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 Judge LaShonda A. Hunt Magistrate Judge M. David Weisman

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED DISTRIBUTION PLAN

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INTRODUCTION

After years of complex and contested litigation and several months of negotiations, Plaintiffs reached a $20 million settlement with Keller Williams Realty, LLC ("Agreement" or "Settlement"). Motion for Preliminary Approval, ECF No. 262. This Court preliminarily approved the Agreement, finding its terms to be fair, reasonable and adequate and that the undersigned Class Counsel will fairly and adequately protect the interests of the Settlement Class. ECF No. 383 ("Preliminary Approval Order") ¶¶ 3, 5.

Plaintiffs now respectfully submit their Proposed Distribution Plan (the "Plan", attached hereto as Exhibit A to the Declaration of Vincent Briganti and Randall Ewing ("Briganti/Ewing Declaration")). Class Counsel have worked closely with world-class economists at Berkeley Research Group ("BRG") and with the Court-appointed Claims Administrator, A.B. Data—both of whom have experience in preparing and managing data for class action cases—to develop a protocol and Claim Form for the distribution of the Net Settlement Fund. Briganti/Ewing Decl. ¶¶ 3-4. Class Counsel have also engaged independent allocation counsel to assess and value the legal risks associated with claims arising out of home purchases by Class Members whose claims have been interpreted as released by settlements reached in related home seller litigation. Briganti/Ewing Decl. ¶ 5; Declaration of Gregory P. Lindstrom dated February 25, 2026 ("Lindstrom Declaration"). *See*, Section I.B., *infra*. The interpretation of those settlements is currently on appeal in the Eighth Circuit.

As this memorandum and the accompanying Declarations demonstrate, the result is a proposed Plan that fairly and equitably allocates the Net Settlement Fund[1] among Settlement

[1] Unless otherwise defined herein, all capitalized terms have the same meaning as in the Stipulation and Agreement of Settlement with Keller Williams (ECF No. 262-2) (the "Agreement").

Class Members based on their estimated harm and legal risks. The proposed Plan is also consistent with *pro rata* distributions approved by courts across the country in similar price-fixing actions and is designed to be efficient, accurate, and as simple as possible for Settlement Class Members in order to promote broad participation in the Settlement. The Plan therefore readily meets the standards for preliminary approval.

<u>THE PROPOSED DISTRIBUTION PLAN</u>

Plaintiffs allege that Keller Williams and the Non-Settling Defendants engaged in a decades-long conspiracy to implement and enforce anticompetitive rules that inflated broker commissions and inflated home prices throughout the United States, among other harms.[2]

Plaintiffs' proposed Plan tracks Plaintiffs' theory of damages and distributes the Settlement Fund on a *pro rata* basis. *See* Plan, Ex.[3] A ¶¶ 8, 15-18. Plaintiffs allege that Settlement Class Members paid too much for their homes as a result of inflated broker commissions caused by Defendants' conspiracy. For purposes of the Plan, the amount that Settlement Class Members overpaid for their qualifying home purchases is referred to as their "Transaction Amount" (i.e: the difference between what an Authorized Claimant actually paid for their home and what they would have paid absent the alleged conspiracy). Plan ¶ 8. Under the Plan, the Claims Administrator will calculate each Authorized Claimant's Transaction Amount using a calculator created by BRG. Plan ¶¶ 9-11. The calculator is based on a formula, also developed by BRG, that accounts for pass-through rates, broker commission rates, and transfer

[2] The background of this case is set forth in extensive detail in the Court's decisions and the Parties pleadings and briefing. *See*, *e.g.*, *Batton v. Nat'l Ass'n of Realtors*, No. 21-CV-00430, 2024 WL 689989, at *1–2 (N.D. Ill. Feb. 20, 2024); *Batton*, 2024 WL 4871366, at *1–*2 (N.D. Ill. Nov. 22, 2024); Amended Complaint, ECF No. 84; Responses to Defendants' Motions to Dismiss, ECF Nos. 65, 97-98, 154.

[3] "Ex." refers to exhibits attached to the Briganti/Ewing Declaration.

tax rates, among other relevant inputs. Plan ¶ 11. To calculate Transaction Amounts, the Claims Administrator will input into the formula information provided by Authorized Claimants through their claim forms, including the purchase price of the home and the buyer broker commission paid. Plan ¶¶ 8-10; Ex. B, Claim Form at 2. The other inputs, such as the pass-through rate and transfer tax rates, will be pre-populated based on data in Plaintiffs' possession regarding housing prices, commissions, and tax rates. Plan ¶¶ 9-10.

Additionally, a 75% legal risk discount will be applied to the Transaction Amount calculated for each Authorized Claimant who is also a class member in sa settlement with Keller Williams reached in litigation with home sellers. Plan ¶ 13. Like the Transaction Amount calculation, the Claims Administrator will determine whether a claim is subject to the legal risk discount using information provided by Authorized Claimants through their claim forms, including the date of any home sales and the addresses of those homes. *Id;* Ex. B. at 3.

Each Authorized Claimant will receive their *pro rata* share of the Net Settlement Fund based upon their Transaction Amount, adjusted for the legal Risk Discount, if applicable. *Pro rata* shares will be calculated by dividing their Transaction Amount by the total Transaction Amounts of all Settlement Class Members who submit Qualifying Claims, using the following formula (Plan ¶ 15):

$$\frac{\textit{Claimant's Transaction Amount}}{\textit{Total of All Claimants' Transaction Amounts}} = \textit{Class Member's Pro Rata Share of Net Settlement Fund}$$

LEGAL STANDARD

To preliminarily approve a distribution plan, the Court must assess "whether the allocation of funds among class members is reasonable and equitable." *Lucas v. Vee Pak, Inc.*, No. 12-cv-09672, 2017 WL 6733688, at *13 (N.D. 1ll. Dec. 20, 2017); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001) ("The same standards of fairness, reasonableness and adequacy that apply to the settlement apply to the Plan of Allocation."). Courts assume a "generally deferential nature … towards the nitty gritty of settlement allocation." *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-CV-815-PPS-MGG, 2020 WL 5627171, at *6 (N.D. Ind. Sept. 18, 2020).

ARGUMENT

I. The Plan is Fair and Reasonable.

Where a distribution plan is "formulated by competent and experienced counsel" the plan "need have only a reasonable, rational basis in order to be fair and reasonable." *Shah*, 2020 WL 5627171, at *6 (quoting *In re IMAXSec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012)) (finally approving "allocation model devised by plaintiffs' counsel and their retained experts"). As detailed in Plaintiffs' motion for preliminary approval and accompanying declaration, Class Counsel have been litigating this case for over four years, including briefing multiple motions before this Court, reviewing voluminous discovery including hundreds of thousands of pages of documents and massive amounts of data, and conferring extensively with their economic and industry experts about, among other things, the impact and damages caused by Defendants' conduct. *See* Joint Declaration of Vincent Briganti and Randall Ewing (Feb. 2, 2026), ECF No. 262-1 ¶¶ 16-35. In addition to their experience in this case, Class Counsel have extensive experience litigating—and settling—similar complex antitrust class actions. *Id.* ¶¶ 50-55. Indeed, the Court has already appointed Class Counsel to represent the Settlement Class based on their experience and prosecution of this case. Preliminary Approval Order ¶¶ 3, 7. There is more than sufficient evidence for the Court to conclude that the Plan has been "formulated by competent and experienced counsel." *Shah*, 2020 WL 5627171, at *6. As set forth below, the Plan also has a reasonable and rational basis.

A. *Pro Rata* Distribution Based Upon Estimated Damages Is Reasonable

Allocation programs that distribute settlement proceeds according to an estimate of each class member's harm are 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). Here, 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 (the "Transaction Amount"). The difference between actual prices and what would have been a "fair" price absent the alleged unlawful conduct—often called the "but-for price"—is a well-recognized measure of damages in antitrust cases like this one. *In re Dealer Mgmt. Sys. Antitrust Litig.*, 581 F. Supp. 3d 1029, 1049 (N.D. Ill. 2022) ("Damages calculations in antitrust cases seek to compare plaintiffs' actual experience in the real world with what the plaintiffs' experience would have been, 'but for' the antitrust violation.") (citing cases); *Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 595 (N.D. Ill. 2015) ("Oftentimes, demonstrating impact and damages involves comparing the 'but-for' price—the price a customer would have paid in the absence of the conspiracy—and the actual price paid."), *aff'd sub nom.*, 831 F.3d 919 (7th Cir. 2016).

The Plan provides that the Claims Administrator will calculate each Authorized Claimant's estimated harm, i.e., their "Transaction Amount" (Plan ¶ 8), using a formula developed by BRG that calculates the but-for price of each Authorized Claimant's qualifying home purchase. Plan ¶¶ 9-11. The Plan, which will be posted on the Settlement Website for review by Settlement Class Members, specifically explains the formula and inputs that will be used to determine each Authorized Claimant's Transaction Amount (*Id.*). *Shah*, 2020 WL 5627171, at *6 ("The allocation model is admittedly complex but was explained in detail in the notice that went out to class members.").

Additionally, *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. LLC v. Int'l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017) ("the proposed mechanism for distributing Settlement 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"). The proposed Plan, like the numerous other similar plans in price-fixing litigation, has a reasonable, rational basis.

B. The Plan Makes Fair and Reasonable Adjustments to Account for Differing Legal Risks

In the settlement context, a method of distribution may make reasonable adjustments in the payment based upon different legal risks faced by some class members. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 589 (N.D. Ill. 2011) ("when real and cognizable differences exist between the likelihood of ultimate success for different plaintiffs, it is appropriate to weigh distribution of the settlement in favor of plaintiffs whose claims comprise the set that was more likely to succeed."); *Shah*, 2020 WL 5627171, at *6 (approving distribution plan that disbursed settlement process not "purely on a pro rata basis" but also accounting for securities "traded at different times and at different prices over the course of many months"); *In re Lloyd's Am. Trust Fund Litig.,* No. 96 Civ. 1262 (RWS), 2002 WL 31663577, at *18 (S.D.N.Y. Nov. 26, 2002) ("[c]lass action settlement benefits may be allocated by counsel in any reasonable or rational manner because allocation formulas reflect the comparative strengths and values of different categories of the claim"); *In re Lucent Techs., Inc., Secs. Litig.*, 307 F.Supp. 2d 633, 649 (D.N.J. 2004) ("Courts have routinely approved plans of allocation that provide different payments to class members.").

Here, the Plan reasonably adjusts the amount of payment based upon legal risks. Specifically, certain Settlement Class Members who not only purchased, but also *sold* homes may also be members of a settlement class and agreement with Keller Williams in related seller litigation ("Home Selling Class Members").[4] *See*; *e.g.*, *Burnett, et al. v. Nat'l Ass'n of REALTORS®, et al.*, 4:19-cv-00332 (W.D. Mo.) ("*Burnett*"), ECF Nos. 1192, 1372 ("Keller Williams Seller Settlement"). The Keller Williams Seller Settlement has been interpreted to release class members' home selling *and* homebuying claims, including homebuying claims being pursued in this case. *Id.* Prior to entering into the Settlement with Keller Williams in this case, Class Counsel appealed the final approval of the Keller Williams Seller Settlement to the Eighth Circuit, arguing that it should not and does not release homebuying claims. *Burnett*, ECF No. 1498. The appeal remains pending. As the outcome of the appeal was uncertain at the time

[4] For the avoidance of doubt, "Home Selling Class Members" means class members who are members of the Keller Williams Seller Settlement, *not* that any Settlement Class Members in this case are making claims based on home sale transactions.

settlement in this case was reached (and remains uncertain), Home Selling Class Members faced a significant legal risk that their homebuying claims against Keller Williams had been released.

On the other hand, other Settlement Class Members are not members of the Keller Williams Seller Settlement either because they have never sold a home (such as first-time home buyers), or because they have not sold a home during qualifying years ("Homebuying-Only Class Members"). These Settlement Class Members' homebuying claims are unaffected by the Eighth Circuit appeal.

Given the circumstances, Class Counsel determined that the best practice would be to have separate Allocation Counsel represent the two groups of Settlement Class Members and attempt to reach agreement as to how each group of claims should be valued against the other. *See* Briganti/Ewing Decl. ¶ 5. Both Allocation Counsel have vast experience with antirust class actions and settlements. Briganti/Ewing Decl. ¶¶ 5-8; Ex Nos. C&D (résumés of each Allocation Counsel). Further, Class Counsel retained the services of nationally recognized mediator, Gergory Lindstrom, who also has prior experience with this case and mediating allocation plans. Briganti/Ewing Decl. ¶ 9; Exs Lindstrom Decl. ¶¶ 2-4.

The use of allocation counsel in developing distribution plans has been repeatedly approved in connection with the distribution of settlement proceeds in class actions. *E.g.*, *FrontPoint Australian Opportunities Trust v. UBS AG, et al.*, No. 1:13-cv-02811 (S.D.N.Y. Feb. 16, 2018), ECF No. 392 (preliminarily approving distribution plan in which Lowey engaged allocation counsel and a mediator to allocate funds according to the legal risks associated with differently situated financial transactions), Motion for Preliminary Approval of Plan of Distribution, *FrontPoint Australian*, No. 1:13-cv-02811, ECF No. 383 at 11-2 (summarizing use of allocation counsel and their legal risk discount determinations); *In re Prograf Antitrust Litig.,* MDL No. 2242, 2016 WL 11746906, at *3 (D. Mass. Apr. 29, 2016) (granting preliminary approval, appointing attorney Christopher M. Burke as allocation counsel to represent interests of third party payor class members, and appointing attorney Kenneth A. Wexler as allocation counsel to represent interest of consumer class members); *In re Gen. Motors LLC Ignition Switch Litig.,* No. 14-MD-2543, 2020 WL 12918022, at *3, *6 (S.D.N.Y. Apr. 27, 2020) (granting preliminary approval of settlement and appointing counsel for settlement allocation purposes only on interim basis), *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MC-2543 (JMF), 2020 WL 7480323, at *3-*4 (S.D.N.Y. Dec. 18, 2020) (granting final approval and finding same); *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Prac. & Prods. Liab. Litig*., No. 8:10 ML 02151, 2013 WL 12212364, at *4 (C.D. Cal. July 24, 2013) (granting final approval, finding that "Allocation Counsel adequately and vigorously represented the Class Members' interests in negotiating the Allocation Plan").

There were serious disagreements among the Allocation Counsel at the outset of the allocation mediation. Lindstrom Dec. ¶ 10. After robust and exhaustive analysis and discussion (*id.*), Allocation Counsel ultimately reached agreement on a 75% legal risk discount to be applied to Home Selling Class Members' Transaction Amounts to reflect the risk that the Plaintiffs might lose their appeal with respect to the Keller Williams Seller Settlement and be found to have released certain of their claims. *Id.* ¶ 11. As the mediator's declaration attests, this result was the product of independent and informed arm's-length negotiation. *Id.* ¶ 12.

To apply the legal risk discount, the Claims Administrator will sum each Authorized Claimant's Transaction Amounts and then apply a 75% discount to the total Transaction Amount if it is determined that the Claimant is a Home Selling Class Member. Plan ¶ 13. Home Selling Class Members will then receive their *pro rata* share of the Net Settlement Fund based on their discounted Transaction Amount. Plan ¶ 17. Class Members whose expected distribution based on their *pro rata* share is less than the cost of administering their claims, they will still receive a minimum payment to be determined after those Claim Forms are reviewed. *Id.* ¶ 17.

Class Counsel's judgment is that the outcome reached by the Allocation Counsel and the Mediator are reasonable in light of all the circumstances. Briganti/Ewing Decl. ¶ 11. These circumstances include, but are not limited to: (1) the timing of the Settlement, (2) Class Counsel's experience and familiarity with the law and facts of this case (3) Class Counsel's experience and familiarity with the Keller Williams Seller Settlement and the likelihood of success on appeal, (3) Allocation Counsel's competence and experience, (4) the Mediator's competence and experience, (4) the arms'-length nature of Allocation Counsel's negotiations, and (5) the overall terms of the Plan. Moreover, in light of these circumstances, the Plan does not favor or disfavor any Class Members; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. A 75% discount that accounts for the risk posed by the Eighth Circuit appeal is therefore fair and reasonable. *Schulte*, 805 F. Supp. 2d at 589 (concluding that a settlement that allocated benefits according to "the facts and law at issue in this case . . . is fair, reasonable and adequate").

II. The Plan Easily Permits Class Members to File a Claim and Furthers Efficient Claims Administration.

Procedurally, the Plan is structured to be efficient to administer and simple for Settlement Class Members, thus incentivizing participation. *See* William B. Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed. 2021) ("the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible").

As set forth above, the Plan specifies how the Transaction Amount will be calculated for each Authorized Claimant, the legal risk discount—including the amount of the discount, to which claims it will apply, and how the Claims Administrator will identify those claims—and how each Authorized Claimant's *pro rata* share will ultimately be calculated.

To receive a portion of the Net Settlement Fund, Settlement Class Members will be required to submit a Claim Form. The Claim Form is straightforward and simple, only requiring a claimant to provide certain readily accessible background information about their home purchases and sales, such as the date of the transaction, the address of the home, and information easily obtained from closing documents such as the purchase price and the broker commission paid. Claim Form at 2-3. The Claim Form will also provide a toll-free telephone number and the Settlement Website address from which potential Settlement Class Members can obtain additional information about the Plan. *Id.* at 1-3.

CONCLUSION

The Plan has a reasonable and rational basis, informed by Class Counsel's experience and knowledge, with substantial contributions from distinguished economic experts and Allocation Counsel. When viewed in total, the Plan is fair, reasonable, and adequate, and it should be disseminated to the Settlement Class for review. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the Plan.

Dated: February 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 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/ Noelle Forde
Noelle Forde