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8  
9 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 ALFIO CONTI, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 SAN FRANCISCO ASSOCIATION OF  
16 REALTORS, NATIONAL ASSOCIATION  
17 OF REALTORS, GREATER SAN DIEGO  
18 ASSOCIATION OF REALTORS,  
19 REALOGY HOLDINGS CORP.,  
20 COMPASS SF I, INC., SOTHEBY'S  
INTERNATIONAL REALTY,  
21 HOMESERVICES OF AMERICA, INC.,  
RODEO REALTY, INC., RE/MAX  
22 HOLDINGS, INC., and KELLER  
WILLIAMS REALTY, INC.,

23 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE CARTWRIGHT  
ACT, THE SHERMAN ACT, THE  
CALIFORNIA UNFAIR  
COMPETITION LAW, AND UNJUST  
ENRICHMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Alfio Conti (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, asserts the following against Defendants San Francisco Association  
3 of Realtors (“SFAR”), National Association of Realtors® (“NAR”), Greater San Diego  
4 Association of Realtors (“SDAR”), Rodeo Realty, Inc., Sotheby’s International Realty,  
5 Compass SF I, Inc., Realogy Holdings Corp., HomeServices of America, Inc., RE/MAX  
6 LLC, and Keller Williams Realty, Inc. (collectively, “Broker Defendants” and together  
7 with SFAR, NAR, and SDAR “Defendants”) based upon personal knowledge, where  
8 applicable, information and belief, and the investigation of counsel.

9 **INTRODUCTION**

10 1. This is a class action on behalf of consumers who have been overcharged  
11 for residential real estate commissions due to the anti-competitive conduct of  
12 Defendants. For decades, real estate agents who belong to the NAR have represented  
13 that the services of agents representing home purchasers are free. In reality, this is far  
14 from the truth, as Defendants’ conduct has resulted in artificially inflated commissions,  
15 which in turn lead to higher home prices paid by buyers.

16 2. The NAR is a trade group with over 1.4 million members. The NAR  
17 amasses a huge war chest by collecting membership dues from real estate agents, which  
18 it uses to lobby federal and state governments on various issues relevant to the real  
19 estate business. In exchange, real estate agents who join the NAR receive benefits,  
20 including access to the “multiple listing service” which is critical to being able to  
21 represent consumers in residential real estate transactions.

22 3. Among other activities, the NAR establishes and enforces rules, policies,  
23 and practices that are then adopted by NAR’s more than 1,400 local associations (also  
24 known as the “Member Boards”) and their affiliated MLSs. These rules, policies, and  
25 practices govern the conduct of the approximately 1.4 million MLS Participants or  
26 REALTORS® affiliated with NAR who are engaged in residential real estate brokerages  
27 across the United States.

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1           4.       When an agent joins the NAR, she or he is required by the NAR to agree to  
2 be bound by the NAR's rules, practices, and guidelines. These rules, which include a  
3 requirement that sellers set aside a portion of the purchase price for buyer agent  
4 commissions, prohibitions on modifying the commission, and permission to filter  
5 listings by commission, all enable NAR, its co-defendants, and its members to maintain  
6 buyer agent commissions at supra-competitive levels unrelated to the services  
7 provided, steer home buyers away from lower commission homes, and drive out  
8 discounters.

9           5.       Brokers use Multiple Listing Services ("MLSs") to share information about  
10 homes for sale. The vast majority of homes in the United States are sold on an MLS. An  
11 MLS is a joint venture among competing brokers to facilitate the publishing and sharing  
12 of information about homes for sale in a geographic area. The NAR, through its  
13 Member Boards, controls a substantial number of the MLSs in the United States. NAR  
14 promulgates rules, policies, and practices governing the conduct of NAR-affiliated  
15 MLSs that are set forth annually in the Handbook on Multiple Listing Policy  
16 ("Handbook").

17           6.       Under the terms of the Handbook, affiliated REALTOR® associations and  
18 MLSs "must conform their governing documents to the mandatory MLS policies  
19 established by [NAR's] Board of Directors to ensure continued status as member boards  
20 and to ensure coverage under the master professional liability insurance program."  
21 (National Association of REALTORS®, Handbook on Multiple Listing Policy 2020  
22 (32nd ed. 2021), at iii).<sup>1</sup>

23           7.       The membership of an MLS is generally comprised of nearly all residential  
24 real estate brokers and their affiliated agents in an MLS's service area. In each area an  
25 MLS serves, the MLS will include or "list" the vast majority of homes that are for sale  
26 through a residential real estate broker in that area. In most areas, the local MLS

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27           <sup>1</sup> Available at [https://cdn.nar.realtor/sites/default/files/documents/2021\\_NAR\\_HMLP\\_210112.pdf](https://cdn.nar.realtor/sites/default/files/documents/2021_NAR_HMLP_210112.pdf). (last visited Mar. 16, 2021).  
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1 provides the most up-to-date, accurate, and comprehensive compilation of the area's  
2 home listings. Listing brokers use the MLS to market sellers' properties to other broker  
3 and agent participants in the MLS and, through those other brokers and agents, to  
4 potential home buyers.

5 8. By virtue of nearly industry-wide participation and control over important  
6 data, MLSs possess and exercise market power in the markets for the provision of real  
7 estate brokerage services to home buyers and sellers in local markets throughout the  
8 country.

9 9. Defendants' unlawful conduct was recently exposed when, on November  
10 19, 2020, the United States filed a civil antitrust Complaint against Defendant National  
11 Association of REALTORS® ("NAR") in Washington, D.C. alleging that a series of rules,  
12 policies, and practices promulgated by the NAR resulted in a lessening of competition  
13 among real estate brokers and agents to the detriment of American home buyers in  
14 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint alleges that  
15 certain NAR rules, policies, and practices have been widely adopted by NAR's  
16 members, including the multiple listing services affiliated with the NAR that facilitate  
17 the publishing and sharing of information about local homes for sale, resulting in  
18 reduced competition among real estate brokers and agents.

19 10. Plaintiff and Class Members in the present case are home buyers who  
20 purchased their homes on MLSs affiliated with and governed by the NAR, such as  
21 Defendants San Francisco Association of Realtors and San Diego Association of  
22 Realtors. Plaintiff brings this action against the NAR, the SFAR, the SDAR, and the  
23 Broker Defendants, for agreeing, combining, and conspiring to impose, implement, and  
24 enforce anticompetitive restraints that reduce price competition in the markets for buyer  
25 agent services in violation of federal and state antitrust law. Defendants' unlawful,  
26 anticompetitive conduct causes home buyers to pay inflated commissions for broker  
27 services that are misrepresented to be free, to pay inflated prices for the homes they  
28 purchase, and to receive reduced quality broker services.

1           11.     The SFAR and SDAR are trade associations of real estate professionals  
2 located in San Francisco and San Diego, respectively. They operate multiple listing  
3 services in the San Francisco Bay Area and in San Diego County.

4           12.     The NAR, the Broker Defendants, and their co-conspirators collectively  
5 possess market power in the market for buyer agent services through their control of  
6 NAR-affiliated MLSs. NAR MLSs are the dominant MLSs in the United States. Even  
7 some independent MLSs require brokers to be members of the NAR to access their  
8 database. Over 200,000 real estate professionals across the United States have registered  
9 with the NAR to access its benefits, including MLSs, which are essential to selling and  
10 finding homes for their clients. Pursuant to Defendants' conspiracy, however, NAR  
11 members may access NAR's benefits, including the right to list their properties on NAR  
12 MLSs, only if they agree to adhere to and implement NAR's rules, policies, and  
13 practices. The NAR and Broker Defendants have adopted a series of rules, policies, and  
14 practices that significantly restrain competition.

15           13.     The NAR imposes certain anticompetitive rules, policies, and practices on  
16 NAR MLSs. The NAR also recommends certain rules, policies, and practices that NAR  
17 MLSs have widely adopted. The NAR's anticompetitive rules, policies, and practices  
18 include:

- 19           a.     requiring every seller-broker, when listing a property on an MLS, to  
20                 make a "blanket unilateral offer[] of compensation" to any buyer agent  
21                 who may find a buyer for the home;
- 22           b.     requiring that the offer of compensation to the buyer agent be a blanket  
23                 offer — *i.e.*, the exact same compensation terms must be simultaneously  
24                 offered to every buyer agent without regard to their experience, the  
25                 services they are providing to the buyer, or the financial arrangement  
26                 they have made with the buyer;

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- c. prohibiting the disclosure of the total commission — the commission due to the seller-broker and the portion of the commission earmarked for the buyer agent — for any listing on an NAR MLS;
- d. permitting buyer agents to misrepresent to buyers that a buyer agent’s services are free;
- e. permitting and enabling buyer agents to filter MLS listings based on the offered commissions and to exclude lower-commission homes from consideration by prospective home buyers;
- f. severely restricting brokers’ ability to modify the buyer agent commission after the buyer agent conveys a purchase offer; and
- g. limiting access to the lockboxes that provide physical access to homes to members of the NAR.

14. The NAR’s rules, policies, and practices have been adopted and enforced by NAR members, including NAR MLSs, and are, therefore, agreements among competing real estate brokers. Defendants’ implementation of and adherence to these agreements is manifestly anticompetitive.

15. Because the Broker Defendants are leading real estate firms in the United States, their participation in the conspiracy is essential to its success. The Broker Defendants have agreed to participate in, facilitate, and implement the conspiracy. Each of the Broker Defendants play an active role in the NAR and has required franchisees, brokerages, and individual realtors to join in and implement the NAR’s anticompetitive agreements as a condition to receiving the benefits of each Broker Defendant’s brand, brokerage infrastructure, and other support.

16. The Broker Defendants use their control of the MLSs and their own governing policies to ensure adherence to NAR rules. For example, Keller Williams’ Policies & Guidelines Manual provides “[w]e expect all of our associates to adhere to the National Association of REALTORS® Code of Ethics.” The Broker Defendants further implement the conspiracy by reviewing and reissuing NAR’s rules at yearly

1 NAR meetings and serving on the boards and committees that enforce compliance with  
2 NAR's rules.

3 17. Defendants' conspiracy has substantially reduced competition in the  
4 market for buyer agent services to the detriment of American home buyers. Specifically,  
5 Defendants' conspiracy enables brokers to raise, fix, and maintain buyer agent  
6 compensation at artificially high levels that would not exist in a competitive  
7 marketplace, which in turn causes home buyers to pay higher prices. The conspiracy  
8 also enables brokers to "steer" home buyers away from lower commission homes. As  
9 a result, home buyers are harmed in at least the following ways:

- 10 a. the conspiracy has inflated the cost of buyer agent services by inflating  
11 buyer agent commissions;
- 12 b. since buyer agent commissions are paid out of the price buyers pay for  
13 their homes, inflated buyer agent commissions in turn have inflated  
14 home prices; and
- 15 c. the conspiracy has reduced the quality of services provided by buyer  
16 agents by, for example, facilitating the steering of home buyers by their  
17 brokers towards higher-commission homes and away from lower-  
18 commission homes, even though such homes may otherwise match  
19 buyers' criteria.

20 18. Plaintiff and the other class members have each incurred at least thousands  
21 of dollars in overcharges as a result of Defendants' conspiracy.

22 19. Defendants' agreements, individually and collectively, unreasonably  
23 restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and the  
24 Cartwright Act. Plaintiff, on behalf of himself and the class, sues Defendants for  
25 violations of the federal antitrust laws and California's Cartwright Act, as alleged  
26 herein, and seeks treble damages, injunctive relief, and the costs of this lawsuit,  
27 including reasonable attorneys' fees.

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**JURISDICTION AND VENUE**

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20. The Court has federal-question jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1337. This case arises under Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1.

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21. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2), because the class contains more than 100 persons, the aggregate amount in controversy exceeds \$5,000,000, and at least one member of each class is a citizen of a State different from Defendants.

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22. This Court has personal jurisdiction over Defendants. Defendants have: (1) transacted business in the United States, including in this District; (2) transacted with members of the Class throughout the United States, including in this District; (3) had substantial contacts with the United States, including in this District; and (4) committed substantial acts in furtherance of their unlawful scheme in the United States, including in this District.

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23. Venue is proper in this District under 28 U.S.C. §1391(b), (c), and (d). Each Defendant transacted business, was found, had agents, and/or resided in this District; a substantial part of the events giving rise to Plaintiff’s claims arose in this District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in this District.

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**INTRADISTRICT ASSIGNMENT**

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24. In compliance with Local Rule 3-2(d), Plaintiff requests that this action be assigned to the San Francisco Division of this District because a substantial part of the events or conduct giving rise to the claims in this action occurred in the County of San Francisco.

26  
**TRADE AND COMMERCE**

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25. The NAR’s anticompetitive rules apply to and have been implemented and enforced by Defendants and coconspirators nationwide. These rules govern the



1 conduct of local NAR associations, local brokers, and local realtors across the United  
2 States. Defendants' conduct alleged herein has, among other harms, inflated buyer  
3 agent commissions nationwide, including in the areas in which the NAR MLSs operate.  
4 Defendant NAR, through its members and other coconspirators, and Broker  
5 Defendants, through their franchisees, brokers, and other coconspirators, are engaged  
6 in interstate commerce and activities affecting interstate commerce in the United States.

## 7 THE PARTIES

### 8 I. Plaintiff

9 26. Plaintiff Alfio Conti is a resident of California. In September 2020, Plaintiff  
10 purchased a home in San Diego, California utilizing a buyer agent. The home Plaintiff  
11 purchased was listed on the Greater San Diego Association of Realtors' Multiple Listing  
12 Service, Inc., which is an NAR member broker and adheres to NAR's guidelines and  
13 policies.

### 14 II. Defendants

15 27. Defendant San Francisco Association of Realtors is a trade association of  
16 real estate professionals located in San Francisco, California. It claims to represent over  
17 4,000 real estate agents in San Francisco and is headquartered at 301 Grove Street, San  
18 Francisco, California 94102. It operates a multiple listing service in the San Francisco  
19 Bay Area. Defendants Compass and Sotheby's International Realty are members of the  
20 San Francisco Association of Realtors.

21 28. Defendant NAR is a trade association. It has over 1.4 million members and  
22 is the leading national trade association of real estate brokers and agents. It oversees  
23 fifty-four state and territorial realtor associations and about 1,200 local realtor  
24 associations. Among its members are licensed residential real estate brokers, including  
25 brokers who provide real estate brokerage services to home sellers, home buyers, or  
26 both.

27 29. Defendant Greater San Diego Association of Realtors is a trade association  
28 of real estate professionals located in San Diego, California. Its website states that

1 “Today, the Greater San Diego Association of REALTORS® is one of the largest  
2 REALTOR® associations in California and the United States with 20,000 members.” It  
3 is headquartered at 4845 Ronson Court, San Diego, California 92111. It operates a  
4 multiple listing service in San Diego County.

5 30. Defendant Realogy Holdings Corp. is the nation’s largest real estate  
6 brokerage company. Realogy is headquartered in Madison, New Jersey, and is a  
7 publicly traded corporation with a market value in excess of \$4 billion and sales of  
8 \$504.21 billion in 2019 alone. Realogy owns, operates, and franchises many real estate  
9 brokerage firms, including Century 21, Coldwell Banker, Sotheby’s International  
10 Realty, The Corcoran Group, Better Homes and Garden Real Estate, ZipRealty, ERA  
11 Real Estate, and Citi Habitats.

12 31. Defendant Compass is one of the nation’s largest real estate brokerages and  
13 its agents are members of the NAR, the California Association of Realtors (“CAR”), and  
14 the San Francisco Association of Realtors. Compass allows its name to be used by  
15 numerous member brokerages, including Compass SF I, Inc. Compass has corporate  
16 offices at 891 Beach Street, San Francisco, California 94109 and 1400 Van Ness Avenue,  
17 San Francisco, California 94109. Compass claims to have engaged in \$23.99 billion in  
18 gross sales volume in its San Francisco Bay Area offices in 2019. At all relevant times,  
19 Compass has been actively involved in efforts to perpetuate the anti-competitive  
20 practices alleged herein in concert with the NAR, CAR, and local real estate associations.  
21 Betty Taisch and Jeannie Anderson, real estate agents with Compass in San Francisco,  
22 have served as Directors of the California Association of Realtors for the 2019-2021 term.  
23 Eugene Pak, a real estate agent with Compass in San Francisco, is serving as a Director  
24 of the CAR for the 2021–2023 term. Richard Sax, a real estate agent with Compass in  
25 San Francisco, is listed as a Director-for-Life of the CAR.

26 32. Defendant Sotheby’s International Realty is one of the nation’s largest real  
27 estate brokerages and is a member of the NAR, the CAR, and the San Francisco  
28 Association of Realtors. Sotheby’s maintains an office at 117 Greenwich Street, San

1 Francisco, California 94111. Sotheby's claims to have engaged in \$2.27 billion in gross  
2 sales volume in its San Francisco Bay Area offices in 2019. At all relevant times,  
3 Sotheby's has been actively involved in efforts to perpetuate the anti-competitive  
4 practices alleged herein in concert with the NAR and local real estate associations. John  
5 Asdourian, a real estate agent with Sotheby's International Realty in San Francisco, has  
6 served as a Director of the CAR for the 2019-2021 term. David Parry, a real estate agent  
7 with Sotheby's International Realty in San Francisco, is serving as a Director of the CAR  
8 for the 2021-2023 term.

9 33. Defendant HomeServices of America, Inc. is one of the nation's largest real  
10 estate brokerages. HomeServices is an affiliate of Berkshire Hathaway headquartered  
11 in Minneapolis, Minnesota, and owns, operates, and franchises many real estate  
12 brokerage firms, including HomeServices, Prudential Real Estate, Real Living, and  
13 Edina Realty. In 2019, HomeServices' annual sales were \$206.08 billion.

14 34. Defendant Rodeo Realty, Inc. is one of the nation's largest independently-  
15 owned real estate brokerages. It is headquartered at 9171 Wilshire Boulevard, Suite 321,  
16 Beverly Hills, California 90210. Rodeo Realty has more than 1,200 licensed agents and  
17 brokers and 12 offices throughout Los Angeles and Ventura Counties.

18 35. Defendant RE/MAX Holdings, Inc. is also one of the nation's largest real  
19 estate brokerages. RE/MAX is headquartered in Denver, Colorado, and is publicly  
20 traded, with a market value of approximately one billion dollars and sales of \$269.93  
21 billion in 2019. It franchises local RE/MAX brokers around the country, which have  
22 approximately 6,800 offices and more than 100,000 sales associates.

23 36. Defendant Keller Williams Realty, Inc. is a privately held company  
24 headquartered in Austin, Texas and is one of the nation's largest real estate brokerages.  
25 Keller Williams franchises local Keller Williams brokers around the country, which  
26 have approximately 940 offices and more than 180,000 sales associates. Keller Williams  
27 has offices in San Francisco located at 1624 California Street, 775 Monterey Blvd., 2207  
28 Lombard Street, 582 Castro Street, and other locations. Keller Williams is operated by

1 holding company KWx, which was formed in 2020. In 2019, Keller Williams realized  
2 \$336.59 billion in sales.

3 **III. Coconspirators**

4 37. Multiple local realtor associations not named as Defendants participated as  
5 coconspirators in the violations alleged herein and performed acts in furtherance  
6 thereof. Specifically, each of the local realtor associations that own and operate the NAR  
7 MLSs agreed to, complied with, and implemented the Buyer Agent Commission Rule.

8 38. The NAR MLSs, among others, have participated as coconspirators in the  
9 violations alleged herein and performed acts in furtherance thereof, including by  
10 adopting the Buyer Agent Commission Rule in their individual rules and regulations.

11 39. Franchisees and brokers of Defendant corporations also participated as  
12 coconspirators in the violations alleged herein and performed acts and made statements  
13 in furtherance thereof. Specifically, each complied with and implemented the Buyer  
14 Agent Commission Rule in the geographic areas where the NAR MLSs operate. In  
15 addition, other brokers in these areas have participated as coconspirators in the  
16 violations alleged herein and performed acts and made statements in furtherance  
17 thereof. These other brokers complied with and implemented the Buyer Agent  
18 Commission Rule in these geographic areas.

19 40. Defendants are jointly and severally liable for the acts of their  
20 coconspirators, whether named or not named as defendants in this Complaint.

21 **BACKGROUND ON THE NAR AND THE REAL ESTATE INDUSTRY**

22 **I. The NAR and Affiliated MLSs**

23 41. The NAR is the largest trade association in America, composed of  
24 REALTORS® (real estate agents registered with the NAR), including residential and  
25 commercial brokers, salespeople, property managers, appraisers, counselors, and  
26 others engaged in the real estate industry across the United States. Members belong to  
27 one or more of NAR's approximately 1,200 local associations or boards and/or 54 state  
28 and territory associations. The NAR's local associations and affiliated MLSs govern the

1 conduct of NAR’s 1.4-million-member REALTORS®.

2 42. The NAR establishes and enforces rules, policies, and practices that are  
3 adopted by NAR’s local associations and their affiliated MLSs and, in turn, must be  
4 complied with by REALTORS®. Membership in the NAR provides real estate  
5 professionals with a number of benefits, including liability insurance, access to MLSs,  
6 trainings, and more.

7 43. Home sellers and buyers are typically represented by brokers, including  
8 those registered with the NAR. According to the NAR, in 2020, 89% of sellers sold their  
9 home with assistance from a seller-broker, and 88% of buyers purchased their home  
10 with assistance from a buyer agent.

11 44. State licensing laws regulate who can represent sellers and buyers in the  
12 real estate market. Two categories of entities may be licensed under state law: (1) the  
13 real estate broker (also known as a “brokerage firm”); and (2) the individual real estate  
14 licensee or agent. Real estate brokers are legally responsible for the activities of their  
15 licensed agents.

16 45. Licensed brokers are the only entities permitted by state law to be paid to  
17 represent buyers or sellers in a real estate transaction. For that reason, all contracts for  
18 real estate services must be with brokers, not agents, and all payments are made to  
19 brokers, not agents. Brokerage firms pay their individual agents. For ease of reference,  
20 this Complaint generally refers to brokers and agents interchangeably.

21 46. Brokers typically share and find information about houses for sale on an  
22 MLS. An MLS is a database of properties listed for sale in a defined region that is  
23 accessible to real estate brokers and their individual realtors so long as they comply  
24 with the rules of the MLS. MLSs function as joint ventures between real estate brokers  
25 to publish and share information about property listings in specified geographic areas.

26 47. MLSs also act as the main sources of listings for online websites, such as  
27 Zillow, through which many prospective home buyers find homes. However, the local  
28 MLS provides the most up-to-date, accurate, and comprehensive compilation of the

1 area's home listings.

2 48. Due to near industry-wide participation and control over important data,  
3 brokers offering MLSs possess and exercise power in the markets for the provision of  
4 real estate brokerage services to home buyers and sellers throughout the country. If a  
5 seller-broker does not list a client's property on an MLS, many buyer agents will not  
6 show that property to prospective buyers.

7 49. The NAR controls a substantial number of the MLSs in the United States.  
8 The NAR MLSs are owned and operated by local realtor associations that are members  
9 of, and governed by, NAR. NAR's map of affiliated MLSs reflects NAR's wide reach.<sup>2</sup>

10 50. The NAR promulgates rules, policies, and practices that govern the  
11 conduct of NAR-affiliated MLSs that are set forth annually in the NAR's Handbook.  
12 Under the terms of the Handbook, NAR members and MLSs must conform their  
13 policies with those established by NAR's Board of Directors.

14 51. The NAR and its affiliated REALTOR® associations and MLSs enforce the  
15 Handbook's rules, policies, and practices as well as the rules, policies, and practices set  
16 forth in NAR's Code of Ethics. NAR's Code of Ethics states that "[a]ny Member Board  
17 which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to  
18 the business activities of its members may, after due notice and opportunity for hearing,  
19 be expelled by the Board of Directors from membership" in the NAR. (National  
20 Association of REALTORS®, Procedures for Consideration of Alleged Violations of  
21 Article IV, Section 2, Bylaws).

## 22 **II. Broker Compensation**

23 52. The standard practice in the residential real estate industry is to  
24 compensate brokers and agents with commissions that are calculated as a percentage of  
25 a home's sale price. Commissions are paid when the home sells.

26 53. The seller-broker's compensation is specified in a listing agreement, a

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27 <sup>2</sup> MLS Map of the National Association of Realtors®, NAR, [https://www.nar.  
28 realtor/mls-map-of-the-national-association-of-realtors](https://www.nar.realtor/mls-map-of-the-national-association-of-realtors) (last visited Jan. 12, 2021).

1 contract between the seller and the seller-broker that details the terms of the seller-  
2 broker services, such as requiring that property be listed on an MLS. The listing  
3 agreement specifies the total commission that a home seller will pay to the seller-broker,  
4 often with a portion of that amount earmarked to be paid to the buyer agent in the event  
5 the buyer has a broker.

6 54. The buyer agent is typically compensated with a portion of the total  
7 commission paid to the seller-broker, which the buyer agent receives if her client  
8 purchases the seller's home. When a buyer retains a broker, the buyer enters into a  
9 contract with that broker, which typically discloses that the buyer agent will be  
10 compensated out of the total commission.

11 55. The following example illustrates how this process typically works:

- 12 • A homeowner enters into a contract with a seller-broker, in which the  
13 seller agrees to pay the seller-broker six percent in total commissions in  
14 exchange for marketing and facilitating the sale of the home.
- 15 • The seller-broker then makes a blanket, unilateral offer of a three  
16 percent commission to every buyer agent when it lists the home on the  
17 MLS.
- 18 • A buyer agent shows the property to a buyer client, who buys the home  
19 for \$500,000.
- 20 • The buyer pays the \$500,000 purchase price into an escrow account. The  
21 escrow company then simultaneously transmits the seller-broker's  
22 commission (three percent of the sales price or \$15,000) to the seller-  
23 broker, the buyer agent commission (three percent of the sales price or  
24 \$15,000) to the buyer agent, and the net amount due to the seller.

25 56. Buyer agent fees are paid out of the funds from the purchase price of the  
26 house — a price the home buyer pays. But, because the buyer agent commission is  
27 ostensibly paid by the seller, buyers do not necessarily realize that the broker  
28 commission is added to the purchase price of the home such that buyers are sharing the

1 cost of the commission with the seller. This fact is obscured further by NAR's Code of  
2 Ethics, which permits and encourages buyer agents to tell their clients that their services  
3 are free. In fact, home buyers pay a high price for these "free" services in the form of  
4 super competitive purchase prices and buyer agent commission rates as well as reduced  
5 quality of buyer agent services.

### 6 **III. Defendants' Market Power in the Market for the Provision of Buyer Agent** 7 **Services**

8 57. The relevant service market for the claims asserted herein is the market for  
9 buyer agent services. The relevant geographic markets for the claims asserted herein  
10 are the geographic areas in which NAR MLSs operate. This market comprises the  
11 bundle of services provided to home buyers by residential real estate brokers with  
12 access to the NAR MLSs. Defendants' control of the NAR MLSs gives Defendants the  
13 ability to impose the Buyer Agent Commission Rule and other anticompetitive NAR  
14 rules on class members and other market participants. Access to NAR MLSs is critical  
15 for brokers to compete and to assist home buyers where those MLSs operate.

16 58. Upon information and belief, NAR and the Broker Defendants, through  
17 their coconspirator franchisees and other conspiring brokers where the NAR MLSs  
18 operate, collectively provide the majority of the residential real estate broker services in  
19 these areas.

20 59. Defendants and their coconspirators collectively have market power in  
21 each relevant market through their control of the local MLS and their dominant share  
22 of the local market.

23 60. Any buyer agents in the areas in which the NAR MLSs operate who wished  
24 to compete outside of Defendants' conspiracy would face insurmountable barriers.  
25 Defendants' control of the NAR MLSs through themselves and their coconspirators  
26 means that non-conspiring brokers would need to establish an alternative listing service  
27 to compete with the conspiring brokers, or alternatively, attempt to compete without  
28 access to a listing service. A seller-broker who represented a seller without using a



1 listing service would lose access to the large majority of potential buyers, and a buyer  
2 agent who represented a buyer without using a listing service would lose access to the  
3 large majority of sellers. Brokers cannot compete effectively without access to a listing  
4 service.

5 61. For an alternative listing service to compete effectively with one of the NAR  
6 MLSs, the alternative would require listings as comprehensive as the NAR MLS.  
7 Brokers and their individual realtors who currently profit from inflated buyer agent  
8 commissions have minimal incentive to participate in an alternative listing service that  
9 would generate lower buyer agent commissions and lower total commissions. Further,  
10 many buyers would be very reluctant to retain a buyer agent operating on an alternative  
11 listing service that required them to pay the buyer agent commission when other buyer  
12 agents operating on the NAR MLSs represent that they are entirely compensated by  
13 home sellers. Accordingly, seller-brokers on an alternative listing service would  
14 struggle to attract buyer agents and their buyer clients. And buyer agents would be  
15 reluctant to use a listing service with limited properties. Accordingly, a listing service  
16 attempting to compete with any of the NAR MLSs would likely fail to attract enough  
17 property listings to operate profitably and act as a competitive constraint on the  
18 incumbent MLSs. The absence of listing services that effectively compete with the NAR  
19 MLSs (or other MLSs) reflects very substantial barriers to entry.

20 62. The NAR also advises MLSs that non-compete agreements are a “critical  
21 component” of any agreement between MLSs and third-party websites, such as Zillow,  
22 that may wish to access the MLSs data. The NAR’s checklist of “critical components”  
23 states that any non-compete should include provisions that the third-party website  
24 “must agree they will not compete with the brokerage firms or MLS by either becoming  
25 a licensed brokerage firm or by providing offers of cooperation and compensation.”  
26 Further, the NAR advises that the non-compete agreement should require the third-  
27 party website to agree not to “use the data in a manner that is similar to a Multiple  
28 Listing Service.” Thus, the NAR, in furtherance of the conspiracy, has advised MLSs to

1 take affirmative steps to prevent third-party websites from becoming competitors.

2 **THE ANTICOMPETITIVE AGREEMENTS**

3 63. NAR's Handbook, Code of Ethics, and Standards of Practice, among other  
4 policies, impose rules, policies, and practices on all NAR members, including NAR  
5 MLSs. Certain of these rules, practices, and policies significantly restrain competition  
6 for the provision of buyer agent services and harm home buyers across the United  
7 States.

8 64. Compliance with NAR's rules is mandatory for NAR membership. NAR's  
9 Code of Ethics states that "[a]ny Member Board which shall neglect or refuse to  
10 maintain and enforce the Code of Ethics with respect to the business activities of its  
11 members may, after due notice and opportunity for hearing, be expelled by the Board  
12 of Directors from membership in the National Association."

13 65. Additionally, NAR's Handbook on Multiple Listing Policy provides that  
14 "Association and Association-owned MLSs must conform their governing documents  
15 to the mandatory MLS policies established by the National Association's Board of  
16 Directors to ensure continued status as member boards and to ensure coverage under  
17 the master professional liability insurance program."

18 66. NAR's rules and policies include: (i) the Buyer Agent Commission Rule;  
19 (ii) a prohibition on disclosing to buyers the total commissions paid to brokers upon the  
20 sale of a house ("Concealment Rule"); (iii) rules permitting and encouraging buyer  
21 agents to represent to home buyers that their services are free ("Free-Service Rule"); (iv)  
22 rules allowing and making it easy for buyer agents to filter MLS listings to only those  
23 with high commissions ("Filter Rules"); (v) rules restricting sellers and seller-brokers'  
24 ability to modify the commissions offered to buyer agents after an offer to purchase the  
25 listed home has been made ("Commission Modification Rules"); and (vi) the restriction  
26 of access to lockboxes, which hold the keys to houses for sale, to only NAR members  
27 ("Lockbox Policy").

28 ///

1           67.     The NAR and its affiliates have a clear agreement: NAR members can  
2 participate in the MLS, and gain the benefits provided by NAR and the NAR MLS, as  
3 long as they agree to adhere to and enforce the anticompetitive restraints set forth in  
4 NAR's rules, practices, and policies. Thus, NAR and the NAR MLSS' adoption and  
5 enforcement of these rules, policies, and practices reflect concerted action between  
6 horizontal competitors and constitute agreements among competing real estate brokers  
7 that reduce price competition among brokers and lead to higher prices and lower  
8 quality service for American home buyers and others.

9           **I.     The Buyer Agent Commission Rule**

10           68.     The Handbook sets forth the Buyer Agent Commission Rule as follows: "In  
11 filing a property with the multiple listing service of an association of REALTORS®, the  
12 participant of the service is making blanket unilateral offers of compensation to the  
13 other MLS participants, and shall therefore specify on each listing filed with the service,  
14 the compensation being offered to the other MLS participants."

15           69.     The Handbook further states that "multiple listing services shall not  
16 publish listings that do not include an offer of *compensation expressed as a percentage*  
17 *of the gross selling price or as a definite dollar amount*, nor shall they include general  
18 invitations by listing brokers to other participants to discuss terms and conditions of  
19 possible cooperative relationships."

20           70.     This practice is virtually universally adopted. Indeed, "[e]very MLS in the  
21 U.S. requires that listing brokers offer compensation to buyer agents." This mandate is  
22 adhered to by Defendants SFAR and SDAR.

23           71.     Defendant SDAR's rules state the following:

24           **Rule 7.12 Unilateral Contractual Offer.** In filing a property with the MLS,  
25 the broker participant makes a blanket unilateral contractual offer of  
26 compensation to the other MLS broker participants for their services in  
27 selling the property. Except as set forth in Rule 7.15 below or pursuant to  
28 California Civil Code § 1087, *a broker participant must specify some*

1        *compensation to be paid to the buyer's agent or a subagent and the offer of*  
2        *compensation must be stated in one, or a combination of, the following*  
3        *forms (1) a percentage of the gross selling price; or (2) a definite dollar*  
4        *amount. The amount of compensation offered through the MLS may not*  
5        *contain any provision that varies the amount of compensation offered*  
6        *based on conditions precedent or subsequent or on any performance,*  
7        *activity or event. Furthermore, the MLS reserves the right to remove a*  
8        *listing from the MLS database that does not conform to the requirements of*  
9        *this section.*<sup>3</sup>

10       72. Defendant SFAR has an almost identical Rule 7.12 that its members must  
11 adhere to:

12        **7.12 Unilateral Contractual Offer; Subagency Optional.** In filing a  
13 property with the MLS, the Broker Participant makes a blanket unilateral  
14 contractual offer of compensation to the other MLS Broker Participants for  
15 their services in selling the property. Except as set forth in Rule 7.15, *a*  
16 *Broker Participant must specify some compensation to be paid to either a*  
17 *buyer's agent or a subagent and the offer of compensation must be stated*  
18 *in one, or a combination of, the following forms (1) a percentage of the gross*  
19 *selling price; or (2) a definite dollar amount. The amount of compensation*  
20 *offered through the MLS may not contain any provision that varies the*  
21 *amount of compensation offered based on conditions precedent or*  
22 *subsequent or on any performance, activity or event. Furthermore, the MLS*  
23 *reserves the right to remove a listing from the MLS database that does not*  
24 *conform to the requirements of this section.*

25       73. As a result of the Rule, seller-brokers must make "blanket unilateral  
26

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27       <sup>3</sup> Available at  
28 [http://media.sdar.com/media/Sandicor\\_Rules\\_and\\_Regulations\\_Document.pdf](http://media.sdar.com/media/Sandicor_Rules_and_Regulations_Document.pdf) (last  
visited March 17, 2021).

1 unconditional offers of compensation to their adversarial buyer agents.” These blanket  
2 offers relieve buyer agents of the need to compete on things like price and quality of  
3 services. Thus, the Buyer Agent Commission Rule reduces competition in the market  
4 for buyer agent services and harms home buyers in a number of ways.

5 74. First, through the Buyer Agent Commission Rule, Defendants act to sustain  
6 high commission rates for broker services. This commission rate is then baked into the  
7 price of the house, artificially raising home prices.

8 75. The Consumer Federation of America has explained, “[t]ypically, on either  
9 a 5% or 6% commission, 3% will be offered to brokers with buyer clients, and that  
10 commission split is disclosed to brokers on real estate firm and multiple listing service  
11 databases.” The listing of the 3% split “then acts as a powerful force to discourage lower  
12 splits of 2% or even 1% because listing brokers, and their sellers, fear that properties  
13 carrying these lower splits will not be shown. As a result, ‘a listing broker lists a split  
14 below’ the standard industry level ‘at their, and their clients’, peril because of the risk  
15 that traditional brokers working with buyers will avoid this property. ... This informal  
16 discrimination against price competitors is the most important factor that allows  
17 dominant brokers to maintain high and uniform prices.” As Defendant Keller Williams  
18 has acknowledged in its instructions to seller-brokers regarding what to tell home  
19 sellers: “[y]ou’re putting yourself at a disadvantage competitively when you reduce  
20 your commission.”

21 76. Additionally, because the NAR and its members offer blanket, unilateral,  
22 unconditional commissions, brokers need not compete with respect to the quality of  
23 services in order to obtain higher commissions. For example, novice brokers who have  
24 just received their licenses can charge the same prices as highly skilled, long-practicing  
25 brokers. Similarly, to the extent a broker commission is calculated as a “percentage of  
26 the gross selling price,” a buyer agent who facilitates the purchase of an \$800,000 home  
27 will receive potentially two times as much as a buyer agent who facilitates the purchase  
28 of a \$400,000 home, regardless of whether the higher compensation is commensurate

1 with the amount and type of services provided.

2 77. Indeed, the Consumer Federation has called brokers “a price-setting  
3 cartel.” As the Federation explained, “[i]n a rational pricing system, home sellers and  
4 buyers would each pay for real estate brokerage services they receive.” But, “[i]f sellers  
5 and buyers each separately negotiated compensation with their brokers, uniform []  
6 commissions would quickly disappear.”

7 78. Second, buyer agents “steer” home buyers to residential properties that  
8 offer higher commissions. Steering of home buyers to high commission homes  
9 reinforces high commission rates. It also reduces the quality of buyer agent services by  
10 incentivizing buyer agents to limit the homes they show prospective buyers to those  
11 that offer high commissions. Home buyers are therefore both more likely to pay a  
12 higher price for their home (since the buyer agent commission is baked in to the sale  
13 price), and less likely to be matched with the optimal home—the exact task the buyer  
14 agent is paid to do.

15 79. Fear of having buyers steered away from a property is also a strong  
16 deterrent to sellers who would otherwise offer lower buyer agent commissions, which  
17 further contributes to higher prices for buyer agent services.

18 80. The prevalence of such steering has been widely reported in government  
19 reports, economic research, and the trade press and is well understood by NAR, the  
20 Broker Defendants, and their coconspirators. For example, according to course  
21 materials provided at Keller Williams University, offering less than three percent in  
22 buyer agent commission on an MLS “will reduce the number of willing and qualified  
23 buyers that will see your home.”

24 81. Steering is facilitated for buyer agents by the fact that the blanket  
25 commission offer must be made available to every buyer agent using the MLS. NAR’s  
26 requirement that offers of compensation be expressed in specific dollar or percentage  
27 terms enables buyer agents to easily compare the financial compensation offered to  
28 them by home sellers and steer their clients to higher commission homes.

1           82.     Thus, the Rule is designed to create tremendous pressure on sellers to offer  
2 the high, standard commission and to act as a powerful deterrent to anyone who may  
3 attempt to offer a discounted commission. As one commentator explained:  
4 “[e]ssentially, the MLS listing acts as a tool which competing brokers can use to help  
5 enforce a near uniform commission rate and drive out discounters.”

6           83.     The Broker Defendants’ franchisees, agents, and other coconspirators have  
7 also utilized software technology to help facilitate steering based on MLS commission  
8 data and to impede buyers from learning about properties that offer discount buyer  
9 agent commissions. For example, NAR’s affiliate, the Greater Las Vegas Association of  
10 Realtors (“GLVAR”) uses for its MLS a software program called Matrix, which was  
11 designed and sold by CoreLogic. CoreLogic provides software and data services to  
12 most, if not all, of the NAR MLSs, including Defendant SDAR. Matrix allows brokers  
13 to provide tailored electronic listings to their buyer clients. Matrix automatically  
14 generates and regularly sends emails to buyer clients that describe properties for sale  
15 that match their search criteria. When brokers set up the Matrix program for their buyer  
16 clients, one of the fields in the software allows the brokers to filter listings according to  
17 the value of the buyer agent commission being offered. In other words, brokers can  
18 program the software to only send property listings to buyers that promise buyer agent  
19 commissions above a specified value.

20           84.     GLVAR elected to adopt a version of the Matrix software that permitted  
21 brokers to exclude properties offering discount buyer agent commissions from Matrix-  
22 generated emails to buyer clients. A number of franchisees and Broker Defendant  
23 agents in at least the area covered by Greater Las Vegas have trained their realtors to  
24 insert 2.5 percent or higher as the minimum permissible buyer agent commission when  
25 using the Matrix system to send property listings to buyer clients. As a consequence,  
26 unbeknownst to them, buyer clients of those realtors often do not receive Matrix-  
27 generated emails that include properties offering a buyer agent commission of less than  
28 2.5 percent, even if that property perfectly matches the buyers’ search criteria.

1           85. As part of the DOJ's investigation into the NAR and anticompetitive  
2 practices in the real estate industry, the DOJ served a Civil Investigative Demand  
3 ("CID") on CoreLogic directing it to produce "all documents relating to any MLS  
4 member's search of, or ability to search, MLS listings on any of the Company's multiple  
5 listing platforms, based on (i) the amount of compensation offered by listing brokers to  
6 buyer agents; or (ii) the type of compensation, such as a flat fee, offered by listing  
7 brokers to buyer agents."

8           86. By encouraging and facilitating steering, and adhering to the "standard  
9 real estate commission," the Buyer Agent Commission Rule deters downward  
10 departures from the standard commission and enables brokers to avoid doing business  
11 with, or otherwise retaliate against, buyer agents who try to compete by offering  
12 significant discounts.

13           87. There is no pro-competitive justification for the Buyer Agent Commission  
14 Rule. Until the early 1990s, all brokers were seller-brokers or subagents of seller-  
15 brokers. Under this "almost universal sub agency system ... brokers, even those  
16 working solely with buyers, were legally obligated to represent the interests of sellers."  
17 Because "nearly all brokers involved in transactions represented the seller either as the  
18 seller's agent or as the subagent of the listing [*i.e.*, seller's] broker," the seller's broker  
19 was paid by the seller and would then compensate the subagent working with the  
20 buyer.

21           88. With the emergence of brokers who were no longer sub-agents of the  
22 seller's broker but were instead working for the buyer, there was no justification for  
23 requiring buyer agents' commissions to be paid as a portion of the total commission.  
24 One industry participant acknowledged, "[w]ith the demise of subagency, there is little  
25 reason to keep inter-broker compensation. It does not make sense for listing brokers to  
26 pay buyers' brokers for the services the latter provides to buyers." As another  
27 commentator has written: the practice of "sellers' brokers specifying the fees that  
28 buyers' brokers charge to the latter's own clients, should be recognized" as "at least an



1 attempt to fix market prices. ... There is no longer any reason to permit listing brokers  
2 [*i.e.*, seller-brokers] to set the default prices that these competing buyers' brokers charge  
3 to serve their own customers. The elimination of inter-broker compensation would  
4 diminish the ability of traditional brokers to frustrate vigorous price competition, and  
5 thus likely lead to a dramatic fall in broker revenues."

6 89. The reason for the Buyer Agent Commission Rule is clear: to maintain high  
7 broker commissions for NAR members at the expense of home buyers. In the absence  
8 of the Rule, buyers rather than sellers would negotiate buyer agent commissions, and  
9 brokers would compete with each other by offering lower commission rates and/or  
10 higher quality services.

11 **A. The Commission Concealment Rule**

12 90. The anticompetitive effects of NAR's Buyer Agent Commission Rule are  
13 magnified by additional rules adopted and enforced by Defendants. NAR's  
14 Commission Concealment Rule prohibits disclosing to prospective buyers the total  
15 commissions offered to buyer agents. So, while buyer agents can see the commission  
16 they will earn if their client purchases a property, NAR MLSs conceal this fee from the  
17 home buyers who will actually pay the commission through the home purchase price.

18 91. NAR's Commission-Concealment Rules lessen competition among buyer  
19 brokers by reducing their incentives to compete against each other by offering rebates.  
20 These rules also make potential home buyers both less likely and less able to negotiate  
21 a rebate off the offered commission. NAR's Commission-Concealment Rules encourage  
22 and perpetuate the setting of persistently high commission offers by sellers and their  
23 listing agents. This contributes to higher prices for buyer broker services.

24 92. The NAR has instituted a series of rules ensuring commission concealment  
25 from buyers. These rules are laid out in several places in NAR's Handbook, including  
26 Policy Statement 7.23, which states "the multiple listing service shall not publish the  
27 total negotiated commission on a listing which has been submitted to the MLS by a  
28 participant. The multiple listing service shall not disclose in any way the total

1 commission negotiated between the seller and the listing broker.”

2 93. Simultaneously, the NAR rules mandate price information sharing among  
3 brokers through its MLS rules. This type of one-way information exchange agreement  
4 eliminates the need for buyer agents to compete on price by offering rebates or accepting  
5 lower commissions. It also encourages and enables brokers to set persistently high  
6 commission offers, leading to higher prices for buyer agent services. Additionally, since  
7 buyers cannot see commission offers, they cannot detect or resist steering. As explained  
8 above, steering results in higher prices and reduces the quality of buyer agent services  
9 for home buyers.

## 10 **II. The NAR’s Free-Service Rule**

11 94. The NAR’s Free-Service Rule, which has been widely adopted by NAR  
12 MLSs, encourages buyer agents to mislead buyers into thinking that the buyer agent’s  
13 services are free when they are not.

14 95. Until January 2021, NAR Ethics Standard 12-2 stated “REALTORS® may  
15 represent their services as ‘free’ or without cost even if they expect to receive  
16 compensation from a source other than their client provided that the potential for the  
17 REALTOR to obtain a benefit from a third party is clearly disclosed at the same time.”  
18 Because buyer agents governed by NAR are technically paid through the seller-broker,  
19 those buyer agents can always tell their buyer clients that their services are free. As a  
20 result, buyers think they are paying nothing for buyer agent services.

21 96. Because buyers do not believe they are paying anything for brokerage  
22 services, they are unlikely to (1) attempt to negotiate a lower buyer agent commission  
23 and/or (2) search for or find attractive buyer agent rebate offers or other discounts. In  
24 these ways, NAR’s Free-Service Rule leads to higher prices for services provided by  
25 buyer agents.

## 26 **III. The NAR’s Commission Filter Rules**

27 97. The NAR’s Commission Filter Rules allow buyer agents to filter MLS  
28 listings that will be shown to buyers based on the level of buyer agent commissions

1 offered. Some MLSs further permit buyer agents not to show certain homes to potential  
2 home buyers if the buyer agent will make less money because of lower commissions,  
3 even though those homes otherwise meet the buyer's search criteria.

4 98. For example, according to Policy Statement 7.58 of NAR's Handbook  
5 "Participants may select the IDX listings they choose to display based only on objective  
6 criteria including ... cooperative compensation offered by listing brokers."

7 99. These Filter Rules, which have been widely adopted by NAR MLSs,  
8 facilitate steering by helping buyer agents selectively conceal from potential home  
9 buyers any property listings offering lower buyer agent commissions. This reduces the  
10 quality of buyer agent services and raises prices for buyer agent services for home  
11 buyers.

#### 12 **IV. Commission Modification Rules**

13 100. Even if a home buyer were to obtain enough information to negotiate a  
14 lower buyer agent commission, NAR's ethics rules expressly prohibit buyer agents from  
15 attempting to reduce buyer agent commissions offered on MLSs through the  
16 submission of purchase offers. While the NAR claims that brokers can negotiate their  
17 compensation at any time during the transaction, NAR's Standard of Practice 16-16  
18 states: "REALTORS®, acting as subagents or buyer/tenant representatives or brokers,  
19 shall not use the terms of an offer to purchase/lease to attempt to modify the listing  
20 broker's offer of compensation to subagents or buyer/tenant representatives or brokers  
21 nor make the submission of an executed offer to purchase/lease contingent on the listing  
22 broker's agreement to modify the offer of compensation." In other words, it is an  
23 unequivocal violation of NAR's ethics rules for a buyer agent to even present an offer  
24 to a seller that is conditional on the seller reducing the buyer agent commission.

25 101. Defendant SDAR's rules explicitly state that:

26 "The amount of compensation offered through the MLS may not contain  
27 any provision that varies the amount of compensation offered based on  
28 conditions precedent or subsequent or on any performance, activity or

1 event.”

2 102. Defendant SFAR’s rules similarly mandate that:

3 “The amount of compensation offered through the MLS may not contain  
4 any provision that varies the amount of compensation offered based on  
5 conditions precedent or subsequent or on any performance, activity or  
6 event.”

7 103. To the extent buyer agents do seek to modify buyer agent commissions, the  
8 NAR illogically instructs buyer agents to attempt those modifications before even  
9 showing the property to any potential buyers. By requiring buyer agents willing to  
10 reduce buyer agent commissions to request those reductions prior to even showing the  
11 property to a potential buyer, NAR forecloses virtually all negotiation over the buyer  
12 agent commission. To comply, a buyer agent would effectively need to contact a seller-  
13 broker on his own to negotiate a reduction to his own commission before his client has  
14 even seen the potential home.

15 104. The NAR’s rules also restrain negotiation of the buyer agent commission  
16 by providing that after the seller has received purchase offers, the seller-broker is  
17 prohibited from attempting to unilaterally modify the buyer agent commission that was  
18 offered on the MLS. NAR Standard of Practice 3-2 states: “Any change in compensation  
19 offered for cooperative services must be communicated to the other REALTOR® prior  
20 to the time that REALTOR® submits an offer to purchase/lease the property. After a  
21 REALTOR® has submitted an offer to purchase or lease property, the listing broker may  
22 not attempt to unilaterally modify the offered compensation with respect to that  
23 cooperative transaction.”

24 105. Consistent with the NAR’s rules, the SFAR’s rules state:

25  
26 **Rule 7.16 Changes to Offer of Compensation by Listing Broker to All**  
27 **Broker Participants.** The listing broker may, from time to time, adjust the  
28 published compensation offered to all MLS Broker Participants with respect

1 to any listing by changing the compensation offered on the MLS or  
2 providing written notice to the MLS of the change. Any change in  
3 compensation will be effective after the change is published in the MLS,  
4 either through electronic transmission or printed form, whichever occurs  
5 first. The listing broker may revoke or modify the offer of compensation in  
6 advance as to any individual Broker Participant in accordance with general  
7 contract principles but *in no event shall the listing broker revoke or modify*  
8 *the offer of compensation without the buyer broker's consent* later than the  
9 time the buyer broker (a) physically delivers or transmits by fax or e-mail  
10 to the listing broker a signed offer from a prospective buyer to purchase the  
11 property for which the compensation has been offered through the MLS, or  
12 (b) notifies the listing broker in person or by telephone, or by electronic  
13 correspondence (fax, email, SMS, *et. al.*) that the buyer broker is in  
14 possession of a signed offer from a prospective buyer to purchase the  
15 property for which the compensation has been offered through the MLS  
16 and is awaiting instructions from the listing broker as to the manner of  
17 presentation or delivery of that offer. Any independent advance  
18 revocations, modifications of the offer or agreements between real estate  
19 brokers are solely the responsibility of such brokers and shall not be  
20 submitted to, published by, or governed in any way by the service.

21 106. Defendant SDAR has an identical Rule 7.16 which states:  
22

23 The listing broker may revoke or modify the offer of compensation in  
24 advance as to any individual broker participant in accordance with general  
25 contract principles but in no event shall the listing broker revoke or modify  
26 the offer of compensation without the cooperating broker's consent later  
27 than the time the cooperating broker (a) physically delivers or transmits by  
28 fax or email to the listing broker a signed offer from a prospective buyer to

1 purchase the property for which the compensation has been offered  
2 through the MLS, or (b) notifies the listing broker in person or by telephone,  
3 fax or email that the cooperating broker is in possession of a signed offer  
4 from a prospective buyer to purchase the property for which compensation  
5 has been offered through the MLS and is awaiting instructions from the  
6 listing broker as to the manner of presentation or delivery of that offer.

7  
8 107. As another example, MLS Listings Inc., one of the largest MLSs in Northern  
9 California states the following on its website to help explain the governing NAR rules:

10 **Can I change my offer of compensation that I had offered to the**  
11 **cooperating agent in the MLS after the agent produces an offer signed by**  
12 **the buyer?**

13 No. In no event shall the listing broker revoke or modify the offer of  
14 compensation later than the time the cooperating broker produces a  
15 prospective buyer who has signed an offer to purchase the property for  
16 which the compensation has been offered through the MLS (9.8).

17 108. The NAR imposes yet another restraint on negotiation by making it  
18 unethical for a buyer agent to urge the buyer to negotiate directly with the seller to  
19 reduce commissions. Since the vast majority of home buyers have limited or no  
20 familiarity with this market and believe that the buyer agent's services to them are  
21 "free," this restriction further restrains negotiations regarding buyer agent  
22 commissions.

## 23 **V. The NAR's Lockbox Policy**

24 109. The NAR and its members have further reduced competition for buyer  
25 agent services by limiting access to lockboxes to only those real estate brokers who are  
26 members of an NAR MLS. Real estate brokers keep, with permission from the sellers,  
27 keys to the houses for sale in lockboxes. This allows brokers to provide potential buyers  
28 with access to the homes while keeping the homes secure. The lockboxes are accessed  
by a real estate broker using a numerical code or digital Bluetooth® 'key'.

110. The NAR and NAR MLSs have adopted a series of rules (set forth in the  
NAR Handbook, Policy Statement 7.31) that limit access to lockboxes only to those real

1 estate brokers that are members of NAR and subscribe to the NAR MLS. Brokers that  
2 are not affiliated with NAR cannot access the lockboxes and cannot show their clients  
3 the homes listed for sale, thereby lessening competition for buyer agent services.

4 111. As described in more detail below, each of these rules and practices have  
5 operated to maintain high commission rates and degrade the quality of the services that  
6 home buyers retain buyer agents to receive. The rules have imposed higher buyer agent  
7 commissions, maintained (and even increased) those overcharges over time  
8 notwithstanding technology and other changes that should have substantially reduced  
9 commissions, and significantly impeded the ability of lower- cost alternatives to create  
10 a more competitive marketplace.

## 11 **VI. THE NAR REQUIRES LOCAL ASSOCIATIONS TO PARTICIPATE IN THE** 12 **CONSPIRACY**

13 112. The NAR successfully requires its members, including state and local  
14 realtor associations, as well as non-member brokers and agents operating in areas with  
15 NAR MLSs, to comply with the above anti-competitive rules, and with other rules  
16 contained in NAR's rules, practices and policies, including the NAR Handbook and the  
17 NAR Code of Ethics.

18 113. The NAR requires NAR members that own an MLS to comply with the  
19 mandatory provisions in NAR's Handbook on Multiple Listing Policy and with NAR's  
20 Code of Ethics. The Handbook states that an agreement by an association for the  
21 establishment of an MLS must include "roles and responsibilities of each association for  
22 enforcement of the Code of Ethics and the intent of the multiple listing service(s) to  
23 operate in compliance with the multiple listing policies of the National Association."

24 114. The NAR threatens its individual and association members with expulsion  
25 if they fail to comply with the Code of Ethics. NAR's Code of Ethics states that "[a]ny  
26 Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics  
27 with respect to the business activities of its members may, after due notice and  
28 opportunity for hearing, be expelled by the Board of Directors from membership in the

1 National Association.”

2 115. A local realtor association owns each of the NAR MLSs, and those realtor  
3 associations are required by the NAR to ensure that their MLS and the MLS’s  
4 participants adhere to the mandatory provisions in NAR’s Handbook on Multiple  
5 Listing Policy. Because access to the NAR MLSs and other MLSs is commercially  
6 necessary, brokers and agents must comply with the mandatory provisions in NAR’s  
7 Handbook. Without access to a local MLS, including the NAR MLSs, a broker or agent  
8 would be unable to list properties for sale in the centralized database or receive offers  
9 of compensation for finding a buyer for a listed property.

10 116. The role of a local realtor association is particularly important for home  
11 buyers as the local MLS provides the most up-to-date, accurate, and comprehensive  
12 compilation of the area’s home listings. Listing brokers will use the MLS to market  
13 sellers’ properties to other broker and agent participants in the MLS and, through those  
14 brokers and agents, to potential home buyers.

15 117. Further, one of the many benefits NAR provides to its realtor associations  
16 and the MLSs owned by those associations is professional liability insurance. To be  
17 eligible for this insurance, realtor associations and their MLSs must comply with the  
18 mandatory provisions in the Handbook on Multiple Listing Policy. The NAR threatens  
19 to withhold these insurance benefits from realtor associations and MLSs that do not  
20 comply with NAR’s mandatory provisions. NAR’s Handbook states that “[t]hose  
21 associations or multiple listing services found by the National Association to be  
22 operating under bylaws or rules and regulations not approved by the National  
23 Association are not entitled to errors and omissions insurance coverage and their  
24 charters are subject to review and revocation.”

25 118. The NAR reviews the governing documents of its local realtor associations  
26 to ensure compliance with its rules. The NAR also requires its local realtor associations  
27 to demonstrate their compliance with these rules by periodically sending their  
28 governing documents to NAR for review.



1 **VII. BROKER DEFENDANTS PARTICIPATE IN, FACILITATE, AND**  
2 **IMPLEMENT THE CONSPIRACY**

3 119. As alleged above herein, the NAR requires its members that own an MLS  
4 to comply with the mandatory provisions in NAR's Handbook on Multiple Listing  
5 Policy and with NAR's Code of Ethics. The NAR and its affiliated associations and MLSs  
6 enforce the Handbook's rules, policies, and practices as well as the rules, policies, and  
7 practices codified in NAR's Code of Ethics.

8 120. The Broker Defendants orchestrated and participated in the conspiracy  
9 alleged herein by at least: (1) requiring their franchisees (and the agents employed by  
10 those franchisees) to comply with NAR rules including the Buyer Agent Commission  
11 Rule; (2) supervising, through their executives, NAR's operations including NAR's  
12 adoption, maintenance, and enforcement of the Buyer Agent Commission Rule; and (3)  
13 controlling local realtor associations by, for example, participating in the governance  
14 and management of those associations and encouraging the adoption of NAR's rules,  
15 including the Buyer Agent Commission Rule.

16 121. The Broker Defendants' rules and policies require their franchises and  
17 agents to (1) comply with NAR's Code of Ethics; (2) join and comply with the rules of  
18 the local realtor association; and (3) participate in and comply with the rules of the local  
19 MLS, which include the mandatory provisions of NAR's Handbook on Multiple Listing  
20 Policy.

21 122. Executives from Broker Defendants have also actively participated in the  
22 management and operation of NAR. NAR's board of directors promulgated the rules  
23 in NAR's Handbook and Code of Ethics, including the Buyer Agent Commission Rule,  
24 and many of those rules were developed and drafted by NAR's Professional Standards  
25 Committee. Senior executives of the Broker Defendants have served on NAR's  
26 governing board of directors. For example, Ronald J. Peltier, the Executive Chairman  
27 of HomeServices of America, and Nancy Nagy, President of Sotheby's International  
28 Realty, currently serve as directors of NAR. Bruce Aydt, Senior Vice President and  
General Counsel of Berkshire Hathaway HomeServices Alliance Real Estate is the

1 former Chair of NAR's Professional Standards Committee.

2 123. Executives of the Broker Defendants have also dominated the eight-person  
3 Leadership Team that manages NAR's day-to-day operations. For example, the 2021  
4 President of the NAR's Leadership Team is Charlie Oppler, CEO of Prominent  
5 Properties, a Sotheby's International Realty franchisee, and its past President is  
6 Elizabeth Mendenhall, who was the CEO of RE/MAX Boone Realty in Columbia,  
7 Missouri. The President of NAR in 2019 was John Smaby, a sales agent at Edina Realty,  
8 which is a HomeServices of America company. NAR's Vice President of Association  
9 Affairs, Colleen Badagliacco, is an agent for Legacy Real Estate & Associates, which is a  
10 franchisee of a Realogy firm. The 2019 leadership team included John Smaby and  
11 Elizabeth Mendenhall, as well as Tracy Kasper, Vice President of Advocacy and a  
12 broker/owner of a Berkshire Hathaway franchisee.

13 124. The Broker Defendants also carry out the anti-competitive practices  
14 through participation in local real estate associations. Betty Taisch and Jeannie  
15 Anderson, real estate agents with Compass in San Francisco, have served as Directors  
16 of the California Association of Realtors for the 2019-2021 term. Eugene Pak, a real  
17 estate agent with Compass in San Francisco, is serving as a Director of the CAR for the  
18 2021-2023 term. Richard Sax, a real estate agent with Compass in San Francisco, is listed  
19 as a Director-for-Life of the CAR. John Asdourian, a real estate agent with Sotheby's  
20 International Realty in San Francisco, has served as a Director of the CAR for the 2019-  
21 2021 term. David Parry, a real estate agent with Sotheby's International Realty in San  
22 Francisco, is serving as a Director of the CAR for the 2021-2023 term.

23 125. Executives of franchisees of the Broker Defendants have participated in  
24 and implemented the conspiracy through the governance of the local realtor  
25 associations that own and operate the NAR MLSs. Those executives and local realtor  
26 associations required compliance with the NAR rules, including the Buyer Agent  
27 Commission Rule, and adopted standard form contracts implementing the NAR rules.

28 126. The Broker Defendants also actively encourage their franchisees to be

1 involved in local realtor association governance. For example, Keller Williams' Policy  
2 & Guidelines Manual states that "[w]e encourage you to be actively involved to the  
3 greatest possible extent" and "[w]e encourage you to take an active role in any such  
4 local organization." The manual further states: "Please be very cooperative with other  
5 realtors for they hold the key to a great deal of information. With their help, you can  
6 become very successful. We cooperate and live by the spirit of cooperation with all other  
7 realtors and brokers."

### 8 **VIII. EFFECTS OF THE CONSPIRACY**

9 127. Defendants' conspiracy has had the following anticompetitive effects,  
10 among others, in each area in which an NAR MLS operates, and nationwide:

- 11 • Home buyers have paid, through the purchase price of their homes,  
12 inflated buyer agent commissions and inflated total commissions;
- 13 • Inflated total commissions are incorporated into the home purchase  
14 price, thereby causing buyers to pay higher prices for homes;
- 15 • The retention of a buyer agent has been severed from the setting of the  
16 broker's commission; the home buyer retains the buyer agent, while the  
17 home seller sets the buyer agent's compensation;
- 18 • Price competition among brokers to be retained by home buyers has  
19 been restrained;
- 20 • Competition among home buyers has been restrained by their inability  
21 to compete for the purchase of a home by lowering the buyer agent  
22 commission; and
- 23 • The quality of buyer agent services has also been reduced through  
24 barriers that prevent buyer agents from presenting and receiving  
25 purchase proposals that reduce the buyer agent commission, thus  
26 making the proposals more attractive to and more likely to be accepted  
27 by sellers; and
- 28 • Broker Defendants have increased their profits substantially by

1 receiving inflated buyer agent commissions and inflated total  
2 commissions.

3 128. There is no pro-competitive benefit to Defendants' conspiracy. Defendants  
4 have successfully stabilized buyer agent commissions and significantly increased the  
5 dollar cost charged despite the diminishing role of buyer agents. According to data  
6 from the NAR, many homebuyers no longer locate prospective homes with the  
7 assistance of a broker, but rather independently through online services. Buyer agents  
8 increasingly have been retained after their client has already found the home the client  
9 wishes to buy. "One would have expected that an information and communication-  
10 based industry like real estate brokerage, would enjoy tremendous cost efficiencies from  
11 the development of the Internet, Databases, and other communication technologies. Yet  
12 it appears that traditional brokers generally have not passed on their cost savings to  
13 consumers in the form of lower fees." Despite their diminishing role, buyer agents  
14 continue to receive the same artificially elevated commission, due to Defendants'  
15 conspiracy.

16 129. Defendants' success in maintaining (and, in inflation-adjusted dollar terms,  
17 substantially increasing) the charge imposed by buyer agents despite the advent of new  
18 technologies stands in stark contrast to other industries. "[I]n almost every other  
19 consumer industry—booksellers, retailers, home appliances, insurance, banking, stock  
20 brokers—the introduction of Internet and discount sellers has been a phenomenal  
21 financial benefit to customers. Economists call this process of squeezing out transaction  
22 costs 'disintermediation.' If any industry is ripe for this, it is the \$70 billion-a-year real  
23 estate brokerage market." Instead, "[e]ven as housing prices have changed over time  
24 and technological advances have arguably made the broker's job easier, commission  
25 rates in the industry have remained remarkably steady at around five to six percent."

26 130. Moreover, there is a disconnect between buyer agent costs and buyer agent  
27 commissions. While "competitive pressures in an industry ordinarily force competitors  
28 to adopt fee structures that reflect their costs, this has not occurred for real estate broker

1 fees.” For example, buyer agent costs are similar regardless of the price of the home.  
2 As the Wall Street Journal has explained, “many, if not most, of the services that Realtors  
3 provide don’t vary with the sales price, so the percentage fee should fall as home price  
4 rises.” Instead, the broker commissions are “unrelated to either the quantity or quality  
5 of the service rendered or even to the value provided.”

6 131. Even if there were any plausible pro-competitive effects, they would be  
7 substantially outweighed by the conspiracy’s anticompetitive effects.

8 132. There is substantial economic evidence that Defendants’ conspiracy has  
9 resulted in buyer agent commissions and total commissions that are inflated well above  
10 a competitive level nationwide.

11 133. Defendants’ conspiracy has maintained broker commission levels at  
12 remarkably stable and inflated levels for the past two decades, despite the advent of the  
13 internet and the diminishing role of buyer agents. Between 2000 and 2017, the average  
14 commission nationally has been stable at a supra-competitive rate of between 5 and 5.4  
15 percent regardless of changing market conditions.

16 134. Moreover, because housing prices have increased substantially in recent  
17 years (at a rate significantly exceeding inflation), and commissions are charged on a  
18 percentage of a home’s sale price, the actual dollar commissions have become even  
19 higher. “For example, between 2001 and 2017, the average price of new homes in  
20 current dollars sold rose from \$213,200 to \$384,900, according to U.S. Census Bureau  
21 Statistics.” As the Consumer Federation of America has observed, “[b]ecause the  
22 industry functions as a cartel, it is able to overcharge consumers tens of billions of  
23 dollars a year. Consumers are increasingly wondering why they are often charged more  
24 to sell a home than to purchase a new car.”

25 135. The standard total broker commissions (*i.e.*, the aggregate commission paid  
26 to the seller-broker and buyer agent) in areas where the NAR MLSs operate is between  
27 five and six percent, substantially higher than in countries with competitive markets for  
28 residential real estate brokerage services. In a 2002 study titled “International

1 Residential Real Estate Brokerage Fees and Implications for the US,” economists  
2 Natalya Delcours and Norm Miller concluded: “Globally, we see much lower  
3 residential commission rates in most of the other highly industrialized nations,  
4 including the United Kingdom (UK), Hong Kong, Ireland, Singapore, Australia, and  
5 New Zealand. ... In the UK, the [total] commission rates average less than 2% ... In New  
6 Zealand and South Africa, [total] commission rates average 3.14%. In Singapore, the  
7 [total] commission rates also tend to run around 3%.” They also found variation within  
8 countries; in the United Kingdom, for example, Delcours and Miller found that “1%-2%  
9 is typical; in very competitive areas 0.5- 0.75%; in low priced areas [for homes] as high  
10 as 3.5%.” Ultimately, the economists concluded that, “based on global data, the [total]  
11 US residential brokerage fees should run closer to 3.0%.”

12 136. The adverse economic impact of the conspiracy’s restraints on price  
13 competition have been severe. The Consumer Federation of America indicated that “[i]f  
14 sellers and buyers each separately negotiated compensation with their brokers, uniform  
15 5-6% commissions would quickly disappear.”

16 137. Brian Larson, an attorney who has represented many MLSs, has observed  
17 that “[w]ith the demise of subagency, there is little reason to keep interbroker  
18 compensation.” According to Larson, “[g]etting rid of interbroker compensation” [*i.e.*,  
19 payments from seller-brokers to buyer agents] would improve the market in several  
20 areas, including:

- 21 • “Buyer agent fees can be commensurate with the skill and experience of  
22 the broker and with the buyer’s needs.”
- 23 • “The market benefits from price competition for buyer-broker services.”
- 24 • “The dangers of price fixing, and the claims by industry watchdogs that  
25 it exists now, will largely be addressed. Brokers will really be unable to  
26 tell what their competitors are charging for services, and there will be  
27 no incentive for commissions to be ‘standard.’”

28 ///

1 138. Because of the scope and magnitude of the overcharges at issue here, the  
2 economic cost to the plaintiff class and other consumers is enormous. Estimates of the  
3 amount of “annual broker fees consumers might save if there was effective price  
4 competition suggests as much as \$30 billion or more annually.”

5 139. Economists Hsieh and Moretti have suggested that “more than half of  
6 current commissions might be eliminated by competition.” Natalya Delcours and  
7 Norm Miller “found that U.S. broker fees should equal something closer to three  
8 percent.”

9 **IX. CONTINUOUS ACCRUAL**

10 140. During the years preceding the filing of this complaint, Defendant NAR  
11 and Broker Defendants in NAR MLSs repeatedly engaged in anticompetitive conduct,  
12 including implementing and enforcing the Buyer Agent Commission Rule and other  
13 anticompetitive NAR rules nationwide. Defendants continue to do so.

14 141. As a result of their conspiracy, Defendants repeatedly charged and  
15 received, and continue to charge and receive, inflated buyer agent commissions and  
16 total commissions that were paid by Plaintiff and the Class in connection with the  
17 purchase of residential real estate listed on one of the NAR MLSs. Each payment of  
18 these inflated commissions by Plaintiff and Class Members during the class period  
19 injured them and gave rise to a new cause of action.

20 **STATUTE OF LIMITATIONS**

21 142. The running of the statute of limitations begins when the Plaintiff discovers  
22 the existence of a cause of action.

23 143. Plaintiff and the Class had no knowledge of Defendants’ unlawful  
24 conspiracy and could not have discovered it by the exercise of due diligence until, at the  
25 earliest, November 19, 2020, the date the DOJ announced the settlement of its antitrust  
26 claims against the NAR.

27 144. Moreover, it was reasonable for Plaintiff and Class Members not to suspect  
28 that Defendants were engaging in any unlawful anticompetitive behavior. Plaintiff and

1 Class Members are unsuspecting home buyers who do not have in-depth knowledge or  
2 information about the real estate industry and are not well-versed with NAR's  
3 framework. Additionally, as alleged herein, the NAR's policies, rules and practices  
4 specifically prohibit the disclosure of total broker commissions to home buyers and  
5 encourage buyer agents to represent to their clients that they are receiving the brokers'  
6 services for free. As a result, the average home buyer does not appreciate that buyer  
7 agent services cost them anything, let alone that Defendants actively conspire together  
8 to maintain supra-competitive broker commissions.

9 145. For these reasons, the statutes of limitation applicable to Plaintiff's and  
10 Class Members' claims have been tolled with respect to the claims asserted herein.

11 146. Additionally, or alternatively, application of the doctrine of fraudulent  
12 concealment tolled the statutes of limitation on Plaintiff's and the Class Members'  
13 claims until at least November 19, 2020.

14 147. Defendants actively concealed their conspiracy by, for example,  
15 prohibiting the disclosure of total commissions to home buyers and encouraging  
16 brokers to represent to home buyers that their services are free of charge.

17 148. Moreover, Defendants' anticompetitive conduct was inherently self-  
18 concealing because the NAR tightly controls its regulated MLSs, agents, and brokers,  
19 and a reasonable buyer under the circumstances would not have had reason to suspect  
20 that they were being subjected to anticompetitive conduct. The conduct prohibiting  
21 NAR MLSs from disclosing to prospective buyers the amount of commission that the  
22 buyer agent will earn if the buyer purchases a home listed on the MLS, allowing buyer  
23 agents to misrepresent to buyers that a buyer agent's services are free, is inherently self-  
24 concealing. Likewise, conduct by Defendants to filter MLS listings based on the level  
25 of buyer agent commissions and to exclude homes with lower commissions is  
26 inherently self-concealing.

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**CLASS ACTION ALLEGATIONS**

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149. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and the following class:

All persons who, since December 1, 1996 through the present, purchased residential real estate that was listed on an NAR MLS.

150. Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and any members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which any Defendant or its parent has a controlling interest and their current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

151. **Ascertainability:** Membership of the Class is defined based on objective criteria, and individual members will be identifiable from Defendants' and public records.

152. **Numerosity:** The exact number of members of the Class is unknown and unavailable to Plaintiff at this time, but individual joinder in this case is impracticable. The Class likely consists of at least thousands of individuals, and the members can be identified through Defendants' and public records.

153. **Predominant Common Questions:** The Class' claims present common questions of law and fact, and those questions predominate over any questions that may affect individual Class members. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendants entered into a conspiracy as alleged herein;
- b. Whether the conspiracy was implemented in the areas in which the NAR MLSs operate;
- c. Whether the conspiracy harmed competition as alleged herein;

- 1 d. Whether home buyers were harmed as a result of Defendants’
- 2 anticompetitive conduct as alleged herein;
- 3 e. Whether buyer agent commissions were inflated as a result of the
- 4 conspiracy;
- 5 f. Whether the competitive harm from the conspiracy substantially
- 6 outweighed any competitive benefits; and
- 7 g. The appropriate class-wide measures of damages.

8 154. **Typicality:** Plaintiff’s claims are typical of the claims of the other members  
 9 of the proposed Class. Defendants’ conduct that gave rise to Plaintiff’s claims is the  
 10 same for all members of the Class.

11 155. **Adequate Representation:** Plaintiff has and will continue to fairly and  
 12 adequately represent and protect the interests of the Class. Plaintiff has retained  
 13 counsel competent and experienced in complex litigation and class actions, including  
 14 antitrust violations. Plaintiff has no interest that is antagonistic to those of the Class.  
 15 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf  
 16 of the members of the Class, and they have the resources to do so. Neither Plaintiff nor  
 17 his counsel have any interest adverse to those of the other members of the Class.

18 156. **Substantial Benefits:** This class action is appropriate for certification  
 19 because class proceedings are superior to other available methods for the fair and  
 20 efficient adjudication of this controversy and joinder of all members of the Class is  
 21 impracticable. This proposed class action presents fewer management difficulties than  
 22 individual litigation and provides the benefits of single adjudication, economies of  
 23 scale, and comprehensive supervision by a single court. Class treatment will create  
 24 economies of time, effort, and expense and promote uniform decision- making.

25 157. Plaintiff reserves the right to revise the foregoing class allegations and  
 26 definitions based on facts learned and legal developments following additional  
 27 investigation, discovery, or otherwise.

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**CLAIMS FOR RELIEF**

**Count I  
Section 1 of the Sherman Act, 15 U.S.C § 1  
(Against All Defendants)**

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3  
4 158. Plaintiff repeats and incorporates by reference each of the foregoing  
5 allegations of this Complaint.

6 159. Beginning in at least 1996, Defendants engaged in a continuing contract,  
7 combination, or conspiracy to unreasonably restrain interstate trade and commerce in  
8 violation of Section 1 of the Sherman Act, 15 U.S.C § 1.

9 160. The misrepresentation as to the payment of brokerage commissions and  
10 the value of houses sold is an actual and proximate cause of harm to home buyers. The  
11 contract, combination, or conspiracy alleged herein has consisted of continuing  
12 agreements among Defendants and their coconspirators to set, raise, and maintain the  
13 level of broker commissions.

14 161. In furtherance of the contract, combination, or conspiracy, Defendants and  
15 their coconspirators have committed one or more of the following overt acts:

- 16 a. participated in the establishment, maintenance, and implementation of  
17 the Buyer Agent Commission Rule and other anticompetitive NAR  
18 rules;
- 19 b. participated in the establishment, maintenance, and implementation of  
20 rules by NAR associations and MLSs that implemented the Buyer  
21 Agent Commission Rule and other anticompetitive NAR rules; and
- 22 c. used their control over the NAR MLSs to force affiliated brokers,  
23 members, and franchisees of Broker Defendants to implement and  
24 adhere to the Buyer Agent Commission and other anticompetitive NAR  
25 rules in the areas in which the NAR MLSs operate.

26 162. Defendants’ conspiracy has caused buyer agents to conceal total  
27 commissions, to misrepresent to buyers that buyer agents’ services are free, to steer  
28 home buyers towards high commission listings, and to diminish the value of buyer

1 agent services by restraining competition on buyer agent commission fees in the home  
2 buying process. Defendants' conspiracy has also had the effect of excluding non-NAR-  
3 affiliated brokers from competing in the market for buyer agent services by restricting  
4 access to lockboxes, which is required in order for buyer agents to show houses for sale  
5 to their clients.

6 163. Defendants' conspiracy has also reduced competition among buyer agents,  
7 thereby requiring buyers to pay inflated prices for their homes and inflated buyer agent  
8 commissions. Reduced price competition among buyer agents has also reduced the  
9 quality of broker services provided to home buyers. This harm to competition  
10 substantially outweighs any competitive benefits arising from the conspiracy.

11 164. Plaintiff and Class Members paid inflated home purchase prices and  
12 broker commissions throughout the class period in connection with the purchase of  
13 residential real estate listed on the NAR MLSs. Absent Defendants' conspiracy, Plaintiff  
14 and the other class members would have paid lower prices for their homes and lower  
15 commissions.

16 165. Plaintiff and Class Members also received diminished services from buyer  
17 agents as a result of the conspiracy. Absent this conspiracy, Plaintiff and Class Members  
18 would have received improved services in negotiating and reducing the purchase prices  
19 of their homes.

20 166. As a direct and proximate result of Defendants' past and continuing  
21 violations, Plaintiff and Class Members have been injured in their business and property  
22 and suffered damages in an amount to be proven at trial.

23 **Count II**  
24 **Violation of the Cartwright Act, CAL. BUS. & PROF. CODE § 16720 *et seq.***  
**(Against All Defendants)**

25 167. Plaintiff incorporates by reference and realleges each and every preceding  
26 paragraph as though fully set forth herein.

27 168. Defendants' acts and practices detailed above violate the Cartwright Act,  
28 Cal. Bus. & Prof. Code §§ 16700, *et seq.*, which prohibits, *inter alia*, the combination of

1 resources by two or more persons to restrain trade or commerce or to prevent market  
2 competition. *See id.* §§ 16720, 16726.

3 169. Under the Cartwright Act, a “combination” is formed when the  
4 anticompetitive conduct of a single firm coerces other market participants to  
5 involuntarily adhere to the anticompetitive scheme.

6 170. The relevant service market for the claims asserted herein is the market for  
7 buyer agent services. The relevant geographic markets for the claims asserted herein  
8 are the geographic areas in which NAR MLSs operate.

9 171. Defendants have market power in the foregoing market, as evidenced by  
10 their long-standing ability to maintain commissions at inflated levels. Defendants’ anti-  
11 competitive conduct has led to the exclusion of viable market alternatives in the real  
12 estate buyer agent services market.

13 172. The misrepresentation as to the payment of brokerage commissions and  
14 the value of houses sold is an actual and proximate cause of harm to home buyers. The  
15 contract, combination, or conspiracy alleged herein has consisted of continuing  
16 agreements among Defendants and their coconspirators to set, raise, and maintain the  
17 level of broker commissions.

18 173. In furtherance of the contract, combination, or conspiracy, Defendants and  
19 their coconspirators have committed one or more of the following overt acts:

- 20 a. participated in the establishment, maintenance, and implementation of  
21 the Buyer Agent Commission Rule and other anticompetitive NAR  
22 rules;
- 23 b. participated in the establishment, maintenance, and implementation of  
24 rules by NAR associations and MLSs that implemented the Buyer  
25 Agent Commission Rule and other anticompetitive NAR rules; and
- 26 c. used their control over the NAR MLSs to force affiliated brokers,  
27 members, and franchisees of Broker Defendants to implement and  
28 adhere to the Buyer Agent Commission and other anticompetitive NAR

1 rules in the areas in which the NAR MLSs operate.

2 174. Defendants' conspiracy has caused buyer agents to conceal total  
3 commissions, to misrepresent to buyers that buyer agents' services are free, to steer  
4 home buyers towards high commission listings, and to diminish the value of buyer  
5 agent services by restraining competition on buyer agent commission fees in the home  
6 buying process. Defendants' conspiracy has also had the effect of excluding non-NAR-  
7 affiliated brokers from competing in the market for buyer agent services by restricting  
8 access to lockboxes, which is required in order for buyer agents to show houses for sale  
9 to their clients.

10 175. Defendants' conspiracy has also reduced competition among buyer agents,  
11 thereby requiring buyers to pay inflated prices for their homes and inflated buyer agent  
12 commissions. Reduced price competition among buyer agents has also reduced the  
13 quality of broker services provided to home buyers. This harm to competition  
14 substantially outweighs any competitive benefits arising from the conspiracy.

15 176. Plaintiff and Class Members paid inflated home purchase prices and  
16 broker commissions throughout the class period in connection with the purchase of  
17 residential real estate listed on the NAR MLSs. Absent Defendants' conspiracy, Plaintiff  
18 and the other class members would have paid lower prices for their homes and lower  
19 commissions.

20 177. Plaintiff and Class Members also received diminished services from buyer  
21 agents as a result of the conspiracy. Absent this conspiracy, Plaintiff and Class Members  
22 would have received improved services in negotiating and reducing the purchase prices  
23 of their homes.

24 178. As a direct and proximate result of Defendants' past and continuing  
25 violations, Plaintiff and Class Members have been injured in their business and property  
26 and suffered damages in an amount to be proven at trial.

27 179. It is appropriate to bring this action under the Cartwright Act because  
28 many of Defendants' illegal agreements with third parties were made in California and

1 purport to be governed by California law, many affected consumers reside in California,  
2 several Defendants have their principal place of business in California and overt acts in  
3 furtherance of Defendants' anticompetitive scheme took place in California.

4 **Count III**  
5 **Violation of the Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.***  
6 **Against All Defendants**

7 180. Plaintiff re-alleges and incorporates the preceding allegations of this  
8 Complaint with the same force and effect as if fully restated herein.

9 181. Defendants committed acts of unfair competition, as described above, in  
10 violation of the Unfair Competition Law ("UCL").

11 182. Defendants' conduct constitutes an "unlawful" business practice within  
12 the meaning of the UCL, and includes, without limitation, the following:

- 13 a. Violating the Sherman Act, as set forth above;
- 14 b. Violating the Cartwright Act, as set forth above and
- 15 c. Engaging in anticompetitive conduct and restraining trade, and  
16 otherwise manipulating the market for residential real estate  
17 services in violation of the Sherman Act and Cartwright Act.

18 183. Defendants' conduct separately constitutes an "unfair" business practice  
19 within the meaning of the UCL because Defendants' practices have caused and are  
20 "likely to cause substantial injury" to Plaintiff and members of the Class that is not  
21 "reasonably avoidable" by them.

22 184. Defendants' conduct, as alleged herein, is and was contrary to public  
23 policy, immoral, unethical, oppressive, unscrupulous and/or substantially injurious to  
24 consumers. Any purported benefits arising out of Defendants' conduct do not outweigh  
25 the harms caused to the victims of Defendants' conduct.

26 185. Defendants' conduct is also "unfair" because it is contrary to numerous  
27 legislatively-declared policies, as set forth in the Sherman Act, the Cartwright Act and  
28 California law. Here, Defendants' conduct not only violates the letter of the law, but it  
also contravenes the spirit and purpose of each of those statutes. The conduct threatens

1 an incipient violation of each of those laws and has both an actual and a threatened  
2 impact on competition.

3 186. Defendants' conduct, as described above, also constitutes a "fraudulent"  
4 business practice within the meaning of the UCL. Defendants' activity with respect to  
5 the MLS listing services and the market for real estate commissions fraudulently raised  
6 the prices of real estate commissions and real estate products, and other manipulative  
7 conduct that did not shift economic risk for the transaction to an arm's length  
8 counterparty. This conduct was designed to deceive — and did deceive — other market  
9 participants about the true supply and demand situation for real estate services and  
10 commissions in order to artificially increase prices in California and throughout the  
11 United States.

12 187. Plaintiff and members of the Class have suffered injury in fact and have  
13 lost money as a result of Defendants' violations of the UCL in that they paid more for  
14 the relevant services and products than they would have paid in a competitive market.  
15 They are therefore entitled to restitution and injunctive relief pursuant to California  
16 Business and Professions Code § 17203.

17 **Count IV**  
18 **Unjust Enrichment**  
19 **Against All Defendants**

20 188. Plaintiff re-alleges and incorporates the preceding allegations of this  
21 Complaint with the same force and effect as if fully restated herein.

22 189. Defendants received benefits from Plaintiff and Class members and  
23 unjustly retained those benefits at their expense. For example, Plaintiff and Class  
24 Members paid supra-competitive commissions to agents employed by Broker  
25 Defendants. Plaintiff and the Class members also paid supra-competitive commissions  
26 to NAR members, who in turn pay dues to NAR for membership. These funds enable  
27 NAR to continue its operations, including the conspiracy to maintain artificially high  
28 commission rates. Defendants' financial benefits resulting from their unlawful and  
inequitable conduct are economically traceable to overpayments for buyer agent



1 commissions by Plaintiff and Class members.

2 190. Additionally, Defendants promulgated and enforced anticompetitive  
3 rules, including the Buyer Agent Commission Rule, Concealment Rules, Free-Service  
4 Rule, Commission Modification Rule, Filter Rule and Lockbox Policy in order to raise,  
5 set, and maintain high commission rates and otherwise reduce competition in the  
6 market for buyer agent services for their own gain, providing Defendants with  
7 economic, intangible, and other benefits.

8 191. Defendants unjustly retained those benefits at the expense of Plaintiff and  
9 Class members because Defendants' conduct damaged Plaintiff and Class members, all  
10 without providing any commensurate compensation to Plaintiff and the Class.

11 192. The benefits that Defendants derived from Plaintiff and Class members  
12 rightly belong to Plaintiff and Class members. It would be inequitable under unjust  
13 enrichment principles for Defendants to be permitted to retain any of the profit or other  
14 benefits they derived from the unfair and unconscionable methods, acts, and trade  
15 practices alleged in this Complaint.

16 193. Defendants should be compelled to disgorge in a common fund for the  
17 benefit of Plaintiff and Class members all unlawful or inequitable proceeds they  
18 received, and such other relief as the Court may deem just and proper.

19 **PRAYER FOR RELIEF**

20 Plaintiff requests relief as follows:

21 A. That the Court determine that this action may be maintained as a class  
22 action under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and  
23 direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil  
24 Procedure, be given to members of the Class;

25 B. That the Court enter an order declaring that Defendants' actions, as set  
26 forth in this Complaint, violate Section 1 of the Sherman Act, 15 U.S.C. § 1 and violate  
27 the Cartwright Act and Cal. Bus. & Prof. Code Section 17200 *et seq.*;

28 C. That the Court award Plaintiff and the other members of the Class

1 damages and/or restitution in an amount to be determined at trial, as provided by  
2 law, determined to have been sustained as to each of them, in an amount to be trebled  
3 in accordance with the antitrust laws, and that judgment be entered against  
4 Defendants on behalf of Plaintiff and the Class;

5 D. That the Court award Plaintiff pre- and post-judgment interest;

6 E. That the Court award Plaintiff his costs of suit, including reasonable  
7 attorney’s fees and expenses;

8 F. That the Court award Plaintiff and the Class a permanent injunction to  
9 permanently enjoin and restrain NAR from establishing the same or similar rules,  
10 policies, or practices as those challenged in this action in the future; and

11 G. That the Court award such other relief as the Court may deem just and  
12 proper.

13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands  
15 a jury trial as to all issues triable by a jury.

16 Dated: March 19, 2021

17 Respectfully submitted,  
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