, Visa, and Mastercard, regarding ATM fees. I also represented consumers in *In re Optical Disk Drive Products Antitrust Litig.*, No. 10-md-2143-RS (N.D. Cal.), *In re Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC) (S.D.N.Y.), and *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02430 (N.D. Cal.), obtaining court-approved settlements for class members in all three cases. I was approved as co-lead counsel to represent a certified class of thousands of consumers in *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill. May 27, 2022), ECF No. 5644. I have negotiated numerous settlements in class and non-class cases during my decades of practice.

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

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

- Susman Godfrey LLP.

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

7. On behalf of Plaintiffs, other Co-Lead Counsel and I personally participated in intensive settlement negotiations with opposing counsel and/or analysis and deliberation among the Plaintiffs’ legal team regarding settlement terms with: (a) Hanna Holdings, Inc. (“Hanna Holdings”); (b) William Raveis Real Estate, Inc. (“William Raveis”); (c) EXIT Realty Corp. International and EXIT Realty Corp., USA (collectively “EXIT Realty”); (d) Windermere Real Estate Services Company, Inc. and William L. Lyon & Associates, Inc. (collectively “Windermere & Lyon”); (e) West USA Realty, Inc. (“West USA”); (f) My Home Group Realty, LLC (“My Home”); (g) Tierra Antigua Realty, LLC (“Tierra Antigua”); and (h) Charles Rutenberg Realty, Inc. (“Charles Rutenberg”) (collectively “Settling Defendants”).

8. The Settlements are attached hereto as follows:

Exhibit A -- Hanna Holdings;

Exhibit B -- William Raveis;
Exhibit C -- EXIT Realty;
Exhibit D -- Windermere & Lyon;
Exhibit E -- West USA;
Exhibit F -- My Home;
Exhibit G -- Tierra Antigua; and
Exhibit H -- Charles Rutenberg.

9. Each Settlement was achieved through extensive negotiations. To achieve a settlement with Hanna Holdings, the parties had an in-person mediation, attended by lead counsel for each party, facilitated by Greg Lindstrom, who has served as a mediator on multiple mediations in this case. This followed months of direct negotiations between Plaintiffs and counsel for Hanna Holdings. To achieve a settlement with William Raveis, the parties had a mediation, attended by lead counsel for each party, facilitated by Jay Daugherty, who has served as a mediator on multiple mediations in this case. To achieve a settlement with Windermere & Lyon, the parties had a mediation, attended by lead counsel for each party, facilitated by Greg Lindstrom. To achieve a settlement with EXIT Realty, the parties engaged in extensive direct settlement discussions over several months. To achieve a settlement with Tierra Antigua, the parties had a mediation, attended by lead counsel for each party, facilitated by David Duncan, who has served as a mediator on multiple mediations in this case. To achieve a settlement with West USA, the parties had a mediation, attended by lead counsel for each party, facilitated by David Duncan. To achieve a settlement with Charles Rutenberg, the parties engaged in extensive direct settlement negotiations. To achieve a settlement with My Home, the parties engaged in

direct settlement discussions. For each settlement, the parties reached agreement only after numerous hours of negotiation.

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

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

12. In my opinion, the Settlements are fair and reasonable in light of the financial condition of each Defendant, 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 Defendants. Counsel assessed whether Settling Defendants could withstand a greater payment. The monetary settlements were reached with due consideration for the Defendants' ability to pay a judgment or settlement.

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

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

15. When the Settlement Agreements were executed with Defendants in this action, Co-Lead Counsel were fully aware of the strengths and weaknesses of each side's positions. Extensive litigation and settlement negotiations in the related actions *Moehrl*, *Burnett*, and *Gibson*, laid the foundation for expeditiously achieving favorable settlements with Defendants. The parties in *Burnett* and *Moehrl* completed over five years of extensive fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production, followed by the production of well over 5 million pages of documents from the parties and dozens of non-parties across both actions. Plaintiffs briefed numerous discovery motions and disputed items in order to obtain important evidence to support their claims. The parties conducted over 100 depositions in the *Moehrl* action and over 80 depositions in the *Burnett* action. *Moehrl* Plaintiffs engaged six experts and *Burnett* Plaintiffs engaged five experts to support their claims and to rebut claims from the nine experts retained by Defendants in each case. Most experts in the case were deposed after the submission of 24 expert reports in *Moehrl* and 19 expert reports in *Burnett*. The Plaintiffs in both cases also briefed summary judgment, and the Plaintiffs in *Burnett* prevailed at trial, including against NAR, and briefed post-trial motions.

16. Discovery in *Burnett* and *Moehrl* focused on the nationwide rules and practices of NAR and its members. Class Counsel and experts in *Burnett* and *Moehrl* analyzed rules, policies,

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

17. During the course of the *Burnett* and *Moehrl* litigation, Plaintiffs' counsel engaged in extensive arm's-length settlement negotiations with various defendants in those cases that lasted nearly four years, including several in-person and telephonic mediations with a nationally recognized and highly experienced mediator, mediations with a retired federal court judge and a federal magistrate judge, and dozens of one-on-one calls and direct communications. This work resulted in Settlement Agreements in those actions that required NAR and several of the largest real estate brokerage firms to abolish the challenged rules, provide cooperation in litigation against non-settling defendants,

18. Proposed Settlement Class Counsel are the same attorneys who successfully represented home sellers in the *Burnett*, *Moehrl*, and *Gibson* actions—and who prevail at trial in *Burnett* and achieved favorable settlements on behalf of home sellers. Proposed Settlement Class Counsel then used their work in those actions to further benefit the class. Plaintiffs filed the *Gibson* and *Umpa* actions alleging a nationwide class against additional Defendants. Based on their extensive work and research in *Burnett* and *Moehrl*, as well as in this action, Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements.

19. In addition, in my opinion, the named Plaintiffs have ably represented the interests of the proposed class. Each has served as a named plaintiff in other litigation involving real estate commissions and has experience litigating such claims. In addition, each named Plaintiff

considered and approved the Settlements. Each also approved the filing of the complaint and is prepared to represent the Class.

20. Given the considerable cost of issuing class notice in a case of this size, and the total Settlement Amount provided by these Settlements, I believe it would serve the best interest of the Class to implement a combined notice program that includes notice of several settlement in the *Gibson* and *Keel II* actions. This would enable the Parties to make more efficient use of settlement funds.

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

Executed September 29, 2025.



STEVE W. BERMAN