

APPENDIX B - 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 is a REALTOR® MLS and 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 agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by the 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 B.

NOW, THEREFORE, in consideration of the agreements and releases set forth in the Settlement Agreement and Appendix B 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:

1. Stipulating MLS agrees that the terms reflected in this Appendix B shall have the same meaning as those defined in the Settlement Agreement.

2. Stipulating MLS represents that it is a REALTOR® MLS, as that term is defined in the Settlement Agreement. This representation is a material component of Appendix B and Stipulating MLS's inclusion as a Released Party.

3. Stipulating MLS agrees that, to be effective, it must provide an executed version of this Appendix B to the below email address within 60 days of the filing of the first motion for preliminary approval of the Settlement Agreement:

- (1) realtorsoptin@jndla.com, (2) realtorsoptin@cohenmilstein.com, and
(3) nargovernance@nar.realtor

4. As a condition for being a Released Party, as that term is defined in the Settlement Agreement, stipulating MLS agrees to be bound by the practice changes in Paragraphs 68 and the cooperation terms in Paragraph 69 of the Settlement Agreement.

5. 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 cooperating 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 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 REALTOR® MLS providing data or data feeds to a REALTOR®, REALTOR® MLS participant, or third party unless the REALTOR® 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 REALTOR® MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or REALTOR® MLS Participant displaying both (1) data or data feeds from a 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 5(vi) of Appendix B, 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.

xi. 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;

xii. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Paragraph 5 of Appendix B; and

xiii. 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.

xiv. the practice changes in Paragraph 5 of Appendix B 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.

6. The obligations set forth in Paragraph 5 of this Appendix B will terminate 7 years after the notice date.

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

8. 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 the Settlement Agreement and Appendix B 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.

9. Stipulating MLS's cooperation obligations, as set forth in Paragraph 8 of Appendix B, 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.

10. Stipulating MLS's obligation to cooperate will not be affected by the release set forth in the Settlement Agreement, Appendix B, or the final judgment orders with respect to National Association of REALTORS®. Unless this Settlement Agreement or Appendix B 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 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.

11. Stipulating MLS acknowledges that the practice changes and cooperation set forth in Paragraphs 5 and 8 of Appendix B are a material components of Appendix B and agrees to use its reasonable best efforts to provide them.

12. Stipulating MLS consents to entry of a final judgment order enjoining Stipulating MLS in accordance with the provisions of Paragraph 68 of the Settlement Agreement.

13. The terms of Appendix B 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.

14. Any disputes between Stipulating MLS and Co-Lead Counsel concerning this Appendix B 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.

15. The Court shall retain jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement, including Appendix B.

16. 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 the Settlement Agreement, including Appendix B, and the meaning and import thereof, and that such Stipulating MLS's execution of this Appendix B 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 B, 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 the Settlement Agreement, including Appendix B, and was not fraudulently or otherwise wrongfully induced to enter into the Settlement Agreement.

17. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Appendix B.

Date: ____ day of _____, 2024

On behalf of _____