

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

JAMES TUCCORI, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

AT WORLD PROPERTIES, LLC *et al.*,

Defendants.

Case No. 1:24-cv-00150

Judge Lindsay C. Jenkins

**ANYWHERE REAL ESTATE INC.'S MEMORANDUM
IN SUPPORT OF FINAL APPROVAL OF ITS CLASS SETTLEMENT**

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INTRODUCTION

This Court should grant final approval of Plaintiffs’ settlement with Anywhere Real Estate, Inc. (“Anywhere”) because the record shows it to be fair, reasonable, and adequate under Fed. R. Civ. P. 23(e)(2). Anywhere’s settlement pays weaker indirect purchaser claims at nearly par value with the stronger direct purchaser claims previously settled, approved, and affirmed by the Eighth Circuit. Anywhere’s relative settlement value also exceeds the icebreaker *Tuccori* settlements, which were unquestionably negotiated in an adversarial context and to which no party objects. And Anywhere’s settlement delivers greater value to the Settlement Class than either of the settlements negotiated by objector Aaron Bolton. By any measure, Anywhere’s settlement delivers exceptional value to the class.

Objectors work hard attempting to characterize Anywhere’s settlement as the product of a “reverse auction,” but this case is nothing like the collusive reverse auction cases objectors rely on. Anywhere did not seek out weak counsel to sell out the class by negotiating a shady deal over lunch. *See Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 280–81 (7th Cir. 2002). To the contrary, Anywhere availed itself of a court-approved opt-in procedure mediated before a court-approved Special Master with court-appointed class counsel for the group of home buyers with unreleased claims that Anywhere wished to settle. In sharp distinction, Bolton and his co-plaintiffs pursued claims that had been released in other litigation and on this basis their motion for class certification and to be appointed class counsel was stricken. Anywhere therefore appropriately availed itself of the Court-approved process for negotiating with appointed class counsel.

Finally, it should not be lost on the Court that the home buyer claims at issue here had significant weaknesses. If litigation had continued, Anywhere is confident that it would have prevailed. Proving Plaintiffs’ case on a class basis would have been difficult—even more so than in the home seller cases—because individualized analysis would be required to determine whether

a home buyer had specifically negotiated their broker commissions. It would also be difficult, if not impossible, to prove that any buyer paid a home price that had been influenced by broker commissions, given the particular circumstances of each buyer's transaction. There were still more hurdles because the trade association rules at issue did not set prices and the Western District of Missouri's outlier finding of "per se" anticompetitive conduct was erroneous and would not have applied here. Most of all, Anywhere had not participated in any conspiracy, specifically speaking out against the very rule that formed the cornerstone of Plaintiffs' case. Anywhere's settlement is an excellent result for class members, who would otherwise have recovered nothing.

For these reasons, in addition to those advanced by Plaintiffs, the settlement with Anywhere should be approved and all objections overruled.

BACKGROUND

I. The Alleged Antitrust Conspiracy.

The allegation at the center of these cases is that real estate brokerages conspired, via the National Association of Realtors ("NAR") and other comparable organizations, to implement rules that had the effect of artificially inflating broker commissions. (*Tuccori* Dkt. 167 ¶¶ 3, 11.) The alleged "cornerstone" was a rule requiring all home listings posted on a Multiple Listing Service ("MLS") to include a blanket offer of compensation (not any particular amount, just something) to any buyer broker who brings a successful buyer to the transaction. (*Id.* ¶¶ 62, 122, 126.) Plaintiffs alleged that this and other related rules resulted in home buyers mistakenly believing their brokerage services were free. (*Id.* ¶¶ 17–18, 141–45.) Buyer brokers, Plaintiffs say, also steered unwitting buyers toward homes with higher offered commissions. (*Id.* ¶¶ 134, 147–49.) Collectively, these rules and practices, according to Plaintiffs, resulted in commissions totaling 5–6% of the sale price when the actual market price for these services would have been much lower. (*Id.* ¶¶ 162, 165.)

Because home sellers typically paid the full commission from the proceeds of the home sale, home sellers are the direct purchasers from an antitrust perspective. Home buyers are indirect purchasers, because they were only impacted if sellers passed a portion of the allegedly inflated commissions on in the form of inflated home prices. *Leeder v. Nat'l Ass'n of Realtors*, 601 F. Supp. 3d 301, 309 (N.D. Ill. 2022) (now referred to as “*Batton*”).

II. The Home Seller Litigation and Settlements.

Home sellers brought the first cases. *See Burnett v. Nat'l Ass'n of Realtors, et al.*, No. 4:19-cv-00332 (W.D. Mo. 2019); *Moehrl v. Nat'l Ass'n of Realtors, et al.*, No. 1:19-cv-01610 (N.D. Ill. 2019). The *Burnett* case, filed against NAR and the four largest real estate brokerages in the U.S., set the quickest pace. From 2019 to 2023, the parties took 80 depositions and served dozens of expert reports. (*Burnett* Dkt. 1458-2 ¶ 13.) The district court certified three classes of Missouri home sellers and set trial for October 2023. (*Burnett* Dkt. 1020.) Most prior courts had applied rule-of-reason analysis to analogous claims against trade association rules that did not directly set prices, but the *Burnett* court *sua sponte* held at summary judgment that the NAR rules at issue were “per se” anticompetitive, thereby lowering the plaintiffs’ burden of proof and preventing the defendants from presenting evidence about the rules’ pro-competitive benefits. (*Burnett* Dkt. 1019 at 20–21.)

Before trial, Anywhere negotiated the icebreaker settlement. The *Burnett* plaintiffs settled with Anywhere first because Anywhere had the strongest facts. Anywhere was not a NAR member, did not require its franchisees to adhere to NAR rules, and was outspoken in opposing the “mandatory offer” rule. (*Burnett* Dkt. 1478 at 10–14.) Indeed, Anywhere had formally petitioned NAR to rescind that rule. (*Id.* at 11.)

Anywhere, for its part, insisted that the people in the settlement class release all their antitrust claims arising from the same alleged conspiracy, including claims they could assert as

either sellers or buyers. Anywhere had no interest in paying the same people twice. (*Burnett* Dkt. 1192 at 12; *Burnett* Dkt. 1192-3 ¶¶ 14–15, 30–32.) Because most people who sell a home also buy one, the *Burnett* settlement released about 7/8 of all potential claims, including 100% of all home seller claims and as much as 79% of home buyer claims. (*Batton* Dkt. 243-4 ¶ 341.) Only about 1/8 of all claims (12.5%) were left for later resolution.

Anywhere’s \$83.5 million settlement accounted for all these factors, as well as Anywhere’s financial condition and ability to pay. (*Burnett* Dkt. 1469-2 ¶¶ 6–9, 12–15.)

RE/MAX followed shortly thereafter, settling for \$55 million on substantially the same terms. (*Burnett* Dkt. 1192-4.)

Trial proceeded against the remaining defendants. Under the “per se” analysis, plaintiffs prevailed. The jury awarded pre-trebled damages of \$1,785,310,872. (*Burnett* Dkt. 1294 at 2.)

Following trial, plaintiffs immediately expanded their case by filing new complaints against a host of additional brokerages, each of whom was an alleged co-conspirator despite not having been named in the original *Burnett* complaint. *See, e.g., Gibson v. Nat’l Ass’n of Realtors, et al.*, 4:23-cv-00788 (W.D. Mo.) (“*Gibson*”); *Keel v. House of Seven Gables Real Estate, Inc., et al.*, 4:25-cv-00055 (W.D. Mo.) (“*Keel*”). Plaintiffs then set about settling both with the remaining original defendants and with the brokerages named in their follow-on actions. (*Burnett* Dkt. 1371 at 1; *Burnett* Dkt. 1458 at 1; *Gibson* Dkt. 161.) Still further, NAR’s settlement included an opt-in procedure for still more brokerages, as well as MLSs, to join the settlement. (*Burnett* Dkt. 1458-1 ¶¶ 66–71.) Many alleged co-conspirators who had not yet been named as defendants joined the settlements through this opt-in procedure. (*Burnett* Dkt. 1538; *Burnett* Dkt. 1540.) As objectors admit, at least two of the opt-in parties had previously been sued elsewhere. (*Tuccori* Dkt. 207 at 16 (“save two”).)

III. The Home Buyer Litigations.

This case and *Batton*, where objector Bolton is a named plaintiff, are two of several litigations across the country that sought to capitalize on the success home seller plaintiffs were realizing. But these two plaintiff groups took very different approaches. *Batton* focused on re-litigating the set of home buyer claims that had been released in *Burnett*, i.e., the 79% of home buyer claims held by people who had also sold a home. *Tuccori*, on the other hand, focused on only the unreleased claims. *Tuccori*'s strategy proved more beneficial for the Settlement Class.

A. *Batton*

Batton was filed in January 2021 in the N.D. of Illinois against the same group of five defendants sued in *Burnett* (NAR and the four largest brokerages). (*See Batton v. Nat'l Ass'n of Realtors, et al.*, Case No. 1:21-cv-00430, Dkt. 1.) It was originally assigned to Judge Wood and later to Judge Hunt. After the *Burnett* verdict, the same plaintiffs filed a second complaint to add as defendants seven additional brokerages. This follow-on case was originally assigned to Judge Chang but was subsequently related to the original *Batton* case and reassigned upon plaintiffs' request. (*Batton* Dkt. 118.) *Batton* plaintiffs did not request similar treatment of *Tuccori*, despite knowledge of it.

In response to the *Batton* complaint, Anywhere led briefing of a successful motion to dismiss. The entire complaint was dismissed because the federal antitrust claims it asserted were improper indirect purchaser claims. *See Leeder*, 601 F. Supp. 3d at 309 (citing *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 729 (1977)). An amended complaint was again dismissed in part in February 2024 for similar reasons. (*Batton* Dkt. 125.) These motions effectively stayed the case for more than three years. The claims plaintiffs were allowed to pursue were limited only to those states that do not follow the federal rule laid down by *Illinois Brick*. (*Batton* Dkt. 84 ¶ 137; *Batton* Dkt. 125 at 4–5.)

With little happening in their own case, the *Batton* plaintiffs, via named plaintiff James Mullis, focused on attempting to disrupt the *Burnett* settlements. Mullis made no objection to NAR's opt-in procedure, but he did object to the release of indirect purchaser claims. (*Burnett* Dkt. 1447.) He first asked the *Batton* court to enjoin the *Burnett* court from approving the settlements. (*Batton* Dkt. 152.) After that motion was denied (*Batton* Dkt. 154), he objected in *Burnett*. (*Burnett* Dkt. 1447.) When his objections were overruled (*Burnett* Dkt. 1487), he appealed to the Eighth Circuit. The fairness of the home seller settlements, including their release of home buyer claims, was ultimately affirmed. *Burnett v. Nat'l Ass'n of Realtors*, No. 24-3444, 2026 WL 2421806, at *1 (8th Cir. Aug. 19, 2026). All members of the *Burnett* settlement class were enjoined from further litigating these claims. (*Burnett* Dkt. 1487 ¶ 63.)

When discovery finally opened in *Batton* in 2024, the *Batton* plaintiffs continued to focus on litigating the released claims. They did not depose a single defense witness and relied almost entirely on documents previously produced in the home seller cases. (*Batton* Dkt. 305 at 4.) Their new discovery primarily involved subpoenaing MLS records in an attempt to support class certification. But the certification motion they brought, even after multiple corrections, was improper. (*Batton* Dkt. 236, 243, 249.) The *Batton* plaintiffs asked to certify a class of all persons who had purchased a home in the identified states from various dates spanning as early as 2015 until December 31, 2021. (*Batton* Dkt. 243 at 2.) By their own count, as much as 79% of the proposed class had already released their claims in *Burnett* and were enjoined from further litigation, as *Batton* counsel conceded in agreeing to stay the claims of three of their named plaintiffs who were both buyers and sellers. (*Batton* Dkt. 243-4 ¶ 341; *Batton* Dkt. 246 at 3; *Batton* Dkt. 162 at 1–2.) And *Batton* counsel had chosen to incur over \$4 million in expert expenses analyzing that facially defective class. (*Batton* Dkt. 249-2 at 10 & n.11.) Anywhere moved to strike

the overly broad motion, and the court struck it. (*Batton* Dkt. 257.) The court invited the *Batton* plaintiffs to proceed with class certification as to the unreleased claims only, but they declined to do so. (*Batton* Dkt. 300-3 at 16–17.) At that point, class certification was stayed. (See *Batton* Dkt. 257, 259.)

Although the court ordered that fact discovery could continue as to the non-released claims (*Batton* Dkt. 259), *Batton* counsel continued to sit on the sidelines. Anywhere was not so passive. It deposed the five named plaintiffs whose claims had not been stayed and learned that three of them had specifically negotiated their buyer broker commission before purchasing a home. In other words, these buyers agreed to an amount of buyer broker compensation that was fair for the work they were requesting and agreed to pay that amount out of pocket if it was not fully paid by the seller. See Exs. A, B, C. They were not tricked into paying inflated commissions hidden within the home price, as home buyers' theory dictated. (See *Tuccori* Dkt. 70 ¶¶ 182–84; *Batton* Dkt. 84 ¶¶ 1, 51.) As these depositions demonstrate, discovering these disqualifying buyer representation agreements requires individualized analysis.

Once these depositions were complete, the *Batton* litigation was effectively stayed while the parties awaited decisions from the Eighth Circuit on the Mullis appeals.

B. *Tuccori*

Tuccori was filed in December 2023 naming @properties as a defendant. (*Tuccori* Dkt. 1.) While the original complaint only named one defendant, it alleged that other alleged co-conspirators were also jointly and severally liable for the same actions, including NAR, NAR MLSs, and NAR-affiliated brokerages and realtor associations. (*Tuccori* Dkt. 1-2 ¶¶ 35–38.) Over the next year and a half, the *Tuccori* plaintiffs filed additional complaints against several more of these alleged co-conspirators, bringing the total number of named defendants to 16. (*Tuccori* Dkt. 53 at 1.) These cases were then consolidated. (*Tuccori* Dkt. 67.)

Rather than insisting on litigating claims that had already been released, the *Tuccori* plaintiffs focused on attempting to resolve the claims of the narrower class of home buyers who held unreleased claims. To do this, *Tuccori* relied on discovery that had been developed in the home seller cases, for example, subpoenaing production of these materials from Anywhere. (*Batton* Dkt. 286 at 8.) Based on the leverage the home seller cases had already developed, they started negotiations with the original 16 defendants.

On October 13, 2025, *Tuccori* plaintiffs announced the first indirect-purchaser, home buyer class settlements in the nation. They filed a motion for preliminary approval of settlements with 10 defendants, including @properties. (*Tuccori* Dkt. 58-1 ¶ 18.) The settlement class was limited to those who had not already released their claims and included purchases from as early as 2017 until the date of Class Notice, in 2026. (*Id.* ¶ 15.) The settlement amounts averaged approximately 10% of the settlors' corresponding direct-purchaser settlements. (*See Tuccori* Dkt. 107-1 at n.1.) Because the indirect-purchaser settlements covered only about 1/8 (or 12.5%) of the transactions released in the direct-purchaser settlements, the 10% settlement value represented only a slight discount off the direct-purchaser settlements on a per-transaction basis. This Court preliminarily approved the initial *Tuccori* settlements and appointed *Tuccori* counsel as Settlement Counsel for the class of unreleased home buyers. (*Tuccori* Dkt. 65.)

The *Tuccori* settlement included an opt-in plan modeled after the NAR direct-purchaser settlement. (*Tuccori* Dkt. 58-1 ¶¶ 35–41; *see also Burnett* Dkt. 1622.) It specifically invited NAR (a *Batton* defendant), and generally invited non-party real estate brokerages, to opt into the settlement through mediation before designated Special Master, Retired Chief Judge James Holderman. (*Tuccori* Dkt. 58-1 ¶ 35.) *Tuccori* counsel was appointed to represent the Settlement Class in these negotiations and to seek out additional settlements. To ensure sufficient funds were

available to administer the settlement, it required that all settlement contributions collectively exceed a confidential threshold amount before any settlement became effective. (*Id.* ¶¶ 82–84.) With this Court’s preliminary approval, (*Tuccori* Dkt. 65), the *Tuccori* plaintiffs undertook to seek non-defendant opt-in settlors to join the settlement.

C. Coordination Mechanisms Were Used.

Objector Bolton asserts that the *Tuccori* plaintiffs intentionally avoided coordination. (*Tuccori* Dkt. 207 at 6, 13.) Not so. After the October 2023 jury verdict in *Burnett*, plaintiffs in two new home seller actions filed a petition to coordinate some of the home seller actions. (*In re: Real Estate Commission Antitrust Litigation*, MDL No. 3100 (Jud. Panel. Multidist. Litig. 2023), Dkt. 1.) In response, NAR also sought coordination of the home buyer actions, including specifically *Batton* and *Tuccori*. (JPML Dkt. 196 at 2.)

Tuccori plaintiffs noted that although local aspects of their case favored adjudication in the Northern District of Illinois, they “would not oppose centralization.” (JPML Dkt. 290 at 1–2; *see also Tuccori* Dkt. 15 at 2 (“*Tuccori* would not oppose centralization in [] the Northern District of Illinois before the Honorable Judge Andrea Wood.”).) *Batton* plaintiffs specifically acknowledged the *Tuccori* litigation as early as February 2024, stating that it “contain[ed] virtually identical factual allegations,” and also supported consolidation. (JPML Dkt. 387 at 1 & n.1.) Anywhere and @properties both supported consolidation too. (JPML Dkt. 487; JPML Dkt. 259 at 1–2; JPML Dkt. 555 at 15.)

In April 2024, however, the JPML declined to order MDL treatment. It noted that “NAR announced that it had reached a nationwide class settlement” and that although “the deal does not automatically include NAR-affiliated brokers with more than \$2 billion in transactions or MLSs that are not owned by an NAR affiliate, it purports to include a mechanism for them to opt-in.” (JPML Dkt. 558 at 3–4.) Because the opt-in structure “may well resolve at least some claims in

this litigation, if not many,” the JPML concluded that “Section 1407 centralization is not necessary.” (*Id.*) Following this decision, *Batton* plaintiffs never sought to consolidate their case with the *Tuccori* action, despite knowing of it.

A year and a half after the JPML’s decision, Tuccori moved for preliminary approval of his icebreaker settlements, appointment of himself as class representative and his counsel as class counsel, and creation of the opt-in mediation process, all as described above. The *Batton* plaintiffs were also aware of the order granting this motion, but raised no objection to the opt-in structure. (*Tuccori* Dkt. 102-1 at 1.)

D. Anywhere’s Decision to Opt Into the *Tuccori* Settlement.

Thus, in early 2026, Anywhere faced the following circumstances:

1. *Tuccori* was pursuing home buyer claims and had alleged a broad antitrust conspiracy, including all U.S. real estate brokerage firms.
2. *Tuccori* had sought and received discovery from Anywhere comprising materials previously produced in the home seller cases.
3. *Batton*’s motion to be appointed class representative and counsel had been rejected because *Batton* was insistent on continuing to litigate released claims.
4. *Tuccori*’s motion to be appointed class representative and counsel for buyers with unreleased claims had been granted, and *Tuccori* was authorized to negotiate settlements with all alleged co-conspirators.
5. The *Tuccori* settlement structure, including the opt-in mechanism, had been preliminarily approved by this Court.
6. The *Batton* plaintiffs were aware of the *Tuccori* opt-in structure, including its open invitation to *Batton* defendants, and raised no objections.
7. On January 9, 2026, Compass, Inc. and Anywhere merged, making Anywhere a corporate affiliate of @properties—one of the original settling defendants in *Tuccori*. (*Tuccori* Dkt. 58.)

Faced with these facts, Anywhere attempted to join its affiliate’s settlement via the court-approved opt-in process. This decision was not made to get a “cheaper” deal, as objectors assert. (*E.g.*,

Tuccori Dkt. 207 at 2; *see Tuccori* Dkt. 204 at 3.) Whether any deal was possible remained uncertain, let alone the amount. Rather, Anywhere reasonably sought to negotiate with the court-appointed counsel for the narrow class it was interested in settling with through a court-approved mediation process before a court-appointed special master. Nothing about this choice was “collusive” in the least.

Mediation was scheduled for February 4, 2026, before Judge Holderman. Just two days before Anywhere’s mediation, the *Batton* plaintiffs moved for preliminary approval of their first settlement, with Keller Williams. (*Batton* Dkt. 262.) This settlement confirmed that the *Batton* plaintiffs continued to pursue released claims; it expressly included all home buyers, including the approximately 79% who had released their claims in the direct-purchaser settlements. (*Batton* Dkt. 262-1 ¶ 10.) For this much larger class, Keller Williams agreed to pay \$20 million. (*Id.* ¶ 12.) Due to an acknowledged conflict between the released and unreleased class members, no allocation plan was announced at that time. Separate allocation counsel would be required. Therefore, neither *Tuccori* plaintiffs nor Anywhere knew how much of the Keller Williams settlement would ultimately relate to the unreleased claims they were attempting to settle. They only knew that amount was far smaller than the \$20 million total.

Anywhere’s mediation proceeded. Through a full day of adversarial negotiations before Judge Holderman, and ultimately a mediator’s proposal, Anywhere reached an agreement with *Tuccori* to settle all unreleased home buyer claims for \$9,602,500. (*Batton* Dkt. 280-1 ¶¶ 7–8.) This represented 11.5% of Anywhere’s corresponding home seller settlement, a substantial increase from the 10% paid by the original *Tuccori* defendants in the icebreaker settlement. (*Tuccori* Dkt. 107-1 at n.1.)

E. Events Subsequent to Anywhere's Settlement.

After Anywhere's settlement agreement was reached, subsequent events substantiated Anywhere's decision to join the *Tuccori* settlement.

First, 15 additional parties agreed to join the *Tuccori* settlement. The motion for preliminary approval of Anywhere's settlement added four other opt-in parties. (*Tuccori* Dkt. 98.) A second motion for preliminary approval added 11 more. (*Tuccori* Dkt. 168.) Altogether, the 26 total agreements provide settlement funds of more than \$120 million, confirming the *Tuccori* case as the primary vehicle for resolving previously unreleased home buyer claims. (*Id.* at 2.)

Second, *Batton* counsel announced their allocation plan for the Keller Williams settlement. (*Batton* Dkt. 276-2.) While the precise allocation between released and unreleased claims remains uncertain, even today, this plan confirms that only a fraction of the total settlement will go to home buyers with unreleased claims. (*Id.*) All claims will be calculated based on broker commission dollars paid in connection with home purchases. (*Id.* ¶¶ 8–12.) Previously released claims are discounted by 75%. (*Id.* ¶ 13.) Because there are far more released class members, even with that discount, Bolton estimates that nearly half of the settlement relates to previously released claims. (*Tuccori* Dkt. 207 at 21 & n.6.) That estimate is likely low. Despite having full claims data since August 25, when the *Batton* claims period ended, Bolton chose not to disclose the actual breakdown in his objection. This is likely because unreleased class members are almost entirely first-time home buyers who tend to purchase cheaper homes with smaller commissions. (*Batton* Dkt. 243-4 ¶¶ 341–42.) Bolton chose to “assum[e] homebuyers submit claims in equal proportion” rather than disclosing the actual data. (*Tuccori* Dkt. 207 at 21 & n.6.)¹

¹ On September 1, 2026, a class member filed a late objection to the Keller Williams settlement, arguing that it was impermissible to include both released and non-released claims in the settlement. (*Batton* Dkt. 359 at 2–3.) That objection remains pending at the time this memorandum is filed.

Third, *Batton* plaintiffs changed their strategy in a later agreement with RE/MAX. The RE/MAX agreement was announced on March 25, more than a month after Anywhere's settlement. Unlike *Batton*'s agreement with Keller Williams, this settlement was limited to home buyers with unreleased claims. For this more limited class, RE/MAX agreed to pay \$8.5 million, which is less than Anywhere's settlement but is approximately 15.45% of RE/MAX's corresponding home seller settlement before deductions for *Batton* counsel's fees and costs. Why RE/MAX agreed to this amount is unknown, but just a month later it announced that it was being sold to Real Brokerage. *Real to Acquire REMAX, Creating a Leading Technology-Enabled Global Real Estate Platform*, REMAX NEWS (Apr. 27, 2026). Therefore, business concerns unrelated to the litigation likely played a role.

Fourth, *Tuccori* counsel's streamlined litigation strategy is consistent with their request for less than the full 1/3 of fees that are commonly sought. Anywhere takes no position regarding who should be awarded fees, or in what amount. But Anywhere notes that the 31.5% request by *Tuccori* counsel, inclusive of costs, would ensure that the vast majority of the settlement fund will go to class members. (*Tuccori* Dkt. 197 at 2–3.) If granted in whole, \$6.6 million of Anywhere's settlement will be distributed to the class.

Finally, *Batton* counsel's approach led to higher fees and costs. In their own case, they sought and were awarded \$4.5 million in costs, most of which related to their ill-fated class certification motion. (*Batton* Dkt. 352 at 2.) They also were awarded \$9.5 million in fees, in addition to a \$500,000 holdback for anticipated future fees and costs. (*Id.*) The incurred fees and costs were distributed across the Keller Williams and RE/MAX agreements. The future award came out of the Keller Williams agreement only. In addition to the \$14.5 million *Batton* counsel have already been awarded, they also seek a further \$38 million in fees from the *Tuccori*

settlement. (*Tuccori* Dkt. 195 at 3.) Again, Anywhere takes no position on Bolton’s fee request, but notes the amounts requested solely to explain the value the various settlements provide to the Settlement Class.

Considering the fees and costs requested by *Tuccori* and *Batton* in their respective cases, Anywhere’s settlement clearly returns the best value to the Settlement Class:

Settling Party	Keller Williams	RE/MAX	Anywhere
Initial Settlement Amount	\$20 Million	\$8.5 Million	\$9.6 Million
Costs	\$3.2 Million	\$1.3 Million	
Fees	\$6.7 Million	\$2.8 Million	\$3.0 Million (inclusive of costs)
Future Fees/Costs	\$0.5 Million		
Remainder for distribution to class	\$9.6 Million	\$4.4 Million	\$6.6 Million
Approximate allocation to home buyers with released claims	\$4.8 Million		
Remainder to home buyers with unreleased claims	\$4.8 Million	\$4.4 Million	\$6.6 Million

ARGUMENT

In the Seventh Circuit, the “law generally favors the settlement of claims,” and under Rule 23(e), a district court may approve a class action settlement that, like the settlement at issue here, is “fair, adequate, and reasonable.” *Astellas US Holding, Inc. v. Federal Ins. Co.*, 66 F.4th 1055, 1065 (7th Cir. 2023); *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014). Plaintiffs address the Rule 23(e) factors in their final approval brief. Anywhere writes separately to address three points. First, to explain why it appropriately opted in to the *Tuccori* settlement. Second, to demonstrate that its settlement with the *Tuccori* plaintiffs delivers exceptional value to the Settlement Class. And third, to explain why the indirect purchaser home buyer claims at issue were particularly weak, especially as compared to the direct purchaser claims brought by home sellers.

I. Anywhere Appropriately Negotiated With Appointed Class Counsel Through a Court-Approved Process and There Was No Reverse Auction.

While the ultimate question is whether Anywhere’s settlement is “fair, adequate, and reasonable,” *Astellas*, 66 F.4th at 1065, in some cases procedural irregularity might justify “closer scrutiny” of the agreement. *Reynolds*, 288 F.3d at 283. To trigger this closer scrutiny, however, objectors would need “proof that the settlement was actually collusive in the reverse-auction sense.” *Id.* “[A]n objector cannot simply say the words ‘reverse auction’ and expect to invalidate a proposed settlement. Instead, an objector must point to some evidence of ‘underhanded activity.’” *In re Wendy’s Company Shareholder Derivative Action*, 2020 WL 13169460, at *8 (S.D. Ohio Jan. 24, 2020) (citing *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1099 (9th Cir. 2008)); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002) (reverse auction findings require “more concrete evidence of collusion than Objector’s conclusory allegations and inferences”); *Wayside Church v. Van Buren Cnty.*, 2025 WL 2829601, at *8 (6th Cir. Oct. 6, 2025) (affirming final approval where “objectors presented ‘more speculation than concrete evidence of collusion’”). Objectors have no such evidence. *See Mars Steel Corp. v. Cont’l Ill. Nat’l Bank & Trust Co. of Chi.*, 834 F.2d 677, 683–85 (7th Cir. 1987) (affirming settlement as substantively and procedurally fair despite unsubstantiated allegations of collusion).

A. Anywhere Appropriately Negotiated With Appointed Class Counsel.

Bolton repeatedly suggests that “[t]he only reason a defendant already embroiled in litigation would settle” elsewhere “is if that defendant believes they have identified the most ineffectual class lawyers to negotiate a settlement.” (*E.g.*, *Tuccori* Dkt. 207 at 12; *see also id.* at 1, 2, 3, 7, 14, 20.) That is inaccurate. The reason Anywhere settled here is because *Tuccori* plaintiffs had been appointed to represent the narrow class of home buyers Anywhere was interested in settling with: those who had not already released their claims in *Burnett*. In contrast, Bolton and

the other *Batton* plaintiffs insisted on litigating released claims, and as a result, their motion to represent any class had been rejected. *See supra* pp. 5–7. *See Wayside Church*, 2025 WL 2829601, at *8 (affirming settlement in a different action after the “district court denied Grainger’s motion for class certification, effectively reducing the case to an individual’s claim”).

B. There Was No Structural Problem with Anywhere’s Settlement Process.

This Court approved the opt-in structure as part of its preliminary approval of the icebreaker home buyer settlements in this case. (*Tuccori* Dkt. 65.) That structure was modeled off NAR’s settlement in *Burnett*, and Bolton acknowledges that it served as a useful “‘monitoring and enforcement mechanism’ to ensure industry practice changes were widely implemented, and to quiet homeseller litigation,” (*Tuccori* Dkt. 130 at 7), and that it was appropriate notwithstanding the fact that some opt-in defendants had already been sued in other cases, (*Tuccori* Dkt. 207 at 16). Its use was also appropriate here. The opt-in mechanism served as an effective tool for bringing alleged co-conspirators into the action, including to increase recovery for the class. And it had numerous safeguards to prevent collusive settlements.

1. The icebreaker *Tuccori* settlements established a non-collusive benchmark for all subsequent settlement negotiations.

The first check against collusive opt-in settlements was the benchmark set by the icebreaker *Tuccori* settlements. *See supra* p. 8. Bolton does not suggest that these 10 initial settlements were collusive or reverse auctions, as the initial settling defendants were not named in *Batton* and were named in *Tuccori*. And they achieved an outstanding outcome for the *Tuccori* class: their settlements averaged 10% of the settlors’ home seller settlements, for just 12.5% as many claims,

and thus settled weaker indirect purchaser claims at nearly par value with the stronger direct purchaser claims.² *See supra* pp. 1, 8.

Because that 10% mark was achieved in a non-collusive setting, it created a benchmark for future settlements, as icebreaker settlements often do. (*Tuccori* Dkt. 207 at 2, 5 (Bolton acknowledging this dynamic).) If Anywhere’s opt-in settlement had fallen substantially below 10% of the settlor’s home seller settlement, that might present a red flag warranting extra scrutiny. But because Anywhere’s opt-in settlement surpassed the 10% benchmark, that strongly rebuts the possibility of collusion with Anywhere.

2. Procedural protections, including a respected Special Master, were used.

The Court also created appropriate procedural safeguards. Opt-in negotiations did not occur in “secret,” as Bolton suggests. (*See Tuccori* Dkt. 207 at 17.) In October 2025, Tuccori and his counsel were publicly appointed to represent the class. They were publicly given six months to negotiate with “non-parties, such as other real estate brokerages,” to join the settlement. (*Tuccori* Dkt. 58 at 8; *Tuccori* Dkt. 65.) NAR, a defendant in *Batton*, was publicly and specifically invited to opt in. (*Tuccori* Dkt. 58-1 ¶ 35.) The Court publicly appointed Judge Holderman as Special Master and charged him with “overseeing mediations with non-parties.” (*Tuccori* Dkt. 65 ¶ 15). Judge Holderman ensured that the opt-in settlements resulted from arm’s-length negotiations and that neither side had inordinate leverage over the other. (*Tuccori* Dkt. 110-1 at 3.)

² Bolton’s suggestion that these claims should have been paid more simply because there were fewer of them is baseless. (*Tuccori* Dkt. 207 at 22.) The *Burnett* settlements already factored in the merits of the claims and each defendant’s ability to pay. Negotiating the lingering 1/8 of claims as effectively part of those same agreements was both reasonable and logical. *See D.S. ex rel. S.S. v. New York City Dept. of Educ.*, 255 F.R.D. 59, 78 (E.D.N.Y. 2008) (“[A] defendant’s ability to pay more than provided through the settlement cannot undercut the overall assessment of fairness, reasonableness, and adequacy of a proposed settlement.”).

This public process, conducted by judicially appointed class counsel and overseen by a respected, court-approved mediator, readily distinguishes this case from the “reverse auction” cases Bolton cites. *See, e.g., Reynolds*, 288 F.3d at 280–81 (secret negotiations over lunch with solo practitioners who lacked clients at the time); *Tech. Training Assoc., Inc. v. Buccaneers Ltd. P’ship*, 874 F.3d 692, 695 (11th Cir. 2017) (“Machiavellian” plot by attorney who had departed from the named plaintiff’s firm); *Williams v. BlueHippo Funding, LLC*, 2008 WL 11345953, at *5 & n.7 (E.D. Ark. Sept. 23, 2008) (“secretly negotiated”). It also resolves any potential process concerns that have motivated other district courts to further investigate settlement process objections. *See, e.g., Borup v. CJS Solutions Grp., LLC*, 2019 WL 2137369, at *1 (D. Minn. May 16, 2019); *Claridge v. N. Am. Power & Gas, LLC*, 2017 WL 3638455, at *2 (S.D.N.Y. Aug. 23, 2017). Here, the process used to reach Anywhere’s settlement was pre-approved by this Court and presents no such concerns.

3. The opt-in structure was known to Bolton, who chose not to timely object.

Although Bolton directs much criticism at the settlement “structure,” his conduct reveals that his true dispute is with the amount of the settlement. The *Batton* plaintiffs knew of the same opt-in structure in *Burnett* and chose not to object to it there, despite advancing other objections. Likewise here, Bolton admits contemporaneous knowledge of this Court’s October 2025 order, which approved the opt-in mechanism and invited *Batton* defendant NAR to participate in it, along with other non-party brokerages. (*Tuccori* Dkt. 102-1 at 1.) But again, he chose not to object to the opt-in process before any opt-in settlements were negotiated. This pattern substantially weakens his contention that the opt-in structure itself presents a genuine process concern.

4. *Tuccori* counsel leveraged lingering risk from *Burnett*.

Bolton argues that *Tuccori* plaintiffs “had no leverage” over Anywhere, but this too is inaccurate. (E.g., *Tuccori* Dkt. 207 at 7.) *Burnett* established that large brokerages like Anywhere face substantial risks from litigation arising out of this alleged nationwide conspiracy. The jury there found that the alleged conspiracy existed and awarded \$1,785,310,872 in pre-trebled damages relating to only home sales in Missouri. (*Burnett* Dkt. 1294 at 2.) That is a number no brokerage could ignore, especially when extrapolated to the rest of the country. The *Burnett* settlements resolved most of the claims arising out of that alleged conspiracy but could not resolve the home-buyer-only claims the *Tuccori* class asserts here. *See supra* p. 4. Thus, after *Burnett*, it was understood that brokerages would face continued risk from the narrow class of home buyers who did not also sell a home during the *Burnett* class period.

Burnett also produced a massive factual record, including 80 depositions and dozens of expert reports. *Supra* p. 3. Relying on that record does not mean *Tuccori* counsel lacked leverage, insufficiently developed their case, or settled too quickly. (*Tuccori* Dkt. 207 at 14, 17.) It means they proceeded efficiently. And contrary to Bolton’s suggestion, (*see id.* at 25), *Tuccori* plaintiffs did seek discovery from Anywhere. They subpoenaed 7,076 documents totaling 155,874 pages from Anywhere, which gave them (in their words) “more than ‘an adequate information base’ on which to negotiate.” (*Batton* Dkt. 286 at 8 (citation omitted).)

“That a case is settled early does not establish that the class was ill-represented or that the settlement was the product of collusion.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 588 (N.D. Ill. July 29, 2011); *see Wong*, 773 F.3d at 862, 865 (affirming settlement approval despite objector’s claim of “[in]sufficient information”). In fact, “early settlement may often be beneficial for the class, as it reduces attorneys’ fees, preserves value for the class, and offers immediate compensation for injured class members.” *In re Cal. Pizza Kitchen Data Breach Litig.*, 129 F.4th

667, 678 (9th Cir. 2025); *Swinton v. SquareTrade, Inc.*, 960 F.3d 1001, 1006 (8th Cir. 2020) (settling before discovery did not suggest “collusion, mendacity, or underhanded activity”). Those benefits were especially clear here, where both *Tuccori* and *Batton* were derivative actions following years of litigation and discovery in *Burnett*.

Finally, Anywhere always faced risk in this litigation. The history of litigating this alleged conspiracy shows that alleged co-conspirators are frequently added as defendants, even if not originally named in a complaint. *Supra* p. 4. *Tuccori* had already sought and obtained discovery from Anywhere, *supra* p. 8, and there was nothing preventing *Tuccori* from naming Anywhere as a defendant at any point. Bolton calls Anywhere’s addition to this case a “settlement-only vehicle,” but that mischaracterizes the record. (*Tuccori* Dkt. 207 at 13.) Anywhere is a defendant for all purposes. If the settlement is not approved, the agreement calls for deadlines to be set for Anywhere to file a Rule 12(b) motion. (*See Tuccori* Dkt. 98-1 at Ex. 4 17–19.) It does not provide Anywhere an assured exit.

C. The *Batton* Litigation Was Not the Source of Anywhere’s Risk.

Bolton’s own litigation was not the source of the leverage that drove Anywhere’s settlement. Although *Batton* was filed years before *Tuccori*, it is no further along. The case was stuck at the pleadings stage for years. *See supra* pp. 5–7. When the pleadings were finally set, Bolton baselessly challenged the *Burnett* releases rather than litigating the remaining claims. *See supra* p. 6. He did nothing to develop a liability case—he did not depose a single defense witness and relied instead on documents produced in *Burnett*. He then spent further time, money, and effort in attempts to certify a defective class that included both released and unreleased claims. (*Batton* Dkt. 243-4 ¶ 341; *Batton* Dkt. 246 at 3.) Because further litigation of released claims was enjoined, Bolton’s entire action was effectively stayed by the time Anywhere negotiated its settlement. To

the extent Bolton had any leverage over Anywhere at that point, it derived entirely from the foundation established in *Burnett*. The *Tuccori* plaintiffs had access to the same leverage.

D. Anywhere’s Settlement Lacks Any Provisions Indicating Collusion.

Bolton first argues that *Tuccori* counsel’s fee request shows collusion, (*Tuccori* Dkt. 207 at 18), but the cases he relies on turned on settlement agreements that specifically awarded fees. *Tech. Training*, 874 F.3d at 695, 698 (settlement included 25% fee provision); *Reynolds*, 288 F.3d at 282–83 (specifically negotiated fees); *see also Cal. Pizza Kitchen*, 129 F.4th at 675–76 (negotiated fees and “clear sailing” provision cited as evidence of collusion). Anywhere’s settlement lacks any such provision. It is agnostic as to fees. Therefore, Bolton’s complaints regarding fees are irrelevant to final approval. The fairness of Anywhere’s settlement and what fees should be awarded from it are entirely separate issues. *See Cal. Pizza Kitchen*, 129 F.4th at 680 (affirming settlement approval but remanding for consideration of fees).

Bolton also notes that the class period in Anywhere’s settlement was expanded to cover the *Batton* claims. (*Tuccori* Dkt. 207 at 19.) That is no reason to reject the settlement either. “[L]itigants are free to modify a class via a court-approved settlement agreement,” *In re Motorola Sec. Litig.*, 644 F.3d 511, 518 (7th Cir. 2011), and courts routinely approve those efforts. *In re IPO Sec. Litig.*, 226 F.R.D. 186, 190 (S.D.N.Y. 2005) (“[A] court may approve a settlement class broader than a litigation class that has already been certified.”); *see, e.g., AdTrader, Inc. v. Google LLC*, 2022 WL 16579324, at *3 (N.D. Cal. Nov. 1, 2022) (granting final approval to settlement with expanded class period); *Allegretti v. Walgreen Co.*, 2021 WL 5119759, at *1 (N.D. Ill. Nov. 1, 2021) (reaffirming preliminary approval of settlement class whose definition had since been modified); *Champagne v. Plannernet, Inc.*, 2019 WL 13254284, at *5 (N.D. Cal. Apr. 22, 2019) (granting preliminary approval to settlement that expanded previously certified litigation class to include additional category of employees who were allegedly misclassified as independent

contractors); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 322 (C.D. Cal. 2016) (granting preliminary approval to settlement that expanded class period by one year, because “[p]laintiff’s request to add the additional time period to the class definition does not alter any of the court’s prior [Rule 23] analysis”); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *9 (S.D.N.Y. Nov. 30, 2010) (granting final approval to settlement that extended the class period of the previously certified litigation class by three years, because the expanded class “m[e]t all of the requirements for [a] settlement class”). There is “nothing improper” about defining a class period or class release so that it reaches “overlapping classes” in other pending cases. *Trombley v. Nat’l City Bank*, 826 F. Supp. 2d 179, 202 (D.D.C. 2011). From a defendant’s perspective, it makes sense to define the class so that it reaches all active, overlapping classes. That is necessary to reach all claims whose statutes of limitations have been tolled by the filing of earlier class actions. *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974).

Here, overlap was inevitable. For certain jurisdictions, the statute of limitations stretches back as far as 15 years. (See *Tuccori* Dkt. 98-1; *Batton* Dkt. 350.) So the *Tuccori* action, filed in 2023, would naturally include many of the same claims as *Batton*, filed in 2021. In fact, Bolton himself recognized the need to adjust class periods to reach resolution. When he unsuccessfully moved to certify a class, his proposed class spanned from 2015 to 2021. (See *Batton* Dkt. 243 at 7.) But when he later settled with Keller Williams and RE/MAX, he expanded this class in both directions, stretching back to 2006 and forward into 2026. (See *Batton* Dkt. 262-2 at 11–14; *Batton* Dkt. 310-2 at 11–14.) There was nothing improper about this expansion, nor was there anything improper here.

E. There Was No “Auction” Of Any Sort.

Finally, contrary to Bolton’s suggestion, *Tuccori* counsel did not engage in any “underbidding.” (*Tuccori* Dkt. 207 at 18.) There was nothing for them to underbid because neither

Tuccori nor Anywhere knew what the *Batton* plaintiffs’ bottom line would be, especially for a class comprising only unreleased claims. The settlement with RE/MAX did not exist when Anywhere settled. (See *Batton* Dkt. 310.) The settlement with Keller Williams had been announced, but it was (and still is) unclear how much of that settlement will go to the subclass comprising unreleased claims. “[T]he terms of the settlement agreement should be analyzed based on what information was known at the time the settlement agreement was reached.” *Trombley*, 826 F. Supp. 2d at 198 (granting final approval). And here, there was nothing to underbid at the time of the negotiations.³

If any doubt on this point remains, Judge Holderman’s affidavit dispels it. Judge Holderman attested that he was aware of both *Batton* and the Keller Williams settlement before mediation. (*Tuccori* Dkt. 110-1 at 3.) And he “did not advise Plaintiffs or Anywhere to terminate their mediation due to either the existence of *Batton* or the settlement with Keller Williams in that case.” (*Id.*) Judge Holderman confirmed that the mediation was “conducted at arms-length according to [his] mediation procedures,” and that “each party’s counsel at all times conducted their mediated settlement negotiations in an adversarial, arm’s-length, and good faith manner.” (*Id.*) He further attested that “[a]t no time during the mediation (or after) did I believe ... that any party was negotiating from a position of inordinate strength or weakness.” (*Id.* at 3–4.) Other courts have overruled reverse auction objections in light of similar statements from Judge Holderman and other retired judges. See, e.g., *Ponzio v. Pinon*, 87 F.4th 487, 507–08 (11th Cir. 2023) (affirming final approval over “reverse auction” objection where district court relied on statements from the

³ Bolton’s counsel toes the line of breaching mediation privilege, but in doing so, admits that the *Tuccori* settlements “pay **significantly more** to settle the buyer-only claims in this case than they previously offered before *Batton* Counsel.” (*Tuccori* Dkt. 220-1 ¶ 8.) This admission forecloses any suggestion of underbidding.

“highly respected ... former United States District Judge James F. Holderman”); *Robinson v. Nat’l Student Clearinghouse*, 14 F.4th 56, 59 (1st Cir. 2021) (settlement reached in mediation before a retired judge was the product of arm’s length negotiations). The same result should follow here.

* * *

In short, objectors failed to identify any evidence of collusion. This is unsurprising, because the process this Court pre-approved for opt-in settlements ensured no such bad behavior could occur. As a result, as Bolton’s own cases have held, (*Tuccori* Dkt. 207 at 17), the Court should “reject[]” objectors’ argument that “the settlement resulted from a collusive reverse auction and f[i]nd that the parties’ settlement was the result of an arm’s-length negotiation.” *Tuttle v. Audiophile Music Direct, Inc.*, 2023 WL 8891575, at *7 (W.D. Wash. Dec. 26, 2023).

II. Anywhere’s Settlement Compares Favorably to Others.

Asserting that an objector “could have obtained a better deal if they had litigated the case further,” as Bolton does, is not a valid objection. *Cal. Pizza Kitchen*, 129 F.4th at 678; *see also Schulte*, 805 F. Supp. 2d at 591 (“[C]omplaining that the settlement should be better [] is not a valid objection.”). “[C]ourts do not have a duty to maximize settlement value for class members” but rather only to “ensur[e] that the class settlement is fair, reasonable, and adequate.” *Cal. Pizza Kitchen*, 129 F.4th at 678. Stated differently, “reasonable disagreements on case strategy are not evidence of an unfair deal or collusion.” *Id.* Under this standard, detailed comparisons to other settlements are not necessary. Regardless, these comparisons confirm that Anywhere’s settlement was not in any way a discount deal.

Burnett. Bolton agrees that settlements in the direct-purchaser litigations provide a useful point of comparison. (*See Tuccori* Dkt. 207.) Here, Anywhere’s \$9,602,500 settlement (*Batton* Dkt. 280-1 ¶¶ 7–8) represents 11.5% of its corresponding home seller settlement. (*Accord Tuccori* Dkt. 207 at 21.) Courts have approved similar rates in indirect-purchaser cases, even where the

defendant had not already settled most of the indirect purchaser claims. *See In re First Databank Antitrust Litig.*, 205 F.R.D. 408 (D.D.C. 2002) (final approval of settlement providing \$23.25 million plus interest to direct purchasers and \$2.75 million plus interest to indirect purchasers (11.8%)). The outcome here, where only about 12.5% as many claims remained for resolution, is an outstanding result for the Settlement Class. The weaker indirect purchaser claims are paid at almost the same rate as the stronger direct purchaser claims.

Tuccori Icebreakers. Anywhere’s settlement also provides a better outcome for the class than the settlements with @properties and the other icebreaker defendants. That is true both in terms of absolute dollars (\$9,602,500 versus \$3,202,000) and in value relative to the respective home seller settlements (11.5% versus 10%). (*See Tuccori* Dkt. 58 at 2; *Tuccori* Dkt. 107-1 at n.1.) Bolton does not object to these initial settlements, even though they are substantively less favorable to him than Anywhere’s settlement.⁴ (*See Tuccori* Dkt. 207 at 10 (objecting only to the “*Batton* Defendant settlements”).) That belies his argument that Anywhere’s settlement is unfairly low.

Keller Williams. Bolton touts his \$20 million settlement with Keller Williams. *See supra* p. 11. But for several reasons, that settlement is far less favorable than its numbers might initially suggest. First, over half the settlement was awarded to counsel as fees and expenses, (*Batton* Dkt. 262-1 ¶¶ 3, 10), leaving only \$9.6 million for distribution to the class. Second, as Bolton acknowledges, it includes both released and unreleased claims—precisely the arrangement Anywhere sought to avoid. Although it is still not clear precisely how the settlement fund will be distributed, at best, roughly half will go to unreleased class members. (*See Batton* Dkt. 243-4 ¶

⁴ Bolton purchased a home in Florida in August 2021. (*Tuccori* Dkt. 207 at 11; *Batton* Dkt. 249-3 at 9.) He is therefore a member of the class for the initial settlements, which covers Florida purchases dating back to December 8, 2019. (*Tuccori* Dkt. 58-1 ¶¶ 2, 15.)

341 (estimating that 79% of the class members had released their claims); *Batton* Dkt. 276-2 at 4–5 (applying a 75% discount to released claims).) Collectively, this means only about \$4.8 million will go to the home buyers comprising the *Tuccori* settlement class. Although fees have not been finally determined for Anywhere’s settlement, it will likely produce a substantially better outcome for plaintiffs (\$6.6 million, assuming a 31.5% fee award). Finally, it is worth noting that Keller Williams was in a materially worse negotiating position than Anywhere, most notably because it had lost the *Burnett* trial and was subject to potential preclusion. *See supra* p. 4.

RE/MAX. Unlike the Keller Williams settlement, *Batton*’s settlement with RE/MAX is limited to unreleased claims. To resolve these claims, RE/MAX agreed to pay \$8.5 million, which is approximately comparable to the \$9.6 million Anywhere agreed to pay. Regardless, Anywhere’s settlement must be judged based on the facts at the time of settlement, which did not include the subsequent RE/MAX agreement. *Trombley*, 826 F. Supp. 2d at 198. (*See Batton* Dkt. 310.) Moreover, once fees and costs are accounted for, only \$4.4 million of the RE/MAX settlement will go to the class, (*Batton* Dkt. 352 at 2), a fair bit less than the \$6.6 million expected from Anywhere’s settlement. Finally, RE/MAX negotiated this settlement facing imminent acquisition, and therefore had unique reasons for wanting prompt finality. *Supra* p. 13. These business concerns do not apply to Anywhere and provide no basis for suggesting Anywhere should have paid more. *See In re Auction Houses Antitrust Litig.*, 2001 WL 170792, at *7 & n.35 (S.D.N.Y. Feb. 22, 2001) (“[A]versions unique to the actors in a particular case, notably risk aversion, may cause them to settle for more or less than their expected value in a given situation[.]”).

III. The Indirect Purchaser Claims Brought Here Are Much Weaker Than the Direct Purchaser Claims Brought in *Burnett*.

The Court should also consider that Anywhere’s settlement in *Tuccori* is an excellent result for class members because it pays the weaker indirect purchaser claims almost exactly the same

as what Anywhere paid to settle the stronger direct purchaser claims. (*See Tuccori* Dkt. 107-1 at 6–7, 15, 19.) And the claims here were weaker in many ways.

A. *Tuccori* plaintiffs would have to satisfy a higher liability standard.

First, the outcome in *Burnett* depended on the district court’s controversial decision about which antitrust standard should apply, and the home buyer plaintiffs here would not benefit from that decision. Courts, including the Seventh Circuit, typically apply the “rule of reason”—a deferential analysis used for assessing novel attacks on longstanding practices—to MLS rules, even when those rules are alleged to stabilize or inflate prices. *See, e.g., Robertson v. Sea Pines Real Est. Cos.*, 679 F.3d 278, 290 (4th Cir. 2012) (membership criteria); *Reifert v. S. Cent. Wis. MLS Corp.*, 450 F.3d 312, 321 (7th Cir. 2006) (anti-solicitation rule); *Supermarket of Homes, Inc. v. San Fernando Valley Bd. of Realtors*, 786 F.2d 1400, 1407 (9th Cir. 1986) (steering). But the *Burnett* district court *sua sponte* applied the “per se” standard, thereby lowering the plaintiffs’ burden of proof and preventing defendants from presenting evidence about the benefits of the rules. (*Burnett* Dkt. 1019 at 20–21.) Because the home buyer actions filed in this district were not governed by the W. D. of Missouri’s ruling on the per se standard, Plaintiffs had a much steeper hill to climb.

B. *Tuccori* plaintiffs had a more difficult damages case.

Second, as indirect purchasers, proving damages would be far more difficult. Home sellers benefited from the federal rule that a direct purchaser is entitled to “100%” of the antitrust “overcharge” in damages, regardless of whether they recouped some of the alleged overcharge by raising home prices. *Paper Sys. Inc. v. Nippon Paper Indus. Co., Ltd.*, 281 F.3d 629, 633 (7th Cir. 2002); *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 488 (1968). The corollary of that rule extinguishes the indirect-purchaser federal claims entirely. *Illinois Brick*, 431 U.S. at 733. Even in the limited set of states that permit indirect purchaser claims, proving damages

(especially on a classwide basis) requires complex econometric analyses showing that the antitrust overcharge was in fact “passed through” to the indirect purchaser. *Hanover Shoe*, 392 U.S. at 493. That proof would be difficult for many reasons, including local market conditions and individualized circumstances (e.g., a seller’s need for a quick sale) that would influence any particular home seller’s ability to pass on brokerage charges, as well as specific evidence in *Burnett* that the direct purchasers were unable to pass on any of the overcharges. (See, e.g., *Burnett* Dkt. 956 at 35–36.)

C. State-specific issues presented substantial class hurdles.

The absence of a federal cause of action presented an additional hurdle. To “prevail on the merits, [Plaintiffs] would also need to succeed in obtaining class certification.” (*Tuccori* Dkt. 58 at 25.) But indirect-purchaser home buyers are forced to rely on a variety of state law claims, the elements of which vary state-to-state. (See *Batton* Dkt. 84 ¶ 160 (pleading violations of 25 state antitrust laws).) Compare, e.g., Ariz. Rev. Stat. § 44-1401 with Hawaii Code § 480 and 740 Ill. Comp. Stat. Ann. 10/3. That fact alone makes proving a case on a classwide basis difficult. “Generally, when multiple state laws need to be applied to resolve class members’ claims, certification is improper.” *Dolmage v. Combined Ins. Co. of Am.*, 2017 WL 1754772, at *5 (N.D. Ill. May 3, 2017); *In re Bridgestone/Firestone Inc.*, 288 F.3d 1012, 1018 (7th Cir. 2002) (because claims “must be adjudicated under the law of so many jurisdictions, a single nationwide class is not manageable”).

D. Discovery in *Batton* undermined home buyers’ claims.

Discovery in *Batton* has also shown that many home buyers separately negotiated and agreed to their particular buyer broker commission. Three of the named plaintiffs revealed during their depositions that they had separately negotiated and agreed to their particular broker

commission and agreed to pay that full commission even if the home seller declined to cover this cost. *See* Ex. A (Brace Nov. 7, 2025 Dep. 94:18–25 (“Q. ... [I]f the seller had offered no commission to be paid to your agent and the seller’s agent refused to split the commission with Ms. Mendenhall, then you could be required to pay Ms. Mendenhall up to 3 percent of the purchase price at closing, correct? A. Yes.”); *id.* 143:2–7 (“Q. ... [W]e established that if the seller or the seller’s agent paid less than 3 percent, shared less than 3 percent with Ms. Mendenhall, you were responsible for paying the balance up to 3 percent, correct? A. Correct.”)); Ex. B (James Oct. 31, 2025 Dep. 123:5–8 (“Q. So by signing this agreement you agree to pay a commission of 3 percent to [the buyer’s broker] if you closed on 4326 Edith Lane, correct? A. Yes.”); *id.* 124:22–125:10 (“Q. ... Whether the seller paid for it or not, you would have to pay the commission either way? A. Right.”)); Ex. C (Parsons Nov. 12, 2025 Dep. 95:5–11 (“Q. ... So you acknowledge that you entered into a buyer agency agreement with Ms. Vigil, correct? A. Yes.”); *id.* 96:7–104:11 (discussing New Mexico form buyer agency agreement)).

These agreements defeat (or at least complicate) the home buyers’ theory of this case: that they were unknowingly harmed by an alleged conspiracy, under which buyer brokers would split the commissions with seller brokers while representing that their services were free. (*Tuccori* Dkt. 1-2.)

E. Claims against Anywhere are particularly weak.

Finally, the home buyers’ claims were particularly weak as to Anywhere for at least two reasons. First, Anywhere settled before trial in the home seller litigation and was not subject to any form of preclusion. *See In re Diaz*, 580 B.R. 238, 242 (N.D. Ill. 2017). Second, there was a reason that the *Burnett* plaintiffs settled with Anywhere first: its facts would have presented a problem for their theory at trial. Anywhere was not a NAR member and was outspoken in opposing the “mandatory offer” of compensation rule at the center of Plaintiffs’ case. (*Burnett* Dkt. 1478 at

10–14.) Indeed, Anywhere had formally petitioned NAR to rescind that rule. (*Id.* at 11.) Thus, *Tuccori* plaintiffs would be unable to prove that Anywhere participated in any conspiracy.

* * *

For all these reasons, Anywhere is confident it would have prevailed if litigation had continued. Thus, the recovery its settlement provides is an outstanding result for the Settlement Class. At a minimum, Anywhere’s defenses show that substantial discounting from its earlier direct-purchaser settlement was justified.

CONCLUSION

For all of the foregoing reasons, Anywhere respectfully requests that the Court grant final approval of its settlement in this matter.

Dated: October 7, 2026

/s/ Kevin P. Wagner

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*Counsel for Defendant Anywhere Real Estate Inc.
(f/k/a Realty Holdings Corp.)*

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2026, I caused a true and correct copy of the foregoing to be served on all counsel of record via the Court's electronic filing system.

Dated: October 7, 2026

/s/ Kevin P. Wagner

Kevin P. Wagner

EXHIBIT A

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

MYA BATTON, AARON)
BOLTON, MICHAEL BRACE,)
DO YEON KIM, ANNA)
JAMES, JAMES MULLIS,)
THEODORE BISBICOS, and)
DANIEL PARSONS,)
individually and on)
behalf of all others)
similarly situated,) Case No. 1:21-cv-00430
Plaintiffs,)
vs.)
THE NATIONAL)
ASSOCIATION OF)
REALTORS, ANYWHERE)
REAL ESTATE INC.,)
RE/MAX, LLC, and)
KELLER WILLIAMS)
REALTY, INC.,)
Defendants.)

VIDEOTAPED DEPOSITION OF MICHAEL BRACE,
taken by the Defendant, Anywhere Real Estate Inc.,
before me, Nancy L. Rambo, a Certified Shorthand
Reporter, within and for the State of Kansas, at
1625 North Waterfront Parkway, Suite 300, Wichita,
Sedgwick County, Kansas, commencing at 9:16 a.m.
on the 7th day of November, 2025.

Page 94 1 pay the balance. You see that? 2 A Yes, sir. 3 Q And that such proceeds -- I guess I should read 4 it in context. It says that the 3 percent shall 5 be paid from the property seller's proceeds of 6 the transaction. To the extent the buyer's fee 7 is not paid from such proceeds, buyer shall pay 8 the balance. Did I read that correctly? 9 A Correct. 10 Q Okay. And will you agree with me that that 11 language -- well, strike that. Do you 12 understand that language to mean that if your 13 broker did not receive the 3 percent commission 14 from the property seller, then you could 15 personally be responsible for paying the 16 3 percent commission? 17 A Yes, sir. 18 Q Okay. And so in other words, if the seller had 19 offered no commission to be paid to your agent 20 and the seller's agent refused to split the 21 commission with Ms. Mendenhall, then you could 22 be required to pay Ms. Mendenhall up to 23 3 percent of the purchase price at closing, 24 correct? 25 A Yes.	Page 96 1 A Correct. 2 Q Okay. Do you know how Ms. Mendenhall was 3 eventually paid for her commission? 4 A I do not. 5 Q Okay. Hold on one second here, my brain is 6 buffering. 7 MR. KLIEBARD: Huh? 8 MS. FORDE: I said, you're losing 9 your touch the further you get from the 10 Northeast. 11 MR. KLIEBARD: It was the food 12 poisoning. 13 A We don't go there. 14 MS. FORDE: Right. 15 MR. KLIEBARD: Yeah, I'll give you 16 the name of the place. 17 A Went to McDonald's last night and the hamburger 18 was pink. 19 BY MR. KLIEBARD: 20 Q Not good. 21 A I was like ooh. 22 Q Are we up to Exhibit 8 now? 23 A Yes. 24 MS. FORDE: Yes. 25 MR. KLIEBARD: Oh, I have a physical
Page 95 1 Q Okay. And I think you said at the time your 2 personal finances were such that you didn't -- 3 that's the arrangement that you preferred was 4 that the -- Ms. Mendenhall's commission would be 5 paid by the seller or the seller's agent at 6 closing? 7 A Correct. 8 Q Okay. So is it fair to say this, knowing that 9 you could have been on the hook personally for 10 the agent commission in the amount of 3 percent, 11 your preference at that time was for 12 Ms. Mendenhall to seek compensation for her 13 commission from the seller or the seller's agent 14 rather than from you? 15 A Correct. 16 Q Did you ask Ms. Mendenhall to only show you 17 properties in which the seller or seller's agent 18 had communicated a willingness to cover 19 Ms. Mendenhall's commission? 20 A No. 21 Q Did you ever form a belief that Ms. Mendenhall 22 misrepresented to you how she would be paid for 23 the services she was providing to you? 24 A Not that I believe. 25 Q Okay. So no?	Page 97 1 enterouage. So this is tab 29, Christina. 2 Once again, goes to Noelle first at her 3 request and then to Madam Court Reporter. 4 (Deposition Exhibit Number 8 5 Marked for Identification.) 6 BY MR. KLIEBARD: 7 Q So we've marked as Exhibit 8 what is tab 29, and 8 it's got the Bates label BATTON-JPWEIGAND31 to 9 42. Do you see that? 10 A I do. 11 Q Okay. Have you ever seen this document before? 12 A Not to my recollection. 13 Q Okay. So I'll represent to you that this is the 14 closing statement the seller -- well, where does 15 it say that? Oh, it's settlement -- it's a ALTA 16 Settlement Statement for the seller in 17 connection with the sale of 1138 North Pershing 18 Street. And you can see that in the bottom half 19 it has something that says seller and then it 20 has debits and credits. So, for example, sale 21 of the property, 73,900 is a credit because that 22 was the money that they were receiving. Do you 23 see that? 24 A Yes, sir. 25 Q And then there's a bunch of debits, some of

25 (Pages 94 - 97)

Page 142 1 that? 2 A Yes, sir. 3 Q So, in fact, Ms. Mendenhall disclosed what her 4 commission would be, correct? 5 A In essence, yes. 6 Q Okay. Well, not just in essence, she disclosed 7 it, right? 8 MS. FORDE: Objection. 9 A Yes. 10 BY MR. KLIEBARD: 11 Q Okay. And -- and we already went over this that 12 the remainder of that paragraph says that if the 13 broker's fee is not paid from the seller's 14 proceeds, then the buyer shall pay the balance, 15 correct? 16 A Correct. 17 Q And we also established that for this reason you 18 would have preferred at the time that 19 Ms. Mendenhall find you a property where the 20 seller was offering a 3 percent commission so 21 that you would not have to pay that out of 22 pocket, correct? 23 MS. FORDE: Objection, 24 mischaracterizes the testimony. 25 A I don't understand the question.	Page 144 1 Agency Agreement, were contractually obligated 2 to pay the difference between what was offered 3 by the seller and 3 percent? 4 MS. FORDE: Objection, calls for 5 speculation. 6 A I don't know if that would have occurred. 7 BY MR. KLIEBARD: 8 Q Okay. 9 A That's just something I -- it didn't happen so I 10 wasn't put in that situation. 11 Q All right. And the reason it didn't happen is 12 because in this instance Ms. Mendenhall found a 13 home where the seller, the seller's agent was 14 willing to pay her 3 percent commission, right? 15 MS. FORDE: Objection, calls for 16 speculation. 17 BY MR. KLIEBARD: 18 Q That's the reason why you didn't have to pay 19 yourself at closing, correct? 20 MS. FORDE: Same objection. 21 A I agree, yes, it was for -- I didn't have to pay 22 at closing, but I didn't have the ability to -- 23 since they were able -- of what is being 24 challenged on one of the rules of able to filter 25 the listings.
Page 143 1 BY MR. KLIEBARD: 2 Q Okay. So we established that if the seller or 3 the seller's agent paid less than 3 percent, 4 shared less than 3 percent with Ms. Mendenhall, 5 you were responsible for paying the balance up 6 to 3 percent, correct? 7 A Correct. 8 Q Okay. Would you agree with me, therefore, that 9 your preference was that Ms. Mendenhall find a 10 property for you to purchase where the seller or 11 the seller's agent was offering a 3 percent 12 commission so that Ms. Mendenhall could be paid 13 by the seller and not out of your pocket at 14 closing? 15 A I would have -- if I was able to get less than 16 3 percent, that would have been perfect, 'cause 17 then I would have had the chance to get the 18 house for a little bit cheaper. 19 Q Uh-huh. 20 A But I would have at least been able to -- I 21 would have liked to have been able to see if I 22 could find a house with maybe less or so. 23 Q Okay. Even though if you found a house where 24 Ms. Mendenhall was receiving something less than 25 3 percent, you, under this Exclusive Buyer	Page 145 1 BY MR. KLIEBARD: 2 Q Uh-huh. 3 A So I don't know if she filtered it or not. 4 Q Right. 5 A So I don't know if she got more or less. I just 6 know if -- you know, I would have loved to have 7 been able to make more of the decision if I 8 would have known how the rules worked at that 9 time. 10 Q Sure. And we already established that she got a 11 3 percent commission? 12 A Right. 13 Q So she didn't get more, she didn't get less, 14 correct? 15 A Yes, sir. 16 Q Okay. And if you had -- and you have no basis 17 to believe that she filtered properties, 18 correct? 19 A Not that I know of 'cause I wasn't there with 20 her. 21 Q Sure. And let's assume that the seller of your 22 property that you purchased was offering a 23 1 percent commission and not the 3 percent that 24 they paid, okay? 25 A Okay.

EXHIBIT B

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

MYA BATTON, AARON BOLTON,
MICHAEL BRACE, DO YEON KIM,
ANNA JAMES, JAMES MULLIS,
THEODORE BISBICOS, and DANIEL Case No.
PARSONS individually and on 1:21-cv-00430
behalf of all others
similarly situated,
Plaintiffs,
v.
THE NATIONAL ASSOCIATION OF
REALTORS, ANYWHERE REAL ESTATE
INC., RE/MAX, LLC, and
KELLER WILLIAMS REALTY, INC.,
Defendants.

** CONFIDENTIAL **
ZOOM VIDEO DEPOSITION
Taken on behalf of the Defendants of
ANNA JAMES
Greensboro, North Carolina
October 31, 2025
9:07 a.m.

Reported by: Audra M. Smith, RPR, CRR, FCRR
Video by: Rob Patterson

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Page 122 1 property, correct? 2 A Yes. 3 Q What, in your own words, is it that 4 this contract says? 5 MR. BEREZNEY: Objection. Overbroad. 6 Calls for a legal conclusion. 7 BY MR. KLIEBARD: 8 Q Can you give me your general 9 understanding of what this agreement is? 10 A It's an agreement to work with Marcus 11 Clayton, with AlmaJAnnie Realty. 12 Q Okay. And in it you agree to have 13 AlmaJAnnie Realty to be your exclusive broker for 14 the acquisition of 4326 Edith Lane, correct? 15 A Yes. 16 Q Okay. And in paragraph 4(b), just like 17 the last one, it has -- it's titled Compensation 18 of Firm. Do you see that? 19 A Yes, uh-huh. 20 Q And just like the last one, in 4(b), 21 there's -- it says: Buyer agrees that the firm's 22 fee for services rendered shall be in the amount 23 of, there's a blank line, and 3 percent is typed 24 in. 25 Do you see that?	Page 124 1 listing firm is less than the 3 percent fee or no 2 compensation is offered, you agree to pay the 3 difference between the fee and the compensation 4 offered, right? 5 MR. BEREZNEY: Same objection. 6 BY MR. KLIEBARD: 7 Q Do you see that? It's the same 8 language as last time. 9 A Yes, I do see it. 10 Q So did you understand from that 11 language that if Mr. Clayton did not receive the 12 3 percent commission from the seller's broker for 13 4326 Edith Lane or from the seller, that you'd be 14 obligated to pay his buyer-broker commission with 15 your own funds of up to 3 percent. See that? 16 A Yeah. I do see it here, but I can't 17 say that I understood that, you know, at that 18 time. 19 Q Did you ask any questions about that at 20 that time before you signed this agreement? 21 A I did not. 22 Q Okay. Looking back at it now, you are 23 aware -- am I correct -- if Mr. Clayton had not 24 received the 3 percent commission from the seller 25 or the seller's broker for the Edith Lane
Page 123 1 A Yes, I do. 2 Q And "firm" is defined above as 3 AlmaJAnnie Realty, correct? 4 A Yes. 5 Q So by signing this agreement you agree 6 to pay a commission of 3 percent to AlmaJAnnie 7 Realty if you closed on 4326 Edith Lane, correct? 8 A Yes. 9 Q Did you try to negotiate the 3 percent 10 term? 11 A No. 12 Q And I think I know the answer, but I'll 13 ask you: Why not? 14 A I didn't know I could negotiate the 15 3 percent. 16 Q Did you discuss the commission at all 17 with Mr. Clayton? 18 A No, I did not. 19 Q Okay. Just like with the last, 20 Exclusive Buyer Agency Agreement that we already 21 walked through for your property on Kate, as you 22 go down in paragraph 4(b), well (i) says they're 23 first trying to get the fee from cooperating 24 listing firm, and (ii) says if you purchase 25 property where the compensation offered by the	Page 125 1 property, then you would be responsible for paying 2 the difference? 3 A I was under the impression I would have 4 to pay either way, like -- 5 Q Okay. 6 A Uh-huh. 7 Q Okay. Whether the seller paid for it 8 or not, you would have to pay the commission 9 either way? 10 A Right. 11 Q Okay. And for that reason that you 12 would have to pay for it either way, looking back 13 on it now, you would have preferred that 14 Mr. Clayton had his commission paid for by the 15 seller or the seller's agent rather than from your 16 own pocket, correct? 17 MR. BEREZNEY: Objection. 18 A I'm not sure. 19 BY MR. KLIEBARD: 20 Q No opinion on that? 21 A No. 22 Q Okay. Do you know how much Mr. Clayton 23 was eventually paid for the -- strike that. 24 Did you close on the Edith Lane 25 property eventually?

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EXHIBIT C

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Page 1

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

MYA BATTON, AARON BOLTON,
MICHAEL BRACE, DO YEON KIM,
ANNA JAMES, JAMES MULLIS
THEODORE BISBICOS, and DANIEL
PARSONS individually Case No. 1:21-cv-00430
and on behalf of all others
similarly situated, Judge LaShonda A. Hunt
Plaintiffs, Mag. Judge M. David Weisman
vs.

THE NATIONAL ASSOCIATION OF
REALTORS, ANYWHERE REAL ESTATE
INC., RE/MAX, LLC, and KELLER
WILLIAMS REALTY, INC.,

Defendants.

CONFIDENTIAL
VIDEOTAPED ZOOM DEPOSITION
OF DANIEL PARSONS
November 12, 2025

Gordon Rees Scully Mansukhani LLP
88500 Menaul Boulevard NE, Suite A-335
Albuquerque, New Mexico 87112
9:16 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this deposition was:
TAKEN BY: KENNETH M. KLIEBARD
ATTORNEY FOR DEFENDANT, ANYWHERE REAL
ESTATE INC.

REPORTED BY: PAUL BACA, CCR #112
VERITEXT LEGAL SOLUTIONS
500 4th Street, Suite 105
Albuquerque, New Mexico 87102

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Page 94 1 A. Yes. 2 Q. Okay. And Mr. McEnroe is a colleague of 3 mine at Morgan Lewis. 4 Did you see a draft of this section of the 5 letter at any point? 6 A. I don't -- I don't remember. 7 Q. Okay. You will see, so this is -- it 8 says, "Request Number 1 through 6, 13 to 14, 9 documents and communications related to the subject 10 transaction." 11 Do you see that? 12 A. Yes. 13 Q. And the subject transaction is identified 14 as the Skagway Drive property; is that right? 15 A. Yes. 16 Q. Do you know whether the Desert Spirit 17 property is considered a subject transaction for 18 this lawsuit? 19 A. My understanding is that it is not. 20 Q. Okay. And one of the things we had asked 21 the plaintiffs to check with you on is, is whether 22 you had a copy of a -- of an agency agreement that 23 you entered into with Ms. Vigil. 24 And under agency relationship second 25 sentence it says, "Mr. Parsons entered into an	Page 96 1 Q. Fair enough. 2 You can set that one aside. 3 MR. KLIEBARD: Terresa, this is going to 4 be Tab 41. And what did we say this was, 10? 5 MR. BEREZNEY: 10. 6 (Exhibit marked, 10.) 7 Q. (By Mr. Kliebard) I am handing you what we 8 have marked as Exhibit 10. And I will represent to 9 you that this is a blank form New Mexico Buyer's 10 Agreement that was used in the 2021 to 2024 time 11 period in New Mexico. 12 I retrieved this from the New Mexico 13 Association of Realtors web page and saw that this 14 was the approved -- the only form of buyer agency 15 agreement that was approved by the New Mexico 16 Association of Realtors at that time. And I am 17 using this because, you know, we were not able to 18 locate the actual buyer agency agreement that you 19 entered into with Ms. Vigil. 20 Does this appear to be the form of the 21 buyer agency agreement that you entered into with 22 Ms. Vigil for which you cannot locate a copy now? 23 A. It looks familiar. 24 Q. Okay. So let's walk through it together. 25 And, again, sorry that it is blank. I wish I had
Page 95 1 agency agreement but Mr. Parsons does not have a 2 copy of this contract." 3 Did I read that correctly? 4 A. Yes. 5 Q. Okay. So you acknowledge that you entered 6 into a buyer agency agreement with Ms. Vigil, 7 correct? 8 A. Yes. 9 Q. But you just have not been able to locate 10 a copy of it? 11 A. Yes. 12 Q. Do you recall what efforts you have 13 undertaken to locate a copy of the written buyer 14 agency agreement that you entered into with 15 Ms. Vigil? 16 A. Yes. 17 Q. What did you do? 18 A. The search through gmail of her name and 19 where I keep hard copy files. 20 Q. Okay. And that was unsuccessful? 21 A. Correct. 22 Q. So to this day you have not been able to 23 locate the -- the written agency agreement between 24 yourself and Ms. Vigil? 25 A. I stopped looking when I couldn't find it.	Page 97 1 the signed one, but we don't have it. 2 So there is -- at the top it would, it 3 says that the New Mexico Buyer Agency Agreement is 4 between buyer and agency. You would be the buyer 5 and Red Fox Realty would be the agency in this case, 6 correct? 7 MR. BEREZNEY: Object, lack of foundation. 8 A. Yes. 9 Q. (By Mr. Kliebard) Page 2 of 5 of this 10 agency agreement that you said you recognize, it has 11 a Section 4, titled Compensation? 12 A. Is that a question? 13 Q. Yeah. Do you see that? 14 A. Yes. 15 Q. Okay. And then it says, "In the event 16 real property is acquired under Section 2 of this 17 agreement, the buyer agrees to compensate agency 18 under the following terms and conditions." 19 You can select a percentage or flat fee. 20 Do you see that? 21 A. Yes. 22 Q. And to your recollection, the agreement 23 you had with Ms. Vigil was -- it would be a 24 3 percent commission? 25 A. I don't remember.

25 (Pages 94 - 97)

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Page 98 1 Q. Okay. But she told you -- 2 A. Yeah. 3 Q. Okay. So it was 3 percent? 4 A. Yes. 5 Q. So by entering into this type of agreement 6 with Ms. Vigil, you understood, based on what she 7 had already told you, that she would be obtaining a 8 commission of 3 percent if she was successful in 9 your purchase of the Skagway property? 10 MR. BEREZNEY: Objection, lack of action 11 foundation. 12 Go ahead. 13 A. And I don't remember the percentage 14 amount, I just remember asking her to cut it down. 15 Q. (By Mr. Kliebard) Okay. 16 A. So I actually should probably clarify 17 that, that I don't remember saying, hey, it is 18 3 percent. I have a basic understanding, I think it 19 was 3 percent. As far as anything else, I don't -- 20 I don't know. 21 Q. And when you asked her for a discount, did 22 you have a specific percentage in mind that you 23 wanted to pay? 24 A. The same as she did for me when she sold 25 my first house.	Page 100 1 Q. And just so we are clear, you don't recall 2 the specific commission percentage that you agreed 3 to that would have been entered on the written Buyer 4 Agency Agreement? 5 A. I don't. But, again, it would be 6 speculating. 7 Q. Fair enough. If you will look at Page 3 8 of 5, Section 6 of this form Buyer Agency Agreement 9 that you said you recognized, it is titled Agency 10 Disclosure. 11 Do you see that? 12 A. Yes. 13 Q. Okay. And it says, "Buyer," that would be 14 you, "recognizing that under this agreement our 15 relationship has been established between the buyer 16 and agency, Red Fox Real Estate." 17 Do you see that? 18 A. Yes. 19 Q. And then it goes on to say, "The agency's 20 policy regarding other agents includes, but is not 21 limited to, cooperating with other agencies acting 22 as listing agent sharing compensation with listing 23 agent and paying other agencies in the same manner 24 representing their sellers." 25 Do you see that?
Page 99 1 Q. The one and a half percent? 2 A. Uh-huh. 3 Q. And did you have understanding when you 4 were having those discussions with Ms. Vigil as to 5 whether you would be paying her commission 6 out-of-pocket or whether it would be paid for at 7 closing by the seller or the seller's agent? 8 A. Let me clarify, make sure I am 9 understanding your question. You are -- you are 10 asking at the time did I know? 11 Q. Yes. 12 A. At the time I didn't know. 13 Q. Okay. It wasn't important to you? 14 A. What is not important? 15 Q. It wasn't important to you as to whether 16 her commission as a buyer agent would be paid by you 17 at closing or would be paid by the seller or the 18 seller's agent at closing? 19 A. I don't really know if it is, as far as 20 importance on where the compensation comes from, 21 just that she is compensated. There is an amount, 22 so I am not -- I don't know. I apologize if that 23 doesn't answer your question. 24 Q. That is fine. 25 A. Okay.	Page 101 1 A. I do. 2 Q. Okay. And based on that section, you 3 understood at the time you entered into the listing 4 agreement with Ms. Vigil that Red Fox Realty's 5 policy would be to seek to share the commission with 6 the agency representing the sellers. 7 MR. BEREZNEY: Objection, lack of 8 foundation and assumes facts not in evidence. 9 Go ahead. 10 A. You're going to have to repeat that 11 question. 12 Q. (By Mr. Kliebard) Let me rephrase it. 13 That wasn't a good question. 14 You understood from -- from that provision 15 that it was Red Fox Realty's policy that they would 16 seek to share compensation with the listing agent 17 for the Skagway home? 18 MR. BEREZNEY: The same objections. 19 A. No. I am actually kind of confused. 20 Q. (By Mr. Kliebard) Okay. You don't know 21 what commission sharing is? 22 A. Well, I have never operated on commission 23 myself. 24 Q. Sure. 25 A. As far as -- but I think that the

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Page 102 1 beginning of your question is a presumption that I 2 understood things in this and I am not sure. 3 Q. Okay. But we -- we already established 4 that you recognize you are as a general matter, held 5 to the terms of a contract even if you did not read 6 the contract before signing it? 7 MR. BEREZNEY: Objection. 8 A. Yes. 9 Q. (By Mr. Kliebard) Okay. Section 7 of this 10 form agreement that you testified you have 11 recognized is titled Compensation Disclosures. 12 Do you see that? 13 A. Yes. 14 Q. And it says that, "Broker shall not 15 receive compensation for brokerage services from any 16 source that exceeds the amount or rate agreed to by 17 the parties under this agreement." 18 Do you see that? 19 A. Yes. 20 Q. Okay. And I read that correctly? 21 A. Yes. 22 Q. So would you agree with me that what that 23 sentence means is that Ms. Vigil in this case would 24 not be allowed to receive compensation for her work 25 that exceeds the amount or rate agreed to by you and	Page 104 1 compensation or commission from anyone, any source 2 that exceeded the amount that you had agreed to with 3 her. So, for example, if you had agreed to 4 2 percent and the seller was offering 3 percent, she 5 would only seek 2 percent? 6 MR. BEREZNEY: The same objections. 7 A. Yeah, I don't know. 8 Q. (By Mr. Kliebard) Okay. 9 A. I understand the question now. 10 Q. Okay. You just don't know? 11 A. I don't know. 12 Q. Okay. And then the final sentence of this 13 Compensation Disclosure says, "Buyer," that would be 14 you, "is hereby made aware that broker fees and 15 applications are fully negotiable and that is set by 16 law." 17 Did I read that correctly? 18 A. Yes. 19 Q. And is that consistent with your 20 understanding that when you entered into your Buyer 21 Agency Agreement with Ms. Vigil that her fees were 22 fully negotiable and that is set by law? 23 MR. BEREZNEY: The same objections. 24 A. No. 25 Q. (By Mr. Kliebard) Okay. Why is that not
Page 103 1 her under this agreement? 2 MR. BEREZNEY: Object to form, lack of 3 foundation, calls for a legal conclusion, and 4 assumes facts not in evidence. 5 Go ahead. 6 A. Yeah, I am confused on the whole question 7 to be honest with you. 8 Q. (By Mr. Kliebard) Okay. What do you 9 understand that first sentence to mean in 10 Paragraph 7? 11 MR. BEREZNEY: Same objections. 12 Q. (By Mr. Kliebard) This is not a law school 13 final exam. You can use your common sense 14 understanding of it. 15 A. Okay. I read that, like, three times. 16 Can you ask your question one more time. 17 Q. What do understand that first sentence to 18 mean? 19 MR. BEREZNEY: The same objections. 20 A. It is a little confusing, to be honest 21 with you, because of the "from any source that 22 exceeds the amount agreed to by the parties under 23 this agreement." So -- 24 Q. (By Mr. Kliebard) It is fair to say that 25 Ms. Vigil agreed that she would not try to get	Page 105 1 consistent? 2 A. Because I asked her to change and she said 3 she couldn't. 4 Q. Well, that is a negotiation, right? 5 A. I don't know, I think a negotiation is 6 going back and forth. 7 Q. You tried to negotiate with her, right? 8 A. Yes. 9 Q. Okay. And has anyone ever told you that 10 broker commissions are set by law? 11 A. No. 12 Q. Okay. And, in fact, this document says 13 they are not set by law, correct? 14 MR. BEREZNEY: Objection, lack of 15 foundation. It calls for a legal conclusion. 16 A. You're asking me if the document says 17 that? 18 Q. (By Mr. Kliebard) That is what the document 19 says? 20 A. The document says that. 21 Q. And it also says that commissions are 22 fully negotiable, correct? 23 MR. BEREZNEY: The same objections. 24 A. Yes. 25 Q. (By Mr. Kliebard) Okay. I think you can

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