

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

SCOTT and RHONDA BURNETT,)
RYAN HENDRICKSON, JEROD BREIT,)
SCOTT TRUPIANO, JEREMY KEEL,)
SHELLY DREYER, HOLLEE ELLIS, and)
FRANCES HARVEY on behalf of themselves)
and all others similar situated,)

))
Plaintiffs,)

v.)

Civil Action No.: 1:19-cv-322-SRB

THE NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS CORP.,)
HOMESERVICES OF AMERICA, INC.,)
BHH AFFILIATES, LLC, HSF AFFILIATES,)
LLC, RE/MAX LLC, and KELLER)
WILLIAMS REALTY, INC.,)

))
Defendants.)

**HOMESERVICES DEFENDANTS' ANSWER TO
THIRD AMENDED CLASS ACTION COMPLAINT**

Defendants, HomeServices of America, Inc. (“HomeServices”), HSF Affiliates, LLC (“HSF”), and BHH Affiliates, LLC (“BHH”) (collectively, the “HomeServices Defendants”), by and through their attorneys, respond as follows to the allegations set forth in Plaintiffs’ Third Amended Class Action Complaint (“Third Amended Complaint”).

HomeServices Defendants deny all substantive allegations contained on pages 1 and 2 of the Third Amended Complaint that precede the first numbered paragraph of formal allegations.

NATURE OF THE ACTION

1. HomeServices Defendants deny that they agreed, combined, or conspired to impose and enforce an anticompetitive restraint that requires home sellers to pay the broker representing the buyer of their homes, or to pay an inflated amount to such brokers, in violation of federal

antitrust law and Missouri law or that they violated antitrust laws in any other way. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of the Third Amended Complaint and therefore deny the same.

2. HomeServices Defendants deny that HomeServices is a real estate broker. HomeServices Defendants admit that BHH and HSF each holds a real estate broker's license, but deny that they engage in the conduct of a traditional real estate broker or the type activities alleged in the Third Amended Complaint. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 of the Third Amended Complaint and therefore deny the same.

3. HomeServices Defendants deny participation in any anticompetitive conspiracy and therefore deny the allegations in paragraph 3 of the Third Amended Complaint.

4. HomeServices Defendants admit that a Multiple Listing Service ("MLS") is a database of properties listed for sale in a particular geographic region. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the Third Amended Complaint and therefore deny the same.

5. HomeServices Defendants deny that "the Adversary Commission Rule is a mandatory rule in NAR's handbook." HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 5 of the Third Amended Complaint and therefore deny the same.

6. The HomeServices Defendants deny the allegations in paragraph 6 of the Third Amended Complaint.

7. The HomeServices Defendants deny the allegations in paragraph 7 of the Third Amended Complaint.

8. The HomeServices Defendants deny the allegations in paragraph 8 of the Third Amended Complaint.

9. HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the Third Amended Complaint and therefore deny the same.

10. HomeServices Defendants deny the allegations in paragraph 10 of the Third Amended Complaint.

11. HomeServices Defendants deny the allegations in paragraph 11 of the Third Amended Complaint.

12. HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12 of the Third Amended Complaint and therefore deny the same.

13. HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Third Amended Complaint and therefore deny the same.

14. HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Third Amended Complaint and therefore deny the same.

15. HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15 of the Third Amended Complaint and therefore deny the same.

16. HomeServices Defendants deny that they have participated in any antitrust conspiracy and deny that “[the] Adversary Commission Rule explains why commissions in the United States remain artificially and anti-competitively ‘elevated’ beyond where they would be in a market free from Defendants’ conspiracy.” HomeServices Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16 of the Third Amended Complaint and therefore deny the same.

17. HSF admits that it may require franchisees to adhere generally to NAR Ethical Rules. HomeServices Defendants deny the remaining allegations in paragraph 17 of the Third Amended Complaint.

18. HomeServices Defendants deny the allegations in paragraph 18 of the Third Amended Complaint.

19. HomeServices Defendants deny any participation in any antitrust conspiracy and therefore deny that “Defendants’ conspiracy has kept buyer broker commissions in the 2.5 to 3.0 percent range for many years despite the diminishing role of buyer brokers” and “[buyer brokers’] percentage of commission has remained steady, due to Defendants’ conspiracy.” HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that “Many home buyers no longer search for prospective homes with the assistance of a broker, but rather independently through online services,” and therefore deny the allegation that they “have studied and are aware of this trend and fact.” HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 19 of the Third Amended Complaint and therefore deny the same.

20. HomeServices Defendants deny that they have “maintained” “artificially and anticompetitively inflated commission rates.” HomeServices Defendants lack knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 of the Third Amended Complaint and therefore deny the same.

21. HomeServices Defendants deny participation in any antitrust conspiracy or anticompetitive practices; deny that the Adversary Commission Rule is an anticompetitive practice; deny that they impose any “commission overcharges” on anyone; and deny that the commissions charged in real estate transactions involving any HomeServices Defendant results from lack of competition and makes no economic sense. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 21 of the Third Amended Complaint and therefore deny the same.

22. HomeServices Defendants deny participation in any anticompetitive conspiracy and the “steering” of their buyer clients. Home Services Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 of the Third Amended Complaint and therefore deny the same.

23. HomeServices Defendants deny the allegations in paragraph 23 of the Third Amended Complaint.

24. HomeServices Defendants deny participation in any anticompetitive conspiracy and therefore deny allegations in paragraph 24 of the Third Amended Complaint.

25. HomeServices Defendants deny participation in any anticompetitive conspiracy and therefore deny allegations in paragraph 25 of the Third Amended Complaint.

26. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny all remaining allegations in paragraph 26 of the Third Amended Complaint.

27. HomeServices Defendants deny that the Adversary Commission adversely affects competition and deny the remaining allegations in paragraph 27 of the Third Amended Complaint.

28. HomeServices Defendants deny violating any antitrust laws and deny any liability to Plaintiffs. HomeServices Defendants state that Plaintiffs' requested relief speaks for itself. HomeServices Defendants deny any remaining allegations in paragraph 28 of the Third Amended Complaint.

29. HomeServices Defendants deny any liability to Plaintiffs and deny that Plaintiffs' claims can be maintained as a class action. Plaintiffs' claims speak for themselves. HomeServices Defendants deny any remaining allegations in paragraph 29 of the Third Amended Complaint.

JURISDICTION AND VENUE

30. HomeServices Defendants admit that this Court has subject matter jurisdiction. HomeServices Defendants lack knowledge or information sufficient to admit or deny the number of purported class members or the aggregate amount in controversy and therefore deny the same. HomeServices Defendants deny any remaining allegations in paragraph 30 of the Third Amended Complaint.

31. HomeServices Defendants admit that they have been served. HomeServices Defendants admit that they have transacted business in the United States and that they have substantial contacts with the United States. HomeServices Defendants deny that HomeServices or HSF has transacted substantial business in this District or that they have substantial contacts with this District. HomeServices Defendants admit that BHH does business in this District. HomeServices Defendants deny participation in an unlawful scheme, anywhere. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 of the Third Amended Complaint and therefore deny the same.

32. HomeServices Defendants deny that HomeServices or HSF has transacted substantial business in this District. HomeServices Defendants admit that BHH has transacted business in this District. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 of the Third Amended Complaint and therefore deny the same.

33. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Third Amended Complaint and therefore deny the same.

34. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Third Amended Complaint and therefore deny the same.

35. HomeServices Defendants deny the allegations in paragraph 35 of Plaintiffs' Complaint.

36. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Third Amended Complaint and therefore deny the same.

37. The allegations regarding proper venue are legal conclusions to which no response is required. HomeServices Defendants deny that HomeServices or HSF has transacted substantial business in this District. HomeServices Defendants deny any conduct giving rise to Plaintiffs' claims. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 of the Third Amended Complaint and therefore deny the same.

38. HomeServices Defendants admit they engage in interstate commerce but deny the remaining allegations in paragraph 38 of the Third Amended Complaint.

THE PARTIES

Plaintiffs

39. [intentionally left blank]

40. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Third Amended Complaint and therefore deny the same.

41. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Third Amended Complaint and therefore deny the same.

41(a). HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41(a) of the Third Amended Complaint and therefore deny the same.

41(b). HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41(b) of the Third Amended Complaint and therefore deny the same.

41(c). HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41(c) of the Third Amended Complaint and therefore deny the same.

42. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Third Amended Complaint and therefore deny the same.

43. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Third Amended Complaint and therefore deny the same.

44. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Third Amended Complaint and therefore deny the same.

45. HomeServices Defendants deny the allegations in paragraph 45 of the Third Amended Complaint.

Defendants

46. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Third Amended Complaint and therefore deny the same.

47. HomeServices Defendants deny that HomeServices is a real estate broker. HomeServices Defendants admit that BHH and HSF each holds a real estate broker's license but deny that either operates as a real estate broker. HomeServices Defendants deny that HSF "operates many real estate franchise networks, including ReeceNichols Real Estate, HomeServices, Prudential Real Estate, and Real Living." HomeServices Defendants admit: that HomeServices is headquartered in Minneapolis, Minnesota, that it is an affiliate of Berkshire Hathaway, and that it owns certain real estate brokerage companies. HomeServices Defendants deny that HomeServices is the majority owner of defendant HSF. HomeServices Defendants

admit that HSF owns BHH. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 47 of the Third Amended Complaint and therefore deny the same.

48. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Third Amended Complaint and therefore deny the same.

49. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Third Amended Complaint and therefore deny the same.

31. [sic]¹ HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 on page 17 of the Third Amended Complaint and therefore deny the same.

32. [sic] HomeServices denies it has transacted substantial business in this District or in the markets covered by the Subject MLSs. BHH and HSF admit that they have transacted business in this District and in the markets covered by the Subject MLSs. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 on page 17 of the Third Amended Complaint and therefore deny the same.

Co-Conspirators

33. [sic] HomeServices Defendants deny any and all anticompetitive conduct alleged in the Third Amended Complaint and deny participation in any anticompetitive conspiracy.

¹ HomeServices Defendants note that the Third Amended Complaint appears to contain scrivener's errors related to the paragraph numbering and this allegation reuses paragraph numbers 31-49 on pages 17-21 of the Third Amended Complaint. For consistency sake, this Answer numbers accordingly.

HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 on page 17 of the Third Amended Complaint and therefore deny the same.

34. [sic] HomeServices Defendants deny any and all anticompetitive conduct alleged in the Third Amended Complaint and deny participation in any anticompetitive conspiracy. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 on page 17 of the Third Amended Complaint and therefore deny the same.

35. [sic] HomeServices Defendants deny the allegations in paragraph 35 on page 18 of the Third Amended Complaint.

36. [sic] HomeServices Defendants deny any liability to Plaintiffs and therefore deny the allegations in paragraph 36 on page 18 of the Third Amended Complaint.

FACTUAL ALLEGATIONS

37. [sic] HomeServices Defendants admit that some state licensing laws regulate who can represent sellers and buyers in residential real estate transactions. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 on page 18 of the Third Amended Complaint.

38. [sic] Paragraph 38 on page 18 of the Third Amended Complaint asserts a legal conclusion to which no response is required. To the extent paragraph 38 makes factual allegations against the HomeServices Defendants, they are denied.

39. [sic] HomeServices Defendants admit that brokers and individual realtors or agents occupy dual roles but lack knowledge or information sufficient to form a belief as to how often

that occurs and therefore deny the truth of the remaining allegations in paragraph 39 on page 18 of the Third Amended Complaint.

40. [sic] HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 on page 18 of the Third Amended Complaint and therefore deny the same.

41. [sic] HomeServices Defendants admit that real estate brokers can receive commissions in residential real estate transactions and that those commissions may be a percentage of a home's sale price. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 41 on page 19 of the Third Amended Complaint and therefore deny the same.

42. [sic] HomeServices Defendants admit that sellers brokers may enter listing agreements with a home seller and that such listing agreements, if written, usually state the terms of the agreement between the home seller and the broker, which may include the exclusive right to market the seller's home for sale, the total commission the seller may owe the broker, and the amount to be offered a buyer's broker. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 42 on page 19 of the Third Amended Complaint and therefore deny the same.

43. [sic] HomeServices Defendants admit that a home buyer may contact with a broker to represent the buyer in his or her search and potential purchase of a home. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 43 on page 19 of the Third Amended Complaint and therefore deny the same.

44. [sic] HomeServices Defendants admit that NAR's Standard of Practice 12-1 and Standard of Practice 12-2 contain guidance regarding using the term "free" and that a buyer's broker may receive a commission, which may be a portion of the total commission. HomeServices Defendants deny the remaining allegations in paragraph 44 on page 18 of the Third Amended Complaint.

45. [sic] HomeServices Defendants admit that a buyer's broker may receive a commission, which may be a portion of the total commission the seller has agreed to pay. HomeServices Defendants deny the remaining allegations in paragraph 45 on pages 19-20 of the Third Amended Complaint.

46. [sic] HomeServices Defendants deny the allegations in paragraph 46 on page 20 of the Third Amended Complaint.

Multiple Listing Services (MLSs) and the Adversary Commission Rule

47. [sic] HomeServices Defendants admit that an MLS is a database of properties listed for sale in a defined region that is typically available to individual agents. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 47 on page 20 of the Third Amended Complaint and therefore deny the same.

48. [sic] HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 on page 20 of the Third Amended Complaint and therefore deny the same.

49. [sic] HomeServices Defendants deny the allegations in paragraph 49 on pages 20-21 of the Third Amended Complaint.

Anticompetitive NAR Rules

50. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Third Amended Complaint and therefore deny the same.

51. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Third Amended Complaint and therefore deny the same.

52. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Third Amended Complaint and therefore deny the same.

53. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Third Amended Complaint and therefore deny the same.

54. HomeServices Defendants deny the allegations in paragraph 54 of the Third Amended Complaint.

55. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Third Amended Complaint and therefore deny the same.

56. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Third Amended Complaint and therefore deny the same.

57. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Third Amended Complaint and therefore deny the same.

58. HomeServices Defendants deny the allegations in paragraph 58 of the Third Amended Complaint.

59. HomeServices Defendants admit that paragraph 59 accurately copies language from Section 5 on page 65 of the NAR Handbook but deny any remaining allegations in paragraph 59 of the Third Amended Complaint.

60. HomeServices Defendants admit that paragraph 60 accurately copies language from Section 1 on page 63 of the NAR Handbook but deny any remaining allegations in paragraph 60 of the Third Amended Complaint.

61. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the referenced Wall Street Journal article and therefore deny the same. HomeServices Defendants deny all remaining allegations in paragraph 61 of the Third Amended Complaint.

62. HomeServices Defendants deny the allegations in paragraph 62 of the Third Amended Complaint, except that they admit brokers may act as a broker for the seller in one transaction and a broker for the buyer in a different transaction and likewise aver that many sellers of homes are also buyers of homes in reasonably contemporaneous transactions.

63. HomeServices Defendants admit that Plaintiffs have accurately quoted Standard Practice 16-16 but deny all remaining allegations in paragraph 63 of the Third Amended Complaint.

64. HomeServices Defendants admit that NAR publishes “Case Interpretations” but deny all remaining allegations in paragraph 64 of the Third Amended Complaint, including those in footnote 18.

65. HomeServices Defendants deny the allegations in paragraph 65 of the Third Amended Complaint, including those in footnote 19.

NAR's Oversight and Enforcement of its Anticompetitive Rules

66. HomeServices Defendants deny that NAR rules are anticompetitive and lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 66 of the Third Amended Complaint and therefore deny the same.

67. HomeServices Defendants admit that Paragraph 67 accurately quotes a portion of Section 3 on page 9 of the Handbook. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 67 of the Third Amended Complaint and therefore deny the same.

68. HomeServices Defendants deny the alleged anticompetitive restraints exist and thus deny that any such restraints are implemented or enforced. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 68 of the Third Amended Complaint and therefore deny the same.

69. HomeServices Defendants admit that Paragraph 69 accurately quotes a portion of NAR's Code of Ethics and Arbitration Manual. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 69 of the Third Amended Complaint and therefore deny the same.

70. Homeservices Defendants admit that if a broker is denied access to a local MLS then it cannot use that MLS. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 70 of the Third Amended Complaint and therefore deny the same.

71. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Third Amended Complaint and therefore deny the same.

72. HomeServices Defendants deny that NAR rules are anticompetitive. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72 of the Third Amended Complaint and therefore deny the same.

73. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Third Amended Complaint and therefore deny the same.

The Corporate Defendants Designed, Joined, and Participated in the Conspiracy

74. HomeServices Defendants deny the allegations in paragraph 74 of the Third Amended Complaint.

75. HomeServices Defendants deny the allegations in paragraph 75 of the Third Amended Complaint.

76. HomeServices Defendants deny the allegations in paragraph 76 of the Third Amended Complaint.

77. HomeServices Defendants admit that certain of its subsidiaries transact business in this District and that BHH may have written agreements with its franchisees that require the franchisee to comply with NAR's Code of Ethics. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 77 of the Third Amended Complaint and therefore deny the same.

78. HomeServices Defendants deny that HomeServices is a franchisor or a broker, that HSF or BHH operate as brokers, and that Ms. Nagy is the CEO of Berkshire Hathaway HomeServices KoenigRubloff Realty Group. HomeServices Defendants admit Ronald J. Peltier and Nancy Nagy currently serve as directors of NAR, and that Bruce Aydt is the former Chair of NAR's Professional Standards Committee. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 78 of the Third Amended Complaint and therefore deny the same.

79. HomeServices Defendants admit that Edina Realty is an affiliate of HomeServices and that John Smaby, an independent contractor real estate sales agent with Edina Realty, is the current President of NAR. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 79 of the Third Amended Complaint and therefore deny the same.

80. HomeServices Defendants admit that Mike Nugent is associated with a franchisee of a HomeServices subsidiary. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 80 of the Third Amended Complaint and therefore deny the same.

81. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny implementing any conspiracy through any means. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 81 of the Third Amended Complaint and therefore deny the same.

82. HomeServices Defendants admit that ReeceNichols Southgate is an office of ReeceNichols and that ReeceNichols is an affiliate of HomeServices. HomeServices Defendants

lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 82 of the Third Amended Complaint and therefore deny the same.

83. HomeServices Defendants deny that they “actively encourage . . . franchisees to be involved in local realtor association governance.” HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 83 of the Third Amended Complaint and therefore deny the same.

84. HomeServices Defendants deny the allegations in paragraph 84 of the Third Amended Complaint.

EFFECTS OF THE CONSPIRACY

85. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny the allegations in paragraph 85 of the Third Amended Complaint.

86. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny that they have participated in anything that has injured competition in any alleged relevant markets. HomeServices Defendants also deny that “no such justification remains for the seller to continue paying the broker now working for and retained by the buyer.” HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 86 of Plaintiff’s Complaint and therefore deny the same.

87. To the extent HomeServices Defendants understand the allegations in paragraph 87, they are denied.

88. HomeServices Defendants deny the existence of any anticompetitive conspiracy or conduct or effects and deny the allegations in paragraph 88 of the Third Amended Complaint.

89. HomeServices Defendants deny the allegations in paragraph 89 of the Third Amended Complaint.

90. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Third Amended Complaint and therefore deny the same.

91. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Third Amended Complaint and therefore deny the same.

92. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Third Amended Complaint and therefore deny the same.

93. HomeServices Defendants deny participation in any anticompetitive conspiracy. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 93 of the Third Amended Complaint and therefore deny the same.

94. HomeServices Defendants deny participation in any anticompetitive conspiracy, admit that Kansas and Missouri unreasonably prohibit rebates to buyers to be paid out of broker commissions and lack information about the Consumer Federation of America's claimed observation and deny the remaining allegations in paragraph 94 of the Third Amended Complaint.

95. HomeServices Defendants deny the allegations in the first and third sentences of paragraph 95 and lack sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 95 of the Third Amended Complaint and therefore deny the same.

96. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Third Amended Complaint and therefore deny the same.

97. HomeServices Defendants deny the allegations in paragraph 97 of the Third Amended Complaint.

98. HomeServices Defendants deny the allegations in paragraph 98 of the Third Amended Complaint.

99. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Third Amended Complaint and therefore deny the same.

100. HomeServices Defendants are aware that the Antitrust Division has recently served CIDs. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 100 of the Third Amended Complaint and therefore deny the same.

101. The CoreLogic subpoena speaks for itself. HomeServices Defendants deny any allegations against them in paragraph 101 of the Third Amended Complaint.

102. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of paragraph 102 of the Third Amended Complaint and therefore deny the same. HomeServices Defendants deny the remaining allegations in paragraph 102 of the Third Amended Complaint.

103. HomeServices Defendants deny the allegations in paragraph 103 of the Third Amended Complaint.

104. HomeServices Defendants deny the allegations in paragraph 104 of the Third Amended Complaint.

105. HomeServices Defendants deny participation in any anticompetitive conspiracy and therefore deny the allegations in paragraph 105 of the Third Amended Complaint.

RELEVANT MARKETS AND DEFENDANTS' MARKET POWER

106. HomeServices Defendants admit that some brokers may believe their independent agents need access to MLSs in order to compete. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first and last sentences in paragraph 106 and deny the remaining allegations in paragraph 106 of the Third Amended Complaint.

107. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 107 of the Third Amended Complaint and therefore deny the same.

108. HomeServices Defendants deny that they have participated in any antitrust conspiracy and deny the remaining allegations in paragraph 108 of the Third Amended Complaint.

109. HomeServices Defendants deny the allegations in paragraph 109 of the Third Amended Complaint.

110. HomeServices Defendants deny that they have participated in any antitrust conspiracy and deny the remaining allegations in paragraph 110 of the Third Amended Complaint.

111. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 of the Third Amended Complaint and therefore deny the same.

112. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Third Amended Complaint and therefore deny the same.

113. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113 of the Third Amended Complaint and therefore deny the same.

114. HomeServices Defendants deny participation in any anticompetitive conspiracy. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 114 of the Third Amended Complaint and therefore deny the same.

115. HomeServices Defendants deny NAR rules, including the Adversary Commission Rule, are anticompetitive. The holding in the cited case speaks for itself. HomeServices Defendants lack knowledge or information sufficient to form a belief s to the truth of the remaining allegations in paragraph 115 of the Third Amended Complaint and therefore deny the same.

CONTINUOUS ACCRUAL

116. HomeServices Defendants deny the allegations in paragraph 116 of the Third Amended Complaint.

117. HomeServices Defendants deny the allegations in paragraph 117 of the Third Amended Complaint.

CLASS ACTION ALLEGATIONS

118. HomeServices Defendants deny that Plaintiffs' claims can be maintained on a class basis and deny the allegations in paragraph 118 of the Third Amended Complaint.

119. HomeServices Defendants deny that Plaintiffs' claims can be maintained on a class basis and deny the allegations in paragraph 119 of the Third Amended Complaint.

120. HomeServices Defendants deny that Plaintiffs' claims can be maintained on a class basis and deny the allegations in paragraph 120 of the Third Amended Complaint.

121. HomeServices Defendants deny that Plaintiffs' claims can be maintained on a class basis and deny the allegations in paragraph 121 of the Third Amended Complaint.

122. Paragraph 122 asserts a legal conclusion to which no response is necessary. To the extent paragraph 122 makes factual allegations, HomeServices Defendants deny them.

123. Paragraph 123 asserts a legal conclusion to which no response is necessary. To the extent paragraph 123 makes factual allegations, HomeServices Defendants deny them.

124. Paragraph 124 asserts a legal conclusion to which no response is necessary. To the extent paragraph 124 makes factual allegations, HomeServices Defendants deny them.

125. HomeServices Defendants deny participation in any anticompetitive conspiracy. The remainder of paragraph 125 asserts legal conclusions to which no response is necessary. To the extent paragraph 125 makes factual allegations, HomeServices Defendants deny them.

126. Paragraph 126 asserts a legal conclusion to which no response is necessary. To the extent paragraph 126 makes factual allegations, HomeServices Defendants deny them.

127. HomeServices Defendants admit that Plaintiffs have retained counsel. The allegation that "[t]he interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel," asserts a legal conclusion to which no response is required. To the extent that sentence makes factual allegations, HomeServices Defendants deny them. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 127 and therefore deny the same.

128. Paragraph 128 asserts a legal conclusion to which no response is necessary. To the extent paragraph 128 makes factual allegations, HomeServices Defendants deny them.

129. Paragraph 129 asserts legal conclusions to which no response is necessary. To the extent paragraph 129 makes factual allegations, HomeServices Defendants deny them.

ANTITRUST INJURY

130. HomeServices Defendants deny any anticompetitive agreements and deny the remaining allegations in paragraph 130 of the Third Amended Complaint.

131. HomeServices Defendants deny the allegations in paragraph 131 of the Third Amended Complaint.

132. HomeServices Defendants deny the allegations in paragraph 132 of the Third Amended Complaint.

133. HomeServices Defendants deny participating in any anticompetitive conspiracy and deny the remaining allegations in paragraph 133 of the Third Amended Complaint.

134. HomeServices Defendants deny the allegations in paragraph 134 of the Third Amended Complaint.

CLAIMS FOR RELIEF

COUNT I:

Violation of the Section 1 of the Sherman Act, 15 U.S.C. § 1 Against All Defendants (Brought on behalf of the Subject MLS Class)

135. HomeServices Defendants repeat and incorporate by reference their responses to paragraphs 1-134.

136. HomeServices Defendants deny the allegations in paragraph 136 of the Third Amended Complaint.

137. HomeServices Defendants deny the allegations in paragraph 137 of the Third Amended Complaint.

138. HomeServices Defendants deny the allegations in paragraph 138 of the Third Amended Complaint.

139. HomeServices Defendants deny the allegations in paragraph 139 of the Third Amended Complaint.

140. HomeServices Defendants deny the allegations in paragraph 140 of the Third Amended Complaint.

141. HomeServices Defendants deny the allegations in paragraph 141 of the Third Amended Complaint.

142. HomeServices Defendants deny the allegations in paragraph 142 of the Third Amended Complaint.

143. HomeServices Defendants deny the allegations in paragraph 143 of the Third Amended Complaint.

**COUNT II:
Violation of the Missouri Merchandising Practices Act
Against All Defendants
(Brought on behalf of the MMPA Class)**

144. HomeServices Defendants repeat and incorporate by reference their responses to paragraphs 1-144.

145. Paragraph 145 asserts a legal conclusion to which no response is required. To the extent paragraph 145 makes factual allegations, HomeServices Defendants deny them.

146. Paragraph 146 asserts a legal conclusion to which no response is required. To the extent paragraph 146 makes factual allegations, HomeServices Defendants deny them.

147. Paragraph 147 asserts a legal conclusion to which no response is required. To the extent paragraph 147 makes factual allegations, HomeServices Defendants deny them.

148. Paragraph 148 asserts a legal conclusion to which no response is required. To the extent paragraph 148 makes factual allegations, HomeServices Defendants deny them.

149. HomeServices Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 149 of the Third Amended Complaint and therefore deny the same.

150. HomeServices Defendants deny the allegations in paragraph 150 of the Third Amended Complaint.

151. HomeServices Defendants deny any violations of the Act and therefore deny the allegations in paragraph 151 of the Third Amended Complaint.

152. HomeServices Defendants deny that Plaintiffs are entitled to any recovery, at law or in equity.

**COUNT III:
Violation of the Missouri Antitrust Law, Mo. Rev. Stat. § 416.031
Against All Defendants
(Brought on behalf of the Missouri Antitrust Law Class)**

153. HomeServices Defendants incorporate by reference their responses to paragraphs 1-152.

154. HomeServices Defendants deny the allegations in paragraph 154 of the Third Amended Complaint.

155. HomeServices Defendants deny participation in any anticompetitive conspiracy or agreement and deny the remaining allegations in paragraph 155 of the Third Amended Complaint.

156. HomeServices Defendants deny the allegations in paragraph 156 of the Third Amended Complaint.

157. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny the remaining allegations in paragraph 157 of the Third Amended Complaint.

158. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny the remaining allegations in paragraph 158 of the Third Amended Complaint.

159. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny the remaining allegations in paragraph 159 of the Third Amended Complaint.

160. HomeServices Defendants deny participation in any anticompetitive conspiracy and deny the remaining allegations in paragraph 160 of the Third Amended Complaint.

161. HomeServices Defendants deny any violation of law and therefore deny the remaining allegations in paragraph 161 of the Third Amended Complaint.

162. HomeServices Defendants deny the allegations in paragraph 162 of the Third Amended Complaint.

Except as expressly admitted herein, HomeServices Defendants deny each and every allegation of Plaintiffs' Third Amended Complaint and all requests for relief.

AFFIRMATIVE DEFENSES

By alleging the following affirmative defenses, HomeServices Defendants are not agreeing or conceding that they have the burden of proof on any of the issues or that any particular issue or subject matter herein is relevant to Plaintiffs' allegations. HomeServices Defendants assert the following affirmative defenses against the named Plaintiffs and any putative class members on behalf of whom Plaintiffs purport to bring claims. HomeServices Defendants reserve the right to amend, withdraw, supplement, or modify these defenses.

1. Plaintiffs' claims are barred, in or whole or in part, by the applicable statute of limitations.

2. Plaintiffs' equitable claims, if any, are barred due to the doctrines of unclean hands, laches, estoppel, and failure to do equity.
3. Plaintiffs' claims are barred due to the doctrine of payment.
4. Plaintiffs' claims are barred due to the doctrines of ratification and acquiescence.
5. Plaintiffs' claims are barred due to the doctrines of accord and satisfaction.
6. Plaintiffs' claims are barred due to the doctrine of waiver.
7. Plaintiffs' claims are barred or any relief should be reduced due to Plaintiffs' failure to mitigate their claimed damages.
8. Plaintiffs' damages, if any, were caused by as of yet unidentified non-parties.
9. Any claim for punitive damages violates the Missouri and United States constitutions.
10. 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.
11. Plaintiffs' claims should be dismissed, in whole or in part, to the extent Plaintiffs lack standing to sue for the injuries alleged in the Third Amended Complaint.
12. Plaintiffs have no 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.
13. Plaintiffs' claims are barred by the existence of intervening and superseding causes.
14. Plaintiffs' claims and the claims of any putative class members are barred, in whole or in part, because any alleged injuries and damages were not legally or proximately caused by any acts or omissions of HomeServices Defendants and/or were caused, if at all, solely and

proximately by the conduct of Plaintiffs themselves or third parties including, without limitations, the prior, intervening or superseding conduct of such Plaintiffs or third parties.

15. 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 HomeServices Defendants was justified, constituted bona fide business competition, and was ancillary to the pursuit of its own legitimate business and economic interests.

16. Plaintiffs' claims are barred from being litigated in this case in this Court by the existence of binding arbitration agreements.

17. 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).

18. Plaintiffs' claims are barred, in whole or in part, by the applicable limitations period set out in contracts and/or agreements executed by Plaintiffs.

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

21. As sought to be applied in this case, the Sherman Act, 15 U.S.C. § 1, violates the Fifth and Fourteenth Amendments of the United States Constitution under the void-for-vagueness doctrine.

WHEREFORE, HomeServices Defendants request that the Court enter judgment in their favor and against Plaintiffs on all issues raised in the Third Amended Complaint, that Plaintiffs take nothing by way of their Third Amended Complaint, the Court order Plaintiffs to pay Defendants costs and reasonable attorneys' fees incurred in defending this action, and for all other just and proper relief.

Dated: May 20, 2022

Respectfully submitted,

s/Jennifer M. Keas

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America, Inc., BHH Affiliates, LLC, and
HSF Affiliates, LLC***

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May 2022, I electronically filed the foregoing **HomeServices Defendants' Answer to Third Amended Class Action Complaint** with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to counsel of record for this case.

s/ Jennifer M. Keas

An attorney for Defendants HomeServices of America,
Inc., HSF Affiliates, LLC, and BHH Affiliates, LLC