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DON GIBSON, LAUREN CRISS, and JOHN MEINERS, individually and on behalf of
all others similarly situated, Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS, COMPASS, INC., EXP WORLD HOLDINGS,
INC., REDFIN CORPORATION, WEICHERT REALTORS, UNITED REAL ESTATE, HOWARD
HANNA REAL ESTATE) SERVICES, and DOUGLAS ELLIMAN, INC., Defendants.

CLASS ACTION COMPLAINT¹

1. Plaintiffs, home sellers who listed their homes on Multiple Listing Services in the United States, bring this action against Defendants for agreeing, combining, and conspiring to impose and enforce an anticompetitive restraint that requires home sellers to pay the broker representing the buyer of their homes, and to pay an inflated amount, in violation of federal antitrust law. Indeed, the Antitrust Division of the United States Department of Justice is currently and actively investigating practices in the residential real estate brokerage marketplace, with a focus on compensation paid to brokers among other conduct and practices.

2. Defendants are the National Association of Realtors and seven of the largest national real estate brokerages and franchisors: Compass, eXp, Redfin, Weichert Realtors, United Real Estate, Howard Hanna Real Estate Services, and Douglas Elliman, Inc. (the latter group is the “Corporate Defendants” and collectively with NAR they are referred to as “Defendants”).

3. The cornerstone of Defendants’ conspiracy is NAR’s rule that requires all homesellers to make a blanket, unilateral and effectively non-negotiable offer of buyer broker compensation (“the Mandatory Offer of Compensation Rule”) when listing a property on an MLS. Corporate Defendants—by virtue of compelling and/or encouraging their franchisees, brokers, and agents to belong to NAR and adhere to its rules—adopt, implement, and enforce the Mandatory Offer of Compensation Rule.

8. 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.

9. It is well recognized in the industry that steering is used to scare homeowners into inflated or stabilized rates for fear that buyer brokers will not share homes.

10. If NAR’s Mandatory Offer of Compensation 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 Mandatory Offer

¹ Paragraph numbers correspond to the Paragraph numbering in the complete legal filing of the complaint whose link appears separately on this page.

of Compensation 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, her, or their broker.

11. Deepening the anticompetitive effects of the Mandatory Offer of Compensation Rule, NAR rules also prohibit buyer brokers from making home purchase offers contingent on the reduction of the buyer broker commission.

21. 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 \$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. Why? Many if not most of the services that buyer brokers provide do not vary based on the sale price, so in a rational, competitive market the percentage fee should decrease as the home price increases. Instead, due to Defendants' conspiracy and anticompetitive practices such as the Mandatory Offer of Compensation Rule, the commission overcharges imposed on home sellers bear little relation to the quantity or quality of the services or value allegedly provided by the brokers who are paid the commissions. This structure results from a lack of competition and makes no economic sense, except for the buyer broker.

22. Moreover, another pernicious effect in the marketplace that results from and is amplified by Defendants' anticompetitive conspiracy is the practice of "steering." That is, given the requirement for seller brokers to make a blanket, unilateral offer of commission to buyer brokers, buyer brokers face strong incentives to "steer" their buyer clients toward homes where the buyer broker would receive a greater commission percentage. Indeed, economic studies have documented and confirmed the prevalence and significance of steering and further "suggest[ed]" that this could limit price competition."

23. Given that buyer brokers will not show homes to their clients where the seller broker is offering a lower buyer broker commission (or will show such homes later), seller brokers face pressure in convincing home sellers to make their unilateral blanket offers to provide high commissions to buyer brokers. In sum, the conspiracy has multiple illogical, harmful, irrational, and anticompetitive effects, including that it: (a) requires sellers to pay overcharges for services provided by buyer brokers to the buyer, who is the seller's adversary in the transaction; (b) raises, fixes, and stabilizes buyer broker compensation at levels that would not exist in a competitive marketplace; and (c) encourages and facilitates steering and other actions that impede innovation and entry by new and lower cost real estate brokerage service providers.

PARTIES

Plaintiffs

39. At the time of his home sale, Plaintiff Don Gibson was a resident and citizen of Missouri; currently he is a resident and citizen of Florida. Gibson sold his home located in Columbia, Missouri in June 2021. Gibson used Weichert Realtors—First Tier as his listing broker to sell the home; Gibson's home was listed on the Columbia Board of Realtors MLS serving the mid-Missouri area. Upon closing his home sale, Gibson paid \$15,750 (3% of the purchase price) to the buyer's broker affiliated with House of Brokers Realty, Inc.

40. Plaintiff Lauren Criss is a resident and citizen of Missouri. She sold her home located in Kansas City, Missouri in September 2023. Criss used Defendant Compass Realty Group as her listing broker to sell the home; Criss's home was listed on the Heartland MLS serving the

Kansas City area. Upon closing her home sale, Criss paid \$7,380 (3% of the purchase price) to the buyer's broker affiliated with Keller Williams Realty Partners, Inc.

41. At the time of his home sale, Plaintiff John Meiners was a reside resident and citizen of Missouri; currently he is a resident and citizen of Kansas. Meiners sold his home located in Kansas City, Missouri in August 2023. Meiners used Compass Realty Group as his listing broker to sell the home; Meiners' home was listed on the Heartland MLS serving the Kansas City area. Upon closing his home sale, Meiners paid \$15,360 (3% of the purchase price) to the buyer's broker affiliated with Platinum Realty.

FACTUAL ALLEGATIONS

64. The result of these agreements and the Mandatory Offer of Compensation 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 Mandatory Offer of Compensation 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.¹¹ And other market participants agreed that the practice is “confusing” and that most consumers “just don’t understand how commission works.”

68. The Mandatory Offer of Compensation Rule requires a seller, through the seller's broker, to make a blanket, unilateral and effectively 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.

78. The Handbook states the Mandatory Offer of Compensation 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.

79. The Handbook further states that “[m]ultiple 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.”

80. The Mandatory Offer of Compensation Rule shifts a cost to the seller that would otherwise be paid by the buyer in a competitive market. As The Wall Street Journal opined, the result is that home sellers are effectively required to hire a buyer broker if they wish to list their home on an MLS, which requires the services of a seller broker, and that this system is a violation of “the Sherman Anti-Trust Act that keeps buying agents paid though they offer almost no useful services.”

82. As to the potential possibility that a buyer might seek to reduce his, her, or their 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.

In other words, for a buyer broker even to present an offer to a seller that is conditional on the seller reducing the buyer broker commission would expressly violate NAR's ethics rules. There is nothing ethical or economically rational about Standard Practice 16-16, especially when coupled with the Mandatory Offer of Compensation Rule.

93. Recently NAR purportedly sought to "clarify" its position that home sellers are not required to offer any amount of compensation to buyer's agents. NAR's "clarification" contradicts the under-oath testimony of its executives and dozens of emails from NAR. Andrea V. Brambila, In 'sudden' reversal, NAR says listing brokers can offer 0%, Inman (Oct. 6, 2023). But even NAR's "new" interpretation does not assist consumers: "NAR is not requiring or encouraging MLSs to change their data fields to permit \$0. We are simply advising that doing so would continue to comply with NAR's MLS policy." Id. Thus, NAR's newly-announced interpretation does two things: (1) reveals that NAR's longstanding interpretation (reversed just a few weeks ago) violated the federal antitrust laws (particularly when considering the amount of NAR enforcement that contradicts its new interpretation), and (2) still does nothing to assist consumers on a going-forward basis.

103. Until earlier this month, Redfin's brokers and agents also were members of NAR and subject to the Mandatory Offer of Compensation Rule. In early October 2023, Redfin announced that it would leave NAR and "require[e] our brokers and agents to leave NAR everywhere we can." *Redfin leaves NAR—and calls on its brokers and agents to follow suit*, Inman (Oct. 2, 2023). This also meant Redfin was resigning from NAR's Board of Directors.

104. According to Redfin's statement, the company had "already been uncomfortable with the NAR's positions on commissions . . ." and it objected to the fact that "NAR still blocks sellers from listing homes that don't pay a commission to the buyer's agent . . ." Through its statement, Redfin admits that NAR's policies were anti-consumer, and that Redfin continued to adhere to them even after it grew "uncomfortable." Despite its adherence to the Mandatory Offer of Compensation Rule and other anti-consumer NAR mandates, Redfin admitted that "[r]emoving these blocks would be easy, and it would make our industry more consumer-friendly and competitive."

105. Notably, however, even Redfin cannot cut all ties with NAR because:

In about half the U.S. . . . we can't quit NAR individually or en masse, because NAR membership is required for agents to access listing databases, lockboxes, and industry-standard contracts.

It's impossible to be an agent if you can't see which homes are for sale, or unlock the door to those homes, or even write an offer.

Id. (emphasis added). Redfin calls on NAR to "decouple" membership from local access to these tools, saying "[a]gents shouldn't have to underwrite policies and legal efforts that hurt consumers..."

EFFECTS OF THE CONSPIRACY

117. Defendants' conspiracy has had the following anticompetitive effects throughout the United States:

- a. Home sellers have been forced to pay commissions to buyer broker—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 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. Corporate Defendants and their franchisees have increased their profits substantially by receiving inflated buyer broker commissions and inflated total commissions.

CLASS ACTION ALLEGATIONS

151. 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 Class defined as:

All persons in the United States who, from October 31, 2019, through the present, used a listing broker affiliated with any Corporate Defendant in the sale of a home listed on an MLS, and who paid a commission to the buyer's broker in connection with the sale of the home.

ANTITRUST INJURY

161. 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. Defendants and their franchisees and subsidiaries have inflated their profits by a significant margin by the increased total commissions and increased buyer broker commissions.

COUNT I

Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1
Against all Defendants
(Brought on behalf of Plaintiffs and the Class)

JURY TRIAL DEMAND

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

Dated: October 31, 2023

Respectfully submitted:

/s/ Matthew L. Dameron

Matthew L. Dameron MO # 52093

Eric L. Dirks MO # 54921

WILLIAMS DIRKS DAMERON LLC

1100 Main Street, Suite 2600

Kansas City, Missouri 64105

Tel: (816) 945-7110

matt@williamsdirks.com

dirks@williamsdirks.com

BOULWARE LAW LLC

Brandon J.B. Boulware MO # 54150

Jeremy M. Suhr MO # 60075

Erin D. Lawrence MO # 63021

1600 Genessee, Suite 416

Kansas City, Missouri 64102

Tel: (816) 492-2826

brandon@boulware-law.com

jeremy@boulware-law.com

erin@boulware-law.com

KETCHMARK AND MCCREIGHT P.C.

Michael Ketchmark MO # 41018

Scott McCreight MO # 44002

11161 Overbrook Rd. Suite 210

Leawood, Kansas 66211

Tel: (913) 266-4500

mike@ketchmclaw.com

smccreight@ketchmclaw.com

Attorneys for Plaintiffs and the Class