

APPENDIX D – NON-REALTOR® MLS “OPT IN” AGREEMENT

**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 NATIONAL
ASSOCIATION OF REALTORS® REALTY, INC.,

Defendants.

Case No. 19-cv-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:19-cv-01610-ARW

WHEREAS, some plaintiffs have alleged that certain MLSs participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state laws;

WHEREAS, Stipulating MLS denies Plaintiffs' allegations in the Actions;

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

WHEREAS, Stipulating MLS believes that it is not liable for the claims and allegations asserted and has good defenses, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims and allegations that Plaintiffs and Settlement Class Members have or could have asserted against the Stipulating MLS; and

WHEREAS, Stipulating MLS, has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in the Settlement Agreement and Appendix D.

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

A. Definitions

Stipulating MLS agrees that the terms reflected in this Appendix D shall have the same meaning as those defined in the Settlement Agreement, unless otherwise specified. The following terms, as used in this Appendix D only, have the following meanings:

1. “Burnett” means the case pending in the United States District Court for the Western District of Missouri Case No. 4:19-cv-00332-SRB, which is currently pending.
2. “Burnett MLSs” means the multiple listing services at issue in Burnett.
3. “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 L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

4. “Court” means the United States District Court for the Western District of Missouri.
5. “Effective” means that all conditions set forth below in the definition of “Effective Date” have occurred.
6. “Effective Date” means the date when both: (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 the National

Association of REALTORS® 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-National Association of REALTORS® Defendant, and any such appeal or other proceedings shall not delay the Settlement Agreement from becoming final and shall not apply to this Paragraph; nor shall this Paragraph 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.

7. "Moehrl" means the case pending in the Northern District of Illinois Case No. 1:19-cv-01610-ARW, which is currently pending.

8. "Moehrl MLSs" means the multiple listing services named in Moehrl.

9. "MLS PIN" means the multiple listing service at issue in United States District Court for the District of Massachusetts Case No. I :20-cv-12244-PBS, which is currently pending.

10. "Opt-Outs" 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.

11. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, affiliates, and assignees.

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

13. “Released Parties” for purposes of this Appendix D means Stipulating MLS and its past and present, direct and indirect, subsidiaries, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns. However, “Released Parties” shall not include any Person who is excluded from being a released party under Paragraphs 16(g) or (h) of the Settlement Agreement.

14. “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).

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

16. “Settlement Class” means the class of persons that will be certified by the Court for settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing

service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:

- Homes listed on Moehrl MLSs: March 6, 2015 to date of Class Notice;
- Homes listed on Burnett MLSs: April 29, 2014 to date of Class Notice;
- Homes listed on MLS PIN: December 17, 2016 to date of Class Notice;
- Homes in Arkansas, Kentucky, and Missouri, but not on the Moehrl MLSs, the Burnett MLSs, or MLS PIN MLS: October 31, 2018 to date of Class Notice;
- Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moehrl MLSs, the Burnett MLSs, or PIN MLS, MLS: October 31, 2017 to date of Class Notice;
- For all other homes: October 31, 2019 to date of Class Notice.

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

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

18. “Settling Parties” means Plaintiffs and Stipulating MLS.

B. Operation of the Settlement

19. Stipulating MLS represents that neither it nor its past or present, direct or indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, franchisors, or franchisees is a defendant in the Actions, as that term is defined in the Settlement Agreement. This representation is a material component of Appendix D and Stipulating MLS’s inclusion as a Released Party.

20. Settling Parties agree that, as a condition precedent for this Appendix D to become

effective, Stipulating MLS must deliver to the below email address within 60 days of the filing of the first motion for preliminary approval of the Settlement Agreement each of the following: (i) an executed version of this Appendix D; and (ii) an indication of whether Stipulating MLS selects either “Option 1” or “Option 2” as defined in this Appendix D:

(1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and

(3) nargovernance@nar.realtor

21. As a condition for being a Released Party, Stipulating MLS agrees to be bound by this Appendix D, including the practice changes and cooperation terms reflected in Paragraphs 35-36 of Appendix D.

22. **Option 1**: Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations (the “Escrow Account”). Within 120 days following preliminary approval of the settlement by the Court, Stipulating MLS will deposit into the Escrow Account a dollar amount equal to 100 multiplied by the number of its subscribers in calendar year 2023. The “2023 Subscribers” reflected in the T360 Real Estate Almanac (2023) shall serve as an irrebuttable presumption of that Stipulating MLS’s number of subscribers in calendar year 2023.

23. **Option 2**: Alternatively, to the extent Stipulating MLS has a good faith belief that it lacks the ability to pay the amount required under Option 1, Stipulating MLS agrees to participate in a non-binding mediation with Co-Lead Counsel to occur within 110 days following preliminary approval of the Settlement by the Court. That mediation will occur before Greg Lindstrom, of Phillips ADR Enterprises, P.C. or another mediator jointly selected by the parties to Appendix D. The costs of the mediation shall be borne entirely by Stipulating MLS. Plaintiffs and Stipulating MLS agree to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation, including the mediation. If, following the non-binding mediation

described herein, Stipulating MLS and Co-Lead Counsel are unable to reach agreement on a settlement within 130 days following preliminary approval of the Settlement Agreement by the Court, Stipulating MLS shall not become a “Released Party” under the Settlement Agreement (including this Appendix D) and any further rights or obligations under the Settlement Agreement (including this Appendix D) of Stipulating MLS, Plaintiffs, Co-Lead Counsel, or the Settlement Class to one another shall terminate.

C. Stipulation to Class Certification

24. 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 Stipulating MLS. 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.

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

D. Approval of this Appendix D and Dismissal of the Actions

26. The Settling Parties agree to make reasonable best efforts to effectuate this Settlement Agreement (including Appendix D), 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 Stipulating MLS; and Stipulating MLS cooperation by providing information reflecting its ability to pay limitations.

27. Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the settlement reflected in Appendix D (the "Motion"). The Motion may be separate from and be filed at a different time than the preliminary approval motion provided in connection with the other class relief afforded in the Settlement Agreement by the National Association of REALTORS®. 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 reflected in Appendix D. Stipulating MLS shall not have any right or opportunity to review the Motion. The Settling Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the settlement reflected in Appendix D. 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 Appendix D directly or with the assistance of an agreed mediator and will endeavor to resolve any issues to the satisfaction of the Court.

28. Subject to approval by the Court, Plaintiffs will undertake a method of providing notice of this settlement to the Settlement Class and for claim administration that meets the requirements of due process and Federal Rule of Civil Procedure 23 and is substantially similar to the forms of notice already agreed-to and approved by the Court in the previous settlements with Anywhere, RE/MAX, and Keller Williams. Class members who file a claim under the Anywhere, RE/MAX and Keller Williams settlements will be deemed to also make a claim against this Settlement unless they affirmatively state they are not claiming this Settlement. The Settling Parties agree to the use of the claims administrator previously selected to administer the Anywhere, RE/MAX, and Keller Williams settlements and approved by the Court. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel and may

occur separately from and at a different time than the class notice provided in connection with the class relief afforded in the Settlement Agreement by the National Association of REALTORS®.

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

30. 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 Stipulating MLS:

(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 Rules of Civil Procedure 23(e) and directing the consummation of the Settlement according to its terms;

(c) enjoining the Stipulating MLS in accordance with the provisions of Paragraph 35 of Appendix D.

(d) directing that, as to Stipulating MLS only, the Actions be dismissed with prejudice and, except as provided for herein, without costs;

(e) reserving exclusive jurisdiction over the Settlement and this Appendix D, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the Court; and

(f) 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 Stipulating MLS.

31. This Appendix D will become Effective only after the occurrence of all conditions set forth above in the definition of the Effective Date.

E. Releases, Discharge, and Covenant Not to Sue

32. 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.

33. 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 Settlement Agreement.

34. The Releasing Parties intend by this Appendix D to settle with and release only the Released Parties, and the Settling Parties do not intend this Appendix D, 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 the 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 the Actions.

F. Practice Changes

35. Stipulating MLS agrees that, as soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of the Settlement Agreement, each Stipulating MLS will implement the following practice changes:

- i. eliminate any requirement by the MLS that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate any requirement that such offers, if made, must be blanket, unconditional, or unilateral;
- ii. prohibit the MLS Participants, subscribers, other real estate brokers, other real estate agents, and sellers from (a) making offers of compensation on the multiple listing service to cooperating brokers or other buyer representatives (either directly or through buyers); or (b) disclosing on the multiple listing service listing broker compensation or total brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);
- iii. eliminate all broker compensation fields on the MLS, and prohibit the sharing of offers of compensation to buyer brokers or other buyer representatives via any other fields on the MLS;

iv. eliminate and prohibit any requirements conditioning multiple listing service participation or membership in an MLS on offering or accepting compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) a MLS providing data or data feeds to a REALTOR®, MLS Participant, or third party unless the MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or MLS Participant displaying both (1) data or data feeds from a REALTOR® MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the operation of this Paragraph 35(vi) of Appendix D, require that all MLS Participants working with a buyer enter into a written agreement prior to the buyer touring any listing;

a. to the extent that such a Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;

b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offering to the buyer");

c. such a Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;

vii. prohibit Participants, subscribers, and other real estate brokers and agents accessing the multiple listing service from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;

viii. require MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;

ix. require MLS Participants to disclose to prospective sellers and buyers 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-specified form, (ii) in their agreement with buyers if it is not a government-specified form, and (iii) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then MLS participants must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable;

x. to the extent that the multiple listing services publishes form listing agreements, buyer representation agreements, or pre-closing disclosure documents for use by

REALTORS®, participants, and/or subscribers, ensure that those forms include language disclosing to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable;

x. require that MLS participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the broker assisting the buyer;

xi. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Paragraph 35 of Appendix D; and

xii. develop educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

xiii. the practice changes in the Paragraph 35 of Appendix D shall not (a) prevent offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service or (b) sellers from offering buyer concessions on an MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker or other buyer representative.

36. Stipulating MLS agrees to provide proof of compliance with these practice changes if requested by Co-Lead Counsel.

G. Cooperation

37. Stipulating MLS will provide valuable cooperation to Plaintiffs and Settlement Class Member as follows in the Actions, including to the extent that any is consolidated pursuant to In re Real Estate Commission Antitrust Litigation (MDL No. 3100):

- i. use reasonable efforts to authenticate documents and/or things produced by it in the Actions where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
 - ii. use reasonable efforts to provide the facts necessary to establish, 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;
 - iii. use reasonable efforts at their expense to provide relevant class member and listing data and answer questions about that data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;
 - iv. stipulate that Plaintiffs have the consent to obtain from third parties relevant class member and listing data to support the provision of class notice, administration of any settlements, or the litigation of the Actions;
 - v. agree that Plaintiffs may use in the remaining Actions any discovery materials provided by it or its officers or employees in Moehrl or Burnett;
 - vi. agree that this Settlement Agreement shall not preclude Plaintiffs from seeking the production of non-privileged documents in its possession, custody, or control;
 - vii. if a Defendant includes a witness on a witness list in the Actions who is then a current officer or employee of the multiple listing service, the multiple listing service will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;

viii. withdraw any existing response before the Judicial Panel on Multidistrict Litigation with respect to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100); and

ix. agree not to provide greater assistance in discovery or trial to any defendant or other non-Released Party in the Actions than to the Plaintiffs unless required by subpoena or other compulsory process.

38. Stipulating MLS's cooperation obligations, as set forth in Paragraph 37 of Appendix D, 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.

39. Stipulating MLS's obligation to cooperate will not be affected by the releases set forth in this Settlement Agreement or Appendix D or the final judgment orders with respect to National Association of REALTORS®. Unless this Appendix D 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 all of the Actions 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.

40. Stipulating MLS acknowledges that the practice changes and cooperation set forth in this Appendix D are a material component of Appendix D and agrees to use its reasonable best efforts to provide them.

H. The Settlement Fund

41. 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 Stipulating MLS's monetary liability with respect to the Settlement exceed the Total Monetary Settlement Amount.

42. 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 this Appendix D. 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.

43. 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 or such later date as directed by Co-Lead Counsel, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, costs, and class representative service award up to the amount specified in Paragraphs 22 or 23 of Appendix D for such fees, expenses, costs, and class representative service award by wire transfer as directed by Co-Lead Counsel in accordance with and attaching the Court's Order, provided that each Co-Lead

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

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

45. Stipulating MLS 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 Appendix D.

46. 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 Paragraphs 51 of Appendix D. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Stipulating MLS regardless of the claims that are made.

47. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in this Appendix D.

48. 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. Stipulating MLS 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 (including Appendix D) 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 Stipulating MLS shall be bound by the terms of the Settlement Agreement (including Appendix D), 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.

49. 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 Stipulating MLS or the Released Parties.

I. Taxes

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

J. Rescission

51. If the Court does not certify the Settlement Class as defined in this Appendix D, or if

the Court does not approve this Appendix D in all material respects, or if such approval is modified or set aside on appeal, or if the Court does not enter final approval, or if any judgment approving this Appendix D is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Appendix D may be rescinded by Stipulating MLS or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within ten (10) business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of the Appendix D. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order. The decision of certain Settlement Class Members to opt out of the Settlement shall not be a basis for Stipulating MLS to rescind or terminate the Appendix D.

52. If Appendix D is rescinded for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Stipulating MLS.

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

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

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

K. Miscellaneous

56. This Appendix D 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. Stipulating MLS denies the material allegations of the complaints in the Actions and in the other cases in *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100). Neither this Appendix D, 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 Stipulating MLS, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Stipulating MLS in any proceeding.

57. The terms of Appendix D are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of Plaintiffs and Stipulating MLS, 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.

58. Any disputes between Stipulating MLS and Co-Lead Counsel concerning this Appendix D shall, if they cannot be resolved, be presented first to an agreed mediator for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

59. The provisions of this Appendix D shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

60. Any disputes relating to this Appendix D will be governed by Missouri law without

regard to conflicts of law provisions.

61. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and Appendix D.

62. This Settlement Agreement and Appendix D constitute the entire agreement among Plaintiffs and Stipulating MLS pertaining to the Settlement of any claims or potential claims against Stipulating MLS. This Appendix D may be modified or amended only by a writing executed by Plaintiffs and Stipulating MLS.

63. Stipulating MLS acknowledges that it has been and is being fully advised by competent legal counsel of Stipulating MLS's own choice and fully understands the terms and conditions of this Settlement Agreement, including Appendix D, and the meaning and import thereof, and that such Stipulating MLS's execution of this Appendix D is with the advice of such Stipulating MLS's counsel and of such Stipulating MLS's own free will. Stipulating MLS submits to the exclusive jurisdiction of the Court for the purposes of interpreting and enforcing the terms of Appendix D, including but not limited to, the practice changes contained therein. Stipulating MLS represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement, including Appendix D, and was not fraudulently or otherwise wrongfully induced to enter into this Appendix D.

64. 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 Appendix D.

Date: ____ day of _____, 2024

On behalf of _____

ON BEHALF OF CO-LEAD COUNSEL

Cohen Milstein Sellers & Toll PLLC