

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

JOSHUA SITZER AND AMY  
WINGER, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No.: \_\_\_\_\_

**COMPLAINT- CLASS ACTION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Joshua Sitzer and Amy Winger (“Plaintiffs”), bring this action on behalf of themselves and on behalf of the plaintiff classes (the “Classes”) consisting of all persons and entities who listed properties on one of four Multiple Listing Services (the “Subject MLS”) and paid a broker commission from at least April 29, 2015 until the Present (the “Subject MLS Class Period”).<sup>1</sup> Defendants are the National Association of Realtors and the four largest national real estate broker franchisors: Realogy Holdings Corp.; HomeServices of America, Inc.; RE/MAX Holdings, Inc.; and Keller Williams Realty, Inc., each of which has a significant presence in the Kansas City metropolitan area and the other areas identified in this Complaint. Together, Defendants have conspired to require home sellers to pay the broker representing the buyer of their homes, and to pay an inflated amount, in violation of federal antitrust law and the Missouri

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<sup>1</sup> Plaintiffs also bring this action on behalf of themselves and the MMPA Class, as defined herein. The Class Period for the MMPA Class is April 29, 2014 (or earlier) until the Present.

Merchandising Practices Act (“MMPA”).

Plaintiffs seek treble damages, injunctive relief, and the costs of this lawsuit, including reasonable attorneys’ fees, and demand a trial by jury.

### **NATURE OF THE ACTION**

1. Plaintiffs, home sellers who listed their homes on one of four Multiple Listing Services (identified below), bring this action against Defendants for conspiring to require home sellers to pay the broker representing the buyer of their homes, and to pay at an inflated amount, in violation of federal antitrust law. Defendants are the National Association of Realtors (“**NAR**”) and the four largest national real estate broker franchisors, Realogy Holdings Corp., HomeServices of America, Inc., RE/MAX Holdings, Inc., and Keller Williams Realty, Inc. (the latter four are the “**Defendant Franchisors**,” and collectively with NAR they are “**Defendants**”).

2. The cornerstone of Defendants’ conspiracy is NAR’s adoption and implementation of a rule that requires all brokers to make a blanket, non-negotiable offer of buyer broker compensation (the “**Adversary Commission Rule**”) when listing a property on a Multiple Listing Service (“**MLS**”).

3. An MLS is a database of properties listed for sale in a particular geographic region. The vast majority of homes in the United States are sold on an MLS marketplace. Brokers, if they are members of an MLS, are required to list all properties on the MLS.

4. The MLSs at issue in this case are controlled by local NAR associations, and access to such MLSs is conditioned on brokers following all mandatory rules set forth in NAR’s Handbook on Multiple Listing Policy.<sup>2</sup> The Adversary Commission Rule is a mandatory rule in

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<sup>2</sup> See National Association of Realtors, Handbook on Multiple Listing Policy 2019, *available at* <https://www.nar.realtor/sites/default/files/documents/2019-HMLP.pdf> (“**NAR Handbook**”).

NAR's Handbook.

5. Defendants and their co-conspirators collectively possess market power in local markets for real estate broker services through their control of the local MLS.

6. Defendants' conspiracy forces home sellers to pay a cost that, in a competitive market and were it not for Defendants' anticompetitive restraint, would be paid by the buyer.

7. Most buyer brokers will not show homes to their clients where the seller is offering a lower adversary / buyer commission, or they will give priority to showing homes with higher adversary / buyer commission offers first. As a result, to gain the cooperation of buyer brokers, selling brokers are incentivized to offer a higher adversary / buyer broker commission as part of complying with NAR's mandatory Adversary Commission Rule.

8. If NAR's Adversary Commission Rule were not in place, then the cost of buyer broker commissions would be paid by their clients (home buyers). Buyer brokers would thus have to compete with one another by offering a lower commission rate. The Adversary Commission Rule thereby restrains price competition among buyer brokers because the person who actually retains the buyer broker — the home buyer — does not negotiate or pay the commission for his or her broker.

9. Deepening the anticompetitive effects of the Adversary Commission Rule, NAR rules also prohibit buyer brokers from making home purchase offers contingent on the reduction of the buyer broker commission.

10. Real estate brokers handle most residential real estate sales in the United States. In a typical transaction, one broker will represent the seller, and another broker will represent the buyer of a home. Both the buyer broker and seller broker (also known as the listing broker) are paid a percentage of the property's sales price. Currently, total broker compensation in the United

States is typically five to six percent of the home sales price, with approximately half of that amount paid to the buyer broker.

11. In competitive foreign markets, home buyers pay their brokers, if they choose to use one, and they pay less than half the rate paid to buyer brokers in the United States. These international markets include United Kingdom, Germany, Israel, Australia, and New Zealand. In these markets, which are not affected by any policy like the Adversary Commission Rule, buyer brokers are paid by home buyers, rather than home sellers. According to the Executive Director of the Consumer Federation of America, total commission rates in “a number of developed countries” range “between 1% and 4%” whereas in the United States the average total commission rates continue to remain between 5% and 6%, which is “no lower than it was in 2001” despite significant advances in technology.<sup>3</sup>

12. Indeed, a 2015 report, commissioned by NAR to study negative emerging trends in the real estate industry, highlighted concerns that total commissions in the United States are inflated compared to international markets, such as the United Kingdom, Singapore, the Netherlands, Australia, and Belgium. According to the report commissioned by NAR, in those countries the average total commissions ranges between 1% and 3%.<sup>4</sup>

13. As a representative of a brokerage that operates in both the United States and internationally observed at an FTC/DOJ Joint Public Workshop on the real estate industry, “[i]t’s

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<sup>3</sup> FTC-DOJ Joint Public Workshop, Segment 3 Tr., June 5, 2018, *available at* [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_3.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_3.pdf).

<sup>4</sup> Swanepoel Group, D.A.N.G.E.R Report, at 22 (definitive analysis of negative game changers emerging in real estate) (2015). The report also suggests that total commissions in Germany range between 3% and 6%.

hard to believe it's 2018 and we're in the US and the average commission fee is still between 5% and 6% when we have one of the largest, most developed markets in the [world]. But we still maintain that *elevated* level of commission expense.” (emphasis added).<sup>5</sup>

14. The Adversary Commission Rule explains why commissions in the United States remain artificially and anticompetitively “elevated” beyond where they would be in a market free from Defendants’ conspiracy. Indeed, other industry participants recognize that “this seller agent/buyer agent model” is why commission amounts are “very different” in the United States compared to countries like “the UK,” as Defendants and their co-conspirators are “dead set on not letting 6% commissions go away” in the United States.<sup>6</sup>

15. Defendants use their control of the MLSs, and Defendant Franchisors use their agreements with their local franchisees, to require brokers in local residential real estate markets to adhere to NAR’s rules, including the Adversary Commission Rule.

16. Defendants’ conspiracy has kept buyer broker commissions in the 2.5 to 3.0 percent range for many years despite the diminishing role of buyer brokers. Many home buyers no longer search for prospective homes with the assistance of a broker, but rather independently through online services. Prospective home buyers increasingly retain a buyer broker after the client has already found the home the client wishes to buy. Despite this diminishing role for buyer brokers, their percentage of commission has remained steady, due to Defendants’ conspiracy.

17. The disconnect between buyer broker costs and commissions illustrates the effect of Defendants’ conspiracy. Whether a home purchased by their client costs \$250,000 or

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<sup>5</sup> FTC-DOJ Joint Public Workshop, Segment 2 Tr., June 5, 2018, *available at* [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_2.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_2.pdf).

<sup>6</sup> *Id.*

\$2,500,000, the buyer broker's costs are roughly similar. But the sum received by the buyer broker as a commission is *significantly* greater for the more costly property. This structure results from a lack of competition and makes no economic sense, except for the buyer broker.

18. Defendants' conspiracy has inflated buyer broker commissions, which, in turn, have inflated the total commissions paid by home sellers such as Plaintiffs and the other Class members. Plaintiffs and the other Class members have each incurred, on average, thousands of dollars in damages as a result of Defendants' conspiracy.

19. For example, a class member who sells a house for \$400,000 would have paid roughly \$10,000 to \$12,000 in additional commissions to the buyer's broker due to the conspiracy. In a competitive market not affected by Defendants' anticompetitive restraint, the seller would pay nothing to the buyer broker, who would be paid instead by the buyer, and the total commission paid by the seller would be set at a level to compensate only the seller broker.

20. Moreover, in the absence of the Adversary Commission Rule, seller brokers would likely face additional competitive pressures. That is, instead of following long-time practice of setting total commissions at or near 6% and assigning roughly half of that amount to themselves and roughly the other half to the buyer broker commission (and selecting that amount at a level to remain in the good graces of buyer brokers), seller brokers would set a commission to pay themselves alone and would likely begin to engage in more vigorous competition with one another to lower their rates and/or provide additional services to justify their newly transparent rates.

21. Plaintiffs, on behalf of themselves and the Class, sue for Defendants' violations of the federal antitrust laws as alleged herein, and seek treble damages, injunctive relief, and the

costs of this lawsuit, including reasonable attorneys' fees.<sup>7</sup>

22. Plaintiffs bring this lawsuit as a class action on behalf of home sellers who paid a broker commission in the last four years in connection with the sale of residential real estate listed on one of the following MLSs ("Subject MLS" or "Subject MLSs"):

- The Kansas City MLS, or the "**Heartland MLS**";
- The St. Louis MLS, or the Mid America Regional Information System MLS or the "**MARIS MLS**";
- The Springfield, Missouri MLS, or the Southern Missouri Regional MLS; and
- The Columbia, Missouri MLS, or the Columbia Board of Realtors MLS or "**CBOR MLS.**"

#### **JURISDICTION AND VENUE**

23. This Court has subject matter jurisdiction under 28 U.S.C. §1332(d)(2), because the Class defined herein contains more than 100 persons, the aggregate amount in controversy exceeds \$5,000,000, and at least one member of the Class is a citizen of a State different from Defendants.

24. This Court has personal jurisdiction over Defendants. Defendants have: (1) transacted business in the United States, including in this District; (2) transacted business with members of the Class throughout the United States, including in this District; (3) had substantial contacts with the United States, including in this District; and (4) committed substantial acts in furtherance of its unlawful scheme in the United States, including in this District.

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<sup>7</sup> As noted, Plaintiffs also bring this action on behalf of themselves and the MMPA Class. *See infra* at Count II.

25. Venue is proper in this District under 28 U.S.C. §1391(b), (c), and (d). Each Defendant transacted business, was found, had agents and/or resided in this District; a substantial part of the events giving rise to Plaintiffs' claims arose in this District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in this District.

26. The Adversary Commission Rule and other anticompetitive NAR rules apply and have been implemented by Defendants and co-conspirators in interstate commerce. These rules govern the conduct of local NAR associations, local brokers, and local sales agents across multiple states, including but not limited to Missouri. Defendants' conduct alleged herein has inflated buyer broker commissions nationwide including in the areas in which the Subject MLSs operate, and has injured home sellers in those areas. Defendant NAR, through its members and other co-conspirators, and Defendant Franchisors, through their franchisees and other co-conspirators, are engaged in interstate commerce, and are engaged in activities affecting interstate commerce, in the United States.

## **THE PARTIES**

### **Plaintiffs**

27. Joshua Sitzler and Amy Winger are citizens of Missouri and residents of Kansas City, Missouri. On November 14, 2017, they sold a home located in the Kansas City metropolitan area. The home was listed on the Heartland MLS. As a part of the sales transaction, Mr. Sitzler and Ms. Winger paid a total broker commission of 5.5%, of which 3% was paid to the buyer's broker.

### **Defendants**

28. Defendant National Association of Realtors, a lobbying group that advocates for the interests of real estate brokers, has over 1.2 million individual members. NAR oversees fifty-



four state and territorial realtor associations and over 1,200 local realtor associations. NAR is headquartered in Chicago, Illinois.

29. Defendant HomeServices of America, Inc. (“**HomeServices of America**”) is one of the nation’s largest real estate brokerages. It is headquartered in Minneapolis, Minnesota. HomeServices of America is an affiliate of Berkshire Hathaway. It owns, operates, and franchises many real estate brokerage firms, including ReeceNichols Real Estate, HomeServices, Prudential Real Estate, Long & Foster, and Real Living. ReeceNichols Real Estate, for example, is by far the largest real estate brokerage in the Kansas City Metropolitan area, with nearly three times as many transactions as its next competitor. Its local gross sales are also nearly three times as large as its next competitor.

30. Defendant Keller Williams Realty, Inc. (“**Keller Williams**”) is a privately held company headquartered in Austin, Texas. It is one of the nation’s largest real estate brokerages, and franchises local Keller Williams brokers around the country.

31. Defendant Realogy Holdings Corp. (“**Realogy**”), a publicly traded corporation with a market value exceeding \$4 billion, has its headquarters in Madison, NJ. It owns, operates, and franchises many real estate brokerage firms, including Better Homes and Garden Real Estate, Century 21, Coldwell Banker, Sotheby’s International Realty, The Corcoran Group, ZipRealty, ERA Real Estate, Citi Habitats, and Climb Real Estate. Realogy is the nation’s largest real estate brokerage company.

31. Defendant RE/MAX Holdings, Inc. (“**RE/MAX**”) is a publicly traded company with its headquarters in Denver, Colorado. RE/MAX franchises brokers around the country, including in the Subject MLSs.

32. Each of the Defendants has a significant presence in the markets covered by the

Subject MLSs.

### **Co-Conspirators and Agents**

33. In addition to the named Defendants, many other local realtor associations and real estate brokers participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. Specifically, all who own, operate, and participate in the Subject MLSs comply with and implement the Adversary Commission Rule.

34. By adopting the Adversary Commission Rule, the Subject MLSs, among others, have participated as co-conspirators in the antitrust violations and unfair practices alleged herein and performed acts and made statements in furtherance thereof.

35. Furthermore, the franchisees of Defendant Franchisors complied with and implemented the Adversary Commission Rule in the geographic areas covered by the Subject MLSs.

36. Defendants are jointly and severally liable for the acts of their co-conspirators whether named or not named as defendants in this Complaint.

## **FACTUAL ALLEGATIONS**

### **Real Estate Industry Background**

37. State licensing laws regulate who can represent sellers and buyers in the real estate market. There are two licensee categories: (1) the real estate broker (also known as a “brokerage firm”), and (2) the individual real estate licensee or agent. Brokerage firms license individual real estate agents and are legally responsible for the actions of their licensed agents.

38. Licensed brokers are the only entities permitted by state law to be paid to represent buyers or sellers in a real estate transaction. That is why real estate brokerage contracts with sellers and buyers are required to be with brokers, not agents, and all payments to agents pass through

brokers.

39. Most brokers and their agents occupy dual roles: that is, a broker may act as a seller broker for some home sales and act as a buyer brokers for other home sales.

40. According to NAR, 92% of sellers sold their home with the assistance of a real estate broker in 2017, and 87% of buyers purchased their home with the assistance of a real estate broker in 2017.

41. In typical residential real estate transactions, real estate brokers and agents receive compensation through commissions that are calculated as a percentage of a home's sale price, and the commissions are paid when the home sells.

42. A seller broker's compensation is set forth in a listing agreement, a contract between the seller and the seller broker. The listing agreement includes the terms of the listing and often provides that the seller broker has the exclusive right to market the seller's home. Notably, due to the Adversary Commission Rule, the listing agreement specifies the total commission that a home seller will pay to the seller broker and also specifies the amount earmarked to be paid to the buyer broker (in the event the buyer has a broker).

43. When a buyer retains a broker, the buyer enters into a contract with that broker. The contract typically discloses that the buyer broker will be compensated by receiving a commission from the seller broker.

44. If the buyer has a broker, the seller broker pays the buyer broker a commission out of the total commission paid by the seller. In fact, a standard of conduct in NAR's Code of Ethics permits and encourages buyer brokers to tell their clients that their services are free, which obviously is not a true statement.

45. The result of these agreements and the Adversary Commission Rule is that buyer

brokers — who are supposed to assist their clients in negotiating against the seller — receive their compensation from the total commission paid by the seller, not from the buyer they represent. Real estate insiders recognize that the Adversary Commission Rule leads to a marketplace where there is “a lot of confusion around how commissions work,” where even writers for real estate publications “never get[] a very clear cut answer from the industry or from anyone” on the subject.<sup>8</sup> And other market participants agreed that the practice is “confusing” and that most consumers “just don’t understand how commission works.”<sup>9</sup>

46. Absent the Adversary Commission Rule and in a competitive market (after all, a seller has no incentive to compensate a buyer broker for actively negotiating against a seller’s interests), a buyer would instead pay his or her broker, and a seller would agree to pay a commission that would go solely toward the seller’s own broker. The seller’s total broker commission would thus be approximately half (or less) than the amount that sellers have paid as a total commission to compensate both their selling broker and their adversary’s broker, the buying broker.

### **Multiple Listing Services (MLSs) and the Adversary Commission Rule**

47. An MLS is a database of properties listed for sale in a defined region that is accessible to real estate brokers and their agents, if they are in compliance with the rules of the MLS. The Subject MLSs are owned and operated by local realtor associations that are members of, and governed by, NAR.

48. As required by NAR rules, seller brokers list their clients’ property on an MLS. If

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<sup>8</sup> FTC-DOJ Joint Public Workshop, Segment 1 Tr., June 5, 2018 (link provided *supra*).

<sup>9</sup> FTC-DOJ Joint Public Workshop, Segment 2 Tr., June 5, 2018, *available at* [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_2.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_2.pdf).

a seller broker does not list a client's property on an MLS, most buyer brokers will not show that property to prospective buyers. MLSs also act as the main source of listings for online websites, such as Zillow, through which many prospective home buyers find homes.

49. The Adversary Commission Rule requires a seller broker, on behalf of the seller, to make a blanket, non-negotiable offer of compensation to buyer brokers whenever listing a home on an MLS owned by a local NAR association. If a buyer represented by a broker purchases the home, then the buyer broker receives the offered compensation.

### **Anticompetitive NAR Rules**

50. The Adversary Commission Rule was adopted by NAR in 1996 in its Handbook on Multiple Listing Policy (the "**Handbook**"). The rule has been in effect ever since.

51. The Handbook states the Adversary Commission Rule as follows:

In filing a property with the multiple listing service of an association of Realtors®, the participant of the service is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS participants.<sup>10</sup>

52. The Handbook further states that "Multiple listing services shall not publish listings that do not include an offer of compensation expressed as a percentage of the gross selling price or as a definite dollar amount, nor shall they include general invitations by listing brokers to other participants to discuss terms and conditions of possible cooperative relationships."<sup>11</sup>

53. The Adversary Commission Rule shifts a cost to the seller that would otherwise be paid by the buyer in a competitive market. Moreover, the NAR requirement that the seller broker make a blanket, non-negotiable offer provides an incentive for seller brokers to cooperate with

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<sup>10</sup> NAR Handbook, at 65.

<sup>11</sup> NAR Handbook, at 35.

buyer brokers by offering a high commission for the buyer broker. And, of course, brokers often act as a selling broker in one transaction but as a buyer broker in another, which fact further contributes to the competition-restraining effects of the Adversary Commission Rule in that it fosters an environment in which brokers work cooperatively to split a total commission, instead of openly competing to earn the business of both potential home sellers and potential home buyers based solely on the services to be provided to that represented party.

54. As to the potential possibility that a buyer might seek to reduce his or her broker's commission by making that reduction a condition of a purchase offer, NAR has adopted another rule that prevents this. Specifically, NAR's Code of Ethics, Standard Practice 16-16, states:

REALTORS, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.<sup>12</sup>

55. But for the Adversary Commission Rule and other anticompetitive rules and policies of NAR, buyers (not sellers) would pay the commission to their broker, and brokers would have to engage in competition by offering lower commissions to prospective buyers. And, selling brokers would face downward pressure on total commissions and renewed competition to earn business from home sellers, as seller brokers would no longer be calculating their commission rates to include any compensation for the buyer broker.

### **NAR's Oversight and Enforcement of its Anticompetitive Rules**

56. NAR has experienced success in requiring that its members — which include state and local realtor associations, as well as non-member brokers and agents who operate in

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<sup>12</sup> National Association of Realtors, Code of Ethics and Standard of Practice (Jan. 1, 2019), *available at* <https://www.nar.realtor/sites/default/files/documents/2019-COE.pdf>.

geographic areas with MLSs operated by local realtor associations — comply with its anticompetitive rules and with other rules set out in the Handbook and NAR’s Code of Ethics.

57. NAR requires that its members which own and operate MLSs comply with the mandatory provisions in the Handbook and the Code of Ethics. The Handbook states that an agreement by an association to establish an MLS must include “roles and responsibilities of each association for enforcement of the Code of Ethics” and the “intent of the multiple listing service(s) to operate in compliance with the multiple listing policies of the National Association.”<sup>13</sup>

58. Local realtor associations own each of the Subject MLS and are required by NAR to monitor their MLS and the MLS’s participants to ensure that they comply with mandatory provisions from the NAR Handbook.

59. Failure to strictly comply with the Code of Ethics can lead to expulsion for NAR’s individual and associational members. NAR’s Code of Ethics and Arbitration Manual states:

Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association.<sup>14</sup>

60. If a broker or agent were denied access to a local MLS, including the Subject MLS, then that broker and its agents could not list properties for sale in the centralized database or receive offers of compensation for finding a buyer for a listed property.

61. NAR’s model rules for local realtor associations also require adherence to NAR’s Code of Ethics.

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<sup>13</sup> NAR Handbook, at 9.

<sup>14</sup> National Association of Realtors, Code of Ethics and Arbitration Manual 2019, at 1, *available at* <https://www.nar.realtor/sites/default/files/documents/2019-CEAM.pdf>.

62. NAR further penalizes and discourages potential noncompliance with its anticompetitive rules by withholding professional liability insurance from any associations operating under any bylaws or rules not approved by NAR.<sup>15</sup>

63. NAR reviews the governing documents of its local realtor associations to ensure compliance with NAR rules. NAR requires its local realtor associations to demonstrate their compliance with these rules by periodically sending their governing documents to NAR for review.

### **Defendant Franchisors Designed and Participated in the Conspiracy**

64. Defendant Franchisors — HomeServices, Keller Williams, Realogy, and RE/MAX — have orchestrated and participated in the alleged conspiracy in at least three ways: (1) Defendant Franchisors have required their franchisees (and the agents employed by those franchisees) to comply with NAR rules, including the Adversary Commission Rule; (2) executives of Defendant Franchisors have supervised NAR's operations, including NAR's adoption, maintenance, and enforcement of the Adversary Commission Rule; and (3) Defendant Franchisors have caused their franchisees to influence local realtor associations that have adopted and enforced NAR's rules, including the Adversary Commission Rule.

65. First, Defendant Franchisors implemented the conspiracy by requiring that their franchisees (and by necessary implication, the franchisees' agents) in the geographic areas in which the Subject MLSs operate comply with NAR's rules, including the Adversary Commission Rule. Franchise agreements between Defendant Franchisors and their franchisees require those franchisees and their agents to (a) comply with NAR's Code of Ethics; (b) join and comply with the rules of the local realtor association; and (c) participate in and comply with the rules of the

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<sup>15</sup> NAR Handbook, at 8.



local MLS, which include the mandatory rules in the NAR Handbook.

66. Second, executives from Defendant Franchisors, the four largest real estate brokerage franchisors in the country, have actively participated in the management and operation of NAR. Indeed, senior executives of Defendant Franchisors have served on NAR's governing board of directors. For example, both Ronald J. Peltier, the Executive Chairman of HomeServices of America, and Nancy Nagy, CEO of Berkshire Hathaway HomeServices KoenigRubloff Realty Group, currently serve as directors of NAR, and Bruce Aydt, Senior Vice President and General Counsel of Berkshire Hathaway HomeServices Alliance Real Estate, is the former Chair of NAR's Professional Standards Committee. Both NAR's Handbook and in its Code of Ethics (and thus the Adversary Commission Rule) were drafted, developed, and promulgated by NAR's board of directors or NAR's Professional Standards Committee.

67. NAR's day-to-day operations are managed by an eight-person Leadership Team. In 2018, that team was dominated by executives of franchisees of Defendant Franchisors. For example, the immediate past President of NAR, Elizabeth Mendenhall, is the CEO of RE/MAX Boone Realty in Columbia, Missouri, one of the Subject MLS in this lawsuit. The President of NAR is John Smaby, a sales agent at Edina Realty, which is a HomeServices of America company. NAR's Vice President of Association Affairs, Colleen Badagliacco, is an agent for Legacy Real Estate & Associates, which is a franchisee of a Realogy firm. The 2019 leadership team includes John Smaby and Elizabeth Mendenhall, as well as Charlie Oppler, First Vice President and COO of a Sotheby's International Realty franchisee, and Tracy Kasper, Vice President of Advocacy and a broker/owner of a Berkshire Hathaway franchisee.

68. Third, executives of franchisees of Defendant Franchisors have participated in the governance of the local realtor associations that own and operate the Subject MLSs (and

participate in the governance of other local realtor associations), and they implemented the conspiracy through those associations. Those executives and local realtor associations required compliance with the NAR rules, including the Adversary Commission Rule, and adopted standard form contracts to implement these NAR rules.

69. Defendant Franchisors actively encouraged their franchisees to be involved in local realtor association governance. For example, Keller Williams' "Policy & Guidelines Manual" encourages its agents to participate "to the greatest possible extent" in state NAR associations and "to take an active role in" local realtor associations. The manual further stresses cooperation with other realtors: "We cooperate and live by the spirit of cooperation with all other REALTORS® and brokers."<sup>16</sup>

70. Accordingly, in each of the areas in which the Subject MLS operate, the franchisees of Defendant Franchisors have furthered the alleged conspiracy through their collaboration with local realtor associations to implement, comply with, and enforce NAR's rules, including the Adversary Commission Rule.

### **EFFECTS OF THE CONSPIRACY**

71. Defendants' conspiracy has had the following anticompetitive effects, among others, in each area in which a Subject MLS operates:

- a. Home sellers have been forced to pay commissions to buyer brokers — who represent their adversaries in negotiations to sell their homes — thereby substantially inflating the cost of selling their homes.
- b. Home sellers have been compelled to set a high buyer broker commission

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<sup>16</sup> Keller Williams Realty, Inc., Policies & Guidelines Manual (Apr. 1, 2019) at 51, 46 *available at* [https://s3.amazonaws.com/prodkwconnect-core/uploads/faq\\_resources\\_block\\_faqs\\_0\\_content/5ca2613326ef7.pdf](https://s3.amazonaws.com/prodkwconnect-core/uploads/faq_resources_block_faqs_0_content/5ca2613326ef7.pdf).

to induce buyer brokers to show their homes to the buyer brokers' clients.

- c. Home sellers have paid inflated buyer broker commissions and inflated total commissions.
- d. The retention of a buyer broker has been severed from the setting of the broker's commission; the home buyer retains the buyer broker, while the home seller's agent actually sets the buyer broker's compensation.
- e. Price competition among brokers to be retained by home buyers has been restrained, as has price competition among brokers seeking to be retained to sell homes.
- f. Competition among home buyers has been restrained by their inability to compete for the purchase of a home by lowering the buyer broker commission.
- g. Defendant Franchisors and their franchisees have increased their profits substantially by receiving inflated buyer broker commissions and inflated total commissions.

72. Plaintiffs are not aware of any pro-competitive effects of Defendants' conspiracy, which is plainly anticompetitive and injurious to competition. Even if any alleged pro-competitive effects exist, they are substantially outweighed by the conspiracy's anticompetitive effects.

73. Substantial economic evidence supports the view that Defendants' conspiracy has resulted in inflated total commissions and inflated buyer broker commissions paid by home sellers, at levels far above what a competitive market would produce.

74. Compared to other countries with competitive markets for residential real estate brokerage services, the commissions in the Subject MLSs are substantially higher. Economists

Natalya Delcoure and Norm Miller compared international real estate commissions with those in the United States.<sup>17</sup> They concluded:

Globally, we see much lower residential commission rates in most of the other highly industrialized nations, including the United Kingdom (UK), Hong Kong, Ireland, Singapore, Australia, and New Zealand . . . . In the UK, the [total] commission rates average less than 2%. . . . In New Zealand and South Africa, [total] commission rates average 3.14%. In Singapore, the [total] commission rates also tend to run around 3%.<sup>18</sup>

75. Delcoure and Miller also found variation within countries. For example, in the UK, they found that “1%-2% is typical” for total broker commissions, but that in “very competitive areas” the total rates ranged between “0.5-0.75%” whereas in lower priced areas the range was “as high as 3.5%.”<sup>19</sup> Ultimately, the economists concluded that, “based on global data, the [total] US residential brokerage fees should run closer to 3.0%.”<sup>20</sup>

76. In comparison, the total broker commissions (*i.e.*, the aggregate commission paid to the seller broker and buyer broker) in the areas in which the Subject MLSs operate average between 5% and 6%, with buyer broker commissions by themselves holding steady in a range between 2.5% and 3%. These numbers have remained stable despite both rising home prices (which lead to larger commission amounts) and the decreasing role of the buyer broker in an age when many prospective home buyers have already scoured the market using Zillow or other websites.

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<sup>17</sup> See Natalya Delcoure & Norm G. Miller, *International Residential Real Estate Brokerage Fees and Implications for the US Brokerage Industry*, 5 Int’l Real Estate Review 12 (2002).

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.* at 17.

<sup>20</sup> *Id.* at 13.

77. Other economists have reached similar conclusions. A Professor of Economics from Cornell University has described the Adversary Commission Rule — that is, the NAR requirement of having “the seller pay[] for the commission of both the listing [selling] agent and the cooperative [buyer’s] agent” — as a “structural hurdle” that has prevented innovation and price competition in the real estate market.<sup>21</sup> This “hurdle” exists only because of Defendants’ anticompetitive conspiracy and does not stem from any actual or unique structural aspect of real estate markets.

78. In addition, Defendants’ conspiracy exerts particularly strong effects in certain of the Subject MLSs, in particular the Heartland MLS that covers the Kansas City Metropolitan area and includes parts of Missouri and Kansas. That is, as noted by the Antitrust Division of the United States Department of Justice, ten states prohibit buyer brokers from offering rebates to buyers.<sup>22</sup> Kansas and Missouri are both among those ten states that prohibit such rebates to buyers paid out of a buyer broker’s commission. This aspect of state law makes Defendants’ anticompetitive conspiracy even more effective in the Subject MLSs and easier to enforce, in that state law has foreclosed one potential avenue through which buyer brokers might attempt to compete with one another for prospective home buyers. As observed by the Consumer Federation of America, when an anti-rebate law is combined with “the coupling of listing and buyer brokerage” commission rates, as required by the Adversary Commission Rule, “there’s just really

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<sup>21</sup> See FTC-DOJ Joint Public Workshop, Segment 3 Tr., June 5, 2018, *available at* [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_3.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_3.pdf)

<sup>22</sup> See <https://www.justice.gov/atr/consumers-save-thousands-commissions>.

no hope for effective [price] competition on the buyer's side.”<sup>23</sup> The economic evidence is plain that the Adversary Commission Rule works to restrain competition in several respects in real estate markets with the end result being that home sellers pay more than they otherwise should.

### **RELEVANT MARKETS AND DEFENDANTS' MARKET POWER**

79. The relevant service market for the claims asserted herein is the bundle of services provided to home buyers and sellers by residential real estate brokers with access to the Subject MLSs. Defendants' control of the Subject MLSs allows Defendants to impose the Adversary Commission Rule and other anticompetitive NAR rules on Class members and other market participants. Access to the Subject MLSs is critical for brokers to compete and to assist home buyers and sellers in the areas in which those MLSs operate.

80. The relevant geographic markets for the claims asserted herein are no broader than the geographic areas in which the four Subject MLSs operate. Nearly all homes sold in these geographic areas were listed on the MLS by brokers that are subject to the MLS and NAR rules and standards. The residential real estate business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions and who maintains an office or affiliated sales associates located reasonably near the seller's property. Likewise, most buyers seek to purchase property in a particular city, community, or neighborhood, and typically prefer to work with a broker who has knowledge of the area where the buyer has an interest.

81. Defendant Franchisors, through their co-conspirator franchisees and other conspiring brokers in the areas in which the Subject MLSs operate, collectively provide the vast

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<sup>23</sup> See FTC-DOJ Joint Public Workshop, Segment 3 Tr., June 5, 2018, *available at* [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_3.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-3/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_3.pdf)

majority of the residential real estate broker services in these areas.

82. Defendants and their co-conspirators collectively have market power in each relevant market through their control of the local MLS and their dominant share of the local market.

83. Any buyer brokers in the areas in which the Subject MLSs operate who wished to compete outside of Defendants' conspiracy would face insurmountable barriers. Defendants' effective control of the Subject MLSs through their co-conspirators (*i.e.*, through their local franchisees, other local brokers, and the local realtor associations) means that non-conspiring brokers would need to establish an alternative listing service to compete with the conspiring brokers, or alternatively, attempt to compete without access to a listing service.

84. A seller's broker without access to a listing service like the Subject MLS would be unable to reach the large majority of potential buyers, and a broker who represented a buyer without using a listing service would lose access to the large majority of sellers. Brokers cannot compete effectively without access to a listing service.

85. For an alternative listing service to compete effectively with one of the Subject MLSs, the alternative would need to have listings as comprehensive (or at least nearly so) as the Subject MLS. But Brokers and their agents who currently profit from inflated buyer broker commissions and total commissions have minimal incentive to participate on an alternative listing service that would generate lower total commissions and lower buyer broker commissions and seller broker commissions. Further, many buyers would be reluctant to retain a buyer broker operating on an alternative listing service that required them to pay the buyer broker commission, when other buyer brokers operating on the Subject MLSs are entirely compensated by home sellers. Accordingly, seller brokers on an alternative listing service would struggle to attract buyer

brokers and their buyer clients.

86. Moreover, many home sellers would not retain brokers using a new, unfamiliar alternative listing service that had no track record of success and had failed to attract sufficient buyers and buyer brokers. Any listing service attempting to compete with any of the Subject MLSs would likely fail to attract enough property listings to operate profitably and be a competitive constraint on the incumbent MLS. The absence of listing services that compete with the Subject MLSs (or other MLSs) reflects the very substantial barriers to entry.

87. As an additional impediment to potential competition, NAR advises MLSs to enter into non-compete agreements with third-party websites, such as Zillow, so that those websites do not become competitive rivals to MLSs. NAR's checklist of "critical components" states that the consumer-facing website "must agree they will not compete with the brokerage firms or MLS by either becoming a licensed brokerage firm or by providing offers of cooperation and compensation." The non-compete agreement requires the consumer-facing website to agree not to "use the data in a manner that is similar to a Multiple Listing Service." NAR has thus advised MLSs to take affirmative steps to further the alleged conspiracy by preventing third-party websites from becoming possible competitors.

88. NAR has also previously taken actions to stifle innovation and competition among real estate brokers, including actions which led to the Antitrust Division of the Department of Justice ("**DOJ**") filing a lawsuit to enjoin a NAR "policy that obstruct[ed] real estate brokers who use innovative Internet-based tools to offer better services and lower costs to consumers." NAR ultimately agreed to a Final Judgment in which it agreed to modify and abandon its challenged



policy.<sup>24</sup> The DOJ's lawsuit illustrates that NAR has a history of formulating, adopting, and enforcing anticompetitive policies — like the Adversary Commission Rule challenged in this case — that stifle innovation and restrain competition in violation of federal law.

### **CONTINUOUS ACCRUAL**

89. During the four years preceding the filing of this Complaint, Defendants, through their co-conspirator brokers in the areas in which the Subject MLSs operate, repeatedly charged and received buyer broker commissions and total commissions that were inflated as a result of the conspiracy. These inflated commissions during the preceding four years were paid by Plaintiffs and the other Class members in connection with the sale of residential real estate listed on one of the Subject MLSs. Each payment of these inflated commissions by Plaintiffs and the other Class Members during the last four years injured them and gave rise to a new cause of action for that injury.

90. During the last four years, Defendants and their co-conspirators have maintained, implemented, and enforced the Adversary Commission Rule and other anticompetitive NAR rules nationwide, including in the areas in which the Subject MLSs operate.

### **CLASS ACTION ALLEGATIONS**

91. Plaintiffs bring this action on behalf of themselves, and as a class action under Federal Rule of Civil Procedure 23, on behalf of the members of the following Class (“the Subject MLS Class”):

All persons and entities in the United States who, from April 29, 2015 through the present, paid a broker commission in connection with the sale of residential real estate listed on one of Subject MLS.

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<sup>24</sup> See [https://www.justice.gov/archive/atr/public/press\\_releases/2005/211008.htm](https://www.justice.gov/archive/atr/public/press_releases/2005/211008.htm); see also <https://www.justice.gov/atr/case-document/final-judgment-142>.

92. Plaintiffs also bring this action on behalf of themselves, and as a class action under Federal Rule of Civil Procedure 23 on behalf of the members of the following Class (“the MMPA Class”):

All persons and entities in the United States who, from April 29, 2014 through the present, paid a broker commission in connection with the sale of residential real estate in Missouri listed on one of Subject MLS.

93. Excluded from the Classes are Defendants, their officers, directors and employees; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded from the Classes are any judicial officer(s) presiding over this action and the members of his/her/their immediate family and judicial staff.

94. The Classes are readily ascertainable because records of the relevant transactions should exist.

95. The Class members are so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiffs believe that the Classes have many thousands of members, the exact number and their identities being known to Defendants and their co-conspirators.

96. Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs’ interests are aligned with, and not antagonistic to, those of the other members of the Classes.

97. Common questions of law and fact exist as to all members of the Classes and predominate over questions affecting only individual Class members. These common legal and factual questions, each of which also may be certified under Rule 23(c)(4), include but are not limited to the following:

a. Whether Defendants engaged in the alleged conspiracy;

- b. Whether the conspiracy was implemented in the areas in which the Subject MLSs operate;
- c. Whether the conduct of Defendants' and their co-conspirators caused injury to the business or property of Plaintiffs and the other members of the Classes;
- d. Whether the effect of Defendants' conspiracy was to inflate both total commissions and buyer broker commissions in the areas in which the Subject MLSs operate;
- e. Whether the competitive harm from the conspiracy substantially outweighs any competitive benefits;
- f. Whether Plaintiffs and the other members of the Classes are entitled to, among other things, injunctive relief, and, if so, the nature and extent of such injunctive relief;
- g. Whether Defendants' conduct is unlawful; and
- h. The appropriate class-wide measures of damages.

98. Plaintiffs' claims are typical of the claims of the members of the Classes because their claims arise from the same course of conduct by Defendants and the relief sought within the Classes is common to each member.

99. Plaintiffs have retained counsel competent and experienced in the prosecution of antitrust class action litigation to represent themselves and the Classes. Together Plaintiffs and their counsel intend to prosecute this action vigorously for the benefit of the Classes. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

100. A class action is superior to other available methods for the fair and efficient

adjudication of this controversy. The prosecution of separate actions by individual members of the Classes would impose heavy burdens on the Court and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Classes. A class action, on the other hand, would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results. Absent a class action, it would not be feasible for the members of the Classes to seek redress for the violations of law alleged herein.

101. Additionally, the Classes may be certified under Rule 23(b)(1) and/or (b)(2) because:

- a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudication, or substantially impair or impede their ability to protect their interests; and/or
- c. Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final and injunctive relief with respect to the Class members as a whole.

#### **ANTITRUST INJURY**

102. Defendants' anticompetitive agreements and conduct have had the following

effects, among others:

- a. Sellers of residential property have been forced to pay inflated costs to sell their homes through forced payments of commissions to buyer brokers;
- b. Home sellers have been forced to set buyer broker commissions to induce buyer brokers to show the sellers' homes to prospective buyers;
- c. Price competition has been restrained among brokers seeking to be retained by home buyers, and by brokers seeking to represent home sellers; and
- d. Defendant Franchisors and their franchisees have inflated their profits by a significant margin by the increased total commissions and increased buyer broker commissions.

103. By reason of the alleged violations of the antitrust laws, Plaintiffs and the Class have sustained injury to their businesses or property, having paid higher total commissions than they would have paid in the absence of Defendants' anticompetitive conspiracy, and as a result have suffered damages.

104. There are no pro-competitive effects of Defendants' conspiracy that are not substantially outweighed by the conspiracy's anticompetitive effects.

105. Significant economic evidence supports concluding that Defendants' conspiracy has resulted in Class members paying buyer broker commissions and total commissions that have been inflated to a supra-competitive level in the areas in which the Subject MLS operate.

106. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

**CLAIMS FOR RELIEF**

**COUNT I:  
Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1  
Against all Defendants  
(Brought on behalf of the Subject MLS Class)**

107. Plaintiffs repeat and incorporate by reference each paragraph above.

108. Beginning more than four years before the filing of this Complaint, and continuing into the present, Defendants engaged in a continuing contract, combination, or conspiracy to unreasonably restrain interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C § 1.

109. The conspiracy alleged herein consists of a continuing agreement among Defendants and Defendants' co-conspirators to require sellers of residential property to make inflated payments to the buyer broker.

110. In furtherance of the contract, combination, or conspiracy, Defendants and their co-conspirators have committed one or more of the following overt acts:

- a. Participated in the creation, maintenance, and implementation of the Adversary Commission Rule and other anticompetitive NAR rules;
- b. Participated in the establishment, maintenance, and implementation of rules by local NAR associations and MLSs that implemented the Adversary Commission Rule and other anticompetitive NAR rules in the areas in which the Subject MLSs operate; and
- c. Requiring franchisees of Defendant Franchisors and others to implement the Adversary Commission Rule and other anticompetitive NAR rules in the areas in which the Subject MLSs operate.

111. Defendants' conspiracy has required sellers to pay buyer brokers, to pay an inflated

buyer broker commission and an inflated total commission, and it has restrained price competition among buyer brokers in the areas in which the Subject MLSs operate. This harm to competition substantially outweighs any competitive benefits arising from the conspiracy.

112. Defendants' conspiracy has caused buyer broker commissions and total commissions in the areas in which the Subject MLSs operate (and elsewhere) to be inflated. Plaintiffs and the other members of the Class paid these inflated commissions during (and before) the last four years in connection with the sale of residential real estate listed on one of the Subject MLSs. Absent Defendants' conspiracy, Plaintiffs and the other Class members would have paid substantially lower commissions because the broker representing the buyer of their homes would have been paid by the buyer.

113. As a direct and proximate result of Defendants' past and continuing violation of Section 1 of the Sherman Act, Plaintiffs and the other Class members have been injured in their business and property and suffered damages in an amount to be proven at trial.

**COUNT II:  
Violation of the Missouri Merchandising Practices Act  
Against all Defendants  
(Brought on behalf of the MMPA Class)**

114. Plaintiffs repeat and incorporate by reference each paragraph above.

115. The Missouri Merchandising Practices Act ("the Act") provides that "[t]he act, use or employment by any person of any deception . . . [or] unfair practice, or the concealment . . . of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice." Mo. Rev. Stat. § 407.020.1.

116. The enabling regulations for the Act define an "unfair practice" as conduct that (1) offends public policy; (2) is unethical, oppressive, and unscrupulous; (3) causes a risk of substantial injury to consumers; (4) was not in good faith; (5) is unconscionable; or (6) is unlawful.

See Mo. Code Regs. Ann. tit. 15, § 60-8.

117. Under the Act, the term “merchandise” is broadly defined to include “any objects . . . or services.” Mo. Rev. Stat. § 407.020.4.

118. The Act authorizes private causes of action, and class actions. Mo. Rev. Stat. §§ 407.025.1; 407.025.2.

119. Plaintiffs purchased services from Defendants and other members of the conspiracy in the form of real estate broker services.

120. As set forth herein, Defendants’ conduct is unlawful and in violation of public policy governing the restraint of trade.

121. Defendant’s violations of the Act were willful and knowing.

122. Plaintiffs and Class members seek actual damages; a declaration that Defendants’ methods, acts and practices violate the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*; restitution; rescission; disgorgement of all profits obtained from Defendants’ unlawful conduct; pre- and post-judgment interest; and attorneys’ fees and costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, requests relief and prays for judgment against Defendants as follows:

A. An Order certifying the Classes under the appropriate provisions of Rule 23 of the Federal Rule of Civil Procedure, and appointing Plaintiffs and their counsel to represent the Classes;

B. Declarations that the actions of Defendants, as set forth above, are unlawful;

C. A permanent injunction under Section 16 of the Clayton Act enjoining Defendants from (1) requiring that sellers pay the buyer broker and (2) continuing to restrict competition



among buyer brokers and seller brokers;

D. A permanent injunction under the MMPA enjoining Defendants from engaging in conduct in violation of the MMPA;

E. Appropriate injunctive and equitable relief;

F. An award to Plaintiffs and the other members of the Classes for damages and/or restitution in an amount to be determined at trial;

G. An award of pre- and post-judgment interest to Plaintiffs;

H. An award to Plaintiffs for their costs of suit, including reasonable attorneys' fees and expenses;

I. An award of such other relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial of all issues so triable.

Dated: April 29, 2019

Respectfully submitted by:

BOULWARE LAW LLC

/s/ Brandon J.B. Boulware

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