

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MYA BATTON, AARON BOLTON,
MICHAEL BRACE, DO YEON IRENE KIM,
ANNA JAMES, JAMES MULLIS,
THEODORE BISBICOS, and DANIEL
PARSONS, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, ANYWHERE REAL ESTATE, INC.
FORMERLY KNOWN AS REALOGY HOLDINGS
CORP., RE/MAX LLC, and KELLER WILLIAMS
REALTY, INC.,

Defendants.

Case No. 1:21-cv-00430 (LAH)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT WITH RE/MAX, LLC**

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INTRODUCTION

After five years of hard-fought litigation, including multiple motions to dismiss, extensive document, data, and written discovery, detailed analysis by economic and industry experts, and rigorous settlement negotiations with the assistance of a mediator, Plaintiffs¹ have successfully achieved an \$8.5 million settlement with RE/MAX, LLC (“RE/MAX”) to resolve all claims that are not otherwise affected by the global settlement reached between RE/MAX and the direct purchaser class and entered in *Burnett v. National Association of Realtors, et al.* Case No. 4:19-cv-00332 (W.D. Mo. (“*Burnett*”). This settlement brings the total recovery achieved by Plaintiffs in this case to \$28.5 million.

The settlement with RE/MAX builds on the settlement with Keller Williams Realty, LLC, which the court preliminarily approved on February 13, 2026. ECF No. 269. In moving for preliminary approval of the Keller Williams settlement, Plaintiffs outlined that: (i) Plaintiffs’ interests are aligned with those of the settlement class members because they each seek the same relief for the same injury, (ii) Plaintiffs and their counsel have devoted the time and resources necessary to vigorously represent the proposed class to date; (iii) the settlement resulted from lengthy negotiations among experienced counsel fully informed of the merits and risks of their cases, after motion practice and discovery and with the assistance of a renowned mediator; and (iv) the settlement terms are substantively fair, providing substantial relief to all Settlement Class Members. ECF No. 262. The Court approved the settlement finding “the Settlement was entered into at arm’s length by experienced counsel, supervised by a neutral mediator, treats all class members equitably, and preliminarily appears to be reasonable, fair, and adequate.” ECF No. 269

¹ Unless otherwise defined herein, all capitalized terms have the same meaning as in the Stipulation and Agreement of Settlement with RE/MAX (the “Agreement”) attached to the Declaration of Vincent Briganti & Randall Ewing (“Briganti/Ewing Decl.”) as Exhibit A, filed herewith. Unless otherwise indicated, “Ex.” refers to exhibits attached to the Briganti/Ewing Declaration.

¶ 5. The Court also appointed the undersigned as Class Counsel. *Id.* ¶ 7 (determining that “the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment”).

The same result is warranted here. Plaintiffs have now structured a settlement to resolve claims by those who are not also settlement class members in direct purchaser litigation, *i.e.*: individuals who have never sold a home or have not sold a home during the time periods covered by RE/MAX’s settlement in the direct purchaser litigation. This Settlement, like the Keller Williams settlement, is procedurally and substantively fair. It was achieved after years of vigorous litigation and significant arms’-length negotiations by counsel deeply familiar with the merits and risks of the case and with the assistance of the same renowned mediator. The resulting Settlement guarantees monetary compensation now in the face of continued litigation risk and RE/MAX’s financial condition. It also provides for valuable cooperation in the form of deposition testimony, trial testimony, and documents. The RE/MAX Settlement, like the Keller Williams settlement, is an excellent result for the Settlement Class Members that warrants preliminary approval.

ARGUMENT

I. The Proposed Settlement Is Highly Likely to Receive Approval Under Rule 23(e)(2).

Class action settlements are strongly encouraged. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980).² The approval “inquiry is limited” to “whether the proposed settlement is lawful, fair, reasonable, and adequate.” *Isby*, 75 F.3d at 1196. To make this determination, the court looks to the factors set

² All citations cleaned up unless otherwise indicated.

forth in Fed. R. Civ. P. 23 (“Rule 23”). *Nistra v. Reliance Trust Co.*, No. 1:16-cv-04773, 2020 WL 13645290, at *1 (N.D. Ill. Mar. 12, 2020). These factors are “(A) the class representatives and counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate []; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). An analysis of the Settlement and its formation confirm that the Settlement is procedurally and substantively fair.

A. The Settlement Is Procedurally Fair Under Rules 23(e)(2)(A)-(B).

1. The Settlement Class has been adequately represented.

Rule 23(e)(2)(A) requires that class representatives’ interests be aligned with the interests of the class. *In re Nat’l Collegiate Athletic Ass’n Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 215 (N.D. Ill. 2019) (“A class is not fairly and adequately represented if class members have antagonistic or conflicting claims.”), *aff’d sub nom. Walker v. Nat’l Collegiate Athletic Ass’n*, No. 19-2638, 2019 WL 8058082, at *1 (7th Cir. Oct. 25, 2019).

Here, the proposed Settlement Class is defined as “all persons (including entities) who purchased residential real estate in the United States, from the beginning of the State Statutory Period through the date of class Notice, that was listed on a MLS,” excluding “any persons who are settlement class members with respect to RE/MAX’s settlement in *Burnett, et al. v. National Ass’n of Realtors, et al.*, 4:19-cv-00332 (W.D. Mo.)” Settlement ¶ 1(gg). The representatives of the Settlement Class are Plaintiffs Bolton, Kim, Brace, Parsons, and James. Each of these Plaintiffs purchased at least one home listed on an MLS during the relevant period and is not a RE/MAX settlement class member in *Burnett*, just as the Settlement Class Members. Plaintiffs and Settlement Class Members seek the same relief for the same injury: compensation for amounts they overpaid for homes as a result of Defendants’ alleged conspiracy. Plaintiffs’ and Settlement Class Members’ interests are therefore entirely aligned. *See In re AT&T Mobility*

Wireless Data Servs. Sales Litig., 270 F.R.D. 330, 344 (N.D. Ill. 2010) (“Plaintiffs have claims that are typical of those brought by other class members, and their interests appear to be entirely consistent with those of the other class members because they—like the other class members—seek relief from AT&T’s allegedly-unlawful tax collections.”). Plaintiffs’ efforts to prosecute this Action by responding to interrogatories, producing documents, assisting counsel, and sitting for depositions additionally warrant a finding of adequacy. *See In re College Athlete NIL Litig.*, No. 20-cv-03919, 2023 WL 8372787, at *7 (N.D. Cal. Nov. 3, 2023).

The Court also considers the adequacy of counsel by evaluating “counsel’s work on the case to date, ... class action experience, ... knowledge of the applicable law, and the resources counsel will commit to the case.” *Van v. Ford Motor Co.*, 332 F.R.D. 249, 286 (N.D. Ill. 2019). Lowey and Korein Tillery have served as counsel in this Action from its inception, led the prosecution of the claims here, and negotiated the proposed Settlement. Both firms have decades of experience leading complex class actions and recovering billions for antitrust plaintiffs. *See Briganti/Ewing Decl.*, Firm Resumes, Exs. B & C.

2. The Settlement is the product of arm’s length negotiations.

Counsel engaged in settlement discussions only after multiple motions to dismiss and significant discovery. *Briganti/Ewing Decl.* ¶¶ 18-45. They enlisted the assistance of experienced mediator Gregory Lindstrom, who is familiar with the facts and issues in this case having mediated Plaintiffs’ settlement with Keller Williams and several settlements reached in the related direct purchaser cases. *Briganti/Ewing Decl.* ¶ 40; *Declaration Gregroy Lindstrom* ¶¶ 1-6. Plaintiffs and RE/MAX reached an agreement-in-principle after an attempt at mediation that did not result in resolution. *Briganti/Ewing Decl.* ¶ 41; *Declaration Gregroy Lindstrom* ¶ 7. Months passed before the parties were able to restart discussions to reach agreement on the terms of the

Settlement. Lindstrom Decl. ¶¶ 9-11. These circumstances evidence good-faith and legitimate negotiations. *Boyo v. United Serv. Cos., Inc.*, No. 1:18-cv-06854, 2020 WL 13505349, at *2 (N.D. Ill. Aug. 3, 2020). As discussed further below, these negotiations also resulted in a Settlement that is substantively fair on its terms, which further evidences arm's length negotiations. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2025 WL 2201610, at *2 (N.D. Ill. June 30, 2025) (granting preliminary approval where “[t]here are no terms in the settlement that would suggest collusion.”).

B. The settlement is substantively fair.

Rule 23(e)(2)(C) focuses on whether “the relief provided for the class is adequate,” accounting for: “(i) the costs, risks, and delay of trial and appeal;” (ii) “the effectiveness of any proposed method of distributing relief to the class” and “the method of processing class-member claims;” (iii) attorneys’ fees; and (iv) “any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). Courts in this Circuit additionally consider factors that overlap with Rule 23(e)(2)(C)(i):³ “(1) the strength of the plaintiffs’ case compared against the amount of the defendants’ settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed.” *Charvat*, 2019 WL 5576932, at *5 (citing *Synfuel Techs., Inc. v. DHL Express, Inc.*, 463 F.3d 646 (7th Cir. 2006)).

1. The substantial relief provided by the Settlement and the complexity, costs, risks, and delay of trial and appeal favor the Settlement.

The Settlement provides substantial relief to the Settlement Class relative to the risks of continued litigation. As an initial matter, the Settlement Class consists of homebuyers who are

³ “[T]he factors articulated by the Seventh Circuit subsume most of [the Rule 23(e)(2)(C)] factors” *Charvat v. Valente*, No. 12-cv-05746, 2019 WL 5576932, at *6 (N.D. Ill. Oct. 28, 2019). Plaintiffs address both sets of factors together here.

not also members of the nationwide settlement class approved by the court in *Burnett*. The Settlement Amount properly accounts for the scope of this release as compared to the Keller Williams settlement.

If not for the Settlement, Plaintiffs would face the potential of an adverse ruling on their upcoming motion for class certification. While Plaintiffs believe they will prevail, additional discovery, summary judgment, expert reports, and trial—each phase with its attendant risks—still lie ahead. As is apparent from the history of this Action (Briganti/Ewing Decl. ¶¶ 33-37), “class certification . . . would . . . be hotly-contested.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). Moreover, given that a central question is whether inflated commissions resulted in inflated home prices, this Action largely focuses on a competing expert testimony. *See Heekin v. Anthem, Inc.*, No. 1:05-cv-01908-TWP-TAB, 2012 WL 5472087, at *5 (S.D. Ind. Nov. 9, 2012) (“the [damages] issue would be both complex and hotly contested, requiring expert testimony on sophisticated methodologies with uncertain results”); *accord Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (expert battles are “lengthy and expensive . . . with the costs of such ...battle[s] borne by the class”). Proposed Class Counsel also took into consideration the potential delay in the future receipt of settlement funds that may result from the uncertainty surrounding the procedures for opt-in settlement set forth in *Tuccori*, another litigation in this District that is proceeding on behalf of indirect purchaser homebuyers and alleging the same conspiracy in which the plaintiffs have invited non-defendant real estate companies to opt-in to a settlement that purports to release both the *Tuccori* and *Batton* claims.⁴

⁴ *See Tuccori*, Mot. for Preliminary Approval, ECF No. 58. *Tuccori* refers to *James Tuccori et al., v. At World Properties et al.*, No. 1:24-cv-00150 (N.D. Ill.).

The relief provided for in the Settlement is also fair and reasonable in light of RE/MAX's financial condition, which has declined over the course of this litigation. Briganti/Ewing Decl. ¶¶ 46-48; Lindstrom Decl ¶¶ 8, 10. RE/MAX's financial condition has decreased significantly and steadily over the past five years, and there is risk that it will decrease further should Plaintiffs continue to litigate. Briganti/Ewing Decl. ¶ 47. RE/MAX's total net income in 2025 was \$8.2 million.⁵ *Id.* Thus, the Settlement Amount is 104.26% of RE/MAX's net income in 2025. *Id.* Moreover, RE/MAX is bound by debt covenants that significantly limit its ability to borrow to fund the settlement or satisfy a judgment. *Id.* The Settlement therefore reflects an amount RE/MAX can reasonably pay. *Kleen Prods. LLC v. Int'l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, at *2 (N.D. Ill. Oct. 17, 2017) (“Defendants’ ability to pay” is one factor courts in the Seventh Circuit consider when determining if a settlement is fair, reasonable, and adequate).

The proposed Settlement exchanges these costs and a lengthy litigation timeline with financial recovery, certainty, and the preservation of Court resources, providing the Settlement Class with a substantial benefit. It also guarantees Plaintiffs meaningful cooperation that will assist them in the continued litigation of their claims. Since the risk of non-recovery would persist as the litigation continued, the Settlement Class receives a substantial benefit from receiving this recovery now. *Schulte*, 805 F. Supp. 2d at 583 (“a dollar today is worth a great deal more than a dollar ten years from now” and “a major benefit of the settlement is that Class Members may obtain these benefits much more quickly than had the parties not settled.”). Accordingly, the “most important factor” in evaluating a class settlement is met. *Schulte*, 805 F. Supp. 2d at 579 (“the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement” is the “most important factor”).

⁵ RE/MAX Holdings, Inc., Form 10-K for the Fiscal Year Ended Dec. 31, 2024 at 49 (2025).

2. It is premature to consider the amount of potential opposition to the Settlement.

As to opposition to the Settlement, it is too early to evaluate. If the Court grants preliminary approval, Settlement Class Members will have the opportunity to object or exclude themselves. Agreement, ¶ 1(gg). Nevertheless, courts in this Circuit “are entitled to rely heavily on the opinion of competent counsel” when evaluating the fairness, reasonableness, and adequacy of a settlement. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-cv-0660-DRH, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018). Proposed Class Counsel, both of whom have extensive experience litigating similar claims (Exs. B & C), strongly support the approval of this Settlement as fair, reasonable, and adequate and in the Settlement Class’s best interests. Briganti/Ewing Decl. ¶ 49.

3. The stage of the proceedings and the amount of discovery completed confirm that the Settlement is appropriate.

A court may approve settlements where “the discovery and investigation conducted by class counsel prior to entering into settlement negotiations was extensive and thorough[.]” *Isby*, 75 F.3d at 1200. Here, where the parties have engaged in substantial party and third-party discovery for years, involving more than half a million documents, data exceeding a terabyte, written discovery responses, and Plaintiff depositions (Briganti/Ewing Decl. ¶¶ 23-35), “[t]his factor weighs in favor of settlement.” *Charvat*, 2019 WL 5576932, at *8 (“the parties engaged in a substantial amount of discovery over the course of multiple years” such that they could “place a reasoned value on their respective positions and litigation risk.”).⁶

4. The allocation of funds will be reasonable and equitable.

⁶ See also *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 198 (N.D. Ill. 2018) (a case is at a “stage where the parties [could] appropriately value the litigation, and arrive at a fair settlement” where “parties conducted early discovery on the merits and class certification, including taking fact and expert depositions, and seeking discovery from several non-parties”).

The allocation of funds must also be reasonable and equitable. *Lucas v. Vee Pak, Inc.*, No. 12-cv-09672, 2017 WL 6733688, at *13 (N.D. Ill. Dec. 20, 2017). Plaintiff's distribution plan (Ex. D) is eminently fair and reasonable. It was formulated by the same "competent and experienced counsel" and world-class experts as the Distribution Plan the Court previously approved for the Keller Williams settlement (ECF No. 296). *Shah*, 2020 WL 5627171, at *6 (quoting *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012)) (finally approving "allocation model devised by plaintiffs' counsel and their retained experts"). It also uses the same formulas set forth in the Keller Williams Distribution Plan.⁷ Specifically, the Plan seeks to distribute the Net Settlement Fund to Settlement Class Members *pro rata* based upon Plaintiffs' allegations of the difference between the *actual* prices Settlement Class Members paid for their homes and what they would have paid for their homes in a world without artificially inflated commissions. Distribution of settlement proceeds according to an estimate of each class member's harm is generally considered reasonable. *Shah*, 2020 WL 5627171, at *6 (funds allocated according to each claimant's "recognized loss"); *Lucas*, 2017 WL 6733688, at *13 (noting "Federal courts have held that an allocation plan that reimburses class members based on the extent of their injuries is generally reasonable" and citing cases). Similarly, *pro rata* distribution of the Net Settlement Fund is consistent with distribution plans frequently approved in price-fixing litigation like this one. *See, e.g., In re Ready-Mixed Concrete Antitrust Litig.*, No. 1:05-cv-00979-SEB-JMW (S.D. Ind. Mar. 31, 2009), ECF No. 732 at ¶ 8 (collecting cases); *Kleen Prods.*, 2017 WL 5247928, at *3 ("the proposed mechanism for distributing Settlement

⁷ The only difference between the Keller Williams Distribution Plan and the RE/MAX Distribution Plan is that the RE/MAX Distribution Plan does not include a legal risk discount. Since the RE/MAX Settlement Class consists only of homebuyers who are not also members of the settlement class approved by the court in *Burnett*, the legal risk discount provided for the in the Keller Williams Distribution Plan is not applicable.

Funds, *pro rata* to all Allowed Claimants based on the Allowed Purchases, is recommended by experienced and competent Co-Lead Counsel, and has a reasonable rational basis having been approved for use by District Courts in this Circuit and elsewhere in similar cases.”); *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1999 WL 639173, at *4 (N.D. Ill. Aug. 17, 1999) (finding *pro rata* distribution to be most appropriate distribution method, noting “that courts have utilized the *pro rata* distribution method in several prior price-fixing class actions”).

5. The requested attorneys’ fees and other awards are limited to ensure that the Settlement Class receives adequate relief.

Plaintiffs’ Counsel will separately file their request for fees and expenses. Proposed Class Counsel will request up to one-third (33.33%) of the combined gross Settlement Funds from the RE/MAX and Keller Williams settlements in fees and costs, as well as for reimbursement of litigation costs and expenses. Agreement ¶ 29. Such a request is well within the range of fees regularly approved in cases of similar size and complexity. *See, e.g., In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022) (“A one-third flat fee ...is routine for class action settlements in similarly complex fields, such as antitrust litigation.”); *Charvat*, 2019 WL 5576932, at *11 (collecting cases). Finally, Proposed Class Counsel will seek a modest service award of no more than \$5,000 to compensate each Plaintiff for their significant contributions to the Action. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2021 WL 5709250, at *5 (N.D. Ill. Dec. 1, 2021) (“Empirical evidence shows that incentive awards are now paid in most class suits and average between \$10-\$15,000 per class representative.”).

6. There are no unidentified agreements that impact adequacy of relief for the Settlement Class.

Rule 23 requires parties to identify “any agreement made in connection with” the settlement. *See Fed. R. Civ. P. 23(e)(3)*. None exist here. Briganti/Ewing Decl. ¶ 43.

II. The Court Should Conditionally Certify the Proposed Settlement Class.

If the preliminary approval criteria are met (they are), the Court must determine that it is likely to certify the Settlement Class for settlement purposes. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii). The settlement class must satisfy Rule 23(a)'s requirements: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 460 (2013). Since this Settlement includes monetary relief, the class must also satisfy Rule 23(b)(3): (i) common questions of law or fact must predominate over individual issues and (ii) a class action must be the superior device to resolve the claims. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615–16 (1997). A certified class must also be defined “clearly and based on objective criteria.” *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). The Settlement again readily meets these standards.

Rule 23(a)(1): Numerosity. The class must be so numerous as to make joinder of its members “impracticable.” “[A] class of more than 40 members is generally believed to be sufficiently numerous for Rule 23 purposes.” *Schmidt v. Smith & Wollensky, LLC*, 268 F.R.D. 323, 326 (N.D. Ill. 2010). Based on Plaintiffs’ investigation, millions of people purchased homes during the Class Period and are not settlement class members in *Burnett*. Briganti/Ewing Decl. ¶ 13. Joinder would be impracticable.

Rule 23(a)(2): Commonality. To certify the settlement class, there must be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (a single common question suffices). The critical common questions in this case are whether a conspiracy existed among Defendants to restrain competition over buyer agent commissions and whether this conspiracy caused inflated home prices. These questions are central to Plaintiffs’ claims and will be decided by evidence, such as documents, communications and expert analysis, common to the class. *Kleen Prods. LLC v. Int’l Paper*, 306

F.R.D. 585, 594 (N.D. Ill. 2015), *aff'd sub nom.*, 831 F.3d 919 (7th Cir. 2016) (“The issues is whether ... the evidence either proving or disproving a conspiracy will be common to the entire class”); *accord Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014). Indeed, “[w]here an antitrust conspiracy has been alleged, courts have consistently held that the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.” *Moehrl*, 2023 WL 2683199, at *11. The same is true here.

Rule 23(a)(3): Typicality. Next, the class representatives’ claims must be “typical” of class members’ claims. “[T]ypicality is closely related to commonality and should be liberally construed.” *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 479 (N.D. Ill. 2009). “A plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.” *Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003, 1011 (N.D. Ill. 2020). Plaintiffs here were injured when they overpaid for their homes as a result of Defendants’ conspiracy to enforce anticompetitive rules that inflated broker commissions. Every Settlement Class Member was injured in this same way by this same course of conduct. Thus, Rule 23(a)(3) is satisfied.

Rule 23(a)(4): Adequacy of Representation. For a case to proceed as a class action, class representatives and counsel must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4); *Kohen v. Pac. Inv. Mgmt. Co. LLC.*, 571 F.3d 672, 679 (7th Cir. 2009). As described, *supra* at p. 4, Plaintiffs and Proposed Class Counsel satisfy this requirement.

Rule 23(b)(3): Predominance. To satisfy Rule 23(b)(3), Plaintiffs must establish that common questions predominate over individual ones and that a class action is the superior method for adjudicating the case. Fed. R. Civ. P. 23(b)(3). “A finding of commonality will likely satisfy a finding of predominance because, like commonality, predominance is found where there

exists a common nucleus of operative facts.” *Saltzman*, 257 F.R.D. at 484. Here, the existence and scope of the alleged conspiracy and Plaintiffs’ injury, and the applicable evidence required to prove the conspiracy are common issues capable of classwide resolution that will predominate over individual issues. *See, e.g., Moehrl*, 2023 WL 2683199, at *3, *13 (certifying seller classes, finding evidence of defendants’ policies and representations “is undoubtedly common across the class”); *accord Burnett*, 2022 WL 1203100, at *20. The predominance requirement is satisfied.

Superiority is evaluated by four considerations: (A) the interest of the members of the class in individually controlling separate actions; (B) the extent and nature of any litigation already commenced; (C) the desirability or undesirability of concentrating the litigation in the particular forum; and (D) the difficulties likely to be encountered in the management of the class action. Fed. R. Civ. P. 23(b)(3). Where, as here, “common questions are found to predominate in an antitrust action” then “courts generally have ruled that the superiority [requirement] is satisfied.” 7AA Charles Alan Wright et al., *Federal Practice & Procedure* § 1781 (3d ed. 2021). Moreover, “the large number of potential class members indicates the superiority of the class action device here.” *Moehrl*, 2023 WL 2683199, at *22. Individual damages are small compared to the high cost of maintaining a complex antitrust suit like this one. *Mullins*, 795 F.3d at 658 (the class device is often essential “to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.”); *In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 117 (S.D.N.Y. 2010) (“A class action is the superior method of adjudicating these [types of] claims.”).

Finally, no existing litigation impacts the superiority of this litigation. The claims advanced in *Burnett* did not attempt to resolve the claims of individuals who did not sell a home within that settlement class period. And *Tuccori* has not pursued any claims against RE/MAX.

The Class is Defined by Objective Criteria. A class must “be defined clearly and based on objective criteria.” *Mullins*, 795 F.3d at 659. Whether a class is ascertainable depends on “the adequacy of the class definition itself” rather than whether “it would be difficult to identify particular members of the class.” *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 581 (N.D. Ill. 2018). The Settlement defines the Settlement Class as consisting of persons who purchased homes in specific states during specific time periods, that were listed on any MLS within the United States, and who are not settlement class members with respect to RE/MAX’s settlement in *Burnett*. Because these criteria are objective, the Settlement Class is readily ascertainable.

III. The Court Should Appoint Counsel as Proposed Class Counsel.

Rule 23(g) separately requires this Court to appoint class counsel. Fed. R. Civ. P. 23(g). The Court previously appointed Lowey and Korein Tillery as Class Counsel in connection with the Keller Williams settlement based on their extensive experience in successfully prosecuting antitrust class actions. ECF No. 269 at ¶ 7. The firms have invested significant resources to represent the proposed class over the past five years of litigation. Briganti/Ewing Decl. ¶¶ 18-37; 16-42. Lowey and Korein Tillery should be appointed Class Counsel for this Settlement as well.

IV. The Court Should Approve The Proposed Class Notice Plan And A.B. Data, Ltd. As Settlement Administrator.

Upon preliminary approval, the Court must direct to class members the “best notice practicable under the circumstances[.]” *Mangone v. First USA Bank*, 206 F.R.D. 222, 231 (S.D. Ill. 2001). Class Counsel proposes combining notice of the RE/MAX settlement with the previously approved notice plan for Keller Williams in order to achieve maximum efficiency and cost savings for the class. The Court previously found the notice plan “the best notice practicable; “reasonably calculated, under the circumstances, to apprise Settlement Class Members of” this case and their rights; “due, adequate, and sufficient notice” of the Settlement

Hearing”; and that it “fully satisfies all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, Due Process, and any other applicable rules or laws.” ECF No. 269 ¶ 18.

Plaintiffs’ proposed notice forms, claim form, and notice plan remain unchanged, except for the addition of the RE/MAX settlement. Exs. E-G. The long and short form notices (Exs. E-F) describe in plain language the Settlement Class definition and how it differs from the Keller Williams class definition such that class members can determine in which settlement they may be class members. Class Counsel has conferred with A.B. Data and confirmed that the notice program can meet all of the deadlines set forth in the proposed schedule previously approved by the Court (ECF No. 269 at 13). Briganti/Ewing Decl. ¶ 58. Accordingly, Class Counsel request that the Court again appoint A.B. Data as Claims Administrator and approve the notice plan.

V. The Court Should Appoint Citibank, N.A. As Escrow Agent.

Class Counsel has again designated Citibank, N.A. to serve as Escrow Agent. Citibank has served as escrow agent in a number of large antitrust settlements, including *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD). Citibank has agreed to provide its services at market rates.

CONCLUSION

For the foregoing reasons, the proposed Settlement warrants the Court’s preliminary approval. Plaintiffs respectfully request that the Court enter an Order (i) granting preliminary approval of the Settlement, (ii) certifying the proposed Settlement Class, (iii) approving the form and content of the notice, (iv) appointing Plaintiffs as Class Representatives, (v) appointing Lowey and Korein Tillery as Class Counsel, (vi) appointing A.B. Data as Claims Administrator, (vii) appointing Citibank as Escrow Agent; and (viii) entering a schedule for final approval.

Dated: March 25, 2026

Respectfully submitted,

/s/ Randall P. Ewing, Jr.

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APPENDIX A

Event	Timing
Begin distribution of Notice and launch of Settlement Website (“Notice Date”)	No later than April 14, 2026
Complete initial distribution of direct and publication notices	49 days after the Notice Date
Deadline to file declaration re implementation of notice plan	56 days after the Notice Date
Deadline to file motions for final approval of the Settlement, an award of attorneys’ fees and expenses, and service awards.	14 days prior to the deadline for objections/56 days after the Notice Date
Objection Deadline	70 days after the Notice Date
Exclusion Bar Date	70 days after the Notice Date
Deadline to file Opt-Out List and Declaration	14 days after Exclusion Bar Date
Deadline to file opposition to objections and reply papers in support of final approval of the Settlement, request for an award of attorneys’ fees and expenses, and request for service awards.	7 days prior to the Settlement Hearing
Settlement Hearing	July 28, 2026
Claims Deadline	133 days after the Notice Date or such other time as set by the Court

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2026, a true and correct copy of the foregoing was filed electronically through the Court's CM/ECF system, which will send notification of the same to all counsel of record in this matter.

/s/ Randall P. Ewing, Jr.
Randall P. Ewing, Jr.