

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JENNIFER NOSALEK, RANDY  
HIRSCHORN, and TRACEY HIRSCHORN,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MLS PROPERTY INFORMATION  
NETWORK, INC., REALOGY HOLDINGS  
CORP., ANYWHERE REAL ESTATE INC.  
(F/K/A REALOGY HOLDINGS CORP.),  
CENTURY 21 REAL ESTATE LLC,  
COLDWELL BANKER REAL ESTATE  
LLC, SOTHEBY'S INTERNATIONAL  
REALTY AFFILIATES LLC, BETTER  
HOMES AND GARDENS REAL ESTATE  
LLC, ERA FRANCHISE SYSTEM LLC,  
HOMESERVICES OF AMERICA, INC.,  
BHH AFFILIATES, LLC, HSF  
AFFILIATES, LLC, RE/MAX, LLC,  
POLZLER & SCHNEIDER HOLDINGS  
CORPORATION, INTEGRA  
ENTERPRISES CORPORATION, RE/MAX  
OF NEW ENGLAND, INC., RE/MAX  
INTEGRATED REGIONS, LLC and  
KELLER WILLIAMS REALTY, INC.,

Defendants.

No. 1:20-cv-12244-PBS

CLASS ACTION

**ANSWER TO SECOND AMENDED  
COMPLAINT**

DEMAND FOR JURY TRIAL

March 27, 2023

**DEFENDANT RE/MAX INTEGRATED REGIONS, LLC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED CLASS ACTION  
AMENDED COMPLAINT**

Defendant RE/MAX Integrated Regions, LLC ("RIR"), by and through its undersigned counsel, hereby responds to Plaintiffs' Second Amended Class Action Complaint (the "Complaint"). RIR has retained the headings and footnotes contained in the Complaint for ease of readability and reference. The headings are for organizational purposes, and the footnotes

generally contain citations, neither of which constitute allegations. Therefore, unless otherwise stated, RIR has not responded to the headings or footnotes. To the extent that a response is deemed to be required, RIR denies any allegations contained within the headings and footnotes. RIR has responded to each allegation on behalf of itself.<sup>1</sup> To the extent an allegation refers to all Defendants, RIR has responded on behalf of itself and lacks knowledge or information sufficient to form a belief about the truth of the allegations as to any other Defendant.

## I. INTRODUCTION

1. Plaintiffs are individuals who sold their home in Massachusetts using the local multiple listing service (“MLS”) Pinergy. As a condition of listing their home on this MLS, Plaintiffs had to include in their listing a single, set offer of compensation to any broker who found a buyer for their home (the “Buyer-Broker Commission Rule”).

**ANSWER:** In response to Paragraph 1 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

2. Plaintiffs then paid that offer amount as a commission in connection with the sale of their home. This requirement that a seller must offer a set commission to the successful buyer-broker in order for their property to be listed on Pinergy is anticompetitive and causes sellers to pay artificially inflated, supra-competitive commission rates.

**ANSWER:** In response to Paragraph 2 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the first sentence, which has the effect of

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<sup>1</sup> The Complaint refers to several “RE/MAX Defendants”. A responsive pleading on behalf of RE/MAX, LLC was filed on January 23, 2023. (Dkt. No. 157). In addition to RE/MAX, LLC and RE/MAX Integrated Regions, the Complaint identifies the following entities: Polzler & Schneider Holdings Corporation, Integra Enterprises Corporation, and RE/MAX of New England, Inc. However, Polzler & Schnieder Holdings Corporation, Integra Enterprises Corporation, and RE/MAX of New England, Inc. each merged into RE/MAX Integrated Regions, LLC, and all were non-surviving entities as of the filing of the Complaint. Further, Polzler & Schneider Holdings Corporation, Integra Enterprises Corporation, and RE/MAX of New England, Inc have not been served.

a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations contained in Paragraph 2.

3. For that reason, Plaintiffs bring this antitrust class action against defendants:

- (a) the owner of Pinerly, MLS Property Information Network, Inc. (“MLS PIN”), a Realtor-controlled entity, which has adopted and enforced the anticompetitive agreements and rules alleged herein;

And the following Realtors:

- (b) Anywhere Real Estate Inc. (f/k/a, Realogy Holdings Corp,) and its wholly owned subsidiaries Century 21 Real Estate LLC, Coldwell Banker Real Estate LLC, Sotheby’s International Realty Affiliates LLC, Better Homes and Gardens Real Estate LLC, and ERA Franchise Systems LLC;
- (c) HomeServices of America, Inc., and its wholly owned subsidiaries, HSF Affiliates, LLC and BHH Affiliates, LLC;
- (d) RE/MAX LLC and its wholly owned subsidiaries Polzler & Schnieder Holdings Corporation, Integra Enterprises Corporation, RE/MAX of New England, Inc., and RE/MAX Integrated Regions, LLC (and any other successor entities); and
- (e) Keller Williams Realty, Inc.

As alleged herein, these Defendants made agreements and engaged in a conspiracy in restraint of trade in violation of § 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** In response to Paragraph 3 of the Complaint, RIR admits that Plaintiffs have brought an action against Defendants for alleged violations of federal antitrust law. RIR denies that Polzler & Schnieder Holdings Corporation, Integra Enterprises Corporation, and RE/MAX of New England, Inc. are wholly owned subsidiaries of RE/MAX, LLC because each one merged into RIR and all were non-surviving entities as of the filing of the Complaint. RIR denies that Plaintiffs have plausibly alleged that RIR made agreements or engaged in a conspiracy in restraint of trade. RIR states that it lacks knowledge or information sufficient to form a belief

about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

## II. JURISDICTION

4. This Court 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 the Class is a citizen of a State different from Defendants. The Court also has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 4, 16 and 28 U.S.C. §§ 1331, 1337.

**ANSWER:** In response to Paragraph 4 of the Complaint, RIR states that the allegations consist of legal conclusions, which do not require a response. To the extent a response is required, RIR states that it lacks knowledge sufficient to form a belief regarding the number of persons in the putative class to satisfy 28 U.S.C. §1332(d)(2). RIR admits that the Court has subject matter jurisdiction under 15 U.S.C. § 4. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

5. This Court has personal jurisdiction over Defendants. Defendant MLS PIN resides in this District and has its headquarters in Shrewsbury. In addition, Defendants: (1) transact substantial business in this District; (2) transacted with members of the Class throughout the District; and (3) committed substantial acts in furtherance of the unlawful scheme in this District.

**ANSWER:** In response to Paragraph 5 of the Complaint, RIR admits that it has been properly served and that it has some level of contacts with this District. RIR denies that it has committed any act in furtherance of an unlawful scheme and that it has transacted business with members of the Class. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

6. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. §1391(b), (c), and (d). Each Defendant transacted business, was found, and/or resided in this District; a substantial part of the events giving rise to Plaintiffs' 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.

**ANSWER:** In response to Paragraph 6 of the Complaint, RIR denies that any events giving rise to Plaintiffs' claims arose in this District or elsewhere. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

### **III. PARTIES AND NON-PARTIES**

#### **A. Plaintiffs**

7. Randy Hirschorn is a resident of Stoughton, Massachusetts. Tracey Hirschorn is a resident of Sharon, Massachusetts. On July 10, 2020, they sold real property located in Sharon, Massachusetts. The home was listed on MLS PIN's Pinery. In that sales transaction, they were represented by Keller Williams Realty and the buyer was represented by William Raemis Real Estate. As part of the sales transaction, Randy Hirschorn and Tracey Hirschorn paid a substantial, supracompetitive buyer-broker commission.

**ANSWER:** In response to Paragraph 7 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

8. Jennifer Nosalek is a resident of Easton, Massachusetts. On January 19, 2018, she sold real property located in the Easton, Massachusetts. The home was listed on MLS PIN's Pinery. In that sales transaction, she was represented by Success! Real Estate and the buyer was represented by Keller Williams Realty. As part of the sales transaction, Ms. Nosalek paid a substantial, supracompetitive buyer-broker commission.

**ANSWER:** In response to Paragraph 8 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

#### **B. Defendants**

9. Defendant MLS Property Information Network, Inc. (with its predecessors, successors, and wholly-owned or controlled subsidiaries or affiliates are collectively referred to herein as "**MLS PIN**") is (according to t360.com, the website of a management consultancy specializing in the real estate industry), the seventh largest MLS in the country with over 41,000 members. Participation in MLS PIN is open to brokers and salespersons licensed in any of the

six New England states (Massachusetts, New Hampshire, Connecticut, Rhode Island, Maine, Vermont) and New York. According to MLS PIN, “250,000 active buyers currently receive automatic nightly emails with property matches that meet their criteria set by their real estate professional through Pinergy.” MLS PIN describes itself as “one of the largest Realtor-owned multiple listing services in the nation . . . offer[ing] a database of approximately 29,000 properties for sale and more than 3.7 million off-market listings and full public records for all of Massachusetts and Rhode Island and much of New Hampshire.” MLS PIN is governed by a Board comprised of 15 Directors. Eight of these directors are Realtors for franchises owned by Broker Defendants, BHH (which is controlled by HSA), RE/MAX Defendants, and Anywhere Defendants (terms defined below).

**ANSWER:** In response to Paragraph 9 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

10. Defendant Anywhere Real Estate Inc. (“**Anywhere RE**”) (formerly known as Realogy Holdings Corp.) is the nation’s largest real estate brokerage company. It is headquartered in Madison, NJ. It is a publicly traded corporation with a market value in excess of \$4 billion. It owns, operates, and franchises many real estate brokerage firms, including Century 21, Coldwell Banker, Sotheby’s International Realty, The Corcoran Group, Better Homes and Garden Real Estate, ZipRealty, ERA Real Estate Citi Habitats, and Climb Real Estate.

**ANSWER:** In response to Paragraph 10 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

11. Defendants Century 21 Real Estate LLC (“**Century 21**”), Coldwell Banker Real Estate LLC (“**Coldwell Banker**”), Sotheby’s International Realty Affiliates LLC (“**Sotheby’s**”), Better Homes and Gardens Real Estate LLC (“**Better Homes & Gardens**”), and ERA Franchise Systems LLC (“**ERA**”) are the wholly owned subsidiaries of Anywhere RE that entered into franchise agreements with the broker franchisees providing services in the Covered Area. Anywhere RE, Century 21, Coldwell Banker, Sotheby’s, Better Homes & Gardens, ERA, their predecessors, successors, and wholly-owned or controlled subsidiaries or affiliates are collectively referred to herein as the “**Anywhere Defendants.**”

**ANSWER:** In response to Paragraph 11 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

12. Defendant HomeServices of America, Inc. (“**HSA**”) is “the second largest residential real estate brokerage firm in the United States.” HSA is a majority owner of Defendant HSF Affiliates, LLC (“**HSF Affiliates**”). HSF Affiliates operates many real estate franchise networks, including HomeServices, Prudential Real Estate and Real Living. **BHH Affiliates, LLC** is a subsidiary of HSF Affiliates LLC and offers real estate brokerage services. HSA, HSF Affiliates, BHH Affiliates, LLC, their predecessors, successors, and their wholly-owned or controlled subsidiaries or affiliates are collectively referred to herein as the “**HomeServices Defendants.**”

**ANSWER:** In response to Paragraph 12 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

13. Defendant RE/MAX, LLC (“**RE/MAX**”), franchises local RE/MAX brokers around the country, which have approximately 6,800 offices and more than 100,000 sales associates.

**ANSWER:** In Response to Paragraph 13 of the Complaint, RIR admits that RE/MAX, LLC offers independently owned and operated franchises in parts of the country. RIR further admits that the Complaint purports to refer to RE/MAX, LLC, its predecessors, and its wholly owned or controlled subsidiaries or affiliates as “RE/MAX.” RIR denies the remaining allegations in Paragraph 13.

14. Defendants Polzler & Schneider Holdings Corporation (“**P&S Holdings**”), Integra Enterprises Corporation (“**Integra Enterprises**”), and RE/MAX of New England, Inc. (“**RE/MAX New England**”) are the wholly owned subsidiaries of RE/MAX who, for at least part of the relevant period, had the authority to enter into franchise agreements with the RE/MAX broker franchisees providing services in the Covered Area. In July 2021, RE/MAX through its wholly owned subsidiary A La Carte U.S., LLC finalized its purchase of P&S Holdings. P&S Holdings wholly owns Integra Enterprises, which wholly owns RE/MAX New England. Based upon information and belief, RE/MAX New England entered into the franchise agreements with RE/MAX franchisees within the Covered Area. In or around July 2021, RE/MAX New England and Integra Enterprises merged with RE/MAX Integrated Regions, LLC (“**RE/MAX Integrated**”) with RE/MAX Integrated being the surviving entity. RE/MAX, P&S Holdings, Integra Enterprises, RE/MAX New England, and RE/MAX Integrated, their predecessors, successors, and wholly-owned or controlled subsidiaries or affiliates are collectively referred to herein as the “**RE/MAX Defendants.**”

**ANSWER:** In response to Paragraph 14 of the Complaint, RIR denies that Polzler & Schneider Holdings Corporation (“P&S Holdings”), Integra Enterprises Corporation (“Integra Enterprises”), and RE/MAX of New England, Inc. (“RE/MAX New England”) are wholly owned subsidiaries of

RE/MAX, LLC because each one merged into RIR and all were non-surviving entities as of the filing of the Complaint. RIR admits that RIR now enters into franchise agreements with independently owned and operated franchisees in Massachusetts and that RIR is a wholly owned subsidiary of RE/MAX, LLC .

15. Defendant Keller Williams Realty, Inc. (with its predecessors, successors, and wholly-owned or controlled subsidiaries or affiliates are collectively referred to herein as “**Keller Williams**”) is one of the nation’s largest real estate brokerages. It is headquartered in Austin, Texas. It is a privately-held company. It franchises local Keller Williams brokers around the country, which have approximately 700 offices and more than 120,000 sales associates.

**ANSWER:** In response to Paragraph 15 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

16. Anywhere Defendants, HomeServices Defendants, RE/MAX Defendants, and Keller Williams are collectively referred to herein as the “**Broker Defendants.**”

**ANSWER:** In response to Paragraph 16 of the Complaint, RIR states that the allegations are not a factual assertion that requires a response.

### C. Co-Conspirators

17. Multiple state and local Realtor associations (“local Realtor associations” or “Realtor associations”) not named as Defendants participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. Specifically, each of the local realtor associations that own and operate Pinergy agreed to, complied with, and implemented the Buyer-Broker Commission Rule.

**ANSWER:** RIR denies the allegations contained in Paragraph 17 of the Complaint.

18. Multiple franchisees and brokers of Broker Defendants participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. Specifically, each complied with and implemented the Buyer-Broker Commission Rule in the geographic areas in which Pinergy operates. In addition, other brokers in these areas have participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. These other brokers complied with and implemented the Buyer-Broker Commission Rule in these geographic areas.

**ANSWER:** RIR denies the allegations contained in Paragraph 18 of the Complaint.



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

**ANSWER:** RIR denies the allegations contained in Paragraph 19 of the Complaint.

#### **IV. INTERSTATE TRADE AND COMMERCE**

20. The violations of federal antitrust laws alleged herein had impact on a substantial amount of interstate trade and commerce.

**ANSWER:** RIR denies the allegations contained in Paragraph 20 of the Complaint.

21. Defendants' conduct alleged herein has inflated buyer-broker commissions within the areas in Massachusetts in which Pinergy operates and has injured home sellers in those areas ("Covered Area").

**ANSWER:** RIR denies the allegations contained in Paragraph 21 of the Complaint.

22. The Buyer-Broker Commission Rule and other anticompetitive rules apply and have been implemented and enforced by Defendants and co-conspirators located throughout Massachusetts.

**ANSWER:** RIR denies the allegations contained in Paragraph 22 of the Complaint.

23. These rules govern the conduct of local associations, local brokers, and local realtors throughout the Covered Area.

**ANSWER:** RIR denies the allegations contained in Paragraph 23 of the Complaint.

24. Defendant MLS PIN, through its members and other co-conspirators, and Broker Defendants, through their franchisees, brokers and other co-conspirators, are engaged in interstate commerce, and are engaged in activities affecting interstate commerce, in the Covered Area.

**ANSWER:** In response to Paragraph 24 of the Complaint, RIR admits that it engaged in interstate commerce, and engaged in some activities affecting interstate commerce, in the Covered Area. RIR denies the remaining allegations contain in Paragraph 24 to the extent they apply to RIR. RIR states that it otherwise lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, including to the extent those allegations apply to another defendant, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

**V. SUBSTANTIVE ALLEGATIONS**

**A. The Real Estate Industry**

25. Only licensed real estate brokers and salespersons can assist buyers and sellers with the purchase, sale, lease or exchange of real property.

**ANSWER:** In response to Paragraph 25 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

26. To become licensed, an applicant generally must satisfactorily complete the agent curriculum in real estate education and pass a written examination.

**ANSWER:** In response to Paragraph 26 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

27. A real estate broker negotiates agreements to sell, exchange, purchase, rent or lease interests in real property for a fee, commission or other valuable consideration for another person.

**ANSWER:** In response to Paragraph 27 of the Complaint, RIR admits that a real estate broker may negotiate agreements to sell, exchange, purchase, rent or lease interests in real property for a fee, commission or other valuable consideration for another person. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

28. A salesperson must be affiliated with a broker, either as an employee or as an independent contractor, and work under the supervision of the broker. A salesperson cannot operate his own real estate business.

**ANSWER:** In response to Paragraph 28 of the Complaint, RIR states that the allegations consist of legal conclusions, which do not require a response. To the extent a response is required, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

29. According to 2020 Report of the National Association of Realtors (“NAR”), 89% of sellers sold their homes with the assistance of a real estate broker, and 88% of buyers purchased their homes with the assistance of a real estate broker. Upon information and belief, similar percentages apply to sales throughout the Covered Area.

**ANSWER:** In response to Paragraph 29 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

30. The standard practice in the residential real estate industry is to compensate brokers and agents with commissions that are calculated as a percentage of a home’s sale price. Commissions are paid by the seller when the home sells.

**ANSWER:** In response to Paragraph 30 of the Complaint, RIR admits that real estate brokers and real estate agents may receive compensation for their role in real estate transactions through commissions, which can be calculated as a percentage of the home’s sale price. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

31. Brokers or their individual salespersons may act as the agent for either the buyer or the seller, and in some cases both, in connection with home sales.

**ANSWER:** In response to Paragraph 31 of the Complaint, RIR admits that real estate brokers or individual real estate agents may represent either buyers or sellers in home sale transactions. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

32. The broker’s compensation is specified in the listing agreement between the seller of the property and his or her broker (i.e., the seller-broker or listing broker). In addition to setting the commission, the listing agreement also typically includes terms granting the broker the exclusive right to market and sell; setting the length of time the broker is given to sell the real property; setting the listing price; and other listing terms.

**ANSWER:** In response to Paragraph 32 of the Complaint, RIR admits that real estate agents may enter into listing agreements with home sellers that specify the real estate agent’s

compensation and may contain terms such as granting the real estate agent the exclusive right to market and sell; setting the length of time the real estate agent is given to sell the real property; setting the listing price; and other listing terms. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

33. When the buyer is represented by a broker, the seller or the seller-broker pays the buyer-broker a commission out of the total commission paid by the seller. Accordingly, the buyer-brokers — who are agents of the buyer and adversarial to the sellers — receive their compensation from sellers, not from buyers they represent.

**ANSWER:** In response to Paragraph 33 of the Complaint, RIR admits that a seller-broker may pay a buyer-broker a commission out of the total commission. RIR denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. The listing agreement typically states that a portion of the commission paid by the seller will be paid to the broker representing a buyer if the buyer has a broker.

**ANSWER:** RIR admits that the listing agreement may disclose that a portion of the commission paid by the seller will be paid to the buyer-broker if the buyer has a broker. RIR lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 34 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

35. The online Pinery listing states the amount of commission the seller will pay the buyer's broker. It is typically expressed as a percentage of the sales price such as, for example, 3 percent.

**ANSWER:** In response to Paragraph 35 of the Complaint, RIR admits that brokers may receive compensation for their role in real estate transactions through commissions, which can be calculated as a percentage of the home's sale price. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

36. With this arrangement, the seller sets the total commission to be paid to the seller-broker with the expectation that a portion of the commission will be paid to a buyer-broker. If there were no Buyer-Broker Commission Rule, (1) buyers would pay their own brokers, (2) sellers would only pay a commission to compensate the seller-brokers as they have no incentive to compensate the buyers' agents negotiating against their interests; and (3) the amount paid by sellers to compensate the seller-brokers would be substantially less than the amount that sellers have to pay to compensate both the buyer-broker and the seller-broker.

**ANSWER:** RIR denies the allegations contained in Paragraph 36 of the Complaint.

37. According to NAR, there are 25,515 Realtors in Massachusetts, 5,227 in Rhode Island, and 6,472 in New Hampshire.

**ANSWER:** In response to Paragraph 37 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

#### **B. Multiple Listing Services and "Pinergy"**

38. State and local Realtor associations own and operate in their markets a centralized database of properties listed for sale in the region known as a Multiple Listing Service or "MLS." The MLS that is the subject of this action is Pinergy, which is owned and administered by MLS PIN.

**ANSWER:** In response to Paragraph 38, RIR admits that an MLS is, at least in part, a database of properties listed for sale in a particular geographic region. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 38, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

39. Pinergy is a joint venture among the competing Broker Defendants to facilitate the publishing and sharing of information about homes for sale in Pinergy's geographic area. The membership in Pinergy is generally comprised of nearly all residential real estate brokers and their affiliated agents in Pinergy's service area. Listing a property for sale on Pinergy is essential to marketing a property effectively to prospective buyers.

**ANSWER:** RIR denies the allegation contained in the first sentence of Paragraph 39 of the Complaint. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 39, which has the effect of a

denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations contained in Paragraph 39.

40. Pinergy will include or “list” the vast majority of homes that are for sale through a residential real estate broker in that area. Pinergy provides the most up-to-date, accurate and comprehensive compilation of the area’s home listings. Listing brokers will use Pinergy to market sellers’ properties to other broker and agent participants and, through those other brokers and agents, to potential home buyers.

**ANSWER:** In response to Paragraph 40, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

41. By virtue of nearly industry-wide participation and control over important data, brokers and broker-controlled entities offering Pinergy possess and exercise market power in the markets for the provision of real estate brokerage services to home buyers and sellers within Pinergy’s service area.

**ANSWER:** In response to Paragraph 41 of the Complaint, RIR states that the allegation of “market power” consists of a legal conclusion, which do not require a response. To the extent a response is required, RIR denies such allegations contained in Paragraph 41. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 41, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

42. According to t360.com, as of December 5, 2020, Pinergy was the seventh largest MLS in the country with 41,537 members.

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 42, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

43. As alleged herein, the use of Pinergy is governed by rules and regulations. Defendants enforce Pinergy’s rules, policies and practices.

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of Paragraph 43, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations contained in Paragraph 43.

44. The website for MLS PIN has a page on which complaints can be filed. The webpage instructs that the form can be used “to report a listing that does not appear in MLS or an existing listing that you believe violates MLS PIN Rules.”

**ANSWER:** RIR admits that Paragraph 44 of the Complaint purports to quote portions of the MLS PIN website. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 44, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

45. The website also touts the MLS PIN’s enforcement efforts to enforce its rules and regulations. According to the “Audits, Warnings & Fines” webpage, in September 2020 alone, there were 14 audits, 18 fines, and 54 warnings.

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 45, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

**C. The Buyer-Broker Commission Rule in MLS PIN’s Rules and Regulations**

46. MLS PIN promulgates its Rules and Regulations governing the use of Pinergy (“MLS PIN Rules”).

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 46 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

47. Section 5 of the MLS PIN Rules requires all seller brokers to offer compensation to buyer brokers. After specifying that brokers are “not obligated to offer compensation in connection with lease or rental properties,” as to property sales, Section 5 states, in relevant part:

**a Listing Broker shall specify, on each Listing Filed with the Service, the compensation offered to other Participants for their services as Cooperating**

Brokers in the sale, lease or rental of the Listed Property. Such offers shall be unconditional, except that entitlement to compensation shall be conditioned on the Cooperating Broker's performance as the procuring cause of the sale, lease or rental. (Emphasis added.)

**ANSWER:** RIR admits that Paragraph 47 of the Complaint purports to quote portions of the MLS PIN Rules. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

48. Additionally, Note 1 to Section 5 of the MLS PIN Rules further states, in relevant part:

In Filing a Listing with the Service, **a Participant is deemed to be making blanket unilateral offers of compensation to the other Participants in the Service.** The Participant therefore shall specify on each Listing Filed with the Service the compensation being offered to the other Participants. (Emphasis added.)

**ANSWER:** RIR admits that Paragraph 48 of the Complaint purports to quote portions of the MLS PIN Rules. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

49. Section 5 warns that the seller broker may not change the offered commission as the result of any negotiation or cooperation with a buyer broker. Section 5 states, in relevant part, that the Listing Broker may only offer a Participant compensation different from the compensation indicated on any Listing if:

(1) the Listing Broker informs the Participant in writing of such proposed change in compensation in advance of the Participant's producing an offer to purchase or, in the case of an Auction Listing, in advance of the Participant's registering a prospective bidder for participation in the Auction, and (2) **the change in the listed compensation is not the result of any agreement or other cooperative activity between the Listing Broker and any one or more of the other Participants or Subscribers.** (Emphasis added.)

**ANSWER:** RIR admits that Paragraph 49 of the Complaint purports to quote portions of the MLS PIN Rules. RIR states that it lacks knowledge or information sufficient to form a belief



about the truth of the allegations in Paragraph 49, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

50. The rules described in Section 5 of the MLS PIN Rules shall be referred to herein as the “Buyer-Broker Commission Rule.”

**ANSWER:** RIR denies the allegation contained in Paragraph 50.

51. A “Listing Broker” means “the Individual Participant or Participant Firm who or which Files a Listing with the Service.”

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 51, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

52. A “Participant” means, in relevant part, “any individual or sole proprietorship and any partnership, corporation, limited liability company or other legal entity which Participates in the Service . . . .” “Participation” is available only to real estate brokers licensed by the one or more of the Subscription States that “abide[] fully by these Rules and Regulations and the policies of the Service.”

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 52, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

53. A “Cooperating Broker” means:

the licensed broker who or which is (i) a Participant and (ii) either a subagent of a Listing Broker, **a buyer’s agent** or other appropriately licensed facilitator in the process of selling a Listed Property. Wherever the context so requires, reference in these Rules and Regulations to a Cooperating Broker shall include the Participant through which any individual Cooperating Broker is acting. (Emphasis added.)

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 53, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

54. All participants of MLS PIN agree to be bound by the MLS PIN Rules. The MLS PIN Participant Agreement/Application states, in relevant part:

**PARTICIPANT’S AGREEMENT TO BE BOUND: -- Participant agrees that Participant and all members of Participant’s firm who utilize the multiple listing service (the “Service”) of MLS Property Information Network, Inc. (the “Company”) in any manner will comply with the Rules and Regulations and the policies of the Company and the Service as established or as amended from time to time, copies of which have been made available to Participant and are available at all times to Participant on the company’s website (www.mlspin.com). (Emphasis added.)**

**ANSWER:** RIR admits that Paragraph 54 of the Complaint purports to quote portions of the MLS PIN Participant Agreement/Application. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 54, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

55. Participants also agree to pay all compensation offered to cooperating brokers. The MLS PIN Participant Agreement/Application states, in relevant part:

**PAYMENT OF FEES TO COOPERATING BROKERS: -- Participant hereby agrees, on Participant’s own behalf and on behalf of Participant’s firm, to pay, or cause to be paid, in a complete and timely manner, as provided in the Company’s Rules and Regulations, any and all compensation offered to cooperating brokers in connection with a listing made with the Service by Participant or by any agent or member of Participant’s firm or any of Participant’s offices. If full payment to a cooperating broker is not made in a timely manner, the Company may impose sanctions on Participant and/or on the listing agent or member of Participant’s firm or any of Participant’s offices. The sanctions may include suspension of access to the Service. (Emphasis added.)**

**ANSWER:** RIR admits that Paragraph 55 of the Complaint purports to quote portions of the MLS PIN Participant Agreement/Application. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 55, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

56. The MLS PIN Rules are enforced by the local Realtors and Realtor associations that own and manage MLS PIN.

**ANSWER:** In response to Paragraph 56 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

57. Given the commercial necessity of having access to an MLS, real estate brokers and individual realtors must comply with MLS PIN Rules.

**ANSWER:** In response to Paragraph 57 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

58. When a buyer retains a broker, the buyer enters into a contract with that broker. The contract typically discloses that the buyer-broker will be compensated by receiving a commission from the seller-broker.

**ANSWER:** In response to Paragraph 58 of the Complaint, RIR admits that when a buyer retains a broker, the buyer may enter into a contract with that broker. RIR admits that buyer contracts between buyer brokers and buyers may disclose that the buyer broker will be compensated by receiving a commission from the seller broker. RIR lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 58 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

59. Seller-brokers list their client's property on Pinery as required by the MLS PIN Rules and to ensure that buyer-brokers and prospective buyers are aware of the property. If a seller-broker does not list a client's property on Pinery, buyer-brokers will not show that property to prospective buyers. Pinery also acts as the main source of listings for online websites, such as Zillow, through which many prospective homebuyers find homes. A home that is not listed on an MLS is very hard to find for prospective homebuyers.

**ANSWER:** In response to Paragraph 59 of the Complaint, RIR admits that MLSs are a source of listings for online websites. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

60. The Buyer-Broker Commission Rule obligates a seller-broker, on behalf of the seller, to make blanket, unilateral offers of compensation to buyer-brokers when listing a home on Pinery. If a buyer represented by a broker purchases the home, the buyer-broker receives the offered compensation.

**ANSWER:** In response to Paragraph 60 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

61. The following example illustrates how this process typically works: (a) a homeowner enters into a contract with a seller-broker, in which the seller agrees to pay the seller-broker six percent in total commissions in exchange for marketing and facilitating the sale of the home; (b) the seller-broker then makes a blanket, unilateral offer of a three percent commission to every buyer-broker when it lists the home on Pinery; (c) a buyer-broker shows the property to a buyer client, who buys the home for \$500,000; (d) the seller-broker receives six percent of the sales price (\$30,000) from the seller; and (e) the seller-broker then pays three percent of the sales price (\$15,000) to the buyer-broker.

**ANSWER:** In response to Paragraph 61 of the Complaint, RIR states that the statements consist of a hypothetical scenario with limited facts to which no response is required. To the extent a response is required, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the purported allegations of Paragraph 61 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

#### **D. THE ANTICOMPETITIVE AGREEMENT**

62. Before the Buyer-Broker Commission Rule was adopted, all brokers involved in residential home sales represented the seller's interests. Until the early 1990s, there was "an almost universal sub agency system" where the brokers "were legally obligated to represent the interests of sellers."<sup>2</sup>

**ANSWER:** RIR admits that Paragraph 62 of the Complaint purports to quote a portion of an article by the Consumer Federation of America, but RIR denies the statement insofar as it constitutes an allegation. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

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<sup>2</sup> Brobeck and Woodall, *How the Real Estate Cartel Harms Consumers and How Consumers Can Protect Themselves*, Consumer Fed'n of Am. at \* 3 (June 2006), [https://consumerfed.org/pdfs/Real\\_Estate\\_Cartel\\_Study061906.pdf](https://consumerfed.org/pdfs/Real_Estate_Cartel_Study061906.pdf).

63. “For most of the last century, the legal relationships between brokers and their clients were simple: Listing brokers represented sellers, and agents who worked with buyers did so as ‘subagents’ of the listing broker.”<sup>3</sup> Accordingly, “[a]ll of the agents involved in a transaction owed their allegiance to the seller, and buyers were unrepresented.”<sup>4</sup>

**ANSWER:** RIR admits that Paragraph 63 of the Complaint purports to quote a portion of an Inman article, but the links provided in the footnotes therein do not disclose the entire article, and therefore RIR cannot admit or deny the accuracy of the alleged statements. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 63, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

64. “[T]he ability to represent sellers on an exclusive basis and offer compensation to cooperating brokers acting as subagents was the foundation upon which the MLS system was built.”<sup>5</sup> Indeed, “[a]s a rule, MLS’s required that offers of compensation be contingent on the cooperating broker acting as a subagent of the listing broker, rather than an agent of the buyer. Subagency allowed cooperating brokers who worked with buyers to collect a share of the commissions paid by sellers without actually representing buyers in an agency capacity.”<sup>6</sup>

**ANSWER:** RIR admits that Paragraph 64 of the Complaint purports to quote a portion of an Inman article, but the links provided in the footnotes therein do not disclose the entire article, and therefore RIR cannot admit or deny the accuracy of the alleged statements. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 64, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

65. During this time, most homebuyers mistakenly believed that the subagent broker was representing their interests — even though the buyer-broker actually owed a fiduciary obligation to the seller. “When this sub agency system, in which brokers working with buyers were legally obligated to pass on information disadvantageous to their clients to sellers, was exposed through press coverage, it collapsed almost overnight.”<sup>7</sup>

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<sup>3</sup> Carter, *From Subagency to Non-Agency: A History*, INMAN (Feb. 17, 2012), <https://www.inman.com/2012/02/17/from-subagency-non-agency-a-history>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Brobeck & Woodall, *supra* note 1.

**ANSWER:** In response to Paragraph 65 of the Complaint, RIR admits that the second sentence purports to quote a portion of the publication cited in the footnote therein. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

66. The late 1980s and early 1990s saw the arrival of exclusive buyer agents, who represent the buyer in the transaction rather than the seller or seller's broker. "In light of these changes, most listing brokers moved away from subagency, preferring to compensate other brokers as buyers' agents and non-agents."<sup>8</sup>

**ANSWER:** RIR admits that the second sentence of Paragraph 66 of the Complaint purports to quote a portion of an Inman article, but the link provided in the footnote therein does not disclose the entire article, and therefore RIR cannot admit or deny the accuracy of the alleged statements. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

67. Given that such buyers agents were representing the buyer, there was no reasonable basis for requiring sellers to pay these commissions. "With the demise of subagency, there is little reason to keep inter-broker compensation. There are also affirmative reasons to get rid of it."<sup>9</sup>

**ANSWER:** RIR admits that the second and third sentences of Paragraph 67 of the Complaint purports to quote a portion of an Inman article, but the link provided in the footnote therein does not disclose the entire article, and therefore RIR cannot admit or deny the accuracy of the alleged statements. RIR denies the allegations contained in Paragraph 67 of the Complaint.

68. But Defendants, rather than adjusting to the introduction of exclusive buyers' agents, sought to enforce a scheme designed to maintain supra-competitive commissions and impede lower-priced competition.

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<sup>8</sup> Larson, The End of MLS as We Know It, INMAN (Aug. 15, 2006), <https://www.inman.com/2006/08/15/end-mls-we-know-it>.

<sup>9</sup> *Id.*

**ANSWER:** RIR denies the allegations contained in Paragraph 68 of the Complaint.

69. The Buyer-Broker Commission Rule in the MLS PIN Rules is one of the ways MLS PIN enforces this scheme to maintain supra-competitive commissions.

**ANSWER:** In response to Paragraph 69 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

70. MLS PIN is empowered to modify the rules in the MLS PIN Rules. MLS PIN consistently and repeatedly retained the Buyer-Broker Commission Rule.

**ANSWER:** In response to Paragraph 70 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

71. In setting forth the rules and requirements, MLS PIN has successfully invited the Defendants and other coconspirators to participate in the following agreement, combination and conspiracy: They can participate in the use of Pinergy, and gain the benefits provided by the MLS, but only if they agree to adhere to and enforce the anticompetitive restraints set forth in the MLS PIN Rules.

**ANSWER:** RIR denies the allegations contained in Paragraph 71.

72. The Buyer-Broker Commission Rule shifts a cost to the seller that would be paid by the buyer in a competitive market. As the Consumer Federation of America explained, “[i]n a rational pricing system, home sellers and buyers would each pay for real estate brokerage services they receive” and “there would be no hidden commission splits that propped up rates.”<sup>10</sup>

**ANSWER:** RIR admits that the second sentence of Paragraph 72 purports to quote a portion of the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 72.

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<sup>10</sup> Brobeck, *Residential Real Estate Brokerage Services: A Cockamamie System That Restricts Competition and Consumer Choice*, Consumer Fed’n of Am., 4 (2006), <http://archives-financialservices.house.gov/media/pdf/072506sb.pdf>.

73. The Rule, however, causes home sellers to pay supra-competitive fees by requiring them to make a blanket unilateral offer of compensation to the buyer-broker as a condition of participating on the MLS.

**ANSWER:** RIR denies the allegations contained in Paragraph 73.

74. Simply put, there is no pro-competitive justification for imposing this overcharge on home sellers. The setting of the fees by sellers-brokers is, at least, an attempt to fix market prices. If inter-broker compensation were eliminated, it would diminish the ability of traditional brokers to obstruct vigorous price competition, and thus lead to a dramatic decrease in broker revenues.

**ANSWER:** RIR denies the allegations contained in Paragraph 74.

75. Additionally, because the Rule requires a blanket offer, the Rule compels home sellers to make this financial offer without regard to the experience of the buyer-broker or the services or value they are providing — in other words, the Rule treats all buying brokers and their services the same. The seller is required to offer the same fee to a buyer-broker with little or no experience as that offered to a buyer-broker with twenty years of valuable experience. Accordingly, there is a significant level of uniformity in the payments that sellers must pay to buyer-brokers.

**ANSWER:** RIR denies the allegations contained in Paragraph 75.

76. As a result, there is little relationship between the commission and quality of the service. “Skilled, experienced agents and brokers charge about the same price as agents with little experience and limited knowledge of how to best serve the consumer clients.”<sup>11</sup> In a price-competitive market, less experienced and less skilled brokers and salespersons would be offering consumers lower commission rates, but they have no incentive to do so because of the Rule.<sup>12</sup>

**ANSWER:** RIR admits that Paragraph 76 purports to quote a portion of the publication cited in the footnotes therein. RIR denies the allegations contained in Paragraph 76.

77. The Rule creates tremendous pressure on sellers to offer the “standard” supra-competitive commission that has long been maintained in this industry. Seller-brokers know that if the published, blanket offer is less than the “standard” commission, many buyer-brokers will “steer” home buyers to the residential properties that provide the higher standard commission.

**ANSWER:** RIR denies the allegations contained in Paragraph 77 of the Complaint.

78. The prevalence of such steering has been widely reported in government reports, economic research and the trade press and is well understood by MLS PIN, the Broker

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *See id.*



Defendants, and their co-conspirators. Indeed, Keller Williams University's own course materials admit that offering less than three percent in buyer-broker commission on an MLS "will reduce the number of willing and qualified buyers that will see your home."

**ANSWER:** RIR denies the allegations contained in Paragraph 78 of the Complaint.

79. The Buyer-Broker Commission Rule's blanket offers to buyer-brokers are overwhelmingly made at or near the supra-competitive commission rates that prevail in the industry. "Typically, on either a 5% or 6% commission, 3% will be offered to brokers with buyer clients, and that commission split is disclosed to brokers on real estate firm and multiple listing service databases."<sup>13</sup> A blanket offer of 3% "then acts as a powerful force to discourage lower splits of 2% or even 1% because listing brokers, and their sellers, fear that properties carrying these lower splits will not be shown."<sup>14</sup>

**ANSWER:** RIR admits that Paragraph 79 purports to quote portions of the publication cited in the footnotes therein. RIR denies the allegations contained in Paragraph 79.

80. Accordingly, "a listing broker lists a split below" the standard industry level "at their, and their clients', peril because of the risk that traditional brokers working with buyers will avoid this property. . . . This informal discrimination against price competitors is the most important factor that allows dominant brokers to maintain high and uniform prices."<sup>15</sup>

**ANSWER:** RIR admits that Paragraph 80 purports to quote portions of the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 80.

81. The Buyer-Broker Commission Rule facilitates anticompetitive steering away from brokers who deviate materially from "the standard real estate commission" by enabling buyer-brokers to identify and compare the buyer-broker compensation offered by every seller in the MLS and then steer clients to homes offering the standard, higher commission.

**ANSWER:** RIR denies the allegations contained in Paragraph 81.

82. "The effects of steering, and its efficiency in curtailing price competition because of the importance of cooperating in the residential real estate industry, have been widely discussed. Brokers are able to engage in steering because 'an MLS listing gives brokers

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<sup>13</sup> Brobeck and Woodall, *supra* note 1 at 4.

<sup>14</sup> *Id.*

<sup>15</sup> Brobeck, *supra* note 9, at 3-4.

information on the commission that will be paid to the broker who brings the buyer to that property.”<sup>16</sup>

**ANSWER:** RIR admits that Paragraph 82 purports to quote a portion of the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 82.

83. By facilitating steering, the Buyer-Broker Commission Rule prevents rates from falling to competitive levels and enables brokers to avoid doing business with or otherwise retaliate against brokers who attempt to offer materially lower rates. The founder of a discount broker, while speaking at a FTC/DOJ workshop, disclosed that after his company began offering a lower commission on the MLS, “[w]e’ve had bricks thrown through car windows. We’ve had our cars egged. We’ve had hate mail sent to our sellers.”<sup>17</sup> He estimated that “40% of agents will go out of their way, above and beyond, and push hard not to show or sell your home if you don’t offer a 2.8% or 3% commission.”

**ANSWER:** RIR admits that Paragraph 83 purports to quote a portion of the statement cited in the footnote therein. RIR denies the allegations contained in Paragraph 83.

84. Another commentator explained that “the MLS listing acts as a tool which competing brokers can use to help enforce a near-uniform commission rate and drive out discounters.”<sup>18</sup>

**ANSWER:** RIR admits that Paragraph 84 purports to quote a portion of the statement cited in the footnote therein. RIR denies the allegations contained in Paragraph 84.

85. Indeed, during a 2016 presentation by Defendant Keller William’s CEO to competing brokerages and other participants at a major industry event, he reported that his firm had found that “[l]imited service, discount broker, market share in the United States, is at an all-time low,” and he enthusiastically reported that efforts to gain business by offering discounted commissions had become “irrelevant.”

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<sup>16</sup> Bradford W. Muller, *Encouraging Price Competition Among New Jersey’s Residential Real Estate Brokers*, 39 Seton Hall L. Rev. 665, 682-683, 683 n.100 (2009).

<sup>17</sup> Statement of Joshua Hunt, *What’s New in Residential Real Estate Brokerage Competition – An FTC-DOJ Workshop (Segment 2)*, FTC, 7 (2018), [https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj\\_residential\\_re\\_brokerage\\_competition\\_workshop\\_transcript\\_segment\\_2.pdf](https://www.ftc.gov/system/files/documents/videos/whats-new-residential-real-estate-brokerage-competition-part-2/ftc-doj_residential_re_brokerage_competition_workshop_transcript_segment_2.pdf).

<sup>18</sup> Muller, *Encouraging Price Competition Among New Jersey’s Residential Real Estate Brokers*, 39 Seton Hall L. Rev. 683 n.100 (2009).

**ANSWER:** RIR states it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 85 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

86. Additionally, the Broker Defendants' franchisees and brokers, among other co-conspirators, have used technology to facilitate steering based on MLS commission data and to impede buyers from learning about properties that offer discount buyer-broker commissions.

**ANSWER:** RIR denies the allegations contained in Paragraph 86 of the Complaint.

87. The Buyer-Broker Commission Rule's facilitation of steering is bolstered (1) by the Rule's requirement that the compensation that home sellers offer to buyer-brokers on Pinery must be offered as a percentage of the gross selling price or a definite dollar amount and (2) MLS PIN Rules' prohibition on negotiating a change to the commission.

**ANSWER:** RIR denies the allegations contained in Paragraph 87 of the Complaint.

88. By requiring that offers of compensation be expressed in specific dollar or percentage terms, the Rule ensures that buyer-brokers can easily compare the financial compensation offered to them by home sellers and steer buyers away from properties offering materially less than the standard real estate commission.

**ANSWER:** RIR denies the allegations contained in Paragraph 88 of the Complaint.

89. The Buyer-Broker Commission Rule deters downward departures from the standard commission and enables brokers to avoid doing business with or otherwise retaliate against brokers who try to compete by offering significant discounts.

**ANSWER:** RIR denies the allegations contained in Paragraph 89 of the Complaint.

90. The anticompetitive effects of the Buyer-Broker Commission Rule are further bolstered because neither buyer nor seller are permitted to view the universe of broker commission terms and thus are unlikely to know whether the buyer-broker is engaged in steering to higher commission properties. Pinery utilizes fields concerning compensation to buyer-brokers that only participants (i.e., brokers and salespersons) are able to view.

**ANSWER:** RIR denies the allegations contained in the first sentence of Paragraph 90 of the Complaint. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 90, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

91. Potential sellers and buyers cannot access the hidden fields and are not permitted to view the universe of buyer-broker commissions and other financial incentives being offered on Pinerly. MLS PIN Rules state, in relevant part:

CONFIDENTIALITY OF SERVICE INFORMATION: Any and all data and information contained in any Service Compilation shall be the proprietary data and information of the Service. . . . No Participant or Subscriber shall cause or permit any data or information contained in any Service Compilation to be transmitted, retransmitted or otherwise provided or made available in any manner to any individual or entity, other than to an individual or entity who or which is a Participant or Subscriber and other than as provided in Article X of these Rules and Regulations.

**ANSWER:** RIR admits that Paragraph 91 of the Complaint purports to quote portions of the MLS PIN Rules. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 91, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

92. MLS PIN has also ensured that commission offers and private remarks are not disclosed to the public through third-party websites or other MLS syndication services (for example, Zillow and Trulia).

**ANSWER:** In response to Paragraph 92 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

93. MLS PIN also requires price information sharing among brokers. This type of information exchange agreement prevents price competition that benefits consumers while allowing brokers to put upward pressure on pricing and to punish brokers who deviate downwards. Moreover, because home sellers and homebuyers, unlike brokers, do not have access to the universe of “blanket unilateral offers of compensation” being made to buyer-brokers, their ability to detect steering by buyer-brokers is significantly impeded. As one commentator has explained, “Buyers are never aware they are being steered. The buyer agent makes a selection of homes to show, and since the public sources of homes never shows the commission offered, buyers are never aware when their agents select out the homes with lower priced commission offerings.”<sup>19</sup>

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<sup>19</sup> Magura, *How Rebate Bans, Discriminatory MLS Listing Policies, and Minimum Service Requirements Can Reduce Price Competition For Real Estate Brokerage Services and Why It Matters*, at n.21, available at

**ANSWER:** RIR admits that Paragraph 93 of the Complaint purports to quote portions from the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 93.

94. The Defendants' anticompetitive restraints have had their intended effect of diminishing price competition and stabilizing and fixing the buyer-broker charges imposed on home sellers at or near the "standard real state commission" level. Moreover, because the actual dollar charge is generally calculated as a percentage of rising home prices, Defendants have substantially elevated the actual overcharge.

**ANSWER:** RIR denies the allegations contained in Paragraph 94 of the Complaint.

95. Although real estate brokers widely claim that commissions are "negotiable," this claim disregards the adverse impact of the conspiracy's anticompetitive restraints that impede effective negotiation within the market.

**ANSWER:** In response to Paragraph 95 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR admits that commissions are negotiable. RIR denies the remaining allegations contained in Paragraph 95 of the Complaint.

96. First, the actions in furtherance of the conspiracy have the purpose and effect of elevating the baseline for any negotiations that could follow. Accordingly, in the same way that an unlawful agreement to fix list prices (or an agreement to increase price announcement terms) is potentially subject to negotiation by some purchasers, the conspiracy's actions are anticompetitive and unlawful because they elevate the base-line for negotiations.

**ANSWER:** RIR denies the allegations contained in Paragraph 96 of the Complaint.

97. Second, the Buyer-Broker Commission Rule — by requiring sellers to make unilateral blanket offers of buyer-broker compensation as a precondition for listing properties on Pinergy — compels sellers to offer high buyer-broker commissions to attract potential buyers. Sellers who attempt to negotiate down the amount of buyer-broker commission to be offered on Pinergy are customarily informed by seller-brokers that reducing that amount will result in materially fewer potential buyers learning about or viewing the property for sale.

**ANSWER:** RIR denies the allegations contained in Paragraph 97 of the Complaint.

98. Indeed, seller-brokers are in fact trained to dissuade home sellers from reducing the buyer-broker commission. For example, Defendant Keller Williams provides courses to its

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<https://www.justice.gov/atr/how-rebate-bans-discriminatory-mls-listing-policies-and-minimum-service-requirements-can-reduce>.

Realtors through “Keller Williams University,” some of which are mandatory. One of the course materials provided to enrollees is a “Script Catalog” for “Working with Sellers,” which consists of a collection of recommended scripts for listing brokers to use when communicating with sellers. The “Script Catalog” includes the following recommended script:

Explaining How Commission Is Used: Script #4

*SELLER:* Can you reduce your commission?

*AGENT:* Of course. As you know, commissions are negotiable. But let me ask you—what are you trying to accomplish by getting me to reduce the commission?

*SELLER:* I'm trying to save money.

*AGENT:* I understand. Do you know how a commission structure works?

*SELLER:* Not really. I just know that I have to pay you a certain amount of what I receive for my house, and that means I get to keep less.

*AGENT:* Let me explain what happens when you reduce a commission. First of all, half of the commission usually goes to a cooperating agent. When you reduce the commission, you reduce the incentive for that agent to bring a buyer to your house. If an agent has ten different houses, nine of which come with a 3 percent commission, one of which comes with 2.5 percent commission, which houses do you think they're going to show?

*SELLER:* The ones with the larger commission.

*AGENT:* Absolutely. You're putting yourself at a disadvantage competitively when you reduce your commission, wouldn't you agree?

*SELLER:* I guess that's true.

**ANSWER:** In response to Paragraph 98 of the Complaint, RIR denies the allegations contained in the first sentence. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

99. Third, because MLS PIN requires the seller-broker to make a financial offer to the buyer-broker, sellers will build this cost into the total commission they charge the seller.

**ANSWER:** RIR denies the allegations contained in Paragraph 99 of the Complaint.

100. Although a seller-broker may offer a buyer-broker a lesser commission than was offered on Pinery, it may only do so if (a) the seller-broker informs the buyer-broker in writing of such proposed change in compensation before the buyer-broker produces an offer to purchase; and (b) the change in the listed compensation is not the result of any agreement or other cooperative activity between the seller broker and the buyer-broker.

**ANSWER:** In response to Paragraph 100 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

101. As a result, a seller cannot respond to a purchase offer with a counteroffer that is conditioned on reducing the buyer-broker commission. Nor can the seller, after receiving purchase offers, decide to unilaterally reduce the buyer-broker commission offered on Pinergy.

**ANSWER:** In response to Paragraph 101 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

102. Due to these restraints, the downward negotiation of the buyer-broker commissions is effectively prohibited and the buyer-broker commission has been maintained at a supra-competitive level — and substantially increased in actual dollars charged — for many years. Indeed, seller-brokers who initially list property with a buyer-broker commission at 2.5% or above almost always stay at a high commission rate; and if a seller-broker who initially offers a lower buyer-broker commission decides to change the amount, the change ordinarily involves imposition of an increased buyer-broker commission.

**ANSWER:** RIR denies the allegations of the first sentence of Paragraph 102 of the Complaint. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 102, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

103. In sum, the Buyer-Broker Commission Rule adopted, implemented and enforced by the conspiracy has achieved exactly what it is designed to do: it has imposed significant overcharges on home sellers, it has maintained — and even increased — those overcharges over time notwithstanding technology changes that should have substantially reduced commissions, and it has significantly impeded the ability of lower-cost alternatives to create a more competitive marketplace.

**ANSWER:** RIR denies the allegations contained in Paragraph 103 of the Complaint.

**E. All participants in Pinergy agree to these anticompetitive restrains**

104. Pinergy users, including Realtor brokers and salespersons and non-Realtor brokers and salespersons operating in the Covered Area must agree to these restraints and fully comply with the above anticompetitive rules, and with other rules contained in the MLS PIN Rules.

**ANSWER:** RIR denies the allegations contained in Paragraph 104 of the Complaint.

105. The MLS PIN Rules, including the Buyer-Broker Commission Rule, are enforced by the local Realtors and Realtor associations that own and manage MLS PIN.

**ANSWER:** In response to Paragraph 105 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

106. Brokers owns MLS PIN, and those brokers are required by MLS PIN to ensure that their participants adhere to the MLS PIN Rules. Thus, each local Realtor association agrees to the anticompetitive restraints challenged herein and plays a central role in implementation and enforcement of those restraints.

**ANSWER:** In response to Paragraph 106 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

107. Because access to Pinergy is a commercial necessity, all brokers and individual salespersons must comply with the MLS PIN Rules. Without access to Pinergy, a broker or agent would be unable to list properties for sale in the centralized database or receive offers of compensation for finding a buyer for a listed property.

**ANSWER:** In response to Paragraph 107 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

**F. Broker Defendants participate in, facilitate, and implement the conspiracy**

108. The Broker Defendants have agreed to adopt, promote, implement, and enforce the Buyer-Broker Commission Rule through their involvement in MLS PIN governance and imposition of MLS PIN Rules on local brokers, Realtors, and Realtor associations, including the Broker Defendants' affiliated franchisees, brokers and employees. By participating in such organizations which prevent members from allowing their associates to compete with each other for commissions — and agreeing to follow and enforce their anticompetitive rules — the Broker Defendants have joined the conspiracy and have played a central role in its implementation and enforcement.

**ANSWER:** RIR denies the allegations contained in Paragraph 108 of the Complaint.



109. The Broker Defendants participate in, implement, and facilitate the conspiracy by requiring their franchisees and realtors to join MLS PIN and comply with the MLS PIN Rules, including the Buyer-Broker Commission Rule.

**ANSWER:** RIR denies the allegations contained in Paragraph 109 of the Complaint.

110. Defendant HomeServices, for example, has explained its own role as follows: “As an industry leader, we have a responsibility to actively participate in shaping our industry and its current and future business model. The HomeServices executive leadership and CEOs of our operating companies drive these important discussions as leaders within the National Association of Realtors . . . and at the regional and local levels of the MLS organizations.”

**ANSWER:** In response to Paragraph 110 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

111. By virtue of their leadership positions in MLS PIN, these and other representatives from the Broker Defendants are responsible for formulating, reviewing, and approving rules like the Buyer-Broker Commission Rule.

**ANSWER:** In response to Paragraph 111 of the Complaint, RIR denies that representatives of RIR have had any responsibility in formulating, reviewing, and approving MLS PIN rules. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 111, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

112. Second, each Broker Defendant assists MLS PIN with ensuring compliance with the MLS PIN Rules. MLS PIN Participants and owners are responsible for the enforcement of the MLS PIN Rules.

**ANSWER:** In response to Paragraph 112 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR further denies that it ensures compliance with MLS PIN rules. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 112, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

113. Third, in each of the areas in which Pinery operates, the Broker Defendants collaborate with local brokers and Realtor associations to implement and enforce the MLS PIN Rules, including the Buyer-Broker Commission Rule, in furtherance of the combination and conspiracy alleged herein. Given the number of brokers and agents working for the Broker Defendants' franchisees in the Covered Area, the Broker Defendants and their policies have influenced the governance of MLS PIN.

**ANSWER:** In response to Paragraph 113 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR further denies the remaining allegations contained in Paragraph 113 of the Complaint.

114. Finally, each Broker Defendant has also agreed to participate in, implement, and/or facilitate the conspiracy by imposing the MLS PIN Rules, including the Buyer-Broker Commission Rule, on its franchisees, affiliates, and realtors. Each Broker Defendant requires its franchisees, affiliates, and realtors to join and/or participate in MLS PIN and follow the MLS PIN Rules. Each Broker Defendant requires its Realtors and franchisees to join the local MLS, including MLS PIN, and abide by such MLS's rules, including the MLS PIN Rules, as a condition of doing business with the Broker Defendants, and to secure the benefits of the Broker Defendants' brands, infrastructure, and other resources that support their brokerage operations.

**ANSWER:** RIR denies the allegations in Paragraph 114 of the Complaint.

115. Anywhere Defendants require their franchisees and realtors to comply with the MLS PIN Rules, including the Buyer-Broker Commission Rule. For example, the Century 21 Alton Clark and Coldwell Banker Traditions Policies and Procedures Manuals formally require MLS membership and compliance with MLS rules.

**ANSWER:** In response to Paragraph 115 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

116. The HomeServices Defendants also require their franchisees and Realtors to join MLS and follow MLS rules. For example, the Real Living Franchise Disclosure Document makes clear that MLS membership and access is required for franchisees, and the agreement requires the franchisee to provide Real Living with access to the franchisee's MLS data.

**ANSWER:** In response to Paragraph 116 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

117. The Keller Williams Policies and Guidelines Manual requires all associates to “become members of their local Board/Association of Realtors and MLS” unless granted an exemption by their team leader. A 2018 Keller Williams Franchise Disclosure Document shows that MLS membership is expected by franchisees, because it includes the MLS fees as part of the estimated initial investment for a Keller Williams market center. And the Keller Williams training manual, which provides sample broker scenarios for realtors, shows that listing brokers are taught to tell home sellers that the sellers have to pay the buyer-broker’s fee and that fee is non-negotiable.

**ANSWER:** In response to Paragraph 117 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

118. 2016 RE/MAX Independent Contractor Agreement prescribes that the contractor shall join the local realtor’s association and “shall abide by . . . the rules and regulations of each local or regional [MLS].”

**ANSWER:** RIR admits that Paragraph 118 purports to quote a portion of the 2016 RE/MAX Independent Contractor Agreement. RIR denies the allegations in Paragraph 118 of the Complaint.

119. Accordingly, by developing and reissuing the Buyer-Broker Commission Rule, enforcing the rule through local realtor association leadership, imposing the rule on local realtor associations and MLSs, and requiring franchisees, realtors, and other affiliates to join local realtor associations and MLSs (including MLS PIN), and comply with their rules (including the MLS PIN Rules), each Broker Defendant has agreed to participate in and implemented and/or facilitated the conspiracy.

**ANSWER:** RIR denies the allegations in Paragraph 119 of the Complaint.

**G. Effects of the conspiracy**

120. Defendants’ conspiracy has had the following anticompetitive effects, among others, in the areas covered by Pinergy:

- Home sellers have been forced to pay the commissions of the buyer-brokers — who represent the interests of the buyers in negotiations to buy their homes — thereby substantially inflating the cost of selling their homes.
- Home sellers have been compelled to set a high buyer-broker commission to induce buyer-brokers to show their homes to prospective home buyers.

- Home sellers have paid inflated buyer-broker commissions and inflated total commissions.
- The retention of a buyer-broker has been severed from the setting of the broker's commission; the home buyer retains the buyer-broker, while the home seller sets the buyer-broker's compensation.
- Competition among home buyers has been restrained by their inability to compete for the purchase of a home by lowering the buyer-broker commission.
- Broker Defendants and their franchisees have increased their profits substantially by receiving inflated, supracompetitive buyer-broker commissions and inflated, supracompetitive total commissions.

**ANSWER:** RIR denies the allegations in Paragraph 120 of the Complaint.

121. Plaintiffs are not aware of any pro-competitive effects of Defendants' conspiracy. Even assuming *arguendo*, that there was any justification for requiring such payments during the sub-agency period much earlier, "[t]here is no longer any reason to permit listing brokers to set the default prices that these competing buyers' brokers charge to serve their own customers."<sup>20</sup> Indeed, none of the purposes of MLS PIN "has anything to do with interbroker compensation. In fact, MLS PIN could continue providing every service of significance it provides without addressing compensation at all."<sup>21</sup> Even if there was a plausible pro-competitive effect, it would be substantially outweighed by the conspiracy's anticompetitive effects.

**ANSWER:** In response to Paragraph 121 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiffs' awareness stated in Paragraph 121, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations contained in Paragraph 121.

122. There is substantial economic evidence that Defendants' conspiracy has resulted in buyer-broker commissions and total commissions paid by home sellers that are inflated well above a competitive level in the Covered Area.

**ANSWER:** RIR denies the allegations contained in Paragraph 122.

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<sup>20</sup>Nadel, *A Critical Assessment of the Traditional Residential Real Estate Broker Commission Rate Structure*, 5 Cornell Real Estate R. 1, 64-65 (2007).

<sup>21</sup> Larson, *supra* note 7.

123. Total average broker commissions (i.e., the aggregate commission paid to the seller-broker and buyer-broker) in the in the Covered Area is approximately between five and six percent.

**ANSWER:** In response to Paragraph 123 of the Complaint, RIR states it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

124. This figure is substantially higher than in countries with competitive markets for residential real estate brokerage services. In a 2002 study titled “International Residential Real Estate Brokerage Fees and Implications for the US,” economists Natalya Delcoure and Norm Miller compared real estate commissions around the world with those in the United States. They concluded: “Globally, we see much lower residential commission rates in most of the other highly industrialized nations, including the United Kingdom (UK), Hong Kong, Ireland, Singapore, Australia, and New Zealand. . . . In the UK, the [total] commission rates average less than 2%. . . . In New Zealand and South Africa, [total] commission rates average 3.14%. In Singapore, the [total] commission rates also tend to run around 3%.” They also found variation within countries; in the United Kingdom, for example, Delcoure and Miller found that “1%-2% is typical; in very competitive areas 0.50.75%; in low priced areas [for homes] as high as 3.5%.” Ultimately, the economists concluded that, “based on global data, the [total] US residential brokerage fees should run closer to 3.0%.”<sup>22</sup>

**ANSWER:** RIR admits that Paragraph 124 of the Complaint purports to summarize and quote portions of a publication by Delcoure and Miller. RIR states it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

125. For years, buyer-broker commissions have remained steady in the United States, including in the Covered Area, despite both an increase in home prices (increasing the dollar amount of the commission) and the diminishing role of buyer-brokers described above. The United States General Accounting Office review of the residential real estate market reported that “commission rates have remained relatively uniform – regardless of market conditions, home prices, or the efforts required to sell a home.”<sup>23</sup> This remains true today. In fact, over the past two decades, the average total commission on an annual basis has always been maintained between 5.02 percent and 5.4 percent. It was at virtually the same level in 2017, as it was at the time of the GAO’s analysis. Similarly, in Defendant Keller Williams’ presentation to competitors

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<sup>22</sup> Delcoure and Miller, *International Residential Real Estate Brokerage Fees and Implications for the US Brokerage Industry*, 5 Int’l Real Estate Rev. 12, 13-14, 17 (2002).

<sup>23</sup> U.S. Gov’t Accountability Office, GAO-05-947, *Real Estate Brokerage: Factors That May Affect Price Competition*, Report to the Committee on Financial Services, House of Representatives 1, 1 (2005)

and other industry participants in 2016, Keller Williams reported that its average buyer-broker commission in 2015 (2.71%) was virtually the same level that was charged in 2002 (2.8%).

**ANSWER:** RIR admits that Paragraph 125 of the Complaint purports to summarize and quote portions of a report by the General Accounting Office. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

126. While the commission rates have been stable, the dollar value of commissions has increased significantly in step with rising housing prices. Since 2000, home prices have approximately doubled, while the total rate of inflation has been below 50%. As Dr. Barwick, an economist at Cornell University, recently stated at the DOJ/FTC workshop on competition in the residential real estate brokerage industry, “if you look at the commission the consumers are paying today relative to 20 years ago, they’re nearly paying twice as much.”<sup>24</sup>

**ANSWER:** RIR admits that Paragraph 126 of the Complaint purports to quote a portion of a statement made by Dr. Barwick. RIR denies the allegations contained in Paragraph 126.

127. While “competitive pressures in an industry ordinarily force competitors to adopt fee structures that reflect their costs, this has not occurred for real estate broker fees” — “broker fees are usually set without regard to either the quantity or quality of service rendered.”<sup>25</sup>

**ANSWER:** RIR admits that Paragraph 127 of the Complaint purports to quote a portion of the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 127.

128. The stability of broker commissions stands in stark contrast to the experience in other industries which have been significantly affected by the internet. “One would have expected that an information and communication-based industry like real estate brokerage, would enjoy tremendous cost efficiencies from the development of the Internet, Databases, and other communication technologies. Yet it appears that traditional brokers generally have not passed on their cost savings to consumers in the form of lower fees.”<sup>26</sup>

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<sup>24</sup>Barwick, et al., *Conflicts of Interest and the Realtor Commission Puzzle*, Nat’l Bureau of Econ. Research, 10 (2015).

<sup>25</sup> Nadel, *supra* note 19, at 4.

<sup>26</sup> Nadel, *supra* note 19, at 7.

**ANSWER:** RIR admits that Paragraph 128 of the Complaint purports to quote a portion of the publication cited in the footnote therein. RIR denies the allegations contained in Paragraph 128.

129. The adverse economic impact of the conspiracy’s restraints on price competition have been severe. The Consumer Federation of America, which has reviewed and criticized the brokerage industry’s practices for many years, has indicated that “[i]f sellers and buyers each separately negotiated compensation with their brokers, uniform 5-6% commissions would quickly disappear.”<sup>27</sup>

**ANSWER:** In response to Paragraph 129 of the Complaint, RIR admits that Paragraph 129 of the Complaint purports to quote a portion of a report by the Consumer Federation of America. RIR denies the allegations contained in Paragraph 129.

130. An attorney who has represented many MLSs observed that “[w]ith the demise of subagency, there is little reason to keep interbroker compensation”; and that “[g]etting rid of interbroker compensation” [i.e., payments from seller-brokers to buyer-brokers] would improve the market in several areas, including:

- “Buyer-broker fees can be commensurate with the skill and experience of the broker and with the buyer’s needs.”
- “The market benefits from price competition for buyer broker-services.”
- “The dangers of price fixing, and the claims by industry watchdogs that it exists now, will largely be addressed. Brokers will really be unable to tell what their competitors are charging for services, and there will be no incentive for commissions to be ‘standard.’”<sup>28</sup>

**ANSWER:** RIR admits that Paragraph 130 of the Complaint purports to quote a statement made by Brian Larson. RIR denies the allegations contained in Paragraph 130.

131. The economic cost to the plaintiff class and other consumers is enormous. Economists Hsieh and Moretti have suggested that “more than half of current commissions might be eliminated by competition.”<sup>29</sup> Natalya Delcourse and Norm Miller “found that U.S. broker fees should equal something closer to three percent.”<sup>30</sup>

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<sup>27</sup> Brobeck & Woodall, *supra* note 1, at 4.

<sup>28</sup> Larson, *supra* note 7.

<sup>29</sup> *Id.* at 8 n.28.

<sup>30</sup> *Id.* at 9 n.28.

**ANSWER:** RIR admits that Paragraph 131 of the Complaint purports to quote portions of the publication cited in the footnotes therein, including statements made by Hsieh, Moretti, Delcourse, and Miller. RIR denies the allegations contained in Paragraph 131.

## **VI. MARKET POWER**

132. Defendants have the power to control prices and exclude competition in the Covered Area.

**ANSWER:** RIR denies the allegations contained in Paragraph 132 of the Complaint.

133. The relevant service market for the claims asserted herein is the bundle of services provided to homebuyers and sellers by residential real estate brokers with Pinergy access. Defendants' control of Pinergy gives them the ability to impose the Buyer-Broker Commission Rule and other anticompetitive MLS PIN rules on class members and other market participants. Access to Pinergy is critical for brokers to compete and to assist home buyers and sellers in the areas in the Covered Area.

**ANSWER:** In response to Paragraph 133 of the Complaint, RIR admits Plaintiffs assert claims relating to the bundle of services provided to home buyers and sellers by residential real estate brokers with Pinergy access. Plaintiffs' assertion of a relevant service market is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies that Plaintiffs have asserted a legally cognizable relevant service market. RIR denies that it has control of Pinergy or imposes any MLS PIN rules on class members. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

134. The relevant geographic markets for the claims asserted herein are no broader than the Covered Area. Nearly all homes sold in the Covered Area were listed on Pinergy by brokers that are subject to MLS PIN Rules and standards. The residential real estate business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions and who maintains an office or affiliated sales associates within a reasonable distance of the seller's property. Likewise, most buyers seek to purchase property in a particular city, community, or neighborhood, and typically prefer to work with a broker who has knowledge of the area in which they have an interest



**ANSWER:** In response to Paragraph 134 of the Complaint, RIR admits Plaintiffs assert claims that are no broader than the Covered Area. Plaintiffs' assertion of a relevant geographic market is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies that Plaintiffs have asserted a legally cognizable relevant geographic market. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

135. Broker Defendants, through their coconspirator franchisees and other conspiring brokers in the Covered Area, collectively provide the vast majority of the residential real estate broker services in these areas.

**ANSWER:** RIR denies the allegations contained in Paragraph 135 of the Complaint.

136. Defendants and their co-conspirators collectively have market power in the Covered Area through their control of Pinergy and their dominant share of the local market.

**ANSWER:** RIR denies the allegations contained in Paragraph 136 of the Complaint.

137. Any buyer-brokers who wish to compete outside of Defendants' conspiracy would face insurmountable barriers. Defendants' control of Pinergy through their co-conspirators (i.e., their local franchisees, other local brokers, and the local realtor associations) means that non-conspiring brokers would need to establish an alternative listing service to compete with the conspiring brokers, or alternatively, attempt to compete without access to a listing service. A seller-broker who represented a seller without using a listing service would lose access to the large majority of potential buyers, and a buyer-broker who represented a buyer without using a listing service would lose access to the large majority of sellers. Brokers cannot compete effectively without access to a listing service.

**ANSWER:** In response to Paragraph 137 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR further states that it lacks information and belief to form a belief about the truth of the allegations contained in the last two sentences, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations in Paragraph 137.

138. For an alternative listing service to compete effectively with Pinergy, the alternative would need to have listings as comprehensive (or at least nearly so) as Pinergy.

Brokers and their individual salespersons who currently profit from inflated, supra-competitive buyer-broker commissions and total commissions have little incentive to participate on an alternative listing service that would generate lower buyer-broker commissions and lower total commissions. Further, many buyers would be very reluctant to retain a buyer-broker operating on an alternative listing service that required them to pay the buyer-broker commission, when other buyer-brokers operating on Pinergy are entirely compensated by home sellers.

**ANSWER:** The allegations in Paragraph 138 of the Complaint are speculation rather than factual allegations and therefore do not require an answer. To the extent an answer is deemed necessary, RIR lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 138, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

139. Accordingly, seller-brokers on an alternative listing service would struggle to attract buyer-brokers and their buyer clients. Moreover, many home sellers would not retain brokers using a new, unfamiliar alternative listing service that had no track record of success and had failed to attract sufficient buyers and buyer-brokers. Thus, a listing service attempting to compete with Pinergy would likely fail to attract enough property listings to operate profitably and be a competitive constraint on Pinergy. The absence of listing services that compete with Pinergy reflects the very substantial barriers to entry.

**ANSWER:** The allegations in Paragraph 139 of the Complaint are speculation rather than factual allegations and therefore do not require an answer. To the extent an answer is deemed necessary, RIR lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 139, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

## **VII. THE CONSPIRACY**

140. MLS PIN conspired with the Broker Defendants, each of the local Realtors and Realtor associations that own and operate MLS PIN, and multiple franchisees and brokers of the Broker Defendants to agree to, comply with, and implement the anticompetitive Buyer-Broker Commission Rules. The conspirators had a conscious commitment to a common scheme designed to achieve the unlawful objective of maintaining supra-competitive commissions.

**ANSWER:** In response to Paragraph 140 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR denies the remaining allegations in Paragraph 140.

141. Broker Defendants participated in MLS PIN's conspiracy by participating in, facilitating, and implementing the Buyer-Broker Commission Rules. Each of the Broker Defendants required its franchisees, affiliates, and realtors to comply with MLS PIN's allegedly anticompetitive restraints to secure the benefits of their brands, infrastructure and resources. They did this by requiring their franchisees and realtors to join MLS PIN and follow the MLS PIN Rules, including the Buyer-Broker Commission Rules. In addition, Broker Defendants require their franchisees and salespersons to join a local Realtor association and MLS PIN.

**ANSWER:** In response to Paragraph 141 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR denies the remaining allegations in Paragraph 141.

142. Given the number of brokers and agents working for the Broker Defendants' franchisees, these franchises had influence over the governance of MLS PIN and the promulgation and enforcement of the MLS PIN Rules.

**ANSWER:** RIR denies the allegations in Paragraph 142 of the Complaint.

143. Here, the Broker Defendants constitute the largest real estate brokers in the Covered Area. It is reasonable to infer from the fact that each Broker Defendant required its franchisees and realtors to join MLS PIN and local Realtor associations that the Broker Defendants supplied those organizations with the membership base that gives them the power to impose the MLS PIN Rules upon the industry in the Covered Area. In short, each Broker Defendant has participated in an agreement that centralizes control over how real estate brokers are compensated with MLS PIN. Thus, Broker Defendants' actions satisfy the conspiracy element because their actions deprived the marketplace of independent centers of decision-making, at least with respect to buyer-broker commissions.

**ANSWER:** In response to Paragraph 143 of the Complaint, RIR denies that it conspired with any Defendant or played any role in furtherance of a conspiracy. RIR denies the remaining allegations in Paragraph 143.

144. Thus, the Broker Defendants' conduct has empowered Pinergy such that access to Pinergy is commercially necessary for real estate brokers. Without the Broker Defendants' conscious assent to the system, Pinergy would be unlikely to have the power to exclude brokerages and realtors that did not abide by MLS PIN's Buyer-Broker Commission Rules.

**ANSWER:** RIR denies the allegations in Paragraph 144 of the Complaint.

145. The Broker Defendants have control over their franchisees and salespersons insofar as the Broker Defendants require them to join MLS PIN and local Realtor associations, the entities responsible for implementing and enforcing the alleged anticompetitive restraints here.

**ANSWER:** RIR denies the allegations in Paragraph 145 of the Complaint.

146. It is reasonable to infer that the Broker Defendants are involved in the maintenance of the existing pricing system. That inference is bolstered by the CEO of Broker Defendant Keller Williams Realty, Inc. informing attendees at an industry event with its competitors that offering a lower buyer-broker commission rate than the industry average amounted to “giving away money” and that “limited service, discount broker, market share in the United States is at an all-time low.”

**ANSWER:** RIR denies the allegations in the first sentence of Paragraph 146 of the Complaint.

RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

147. Thus, the operation of the Buyer-Broker Commission Rule was clearly a topic of considerable interest and was an issue discussed among competitors.

**ANSWER:** RIR denies the allegations in Paragraph 147 of the Complaint.

148. In sum, the Broker Defendants’ conduct deprived the real estate market of independent centers of decision-making by effectively concentrating power in the hands of MLS PIN to set the rules for buyer-broker commissions in the Covered Area. Moreover, the Broker Defendants played a key role in maintaining that system by requiring its franchisees and salespersons to join MLS PIN and local Realtor associations and abide by their rules. And representatives from the Broker Defendants implemented and enforced those rules through their leadership roles with local Realtor associations.

**ANSWER:** RIR denies the allegations in Paragraph 148 of the Complaint.

### **VIII. THE UNREASONABLE RESTRAINT OF TRADE**

149. The relevant service market is the bundle of services provided to homebuyers and sellers by residential real estate brokers with MLS access in the Covered Area.

**ANSWER:** In response to Paragraph 149 of the Complaint, RIR admits Plaintiffs assert claims relating to the bundle of services provided to homebuyers and sellers by residential real estate

brokers with access to the Covered MLSs. Plaintiffs' assertion of a relevant service market is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies that Plaintiffs have asserted a legally cognizable relevant service market and denies all remaining allegations in Paragraph 149 of the Complaint.

150. The relevant geographic market is the Covered Area.

**ANSWER:** Plaintiffs' assertion of a relevant geographic market is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies that Plaintiffs have asserted a legally cognizable relevant geographic market.

151. The Buyer-Broker Commission Rule causes an anticompetitive effect in the form of artificially inflated buyer-broker commissions. Specifically, while the Buyer-Broker Commission Rule has been in effect, total commissions for United States residential real estate sales have held steady between 5.0 and 5.4 percent with 2.5 to 3.0 commissions going to buyer-brokers.

**ANSWER:** RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the last sentence, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations in Paragraph 151.

152. Those rates are sufficiently higher than in comparable international markets.

**ANSWER:** In response to Paragraph 152 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

153. The commission rates held steady even as housing prices increased during that time (outpacing the rate of inflation), meaning that actual dollar commissions on home sales rose during that period. Such sustained increasing pricing is not expected in a competitive market in the absence of comparable increases in the cost of delivering the relevant services. Because stable, percentage-based commissions are directly correlated with the price of housing, and the cost of housing has substantially increased relative to the rate of inflation, increases in the cost of providing realtor services do not account for the dramatic increase in the value of commissions.

**ANSWER:** In response to Paragraph 153 of the Complaint, RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

154. As recognized by least some Defendants, brokers who try to gain business by offering discounted commissions have become almost “irrelevant.”

**ANSWER:** RIR states it lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 154 of the Complaint, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

155. When viewing the Buyer-Broker Commission Rules as a whole, it is easy to understand how they could plausibly result in inflated commission rates.

**ANSWER:** RIR denies the allegations contained in Paragraph 155 of the Complaint.

156. First, under the Buyer-Broker Commission Rule, the seller-broker must list the property with a blanket offer of some compensation to the buyer-broker. That requirement, by itself, raises antitrust concerns given that the offer is the same regardless of the buyer-broker’s experience or the value of services provided by the buyer-broker.

**ANSWER:** RIR denies the allegations contained in Paragraph 156 of the Complaint.

157. A buyer-broker is highly unlikely to show their client a home when the seller is offering a relatively low commission.

**ANSWER:** RIR denies the allegations contained in Paragraph 157 of the Complaint.

158. Nor would a prospective homebuyer necessarily be able to detect that their broker is screening out homes offering insufficient commissions because only brokers and realtors that subscribe to the MLS can view buyer-broker commission offers. That also means a home seller is unable to view the universe of buyer-broker commission offers before agreeing to a commission rate in the listing agreement, thereby putting the seller-broker in a substantial position of influence with respect to that decision.

**ANSWER:** RIR denies the allegations contained in Paragraph 158 of the Complaint.

159. Such an arrangement restrains trade because it substantially deprives the customer of the ability to utilize and compare prices in selecting brokers.

**ANSWER:** RIR denies the allegations contained in Paragraph 159 of the Complaint.

160. At the same time, MLS PIN Rules require that brokers share price information.

**ANSWER:** In response to Paragraph 160 of the Complaint, RIR states it lacks knowledge or information sufficient to form a belief about the truth of the allegations, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5).

161. Once a home seller has agreed to a commission rate, they are effectively locked in to paying that amount.

**ANSWER:** RIR denies the allegations contained in Paragraph 161 of the Complaint.

162. Conversely, the seller has contractually agreed to pay a total commission. Thus even if the seller were able to negotiate down the buyer-broker's commission, the seller would not be entitled to the benefit as the seller-broker would be contractually entitled to retain any discount.

**ANSWER:** RIR denies the allegations contained in Paragraph 162 of the Complaint.

163. But even if the seller or buyer were inclined to negotiate the buyer-broker commission, MLS PIN Rules expressly limit this conduct. According to the MLS PIN Rules, the only time a buyer-broker can negotiate the listed commission amount is prior submitting an offer from a potential buyer. Nor can the buyer-broker circumvent the rule by urging the buyer to negotiate with the seller directly.

**ANSWER:** RIR denies the allegations contained in Paragraph 163 of the Complaint.

164. Conversely, once a seller-broker has received an offer on a property, they are prohibited from attempting to modify the buyer-broker commission unilaterally. Moreover, it is difficult to imagine how such negotiation could occur. Indeed, upon information and belief, seller-brokers who list a property with a buyer-broker commission offer of 2.5 percent or above will rarely subsequently decrease the offer below that threshold.

**ANSWER:** RIR denies the allegations contained in Paragraph 164 of the Complaint.

165. This results in a pricing system in which the seller is essentially locked into a buyer-broker commission rate upfront that neither the buyer nor the seller have the ability to negotiate.

**ANSWER:** RIR denies the allegations contained in Paragraph 165 of the Complaint.

166. In sum, the Buyer-Broker Commission Rules prevent effective negotiation over commission rates and cause an artificial inflation of buyer-broker commission rates in the markets served by Pinergy.

**ANSWER:** RIR denies the allegations contained in Paragraph 166 of the Complaint.

## **IX. Injury**

167. Plaintiffs have suffered an antitrust injury from Defendants' conspiracy. Plaintiffs were home sellers required to pay a commission to the buyer-broker of the person who purchased their home. But-for Defendants' conspiracy, Plaintiffs would have paid "substantially lower commissions." Such an injury is assuredly of a type that the Sherman Act was designed to prevent.

**ANSWER:** In response to Paragraph 167 of the Complaint, RIR denies that it has conspired with other Defendants or played any role in furtherance of a conspiracy. RIR states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence, which has the effect of a denial under Federal Rule of Civil Procedure 8(b)(5). RIR denies the remaining allegations in Paragraph 167.

168. Nor is the alleged injury one particular to Plaintiffs but instead it would be felt by all home sellers who list their property on Pinerly.

**ANSWER:** Paragraph 168 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 168.

### **CLASS ACTION ALLEGATIONS**

169. Plaintiffs bring this lawsuit as a class action on behalf of home sellers who paid a broker commission in connection with the sale of residential real estate listed on Pinerly. Specifically excluded from this Class are: the Defendants; the officers, directors and employees of any Defendant; any entity in which any Defendant has a controlling interest; any affiliate, legal representative of any Defendant; the judge to whom this case is assigned and any member of the judge's immediate family; the clerks and staff of the judge to whom this case is assigned and any member of their immediate family; and any heirs, assigns and successors of any of the above persons or organizations in their capacity as such.

**ANSWER:** RIR admits that Plaintiffs purport to bring an action on behalf of themselves and the persons identified in Paragraph 169 of the Complaint and that, for that purported class, Plaintiffs have specifically excluded certain groups of people. RIR denies that Plaintiffs have identified a class that satisfies the requirements of Federal Rule of Civil Procedure 23.

170. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, there are thousands of members in the Class.



**ANSWER:** Paragraph 170 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 170.

171. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs' claims, and the claims of all Class members, arise out of the same conduct, policies and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendant's wrongful conduct.

**ANSWER:** Paragraph 171 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 171.

172. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- A. Whether Defendants conspired as alleged herein;
- B. Whether the conspiracy was implemented in the areas in which Pinergy operates;
- C. Whether the conspiracy harmed competition as alleged herein;
- D. Whether the competitive harm from the conspiracy substantially outweighs any competitive benefits;
- E. Whether buyer-broker commissions and total commissions were inflated as a result of the conspiracy in the areas in which Pinergy operates; and
- F. The appropriate class-wide measures of damages.

**ANSWER:** Paragraph 172 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 172.

173. Plaintiffs will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of class action litigation. Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

**ANSWER:** Paragraph 173 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 173.

174. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and

burden of individual litigation make it impossible for members of the Class and/or Subclass to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**ANSWER:** Paragraph 174 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 174.

175. Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant.

**ANSWER:** Paragraph 175 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 175.

176. In the alternative, certification under Rule 23(b)(2) is warranted because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to each Class as a whole.

**ANSWER:** Paragraph 176 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 176.

177. In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

**ANSWER:** Paragraph 177 is a legal conclusion to which no answer is necessary, but to the extent an answer is deemed necessary, RIR denies the allegations contained in Paragraph 177.

**COUNT I**  
**Violation of Section 1 of the Sherman Act, 15 U.S.C § 1**

178. Plaintiffs repeat and incorporate by reference each of the foregoing allegations of this Complaint.

**ANSWER:** RIR repeats and incorporates by reference its response to the foregoing allegations of the Complaint.

179. Defendants have engaged in a continuing contract, combination, or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C § 1.

**ANSWER:** RIR denies the allegations contained in Paragraph 179.

180. The contract, combination, or conspiracy alleged herein has consisted of a continuing agreement among Defendants and their co-conspirators to require home sellers to pay the buyer-broker and to pay an inflated amount.

**ANSWER:** RIR denies the allegations contained in Paragraph 180.

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

- Participated in the establishment, implementation and enforcement of the Buyer-Broker Commission Rule and other anticompetitive MLS PIN rules;
- Participated in the establishment, implementation and enforcement of rules by MLS PIN, local Realtor associations and Pinergy that implemented the Buyer-Broker Commission Rule and other anticompetitive rules in the Covered Area; and
- Included provisions in franchise agreements, policy manuals, and other corporate agreements with franchisees, affiliates, and realtors of Broker Defendants that required the implementation of and adherence to the Buyer-Broker Commission Rule and other anticompetitive MLS PIN rules in the Covered Area.

**ANSWER:** RIR denies the allegations contained in Paragraph 181, inclusive of all sub-parts.

182. Defendants' conspiracy has required sellers in the Covered Area to pay buyer-brokers who represent interests antagonist to their own, to pay an inflated buyer-broker commission and an inflated total commission and has restrained price competition among buyer-brokers. This harm to competition substantially outweighs any competitive benefits arising from the conspiracy.

**ANSWER:** RIR denies the allegations contained in Paragraph 182.

183. Defendants' conspiracy has caused buyer-broker commissions and total commissions in the Covered Area to be inflated. Plaintiffs and the other members of the Class paid these inflated commissions in connection with the sale of residential real estate listed on Pinergy. Absent Defendants' conspiracy, Plaintiffs and the other class members would have paid substantially lower commissions because the broker representing the buyer of their homes would have been paid by the buyer and buyer-broker commissions would not be at supra-competitive levels.

**ANSWER:** RIR denies the allegations contained in Paragraph 183.

184. Defendants' conspiracy is a *per se* violation of Section 1 of the Sherman Act.

**ANSWER:** RIR denies the allegations contained in Paragraph 184.

185. As a direct and proximate result of Defendants' past and continuing violation of Section 1 of the Sherman Act, Plaintiffs and the other class members have been injured in their business and property and suffered damages in an amount to be proven at trial.

**ANSWER:** RIR denies the allegations contained in Paragraph 185.

186. In the alternative, Defendants' conspiracy violates section 1 of the Sherman Act under the Rule of Reason.

**ANSWER:** RIR denies the allegations contained in Paragraph 186.

187. As a direct and proximate result of Defendants' past and continuing violation of Section 1 of the Sherman Act, Plaintiffs and the other class members have been injured in their business and property and suffered damages in an amount to be proven at trial.

**ANSWER:** RIR denies the allegations contained in Paragraph 187.

#### **PRAYER FOR RELIEF**

188. WHEREFORE, Plaintiff, individually and on behalf of the Class, pray for relief as follows as applicable for the particular claim:

- (a) That the Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to members of the Class;
- (b) That the Court enter an order declaring that Defendants' actions, as set forth in this Complaint, violate the law;
- (c) That the Court award Plaintiffs and the other members of the Class damages and/or restitution in an amount to be determined at trial;
- (d) That the Court award Plaintiffs and the Class pre- and post-judgment interest;
- (e) That the Court award Plaintiffs and the Class their costs of suit, including reasonable attorneys' fees and expenses;
- (f) That the Court award Plaintiffs and the Class a permanent injunction, under Section 16 of the Clayton Act, enjoining Defendants from continuing conduct determined to be unlawful; and
- (g) That the Court award such other relief as the Court may deem just and proper.

**ANSWER:** RIR denies that Plaintiffs are entitled to any relief from RIR as requested by Plaintiffs in the Requested Relief.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

**ANSWER:** RIR admits that Plaintiffs demand a jury trial. Pursuant to Federal Rule of Civil Procedure 38, RIR hereby demands a trial by jury.

**AFFIRMATIVE DEFENSES**

By alleging the following affirmative defenses, RIR is not agreeing or conceding that it has the burden of proof on any of the issues or that any particular issue or subject matter herein is relevant to Plaintiffs' allegations. RIR asserts the following affirmative defenses against the named Plaintiffs and any putative class members on behalf of whom Plaintiffs purport to bring claims. RIR reserves the right to amend, withdraw, supplement, or modify these defenses.

**FIRST DEFENSE**

Plaintiffs' claims should be dismissed because the Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s) of limitations or repose.

**THIRD DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches and unclean hands.

**FOURTH DEFENSE**

Plaintiffs' claims should be dismissed to the extent that plaintiffs seek remedies that are unconstitutional, contrary to public policy, or are otherwise unauthorized.

**FIFTH DEFENSE**

Plaintiffs' claims should be dismissed because Plaintiffs suffered no injury or damages as a result of the matters alleged in the Complaint. To the extent that Plaintiffs purportedly suffered injury or damage, which RIR specifically denies, RIR further contends that any such purported injury or damage was not caused by any act or omission of RIR.

#### **SIXTH DEFENSE**

Plaintiffs' claims are barred on the ground that the acts complained of, to the extent they occurred, were procompetitive in nature, were done solely to promote, encourage, and increase competition, and had procompetitive effects that outweighed any alleged harm.

#### **SEVENTH DEFENSE**

Plaintiffs' claims should be dismissed because Plaintiffs and/or one or more members of the proposed class have not suffered actual, cognizable antitrust injury of the type antitrust laws are intended to remedy.

#### **EIGHTH DEFENSE**

Plaintiffs' claims should be dismissed because the alleged damages sought are too speculative and uncertain, and cannot be practically ascertained or allocated.

#### **NINTH DEFENSE**

Plaintiffs' claims should be dismissed, in whole or in part, because Plaintiffs failed to take all necessary, reasonable and appropriate actions to mitigate their alleged damages, if any.

#### **TENTH DEFENSE**

Plaintiffs' claims should be dismissed, in whole or in part, to the extent Plaintiffs lack standing to sue for the injuries alleged in the Complaint. Plaintiffs also lack standing to bring this action for injunctive relief, and are not entitled to such relief, because the alleged violation of

the antitrust laws does not threaten immediate, irreparable loss or damage within the meaning of 15 U.S.C. Section 26.

#### **ELEVENTH DEFENSE**

Plaintiffs' claims should be dismissed to the extent that they are barred, in whole or in part, because Plaintiffs may not rely upon the doctrine of fraudulent concealment as they cannot show concealment, actual and reasonable reliance on such affirmative acts of concealment, and/or due diligence in discovery of their claim. Plaintiffs have failed to plead fraudulent concealment with particularity, as required by Fed . R. Civ. P. 9(b).

#### **TWELFTH DEFENSE**

Plaintiffs' damages, if any, resulted from the acts or omissions of third parties over whom RIR had no control or responsibility. The acts of such third parties constitute intervening or superseding causes of harm, if any, suffered by Plaintiffs and/or any members of the proposed class.

#### **THIRTEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, to the extent that any Plaintiffs have released, settled, entered into an accord and satisfaction or otherwise compromised their claims. Without admitting that Plaintiffs are entitled to recover any damages in this matter, RIR is entitled to set off any amount paid to Plaintiffs by any other Defendant who has settled, or does settle, Plaintiffs' claims in this matter from any recovery Plaintiffs may obtain against RIR.

#### **FOURTEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs directly or indirectly authorized, consented to, acquiesced in, ratified, confirmed, participated in, and/or benefited from some or all of the actions and omissions of which they complain.

**FIFTEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because any and all injuries alleged in the Complaint, the fact and extent of which RIR specifically denies, were directly and proximately caused or contributed to by the statements, acts, and/or omissions of Plaintiffs and/or third parties or entities other than RIR.

**SIXTEENTH DEFENSE**

Plaintiffs' claims should be dismissed to the extent that they are barred, in whole or in part, because any action taken by or on behalf of RIR was justified, constituted bona fide business competition, and was ancillary to the pursuit of its own legitimate business and economic interests.

**SEVENTEENTH DEFENSE**

Plaintiffs' claims are barred to the extent that such conduct was committed by any individual acting ultra vires.

**EIGHTEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, to the extent that they have agreed to arbitration or chosen a different forum for the resolution of their claims.

**NINETEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the direct-purchaser requirement of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

**TWENTIETH DEFENSE**

RIR adopts and incorporates by reference any and all other additional or affirmative defenses asserted or to be asserted by any other defendant in this proceeding to the extent that RIR may share in such affirmative defenses.



**RIGHT TO ASSERT ADDITIONAL DEFENSES**

Plaintiffs' claims should be dismissed for uncertainty and vagueness and because their claims are ambiguous and/or unintelligible. RIR avers that Plaintiffs' claims do not describe events or legal theories with sufficient particularity to permit RIR to ascertain what other defenses may exist. RIR therefore gives notice that it intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserves its right to amend its answer to assert such defense.

\* \* \*

WHEREFORE, RIR respectfully requests that this Court:

1. Dismiss the Complaint with prejudice, and enter judgment in favor of RIR and against Plaintiffs on all claims;
2. Deny certification of Plaintiffs' alleged class;
3. Award RIR its costs and expenses; and
4. Grant such additional relief for RIR as this Court deems just and proper.

Dated: March 27, 2023

Respectfully submitted,

*/s/ Jeffrey A. LeVee*

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Kate Wallace (BBO #665503)

kwallace@jonesday.com

JONES DAY

100 High Street

21st Floor

Boston, MA 02110

(617) 960-3939

Jeffrey A. LeVee (pro hac vice)

jleee@jonesday.com

Eric P. Enson

epenson@jonesday.com

JONES DAY

555 South Flower Street, 50<sup>th</sup> Floor

Los Angeles, CA 90071

(213) 489-3939

Eddie Hasdoo (pro hac vice)

ehasdoo@jonesday.com

JONES DAY

110 N. Wacker Dr., Suite 4800

Chicago, Illinois 60606

(312) 782-3939

*Attorneys for Defendant RE/MAX Integrated  
Regions, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that this document has been electronically filed with the Court on March 27, 2023, that it is available for viewing and downloading from the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

*/s/ Jeffrey A. LeVee*

\_\_\_\_\_  
Jeffrey A. LeVee

*An Attorney for Defendant RE/MAX  
Integrated Regions, LLC*