

INITIAL STATEMENT OF REASONS

IMPLEMENTATION OF AB 2992 (2024) REGARDING BUYER-BROKER REPRESENTATION AGREEMENTS

TITLE 10, CHAPTER 6

PROPOSED ARTICLE 18.1., SECTIONS 2908.1, 2908.2, AND 2908.3

This regulation proposal adopts three new sections, 2908.1, 2908.2, and 2908.3, as a new Article 18.1 of the Regulations of the Real Estate Commissioner (California Code of Regulations, Title 10, Chapter 6) (the "Regulations"), "Buyer-Broker Representation Agreements." This Article implements portions of AB 2992 (Stephanie Nguyen, Chapter 516, Statutes of 2024) ("AB 2992") which is a consumer protection bill and, inter alia, adds Section 1670.50 to the Civil Code and amends Section 2079.13 of the Civil Code. In pertinent part, AB 2992 provides a definition of a "buyer-broker representation agreement", details minimum required terms and conditions for such agreements, provides term length and renewal limitations for said agreements, and identifies the type of real estate licensed activities requiring a signed buyer-broker representation agreement.

The three new sections:

- Clarify the maximum length of the initial term and any optional renewal term of a buyer-broker representation agreement and the conditions upon which those terms commence.
- Makes expressly clear that the maximum initial and renewal term lengths set forth in the statute do not apply to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, and partnerships.
- Makes expressly clear that the statutory prohibition that buyer-broker representation agreements cannot renew automatically and that such renewals need to be effectuated via a writing that is signed by the parties.
- Clarify the timing of and creates a rebuttable presumption as to when it would be initially practicable for a buyer's agent to enter into a buyer-broker representation agreement with a buyer as contemplated in the statute.

- Makes expressly clear that a buyer-broker representation agreement is only required if a real estate broker is performing services for or on behalf of a buyer of real property or an interest in real property for which a real estate license is required.

PROBLEM STATEMENT

Over the last several years, the United States Department of Justice and attorneys representing buyers and sellers of real estate filed numerous lawsuits against the National Association of REALTORS® (“NAR”), a number of state and local realtor associations, multiple listing services (“MLSs”), and various national real estate brokerages (collectively “Real Estate Defendants”) alleging that the Real Estate Defendants engaged in anti-competitive activities in violation of federal antitrust laws (“NAR Lawsuits”). The plaintiffs alleged that the Real Estate Defendants’ conduct increased compensation paid to real estate agents and inflated home prices. One of several allegations made against NAR specifically was that NAR policies and rules allow for sellers’ and buyers’ agents to determine compensation for buyers’ agents without notifying or involving buyers in the negotiations over such compensation.

In March 2024, NAR entered into a settlement agreement with the seller plaintiffs to settle the seller-side class action lawsuits against the Real Estate Defendants (“NAR Settlement”). The NAR Settlement provided, among other things, that no later than August 1, 2024, all principal brokers or brokerage firms participating in a multiple listing service and working with a buyer must enter into a written agency agreement before the buyer tours any home.

Requiring buyers and their brokers to enter into a signed agency agreement benefits both parties to the agreement by providing the broker with assurances that they will be compensated for their services and the buyer with assurances of what services the broker will provide to their buyer client and at what cost.

AB 2992 was introduced as a result of the NAR Lawsuits. While California currently requires that a written listing agreement be executed between sellers of real property and a listing agent, California did not require a written agency agreement between buyers and their agents prior to the passage of AB 2992. Beginning January 1, 2025, AB 2992 requires, among other things, that buyer-broker representation agreements be executed between a buyer’s agent and a

buyer “as soon as practicable, but no later than the execution of the buyer’s offer to purchase real property.” However, AB 2992 does not provide a definition of what is considered “as soon as practicable.” This is problematic because waiting to sign the agreement until right before the execution of the buyer’s offer to purchase real property leaves both the broker and the buyer open to liability. For example, if a broker provides licensed services to a buyer without that buyer having a signed buyer-broker representation, the broker has no contractual guarantee that they will be compensated for the services they have provided. On the buyer’s side, if there is no buyer-broker representation agreement in place a buyer could engage a broker for their services without understanding what they will be obligated to pay the broker for the services that have already been provided. Both scenarios could foreseeably lead to litigation. Additionally, many California real estate licensees are required to comply with the NAR Settlement which requires a signed agreement with a buyer before the buyer tours a home. One objective of these Regulations is to close the gap between the agreement execution deadline set by the NAR Settlement and AB 2992’s trigger for signing a buyer-broker representation agreement by defining what is “as soon as practicable.”

AB 2992 also provides that neither the initial term nor a renewal term of a buyer-broker representation agreement can “last longer than three months from the date the agreement was made,” but the use of the term “three months” can lead to various, inconsistent agreement term lengths and lacks the specificity needed for California real estate licensees to ensure that the terms of their buyer-broker representation agreements do not run afoul of the law.

PURPOSE, NECESSITY, BENEFITS, AND GOALS OF THIS ADOPTION

In general, the purpose of Article 18.1 is to provide clarification to the underlying statutes and effectuate AB 2992’s purpose as a consumer-protection bill. The purposes, necessities, benefits, and goals of the individual sections and, where necessary, their subdivisions are described in further detail below.

Section 2908.1, subdivision (a): Civil Code section 1670.50(d)(1) and (2) of AB 2992 provides that the maximum length of the initial term and any renewal term of a buyer-broker representation agreement is three months from the date the agreement was made. As to the three-month term length, the purpose of subdivision (a) is to clarify and make specific how long “three months” is using a definitive number of calendar days, i.e., “90 calendar days.”

Calendar months vary in the total number of days they contain; months are either 28, 29, 30 or 31 days in length and in a typical year there are seven months with 31 days, four months with 30 days, and one month with 28 days (or 29 days in a leap year). Without specifying that three months means 90 calendar days, buyer-broker representation agreements that happen to be signed on the first of one month would have different term lengths compared to buyer-broker agreements that are signed on the first day of a different month. For example, if a buyer and broker enter into a buyer-broker representation agreement on October 1st and that agreement runs for three calendar months (October 1st through December 31st), then the term of that agreement would be 92 days' long compared to if the parties signed a buyer-broker representation agreement on February 1st; the term of that agreement would be 89 or 90 days depending on whether the agreement is signed during a leap year. Determining how long a three-month term runs becomes more difficult if an agreement is signed on any other day than the first day of a month, which is more likely to happen in a real-world situation.

As to the language of subdivision (a) providing that the 90 calendar days begins to run "on the day following the day that the last party signs the agreement", the purpose of this language is to give both buyers and brokers an express and definitive condition upon which the 90 calendar days begins to run. Without specifying that the first day of the 90 calendar days begins to run the day after the date the agreement is fully signed, a question could arise as to whether the term of the agreement runs on the date the agreement is fully signed or the following day. Such an ambiguity could result in a contractual dispute and lead to litigation.

Regarding the language of subdivision (a) that allows the parties to agree in writing that the 90-calendar day term can begin to run on a specific date in the future, the purpose of this language is to give the parties the freedom and flexibility to determine for themselves when it is best for the 90 calendar days to begin to run, yet still preserving the maximum length term as provided in the statute. For instance, the parties may want to delay the start of the 90-day period to allow for a prior buyer-broker representation agreement with a different broker to expire before a buyer's signed agreement with a new broker commences.

Clarifying that "three months" means "90 calendar days" and when, specifically, the 90-calendar day term will begin to run is necessary and beneficial to both consumers and the California real estate industry at large. Combined

together, these parameters will result in there being one consistent, standard term length for all buyer-broker representation agreements executed in California that can be easily calculated and subject to one interpretation. As a result, there is a decreased likelihood of disputes regarding the term lengths of buyer-broker representation agreements resulting in the decreased likelihood of litigation and the increased likelihood of smoother real estate transactions.

Section 2908.1, subdivision (b): Civil Code section (d)(1) of AB 2992 provides, among other things, that the three-month term limitation does not apply to buyer-broker representation agreements between brokers and buyers who are corporations, limited liability companies, or partnerships. Civil Code section (d)(2) of AB 2992 provides, among other things, that buyer-broker representation agreements cannot renew automatically and that any renewal of a buyer-broker representation agreement subject to Civil Code section (d)(1) cannot last longer than three months from the date the renewal is made.

The purpose of subdivision (b) is to make clear and eliminate any confusion regarding whether the maximum three-month term limitation for the initial term of the agreement and any renewal term applies to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, or partnerships; it does not.

Section 2908.1, subdivisions (c) and (d): The purpose of subdivisions (c) and (d) is to make clear that buyer-broker representation agreements cannot renew automatically no matter who the buyer is; rather such agreements must be affirmatively renewed in a writing that is signed by the parties, but if the buyer is not a corporation, limited liability company or partnership, the maximum length of the renewal term cannot exceed 90 calendar days.

Subdivisions (c) and (d) are necessary so that a reader of Section 2908.1 can read this regulation in its totality and understand all of the buyer-broker representation agreement renewal limitations and requirements and not have to read the regulation in conjunction with the underlying statute to get to the same result.

Section 2908.2, subdivision (a): Civil Code section 1670.50(a) provides that “[a] buyer-broker representation agreement shall be executed between a buyer’s agent and a buyer as soon as practicable, but no later than the execution of the buyer’s offer to purchase real property.” While the statute provides a definitive deadline by which a buyer-broker representation agreement

must be executed, i.e., no later than the execution of the buyer's offer to purchase real property, the statute does not provide a specific event or action that would start the time period during which a broker and a buyer must formalize their business relationship by signing a buyer-broker representation agreement. The Department drafted subdivision (a) to create a rebuttable presumption with the purpose of providing such guidance. Subdivision (a) makes clear that it is first practicable for a buyer and their broker to enter into a buyer-broker representation agreement before the broker shows a property to a buyer in person or virtually ("Triggering Event"). The Department specifically chose showing a property to a buyer as the Triggering Event because it is generally the point where a buyer moves beyond a casual introductory interaction with a broker to actively engaging a real estate broker for their services with the objective of actually purchasing property. Moreover, the NAR Settlement uses the touring of a house as the deadline by which a written buyer agency agreement must be signed. Many California real estate licensees are members of NAR, so the Department felt it beneficial to try to align the Triggering Event with the NAR Settlement to the extent that the underlying statute would allow.

A rebuttable presumption is a presumption that is to be assumed until such time that evidence suggests otherwise. The Department created a rebuttable presumption regarding it being first practicable for a buyer and their broker to enter into a buyer-broker representation agreement before the broker shows a property to a buyer for two reasons. First, it allows for easier enforcement of AB 2992 by DRE if there is a legal assumption that the Triggering Event is the first time that it is practicable for a buyer and broker to enter into an agency agreement. If the specific real estate transaction is one where a different event should have triggered the period during which a buyer-broker agreement should be signed, then the burden will be on the party making that argument to provide evidence supporting that assertion rather than DRE needing to retain an expert to establish a standard of care to prove otherwise. Second, by creating a rebuttable presumption that it is first practicable for buyer and broker to enter into an agency agreement before a broker shows a property to a buyer, DRE is honoring the Legislature's desire to allow buyers to "try out" different potential agents before a buyer is statutorily obligated to enter into an agreement with one particular broker. Brokers can rebut the presumption that it was not first practicable to have a buyer-client sign a buyer-broker representation agreement before the broker shows a property to that buyer-client by providing evidence that their buyer-client

refused to sign an agreement at that time but instead preferred to sign the agreement before executing an offer to purchase a property.

DRE also determined that it is appropriate to include both virtual and in person showings in the definition of “show” or “showing.” While in person showings are typically what occur, DRE included virtual showings because there can be occasions where a buyer cannot be physically present at a showing because they live out of town or have a scheduling conflict. A virtual showing simulates a real-life showing of a property as if the buyer was in person walking through the property with their broker. Because both in person and virtual showings are commonly used in the current real estate industry, and DRE could find no reason to exclude one type of showing in favor of the other.

Section 2908.2, subdivision (b): Subdivision (b) provides a definition of “virtual showing” as referenced in subdivision (a) and defines it as when a buyer’s agent (or a salesperson or broker associated affiliated with that agent) enters into or onto a property at the direction of the buyer and when the buyer is not physically present to provide the buyer with a live or recorded digital walk-through of the property, including, but not limited to images of the property’s exterior and interior features. With this definition, it is the Department’s intent to include virtual walk-throughs of both vacant land and land with structural improvements.

Section 2908.3, subdivision (c): Subdivision (c) provides that a seller’s agent acting solely on behalf of a seller is not acting as a buyer’s agent when showing a property to potential buyers at an open house or any other type of showing. By including this subdivision, it is the intent of the Department to address the common situation where potential buyers visit open houses on their own without being represented by a broker or, if they are working with a broker, without the involvement of their broker. The purpose of this regulation is to clarify that in the above situation the seller’s agent, if they are acting solely on behalf of the seller, does not need to enter into a buyer-broker representation agreement with that potential buyer.

Section 2908.3: Civil Code section 7029.13(p) of AB 2992 defines a “buyer-broker representation agreement” as “a written contract between a buyer of real property and a buyer’s agent by which the buyer’s agent has been authorized by the buyer to provide services set forth in subdivision (a) of Section 10131 of the Business and Professions Code for or on behalf of the buyer for which a real estate

license is required pursuant to the terms of the contract." (Emphasis added.) As applicable to Civil Code section 7029.13(p), Section 10131(a) of the Business and Professions Code contemplates real estate brokers performing services for compensation regarding the sale, offers to sell, purchase, offers to purchase, soliciting of prospective sellers or buyers of, soliciting or obtaining the listings of, or negotiating the purchase, sale or exchange of real property. The purpose of this regulation is to make it expressly clear that brokers only need signed buyer-broker representation agreements in place when providing services to buyers related to real estate sales transactions as those terms are defined in Civil Code section 7029.13 for which a real estate license is required pursuant to Business and Professions Code section 10131(a).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

DRE did not rely upon any technical, theoretical, or empirical studies, or reports in developing these proposed regulations. However, DRE did review and rely on portions from the NAR Settlement regarding buyer-broker agency agreements. Those portions of the NAR Settlement agreement are included at the end of this document. A full copy of the NAR Settlement can be found at <https://www.nar.realtor/sites/default/files/documents/nar-settlement-agreement-download-2024-04-19.pdf> or using the Public Access to Court Electronic Records website for Federal court cases at <https://pacer.uscourts.gov/>.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

AB 2992 seeks to address various issues and changes in the real estate industry in light of the recent NAR Settlement. One of those changes to the real estate industry that occurred as a result of the NAR Settlement is that California real estate licensees who are members of NAR must enter into written agency agreements with their buyer clients. With this bill, buyer-broker representation agreements are now required under California law beginning January 1, 2025.

Given this data, the Department makes the following findings.

- The proposal will not impact the creation or elimination of jobs available within the State of California as AB 2992 did not change any statutory or common law obligations or duties of an agent to a buyer that exist under current law apart from creating the obligation that written

agency agreements be executed between a buyer and the buyer's broker.

■ The proposal will not affect the creation of new businesses or the elimination of existing businesses within the State of California as AB 2992 merely mandates the additional obligation that buyer-broker representation agreements be used in real estate transactions in California for the purpose of ensuring that buyers of property in California have a clear understanding of the terms of their business relationship with their chosen broker.

■ The proposal does not affect the expansion of existing businesses within the State of California. Existing California real estate brokers and brokerages will not be significantly impacted by the requirement that buyer-broker representation agreements be used in real estate transactions. In fact, the California Association of REALTORS® has had a standard buyer-broker agreement form available for use by its members for some time now. While use of this form was optional before the NAR Settlement and AB 2992, the use of written agency agreements between buyers and brokers is not a new concept for California real estate licensees.

■ The proposal will benefit consumers in California, while not adversely affecting the health and welfare of California residents, worker safety, or the State's environment, because requiring a contract between real estate licensees and their client buyers means buyers will have a better understanding of, among other things, their agent's role during the transaction, the scope of services their agent will provide, and the amount of compensation their agent will be paid for providing those services. Such contracts promote transparency and help to ensure a smoother real estate transaction by minimizing the risk of misunderstandings and disputes between the parties.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND DRE'S REASONS FOR REJECTING THOSE ALTERNATIVES

Alternative 1: *Specify that renewals of buyer-broker representation agreements be in writing and signed by the parties by way of an amendment to the original agreement or an entirely new agreement.* **Reason for rejecting:** Civil Code section 1670.50 (d)(2) provides in pertinent part that buyer-broker

representation agreements cannot renew automatically and “a renewal of a buyer-broker representation agreement shall be in writing and be dated and signed by all parties to the agreement.” The fact that Section 1670.50(d)(2) specifically prohibits the automatic renewal of buyer-broker representation agreements means that the renewal of the agreement cannot be hard-wired into the language of the original agreement, but rather the parties must take affirmative steps to renew the agreement. Consequently, clarifying in the Regulations that a new agreement or an amendment to the original agreement is necessary in order to renew a buyer-broker representation agreement is not required.

Alternative 2: *Specify that if the last day of a 90-calendar day term falls on a weekend or a holiday, then the last day of the term of a buyer-broker representation agreement is extended to the next day that is neither a holiday nor weekend day.* **Reason for rejecting:** Real estate transactions/activities occur seven days per week, so the above carve-out is unnecessary in light of industry standards.

Alternative 3: *Regarding the initial and renewal term lengths of a buyer-broker representation agreement, rather than specify that “three months” means 90 calendar days, specify instead that the first day of a three month term starts on the day following the day that the last party signs a buyer-broker representation agreement and ends on the same date of the following third consecutive month, inclusive, unless the parties agree to a different starting date in the agreement, in which case the three months starts upon the agreed-upon date and ends on the same date of the following third consecutive month.* **Reason for rejecting:** The Department determined that this language does not “pencil out” if a buyer-broker representation agreement happens to be signed on the last day of certain months of the year. For example, if a buyer-broker representation agreement is signed by the last party on November 30th, there is no “same date” in the third consecutive month following November because February does not have 30 days. The same problem exists if a buyer-broker representation agreement is fully signed on January 31st as there is no corresponding date of the following third consecutive month because April only has 30 days rather than 31 days. The same problem arises if a buyer-broker representation agreement is fully signed on March 31st. The third consecutive month following March is June and there is only 30 days in June. Because the alternative language is not applicable when applied in every real-world situation, the alternative language must be rejected. This problem is avoided by using 90

calendar days instead of three months to measure the outside length of an agreement. Additionally, industry professionals regularly reference calendar days to mark time periods in real estate transactions. For instance, contingencies must be removed in 17 calendar days, or a counteroffer expires in 3 calendar days unless accepted. Real estate professionals know and are comfortable using calendar days to measure the length of commitments, so using a definitive number of calendar days to define the term of an agreement rather than relying on the “three months” language of the underlying statute should not be difficult for the industry to adhere to.

Alternative 4: Define “as soon as practicable” more broadly to be when a buyer’s agent has been authorized by the buyer to provide services for which a real estate license is required as set forth in Section 10131(a) of the Business and Professions Code. **Reason for rejecting:** When exactly a buyer authorizes a broker to provide services could be difficult to pinpoint and could foreseeably lead to misunderstandings and litigation. Having a definitive event trigger the period during which a buyer-broker representation agreement must be executed results in a consistent standard leading to easier compliance of the law by real estate licensees and predictable outcomes for both buyers and brokers resulting in the reduced likelihood of contractual disputes on this point.

Alternative 5: Define “virtual showings” narrowly to mean only virtual showings done live and in real time, i.e., the buyer is watching the video feed of the showing in real time as the showing is happening. This definition of a “virtual showing” tracks the National Association of Realtors definition of a “virtual tour” in light of the NAR Settlement. **Reason for rejecting:** It is reasonable to foresee that California real estate licensees not only conduct live, real-time virtual showings for their buyer clients, but also record property walk-throughs for their buyer clients to view later. The Department sees no added benefit to consumers or the California real estate industry at large should the Department define “virtual showings” so narrowly as to only include live, real-time virtual showings.

Alternative 6: Include references to “tour” and “touring” as well as “show” and “showing” in Section 2908.2. **Reason for rejecting:** Both “tour[ing]” and “show[ing]” of property have the same general meaning in the California real estate industry. For clarification purposes and in an effort to eliminate ambiguity and the possibility of multiple interpretations of the Regulations, the Department decided to only use the term “show” and “showing” and eliminate all references to “tour” and “touring” throughout Section 2908.2.

The Commissioner finds that no alternatives considered would be (1) more effective in carrying out the purpose of the proposed regulations regarding the use of buyer-broker representation agreements or (2) as effective and less burdensome to affected persons than the proposed regulations.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed regulations do not include any requirement that a specific technology or equipment be used by any affected party.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

RHONDA BURNETT, JEROD BREIT, HOLLEE ELLIS,
FRANCES HARVEY, and JEREMY KEEL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No. 19-cv-00332-SRB

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

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

Plaintiffs,

v.

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

Defendants.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 15th day of March, 2024 (the “Execution Date”), by and between defendant the National Association of REALTORS® and plaintiffs Rhonda Burnett, Jerod Breit, Jeremy Keel, Hollee Ellis, Frances Harvey, Christopher Moehrl, Michael Cole, Steve Darnell, Jack Ramey, Daniel Umpa, Jane Ruh, Don Gibson, Lauren Criss, and John Meiners (collectively “Plaintiffs”), who filed suit in the above captioned actions and in *Daniel Umpa v. The National Association of Realtors, et al.*, No. 23-cv-945 (W.D. Mo.), and *Don Gibson v. The National Association of Realtors, et al.*, No. 23-cv-00788 (W.D. Mo.) (all four actions collectively, “the Actions”), both individually and as representatives of one or more classes of home sellers. Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, in the Actions, Plaintiffs allege that the National Association of REALTORS® 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, National Association of REALTORS® denies Plaintiffs’ allegations in the Actions and has asserted defenses to Plaintiffs’ claims;

WHEREAS, the parties in Burnett proceeded to a jury trial, and the jury returned a verdict in favor of the plaintiffs in that action;

WHEREAS, the National Association of REALTORS® has filed post-trial motions in Burnett pursuant to Federal Rules of Civil Procedure 50 and 59 and a motion to decertify the class, and joined in post-trial motions filed by Keller Williams, Inc., HomeServices of America, Inc., BHH Affiliates, LLC, and HSF Affiliates, LLC, which are pending;

WHEREAS, National Association of REALTORS® has filed a motion in Moehrl pursuant to Federal Rule of Civil Procedure 56;

WHEREAS, extensive arm's-length settlement negotiations have taken place between Plaintiffs' Co-Lead Counsel and counsel for the National Association of REALTORS®, including several telephonic mediations with a nationally recognized and highly experienced mediator, two mediations with a retired federal district judge, and a mediation with a federal magistrate judge;

WHEREAS, the Actions will continue, including against certain other defendants, unless Plaintiffs separately settle with those defendants;

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

WHEREAS, the National Association of REALTORS® believes that it is not liable for the claims asserted and has good defenses to Plaintiffs' claims and meritorious summary judgment and post-trial motions, 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 that Plaintiffs and Settlement Class Members have or could have asserted against the Released Parties, as defined below; and

WHEREAS, the National Association of REALTORS®, in addition to the settlement payments set forth below, has agreed to cooperate in discovery and at trial with Plaintiffs and to implement certain practice changes, each as set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and other good and valuable consideration, and intending to be legally bound, it is agreed by and between the National Association of REALTORS® and the Plaintiffs that the Actions be settled,

compromised, and dismissed with prejudice as to the National Association of REALTORS® only, without costs to Plaintiffs, the Settlement Class, or the National Association of REALTORS® except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. “Burnett” means the case pending in the United States District Court for the Western District of Missouri, Case No. 4:19-cv-00332-SRB.

2. “Burnett MLSs” means the multiple listing services identified as “Subject MLSs” 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.

Amount, or any portion thereof, by or on behalf of the National Association of REALTORS® to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States 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 the National Association of REALTORS®, then, at the election of Co-Lead Counsel, this Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

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

57. The National Association of REALTORS® reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Outs.

H. Practice Changes

58. As soon as practicable, and in no event later than the date of Class Notice (as provided in Paragraph 30 of this Settlement Agreement), the National Association of REALTORS® (defined for purposes of this paragraph to include present and future, direct and indirect subsidiaries, predecessors, and successors) will implement the following practice changes:

- i. eliminate and prohibit any requirement by the National Association of REALTORS®, REALTOR® MLs, or Member Boards that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate and prohibit any requirement that such offers, if made, must be blanket, unconditional, or unilateral;
- ii. prohibit REALTOR® MLS Participants, subscribers, other real estate brokers, other real estate agents, and their sellers from (a) making offers of compensation on the MLS to buyer brokers or other buyer representatives (either directly or through buyers) or (b)

disclosing on the MLS listing broker compensation or total broker compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);

iii. require REALTOR® MLSs to (a) eliminate all broker compensation fields on the MLS and (b) prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives described in Paragraphs 58(i) and (ii) of this Settlement Agreement via any other REALTOR® MLS field;

iv. eliminate and prohibit any requirements conditioning participation or membership in a REALTOR® MLS on offering or accepting offers of 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 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 58(vi) of this Settlement Agreement, require that all REALTOR® MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

(3) nargovernance@nar.realtor

67. In order to be included as a Released Party, each non-REALTOR® MLS must among other requirements agree to be bound by the practice changes in Paragraph 68 of this Settlement Agreement, the cooperation terms in Paragraph 69 of this Settlement Agreement, and the payment terms reflected in Appendix D, including by executing Appendix D and providing it to the below email address within 60 days of the filing of the first motion for preliminary approval of this Settlement Agreement:

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

(3) nargovernance@nar.realtor

68. As soon as practicable, and in no event later than 150 days after the filing of the first motion for preliminary approval of this Settlement Agreement, each opting-in REALTOR® MLS and non-REALTOR® MLS will implement the following practice changes:

- i. eliminate any requirement by the MLS that listing brokers or sellers must make offers of cooperating compensation to 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 MLS Participants, subscribers, other real estate brokers, other real estate agents, and sellers from (a) making offers of compensation on the MLS to cooperating brokers or other buyer representatives (either directly or through buyers); or (b) disclosing on the MLS 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 described in Paragraphs 68(i) and (ii) of this Settlement Agreement 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 broker or other buyer representative;

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) an MLS providing data or data feeds to a 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 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 68(vi) of this Settlement Agreement, require that all MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

a. to the extent that such an MLS 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 an MLS Participant may not receive compensation for brokerage