

Exhibit E

EXECUTION COPY

EXHIBIT 2

**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., 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
SYSTEMS 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.

Case No. 1:20-cv-12244-PBS
Judge Patti B. Saris

**[PROPOSED] FINAL JUDGMENT AND ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT BETWEEN PLAINTIFFS
AND MLS PROPERTY INFORMATION NETWORK, INC.**

WHEREAS, an action is pending before this Court styled *Nosalek v. MLS Property Information Network, Inc., et al.*, No. 1:20-cv-12244-PBS (the "Action");

WHEREAS, Plaintiffs Jennifer Nosalek, Randy Hirschorn, and Tracey Hirschorn ("Plaintiffs") have moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order (a)

granting final approval to the Settlement Agreement¹ with MLS Property Information Network, Inc. (“MLS PIN”); (b) certifying the Settlement Class (defined in ¶ 5, *infra*); (c) seeking the appointment of the Plaintiffs as representatives of the Settlement Class under Federal Rule of Civil Procedure 23(g); (d) seeking appointment of Plaintiffs’ Counsel as interim counsel for the Settlement Class under Federal Rule of Civil Procedure 23(g); and (e) granting final approval to the joint Class Notice (defined in ¶ 10, *infra*);

WHEREAS, the Court has considered the Settlement Agreement and other documents submitted in connection with Plaintiffs’ Motion for Final Approval of Settlement with MLS PIN, and good cause appearing therefor;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has subject matter jurisdiction over this Action and, solely for purposes of effectuating the Settlement and subject to the express limitations contained in the Settlement Agreement, personal jurisdiction over Plaintiffs, MLS PIN, and all members of the Settlement Class (defined in ¶ 5, *infra*).

2. All terms in initial capitalization used in this Final Judgment and Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

I. FINAL APPROVAL OF SETTLEMENT

3. Upon review of the record, including the order preliminarily approving the Settlement and the submissions in support of the Settlement and preliminary certification, the

¹ The Amended Settlement Agreement memorializing the terms of the settlement with MLS PIN was entered into on September 1, 2023 and submitted to the Court as Exhibit A to the Second Declaration of Seth R. Klein in support of Plaintiffs’ Motion for Preliminary Approval of Settlement with MLS PIN [ECF No.].

Court finds that the Settlement resulted from arm's-length negotiations between highly experienced counsel and fall within the range of possible approval.

4. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby grants final approval of the Settlement Agreement on the basis that it is fair, reasonable, and adequate as to, and in the best interest of, all members of the Settlement Class within the meaning of, and in compliance with all applicable requirements of, Federal Rule of Procedure 23; the Court directs the Settlement's consummation according to its terms. Moreover, the Court concludes as follows:

a. The Settlement was negotiated by counsel with significant experience litigating antitrust class actions and are the result of vigorous arm's-length negotiations undertaken in good faith;

b. This Action is likely to involve contested and serious questions of law and fact, such that the value of the prospective relief set forth in the Settlement outweighs the uncertain possibility of future relief after protracted and expensive litigation; and

c. Plaintiffs' Counsels' judgment that the Settlement is fair and reasonable, and the Settlement Class members' reaction to the Settlement, are entitled to great weight.

II. CERTIFICATION OF THE SETTLEMENT CLASS

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement set forth in the Settlement Agreement, the following Settlement Class:

Sellers who paid, and/or on whose behalf sellers' brokers paid, Buyer-Broker Commissions during the Settlement Class Period in connection with the sale of Residential Real Estate listed on Pinerly.²

6. The Court's certification of the Settlement Class as provided herein is without prejudice to, or waiver of the rights of, any other defendant to contest certification of the proposed class in this Action. The Court's findings herein shall have no effect on the Court's ruling on any motion to certify any class in this Action, and no party may cite or refer to the Court's certification of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class. The findings that follow in paragraphs 7-8 are limited to this particular Order and are made only in the context of this particular Settlement.

7. The Court appoints Plaintiffs as Class Representatives and finds that the requirements of Rule 23 are satisfied solely for the purpose of effectuating the Settlement as follows:

- a. Pursuant to Rule 23(a)(1), the Court determines that the members of the Class are so numerous that their joinder before the Court would be impracticable;
- b. Pursuant to Rule 23(a)(2), the Court determines that Plaintiffs have alleged one or more questions of fact or law common to the Class;
- c. Pursuant to Rule 23(a)(3), the Court determines that Plaintiffs' claims are typical of the claims of the Class;

² Specifically excluded from the Settlement Class are Defendants; Released Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Party, or co-conspirator; any entity in which any Defendant, Released Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Party, or co-conspirator and any person acting on their behalf. Also excluded from the Settlement Class are any judicial officers presiding over this action and the members of his/her immediate families and judicial staff, and any juror assigned to the Action.

d. Pursuant to Rule 23(a)(4), the Court determines that Plaintiffs will fairly and adequately protect the interests of the Class; and

e. Pursuant to Rule 23(b)(2), the Court determines that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

8. If the Effective Date³ does not occur with respect to the Settlement because of the failure of a condition that affects the Settlement, this certification of the Class shall be deemed null and void as to the parties subject to the Settlement without the need for any further action by the Court or MLS PIN. In such circumstances, MLS PIN shall retain its rights to seek or to object to certification of this litigation as a class action under Rule 23 of the Federal Rules of Civil Procedure, or under any other state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any grounds.

III. CLASS COUNSEL

9. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, and solely for settlement purposes, the following firms are appointed as counsel for the Settlement Class: (1) Robert A. Izard and Seth R. Klein of Izard, Kindall & Raabe, LLP and (2) Christopher L. Lebsack and Jose Roman Lavergne of Hausfeld LLP.

³ Pursuant to paragraph 6(a) of the Settlement Agreement: “The Effective Date shall be the date when all of the following events shall have occurred and shall be contingent on the occurrence of all of the following events: (i) Entry by the Court of the Preliminary Approval Order; (ii) Final approval by the Court of the settlement set forth in this Agreement, following Class Notice and the Fairness Hearing; (iii) No Party having exercised his, her, or its rights to terminate this Agreement; and (iv) Entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becoming final, or, in the event that the Court enters an Alternative Judgment and neither Class Plaintiffs nor MLS PIN elects to terminate this Agreement, such Alternative Judgment becomes final. Neither the provisions of Federal Rule 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.”

IV. FINAL APPROVAL OF CLASS NOTICE

10. Upon review of the record, the Court finds that the Class Notice⁴ constituted due, adequate, and sufficient notice of the Settlement and was appropriate under the circumstances and satisfied the requirements of Federal Rules of Procedure 23(c)(3)(A) and 23(e)(1), due process, and any other applicable law. Therefore, the Class Notice is finally approved.

V. OTHER PROVISIONS

11. The Court approves and directs the implementation of all the terms of the Settlement Agreement.

12. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and if it is not fully reinstated on further appeal, this Final Judgment and Order certifying the Class shall be vacated *nunc pro tunc*.

13. All Released Parties⁵ and Releasing Parties⁶ are bound by this Final Judgment and Order and by the Settlement Agreement.

⁴ Class Notice is defined in paragraph 2(g) of the Settlement Agreement as: “The notice of proposed settlement to be provided to the Settlement Class as provided in this Agreement and the Preliminary Approval Order.”

⁵ Released Party or Released Parties is defined in paragraph 2(aa) of the Settlement Agreement as: “MLS PIN and each of its past or present direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, shareholders (except those who are Defendants in the Action), and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties does not include the other Defendants in the Action.”

⁶ Releasing Party or Releasing Parties is defined in paragraph 2(bb) of the Settlement Agreement as: “Individually and collectively, Plaintiffs and each Settlement Class Member, on behalf of themselves and, to the extent permitted by law, any of their respective past or present officers, directors, shareholders, agents, employees, legal representatives, partners, associates, trustees, beneficiaries, beneficial owners, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Agreement.”

14. The Court dismisses with prejudice the Action as against MLS PIN, as well as all of the Released Claims⁷, against any of the Released Parties by the Releasing Parties. The parties are to bear their own costs, except as otherwise provided in the Settlement Agreement, provided that such dismissal shall not affect, in any way, the right of the Releasing Parties to pursue claims, if any, outside the scope of the Released Claims.

15. Upon the Effective Date, and except as otherwise authorized under paragraph 8(b) of the Settlement Agreement, the Releasing Parties: (a) shall be deemed to have hereby fully and irrevocably waived, released, relinquished, and discharged all Released Claims against the Released Parties; (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (c) agree and covenant not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

16. The Settlement Agreement, acts performed in furtherance of the Settlement Agreement and/or documents executed in furtherance of the Settlement Agreement may not be deemed or used as evidence of an admission or other statement supporting: (a) the validity of any claim made by Plaintiffs, Settlement Class, or Class Counsel (including without limitation the appropriateness of class certification); (b) any wrongdoing or liability of the Released Parties; or

⁷ Released Claims is defined in paragraph 2(z) of the Settlement Agreement as: “Any and all manner of claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and that arise from the factual predicate of the Action.”

(c) any fault or omission of the Released Parties in any court, administrative agency, or other proceeding.

17. The Settlement Agreement shall not be offered or be admissible in evidence against Released Parties in any action or proceeding, except in an action or proceeding that is in furtherance of the respective Settlement's terms or brought to enforce its terms. Notwithstanding the foregoing, the Settlement Agreement may be filed in an action to enforce or interpret the terms of the respective Settlement Agreement and any other documents executed in connection with the performance of the agreements embodied therein. The Released Parties may file the Settlement Agreement and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Any order entered regarding the motion for attorneys' fees and expenses in this Action shall in no way disturb or affect this Final Judgment and Order and shall be considered separate from this Final Judgment and Order.

19. If this Final Judgment and Order is set aside, materially modified, or overturned by this Court or on appeal, and is not fully reinstated on further appeal, this Final Judgment and Order shall be deemed vacated and shall have no force or effect whatsoever. In the event the Settlement Agreement is terminated in accordance with its terms, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the parties shall be deemed to have been restored to their respective status in the Action as of the Execution Date without prejudice and shall comply with all applicable provisions of the Settlement Agreement including, without limitation, the provisions of its paragraph 12(c).

20. Without affecting the finality of this Final Judgment and Order in any way, this Court hereby retains exclusive continuing jurisdiction over: (a) implementation of the Settlement Agreement; (b) hearing and determining applications for attorneys' fees, costs, and expenses; and (c) all parties hereto for the purpose of construing, enforcing, and administering the Settlement Agreement.

21. To the extent permitted by law, the Court bars claims against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of any settlement, judgment or otherwise by any of the following:

- a. Any of the other Defendants currently named in the Action;
- b. Any other Person⁸ formerly named as a party in the Action; or
- c. Any other Person subsequently added or joined as a party in this Action.

22. There is no just reason for delay in the entry of this Final Judgment and Order, and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED on this _____ day of _____, 2023.

Hon. Patti B. Saris
UNITED STATES DISTRICT JUDGE

⁸ Person(s) is defined in paragraph 2(u) of the Settlement Agreement as: “An individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity, and any spouses, heirs, predecessors, successors, representatives, agents, or assignees of the foregoing.”