Objection of Tanya Monestier
To Settlement and Plaintiffs' Request for Attorneys' Fees:
A Guide to Understanding the Objection

Section	Additional Detail	Page
Introduction	"The settlement will provide only nominal financial relief for class members who paid inflated commissions to buyer brokers during the class period. By one estimate, if every class member filed a claim, the average payout would be about $13.1 I paid approximately $27,500 to the buyer's agent when I sold my home in 2022. The monetary relief I will receive from the settlement is nowhere in the vicinity of compensating me for the harm caused by the Defendants' allegedly anti-competitive practices."	4
	"The settlement makes sense—but only on paper. It is an example of something concocted by lawyers without a full appreciation of how this would play out in the real world. In the real world, the implementation of the settlement has been a disaster. It has not eliminated steering. It has not resulted in lower commissions. It has not shifted the obligation to buyers to pay their own agents. It has led to widespread confusion and the exploitation of consumers. It has not accounted for the psychology of buyers and sellers. And it did not anticipate the lengths to which the industry would go to ensure that the commission structure that has prevailed for decades stays firmly in place."	5
	"This settlement is the worst of all possible worlds. Under the pre-NAR settlement paradigm, the rules were clear, and confusion did not reign supreme. Sure, sellers paid inflated commissions, but the rules of the game were well-established. The settlement agreement takes a tiny baby step toward decoupling, but in a way that is just an illusion. We basically just have the pre-NAR settlement system in place with a whole lot more paperwork, headaches, lies, chaos, and frustration. The settlement, as applied in the real world, is an abject failure. The words on a piece of paper in a document that no realtor will read or understand do not matter. How this was supposed to theoretically play out doesn't matter. What matters is how the settlement is being implemented in real life. And it is being implemented in a way that preserves the status quo of sellers paying both brokers, and commissions remaining steady at 5%- 6%."	5
	"I have asked myself the question: *But isn't something better than nothing? Isn't a step toward decoupling helpful in combatting steering and anti-competitive behavior*? In my view, the answer is no. The settlement has not meaningfully decoupled anything because sellers (and/or listing agents) are still permitted to offer buy-side commission in advance. As long as this is possible, the current system of seller-financed commissions will remain intact. If this Court approves this settlement, it will be taking a large step backward. The industry will continue with all its anti-consumer shenanigans for many more years until another lawsuit is launched."	5
	"*Where would that leave us*? It would leave us with a quasi-regulatory scheme conjured up by lawyers to govern an industry that is thumbing its nose at the settlement. It would leave us with quasi-regulation with absolutely no enforcement mechanism. The "enforcer" of this settlement is the Defendant itself. Sort of like the fox guarding the henhouse. It will leave sellers still offering buyer broker commission in advance because they fear that buyers will skip their house if they don't. It will leave buyers only seeking out properties where they know their buyer broker will be compensated by the seller. It will leave any potential unrepresented buyer out in the cold; if you don't play by the rules of the industry, you get shut out. And it will leave us in a worse position than we were before. There is at least something to be said for the clarity and simplicity of the former system."	5-6
	"Unless someone speaks up, this Court is likely to be convinced that this settlement is "fair, reasonable, and adequate." It is not. It simply reinforces the existing system of seller-paid inflated compensation while pretending to eliminate it."	7
Role of Objector	"I request the ability to participate in the fairness hearing telephonically or via Zoom. I think it is an unfair burden to place on class members/objectors to expect them to take time off of work and come up with the money to travel to a fairness hearing hundreds of miles away from their home."	9

	"This in-person requirement serves to stifle the voice of objectors. No reasonable person would pay thousands of dollars out of pocket to come to a hearing for a settlement which, if approved, would net them a few dollars."	9
	"Even the burdens placed on objectors with respect to this submission are unreasonable. In this day and age, there is no reason why an objector cannot file an electronic submission. Yet, I need to print a copy of this 135-page objection and physically mail it out both to the Court and the parties—again, at a cost to myself which likely exceeds my recovery. By contrast, the settlement is set up to make it easy for defendants to opt into the settlement—they can simply send an opt-in notice to a specified email address."	9
	"I have chosen to file an objection of this length and with this level of detail for one simple reason: because I think no one else will. This settlement is sorely lacking outside, neutral analysis. I wish there were more voices closely scrutinizing whether this settlement provides the value it claims to aggrieved class members and whether the attorneys have provided a third of a billion dollars in value to the class. As far as I know, those voices are nowhere to be heard."	14
Realtors are Breaching the Settlement and Engaging in Workarounds	SELECTED WORKAROUNDS *#1: Amending the Buyer Representation Agreement to Enable Broker to Receive Additional Compensation* "The most talked about workaround is simply modifying a representation agreement upward once the promised rate of compensation is known."	19
	"In my view, modifying a representation agreement to increase the level of compensation for a buyer broker violates the NAR settlement agreement. In this respect, I don't think this is a "workaround" so much as a flat-out breach of the agreement."	19
	"Practices like this where realtors scoop up 'excess' funds result in the maintenance of the commission structure that the NAR settlement was intended to dismantle."	21
	"There is ample evidence that realtors are asking buyers to sign modification agreements and that the practice is being sanctioned by NAR, state and local associations, MLSs, and private brokerages. NAR president Kevin Sears has indicated that it is permissible for realtors to amend their buyer representation agreements to collect a higher commission than originally agreed to."	22
	"The statement of NAR's president, coupled with the deliberate NAR ambiguity on this point, is what allows these sorts of breaches to flourish and realtors to proceed with impunity. To be clear, it would not be difficult for NAR to implement a rule change that expressly says: "Brokers are not permitted to increase their compensation after a buyer-broker agreement has been signed." The fact that it hasn't done so is telling—it is a "wink and nod" that modifying an agreement is a NAR-sanctioned way that realtors can avoid the settlement provision that prohibits realtors from collecting more than they agreed to in the agreement entered into with their buyer."	22
	Screenshot examples of these workarounds being encouraged in practice by realtors to "up" buyer broker commission after the fact—trending on Reddit and Facebook.	26-28
	". . . almost everyone in the industry believes it is perfectly acceptable to have a buyer sign a modified representation agreement to allow a buyer broker to collect a fee in excess of [what was agree upon, which would] . . . completely defeat the intent of the settlement."	28
	Workaround #2: Buyer Being Asked to Agree to Seller-Paid Bonuses "A variation of the first workaround (which I believe is actually a breach) is found in provisions that allow the buyer's agent to collect bonuses from sellers. Apparently, there is a belief that a bonus is distinct from compensation. I do not believe this is permitted by the NAR settlement. Buyers' agents are permitted to only collect the amount listed in their buyer representation agreement, whether characterized as commission, a fee, a bonus, or anything else."	29
	"The NAR settlement prohibits realtors from receiving "compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer." Bringing a buyer to a certain listing because of a bonus certainly constitutes "brokerage services"—and is	33

	exactly the sort of steering the settlement was designed to combat. It doesn't matter what we call it: additional compensation, incentive, bonus, rebate, or other valuable consideration. If the compensation is offered by a seller or seller's broker, then it is compensation for brokerage services which is capped at the ascertainable amount specified in the buyer representation agreement."	
	Workaround #3: "Touring" or "Showing" Agreements Supplemented by Buyer Representation Agreements "These sorts of agreements seem to envision a free (or low cost) initial representation period, followed by a subsequent contract establishing the broker's right to commission for properties that have already been toured pursuant to a prior agreement. In my view, the subsequent buyer representation agreement cannot provide the basis for compensation for a home that the buyer has already toured with an MLS participant."	35
	"The written agreement that governs their relationship for that toured property is the one they executed prior to the tour, even if the scope of services was limited. The realtor will not be able to collect any fees in excess of what was agreed to in that initial agreement. In other words, a realtor is limited to the amount set out in the agreement that was signed prior to the showing—not an amount reflected in a new buyer representation agreement entered at the time the buyer decides to submit an offer."	35
	"Any other interpretation would eviscerate the settlement agreement. Every realtor could enter into a one-month touring agreement (and keep renewing it) and then sign a formal buyer representation agreement when his or her client decided to proceed with an offer. Functionally, this would be the exact same thing as the status quo where realtors proceed without written agreements in place."	35
	Workaround #7: Tailoring the Buyer Representation Agreement to Seller-Offered Compensation "Another common way of circumventing the intent of the settlement involves brokers entering into house-specific representation agreements that are tailored to the commission being offered by a particular seller."	41
	"These property-specific agreements are probably consistent with the wording of the settlement agreement, though I am certain they are not what the drafters intended. Under this practice, a broker could have dozens of virtually identical representation agreements with each individual buyer. The practice of matching an agreement to the compensation offered by a seller in advance also raises major concerns about steering."	41
	"All of this shows a concerted effort to allow buyer brokers to collect whatever the listing agent or seller is offering—something that is explicitly prohibited by the settlement. The point of this settlement, in part, was to decouple commission. In its simplest form, sellers pay for their agents and buyers pay for their agents. By putting the buyer on the hook for their own agent's fees, the thinking was that: (a) buyers would actively negotiate their fees, and; (b) buyer brokers would not have any incentive to steer. Given these workarounds, buyer brokers still have every incentive to steer, and commissions are not meaningfully decoupled. Any practice which continues to tie the compensation of buyer brokers to what is offered by sellers or listing agents will continue to perpetuate steering and run afoul of antitrust laws."	41-42
Realtors are Adopting Anti-Consumer Practices Post-Settlement Designed to Maintain Artificially High Commissions	"[T]here are myriad ways that realtors have exploited the settlement to continue unlawful, anticompetitive practices that harm home sellers."	42
	<u>CONTINUED STEERING AND UNETHICAL REALTOR PRACTICES</u> *Listing Agents Not Taking Listings Unless Seller Pays Buyer Broker Commission* See a real-life example of a realtor refusing to take a nearly $2 million listing because the seller refused to offer at least 2% to the buyer's broker.	42-44
	Listing Agents Telling Sellers That If They Don't Offer Compensation, They Won't Get Offers "I believe many listing agents are telling their sellers that if they don't offer compensation in advance, then they will not get offers. This, in turn, scares sellers into offering buy-side compensation."	44

	"The messaging that 'no one will buy your house if you don't offer to compensate the buyer broker' has been so persuasive in the past couple of months that NAR had to put out special guidance in September to try to put an end to it."	46
	"This generic messaging is about as effective as shouting into a hurricane. A seller who is told that their house will not sell if they do not offer buy-side compensation will offer buy-side compensation. And where does that leave us? In precisely the same position we were in before the settlement with sellers paying double commission."	46
	Buyers Are Told To "Skip" Houses That Don't Offer Guaranteed Compensation to Buyer Broker "Buyers are being told that they should 'skip' houses where the seller is not offering buyer broker compensation in advance." See this sentiment echoed on social media.	47-49
	"But consider what happens when this practice becomes widespread (which it already might be): buyers blackball sellers who don't offer compensation in advance and therefore sellers are compelled to offer to compensate the buyer's broker in advance. And that leads us right back to square one—with the seller covering the full cost of commissions. According to some buyers' agents, sellers are covering the commissions post-NAR settlement in 99% of cases (and are telling their clients that)."	49
	<u>REALTORS EXPLOITING THE SETTLEMENT TO GET NEW BUSINESS</u> "[T]he post-NAR settlement landscape creates an opportunity for unscrupulous or uninformed realtors to take advantage of buyers' ignorance and have them sign representation agreements under the guise of this being "required" or "the law."	52
	"Shortly after the settlement was announced, some realtors seized on the perceived opportunities created by the "written agreement requirement" in the NAR settlement, particularly in relation to open houses. Open houses would now be a gold mine. When unrepresented buyers came in, the listing agent could get them to sign a representation agreement. Like shooting fish in a barrel!"	52
	"The practice of having buyers sign these sorts of agreements at open houses is hugely concerning. First, the buyer will have just met the broker a couple of minutes earlier. And they will be asked to commit to some sort of ongoing relationship, involving potentially tens of thousands of dollars, with someone they do not know and who they have had no opportunity to meaningfully vet. Most states have laws allowing a consumer to cancel a $25 transaction entered into with a door-to-door salesperson; yet, a commitment to pay tens of thousands of dollars entered into in a high-pressure environment would be presumptively binding."	55
	"Second, the buyer is committing themselves to less-than-ideal representation since the agent will also be the seller's agent. All things being equal, why would a buyer want to hire the agent that works for the benefit of his prospective counterparty?"	55
	"Third, these agreements are all several pages long. How would a buyer be expected to read and understand all of this at an open house? It is laughable that the form says that "commissions are negotiable" (per NAR Settlement guidance). Is a visitor expected to start negotiating commissions with the agent at the open house?"	56
	"Fourth, the whole process of capitalizing on buyers' fears and ignorance at an open house and having them sign an agreement they will certainly not understand is plainly wrong. Buyers who will be particularly susceptible to being convinced into signing are likely those with limited education, lower literacy skills, and those for whom English is not a first language."	56
	There are numerous examples we have of buyers being tricked into signing representation agreements. "Most egregiously, realtors in Colorado have already tricked buyers into signing representation agreements at open houses by telling them they needed to sign certain papers for 'insurance' purposes."	56-58
	See examples of what's happening when buyers unfamiliar with the settlement or how hiring an agent works call up an agent on Zillow to request a tour.	60-62

	See examples of some buyers that reach out to brokerages and are told that "they are not legally permitted to show the house without having a representation agreement in place."	62-63
	LISTING AGENTS SHUTTING OUT UNREPRESENTED SELLERS "Another unintended consequence of this settlement is that listing brokers are de facto forcing prospective buyers into signing a representation agreement—either with them (as discussed above) or with someone else. They will do this by refusing to show a property to, or otherwise deal with, an unrepresented buyer. The net effect is that buyers will be compelled to hire an agent, and gross commissions will remain at the standard 5-6%, with the seller likely paying both sides."	63
	"A large number of listing agents do not believe they are contractually or ethically required to facilitate showings or offers for unrepresented buyers."	64
	See examples of how realtors are using their forms to scare buyers into accepting representation in New Mexico, structured in a manner "suggesting that the choice lies with the broker, not the seller."	65-70
	"There is widespread belief in the industry that unrepresented buyers are difficult to work with, will tank the deal, etc. . . Some of this may be true in some cases. But 'unrepresented buyers' cannot be painted with the same broad brush and elbowed out of the marketplace *en masse* based on stereotypes and assumptions."	71
	"It is concerning that realtors are taking the position that they will not engage with unrepresented buyers. The essence of a listing agreement is that the listing agent will make every reasonable effort to sell the house. This certainly includes the obligation to facilitate showings for prospective buyers, represented or unrepresented. The fact that realtors are attempting to force a 3% surtax on a buyer who wants to proceed unrepresented is yet another way of maintaining the status quo."	71
	REALTORS ARE CHARGING NEW FEES TO ENSURE COMMISSIONS STAY HIGH "One interesting way that realtors are looking to make up for any potential lost revenue from the NAR settlement is by charging fees to their clients that differ depending on whether there is an agent on the other side of the transaction. Many (if not most) listing agreements provide the possibility for the realtor to charge an extra fee if the buyer is unrepresented. Usually, the number that is inserted is 1%-1.5%, which translates into thousands of dollars extra that the seller must pay solely because a buyer has chosen not to engage the services of a real estate agent."	71
	See examples of forms from Northern Virginia, Pennsylvania, and Northwest MLS showing potential surcharges if the other side is unrepresented.	72-73
Settlement Has Caused Mass Confusion for Sellers and Buyers	"If there is anything that anyone agrees upon, it is that this settlement has caused mass confusion for both buyers and sellers."	73
	"Plaintiffs and Defendants may believe that this confusion will be worked out in time, that these are just 'growing pains.' I disagree. I think if this settlement is given final approval, home selling and buying will be forever changed—for the worse. I have spent about six months trying to understand the settlement, the industry, real estate practices, forms, etc. And I am confused. What hope is there for the average everyday consumer? Adding to the confusion is the fact that a large number of realtors do not themselves fully understand the settlement. How can they then be entrusted to put it into practice?"	74
	"Here are just a few of the confusing things about this settlement that are enough to make your head spin: 1. The mantra is that "commissions are negotiable," but most agents will not negotiate them. Forms are presented to buyers and sellers with numbers already filled in. 2. There are at least three different models of seller-paid compensation for a buyer broker: seller pays listing agent full commission which is shared; seller pays listing agent and separately offers to pay buyer's agent; seller agrees to a concession which buyer uses to pay agent. 3. If you are a seller and you agree to a full commission which is shared, you don't get any money back if the buyer is unrepresented. If you agree to pay the buyer broker separately, you may get money back if the buyer is unrepresented. 4. Listing agents are now charging a higher fee if the buyer is not represented by an agent. Some buyer's agents charge more if the seller is not being represented by an agent.	74-75

	5. Buyer brokers are not permitted to collect more than agreed to in their compensation agreement. Yet, no one seems to understand where the excess goes. The confluence of at least three different contracts and a quasi-regulatory scheme makes this impossible to sort out. 6. Buyer brokers are asking clients to modify an agreement upward or to allow an agent to collect a bonus. This is a clear conflict of interest. But it is likely happening all the time with no way to monitor it. 7. Sellers are being told that they don't have to pay buyer broker compensation but if they don't, "no one will come see the house." Some agents won't take a listing unless a seller agrees to cover both commissions. 8. On the flipside, some buyers are skipping houses if they can't be sure that a seller will pay their broker's commission. 9. Buyers are being told that they must sign representation agreements to view a house. That is not true. A listing agent may (and should) show a house as an agent of the seller. 10. Certain real estate agents are not realtors so none of this applies to them. 11. Buyers are calling up listing agents to see properties that they are listing and are either met with "I need you to sign this so I can be your agent" or they are transferred to a buyer's agent. Buyers don't understand that if they wish, they don't have to use an agent. 12. Listing agents are routinely staffing open houses with buyers' agents who tell people that the "new law" requires them to sign here and now, or they won't have representation. The new requirements are seen as an "opportunity" to build business, rather than show a property on behalf of the seller. Most sellers have no idea that their house is used as a locale for a meet-and-greet to drum up business for agents. 13. Unrepresented buyers are told that they must use certain forms to submit an offer (not true). When unrepresented buyers ask for those forms, they are told that they are proprietary, and that the listing agent is not permitted to give them to the buyer. When the buyer then uses forms from the internet or creates a document from scratch, the listing agent tells their seller that they can't advise on the offer because they are not familiar with the form. 14. Most listing agreements and buyer representation agreements are written so that you would need a law degree to understand them. There are numerous provisions that are indecipherable to the average person and that would certainly catch a hapless buyer off-guard. 15. State law may impose additional or different requirements. 16. No one is enforcing the rules, so it is impossible to be sure that buyers' agents are having their clients sign representation agreements as soon as they start working with them (vs. when they put an offer on a house)." Examples of two "fictional" conversations that I think replicate conversations that are being had every day in living rooms across this country. The conversations are intended to illustrate how an average seller or buyer would feel when inundated with all these new "rules," as interpreted through the lens of a broker trying to secure their business.	78-82
Unresolved Ambiguities	*Overage Amounts* "Under the settlement, a buyer's agent "may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer[.]" What is unclear, however, is what happens to the excess."	84
	"If the seller is offering the money directly, then any excess should automatically revert to the seller. I do not see how this offer can be "repurposed" by other parties in the transaction without the seller's consent."	85
	Cooperative Compensation "[I]f cooperative compensation remains a permissible model, then we have not moved away at all from the model of compensation that prevailed for decades. Even though some brokerages may have begun to experiment with a direct seller offer model or a concession model of compensation, nothing is to stop all these brokerages from coming back to the model in which sellers handsomely compensated both sides of the transaction."	85
	"It is not clear why Plaintiffs and Defendants have refused to clarify this major point. Mr. Ketchmark was repeatedly asked this question in an interview—can sellers make preemptive offers of compensation? He evaded the question every single time he was asked . . ."	85
	"It is insane that Plaintiffs' counsel has refused to answer a simple "yes" or "no" question. It is not a hypothetical question that "depends." Either this is permitted by the settlement or not. Cagey answers like this are why we are in the current mess that we are in."	86
	The Initially Unrepresented Buyer "One thing that is unclear from the settlement is whether a buyer who is initially unrepresented can later choose to engage the services of a realtor at a point when he decides it makes sense for him. For instance, assume I decide that I would like to proceed unrepresented. I attend open houses, and	

	I attend showings through the listing agent (provided the agent will facilitate them for me). I do not sign a buyer representation agreement with any listing agent. Subsequently, I decide that I would prefer to have a realtor's assistance in making an offer—can I then enter into a contract with a realtor? Would that realtor be entitled to any commission on a property I toured without them? I think the answer is yes, but I suspect these sorts of buyers and realtors will get into sticky situations with other MLS participants."	86-87
Lack of an Effective Enforcement Mechanism	"The NAR settlement has created something tantamount to a complicated regulatory scheme with virtually no oversight."	87
	Co-Lead Counsel May Ask for Proof of Compliance and NAR Must Provide "We are largely leaving enforcement of this settlement to a handful of Plaintiffs' lawyers who will benefit to the tune of approximately a third of a billion dollars so long as meaningful problems don't arise with the settlement. This appears to be a huge conflict of interest. If the settlement falls apart or is rescinded, Plaintiffs' attorneys will not be paid for the years of work they put into the case. It stands to reason that they are not going to look very hard for violations or be receptive to all the ways that the settlement is failing class members."	88
	"Indeed, when I reached out to lead counsel about perceived workarounds, I did not get a response from him. Certainly, there is no obligation on lead counsel to follow up on every lead. But one might think that research provided by a law professor and shared with the Department of Justice would warrant a response. Although I obviously have no proof of this, I believe this is emblematic of the hands-off approach that Plaintiffs' attorneys are taking in this case."	88
	"Moreover, it is hard to believe that Plaintiffs' attorneys will be spending the next seven years working to ensure that Defendants are complying with the settlement—all for "free" since, at that point, they will presumably have already been paid. Once this settlement is approved, the reality is that there will be no oversight of it."	88
	NAR Must "Track" Whether Affiliates Have Satisfied Conditions for Obtaining Relief "This outsourcing of supervisory and enforcement responsibility to individuals who necessarily have a conflict of interest [i.e. individual MLSs] is hugely problematic. Many brokers themselves don't understand the rules and are openly flouting them. And we expect these same people to make sure that their agents are playing by the rules of the game? It is laughable that Plaintiffs and Defendants have created the functional equivalent to a regulatory scheme with no one to enforce it other than the people who are bound by it and have every interest in finding ways around it."	90
	"I think it is safe to say that many of these practices, by their very nature, fly beneath the radar and will never be caught. How does an unrepresented buyer prove that she was shut out of the market? How does a prospective seller prove that the listing agent wouldn't take the listing because seller refused to offer buy-side compensation? Who is going to report a buyer-broker for steering when that steering is at the request of the buyer? Who is going to challenge the practice of brokers modifying contracts upwards and collecting bonuses: Buyers who have just "approved" the practice? Or sellers who know nothing about the practice? All of these things happen in secret, behind closed doors. All are the product of an industry that is hell-bent on maintaining a 5-6% commission structure."	90
Value of Injunctive Relief is Overstated	"Plaintiffs and Defendants now unite in asking this Court to approve the settlement. Over one billion dollars is at stake. Neither party has an interest in rocking the boat. Defendants want to move forward without the constant fear of being bankrupted by future antitrust suits. And Plaintiffs have over three hundred million reasons to call this a "win" and move on. One of the named plaintiffs in this case, Josh Sitzer, has a vested interest in seeing the settlement approved—he has just launched a new real estate platform which is intended to operate as an alternative to the traditional model."	90
	"In support of their motion for attorneys' fees, Plaintiffs proffered the testimony of Dr. Nicholas Economides, a professor of Economics at the Stern School of Business at New York University. Dr. Economides concludes that these practice changes could save consumers billions of dollars. Dr. Economides' projections, however, are based on a variety of assumptions that simply don't hold	90-91

	true. No doubt, these assumptions were grounded in what the parties represented was theoretically the intent of the settlement. But how the settlement has been interpreted and implemented by the 1.5 million realtors on the ground is what matters. And a close look at that reveals that steering is alive and well, most sellers are offering compensation in advance to buyer brokers, and commissions remain virtually unchanged."	
Settlement Should Not Be Salvaged	"How can industry participants be expected to play by the rules of the game when they don't know what those rules are? Plaintiffs and Defendants have been deliberately opaque on the answers to all these questions. That opacity—especially in the face of a simple yes/no question—is what has led to the current state of mass chaos and confusion. As I have outlined above, I do not believe that the injunctive relief meaningfully benefits the class. It fundamentally keeps the same seller-paid commission structure in place with a lot more hassle, confusion, and paperwork."	94
	"I am mindful of how many hours have been worked, how many law firms participated on both sides, how much money was spent bringing and trying this case, and how risky the case was. None of that, however, changes the fact that the settlement is woefully inadequate in doing the very things it purports to do: decoupling commissions, eliminating steering, and ensuring the sellers don't have to pay inflated commission rates. The litigants have basically spent five years and millions of dollars to come up with a system that is virtually the same as that which has been in place for decades, albeit with some cosmetic changes."	94
	"As long as buyers insist on hiring buyer brokers, sellers will continue offering to compensate them out of fear. It is instilled in sellers that you don't want to be perceived as "difficult" or "uncooperative" or, God forbid, have your listing go stale. Indeed, listing agents have turned this into a marketing tool, telegraphing to prospective buyers how much sellers "value" the buyer's contract with their agent."	95
	"[I]f there was ever a time when the industry would "behave" it would be now—before the settlement is finally approved and when the Department of Justice is still monitoring NAR practices. The fact that the settlement is being breached left and right shows that there is really no hope for this getting any better. As I said earlier, the words on a piece of paper and how they were supposed to play out doesn't matter. What matters is that the industry is blatantly defying the settlement, while all the litigation participants are pretending that everything is hunky-dory."	95
Objection to Monetary Relief	"This settlement is constantly referred to in superlative terms. Words like "historic," "landmark," "groundbreaking," and "immense" are constantly bandied about. These words obscure a very important fact: the average class member will get next-to-no-money in his pocket from this settlement."	96
	"Sure, the settlement is big. That's because a huge number of defendants have opted-in to shield themselves from liability. Meanwhile, the class is gargantuan in size—likely in the tens of millions. No matter how big of a fund you have, when you divide it among tens of millions of people, the recovery will be negligible."	96
	"Plaintiffs will counter this argument with the fact that not everyone will submit a claim; thus, the denominator will not be the tens of millions I referred to, but some smaller number. This argument is specious as it relies on the hope that people who are entitled to recovery do not claim that recovery. In other words, if I get more than pizza money, it is not because it was negotiated for me by Plaintiffs' counsel; it will be because other class members are forfeiting their entitlement to the money. They may rightly decide that it is not worth the time, hassle, and expense of filing this paperwork just to get a check in the mail that feels like a slap in the face."	96
Objection to Plaintiffs' Request for Attorneys' Fees	"The lion's share of the settlement fund is going to the lawyers and other participants in the lawsuit— not class members. Billing at their "normal" rates, Plaintiffs' claim that the value of their work product is approximately $92 million. This includes fees for many attorneys billing at rates of $1,000- $2,200/hour. Plaintiffs' attorneys are seeking approximately $333,000,000 in fees plus $16 million in expenses. For the following reasons, this fee request should be disapproved. Any amount greater than 10-15% percent would constitute an unwarranted windfall and would be grossly disproportionate to the "relief" provided to class members."	97

	#1: Plaintiffs Have Not Provided Court with Information Required to Decide on Grant of One-third Fee "In short, Plaintiffs' attorneys in this case are seeking 3.62 times the purported value of their services to account for the "unique risks and challenges in this litigation." Plaintiffs' motion in support of their petition for attorneys' fees reads like a cut-and-paste job of every other petition for attorneys' fees: the fee is justified because of the extraordinary results, the skill and experience of counsel, and the difficulty of prosecuting the case."	97
	#2: Declaration of Plaintiffs' Expert Does Not Paint an Accurate Picture "Plaintiffs' attorneys submit the declaration of Professor Klonoff to support their request for approximately a third of a billion dollars in fees (plus expenses). Plaintiffs' attorneys paid Professor Klonoff $1,250/hour to write his declaration in support of their motion for fees."	99
	"Professor Klonoff lists twenty cases where he has filed declarations in support of attorney fee requests and says that there are "many others." The very nature of hiring an expert and paying them $1,250/hour to support your fee petition should call into question the neutrality and reliability of the opinion. It appears that Professor Klonoff almost always testifies that the plaintiffs' request for fees is reasonable."	99-100
	Professor Mullenix, a leading class action scholar, identifies Professor Klonoff as belonging to the "relatively small universe of law professors who repeatedly appear in support of attorney fee requests." These professors all cite each other and cite cases where the courts were persuaded by their opinions. Professor Mullenix decries this practice as "daisy-chaining" and "regulatory capture."	99
	#3: Plaintiffs Do Not Consider Fees in Relation to Value of Settlement to Class Member "It doesn't matter how long you've worked, how hard you've fought, or how smart your opponents were if you have not negotiated a settlement that provides any actual value to the class."	101
	"Plaintiffs and Defendants don't once mention the actual size of the class, which is the most critical component of the monetary "value" delivered. A billion-dollar fund—which would be reduced to under $600 million after all fees and expenses are deducted if Plaintiffs have their way—amounts to negligible recovery for an individual class member if there are thirty million class members."	102
	"It's simple math. The larger the denominator, the less valuable the recovery is. Not one expert or economist in this litigation has estimated what the actual monetary value of this settlement is for an individual class member. This is because Plaintiffs want to obfuscate the fact that the monetary recovery is next-to-nothing for an individual home seller in Kansas, Missouri. Meanwhile, attorneys will pocket a third of a billion dollars."	102
	#4: One-Third Fee is Almost Never Awarded in $1 Billion Mega-fund Cases These studies all say that in mega-fund cases, the attorneys' fees awarded are nowhere close to the "normal" 33% range. Instead, they tend to be in the 10-15% range.	102
	"All these studies conducted by leading class action scholars and empiricists show that in mega-fund cases, recovery is *much, much* lower than 33%."	104
	"Despite the empirical evidence that mega-fund cases almost always receive lower fee awards on a percentage basis, Professor Klonoff proceeds to discuss why he nonetheless believes a 33% fee award is warranted in this billion-dollar mega-fund case. He provides a table where he collects "51 mega- fund cases that involved fee awards of 30 percent or greater (30 of which awarded 33 percent or more)." Apparently, this "cherry picking" of results is common among plaintiffs trying to get a large fee. The messaging here is clear: other courts have approved large awards in mega-fund cases and so too should this Court."	104
	"Moreover, thirty-two of the fifty mega-fund cases referenced by Professor Klonoff involve funds of less than $200 million—less than one-fifth of what we are dealing with in this case. While they are technically mega-fund cases, they are not comparable to the $1 billion fund at issue in this case. The real question to be answered is what percentage of courts award 33% in attorneys' fees in billion-dollar mega-fund cases? I venture to guess that percentage is very low."	106

	Professor Klonoff can only point to two recent cases with recovery in the range involved in the instant case (around a billion dollars) . . . In short, in the only two recent "comparable" mega-fund cases that Professor Klonoff identified, the class sizes were much smaller than the one in this case (in one case, only 2,200 class members). Monetary recovery, therefore, was meaningful and valuable for the class. Plaintiffs do not argue—and cannot argue—that this settlement provides significant compensatory redress to individual members of the class."	106
	"If this Court awards Plaintiffs $333,000,000, I believe it will be one of the largest awards in Missouri history (if not, the largest). Recently, a court in Delaware awarded $267 million in attorneys' fees, which garnered national headlines like "Whopper $267 Million Fee Award Shows Why Delaware is Different." The settlement was the second highest securities class action recovery in Delaware history. Notably, this gargantuan award was only 26.67% of the settlement amount."	107
	"It is no secret that class actions get a bad reputation. And that reputation is sometimes well deserved. There is a perception that in a class action, an average class member walks away with a toaster while the attorneys walk away with millions of dollars (here, hundreds of millions of dollars). Fee requests such as the one in the instant case do nothing but validate that perception."	107
	#5: Eighth Circuit Precedent Does Not Support Fee Request See decision from Eighth Circuit Court of Appeals, which ruled just three months ago that an award which gives plaintiffs' attorneys between $7,000 to $9,500 an hour is not "reasonable."	
	"In the instant litigation, there is one attorney, Mr. Seltzer, who would be making $7,964 an hour under the fee request ($2,200/hour multiplied by a 3.62 multiplier). This falls squarely within what the Eighth Circuit refused to award. Another attorney, Mr. Ketchmark, would be making $5,240/hour ($1,450/hour multiplied by a 3.62 multiplier), just a little lower than the fee that was disapproved by the Eighth Circuit. There are many other attorneys billing at similar rates to Mr. Ketchmark."	108 108
	"No reasonable class member would willingly pay an attorney between $5,240/hour and nearly $8,000/hour—particularly not to receive a paltry payout representing a less-than-negligible portion of their actual losses."	108
	#6: Plaintiffs Fail to Establish Lodestar Fees Billed at Prevailing Market Rates "Plaintiffs have also not put forward evidence to show that billing rates of $1,000-$2,200/hour are normal or customary. Are these the rates that they charge anyone off the street? Or are these inflated, "we-are-pursing-a-class-action" rates? It matters because all we have is the say-so of the plaintiffs that "these are our rates.""	108-109
	"Plaintiffs are required to establish that these are standard market rates in that geographical area that do not already account for the risk involved in prosecuting a class action. In other words, you don't get to charge higher rates because it's a risky case and then multiply those higher rates by 3.62 because, once again, it's a risky case."	109
	"The reason that the actual "prevailing" rates are used and information about what tasks an attorney undertook must be provided is to have an accurate lodestar crosscheck. If the prevailing rates are half of what Plaintiffs are claiming, then the $92 million in fees drops to $46 million. The lodestar multiplier doubles to over 7 times the reasonable hourly rate, a number the Eighth Circuit would surely say is outside the reasonable lodestar cross-check range."	110
	See exact attorney billing rates in this case.	111
	#7: Plaintiffs' Attorneys May Have Misstated Hourly Billing Rates "There are anomalies I have found that suggest certain plaintiffs' attorneys misstated their billing rates—or, more charitably, charged completely different rates to different clients during the same time period."	112

	See attorney and non-attorney fees jump at enormous rates across the board for attorneys in this case.	113-116
	"As of August 2022, when Mr. Dameron submitted his declaration, he had presumably been working on the Burnett case for three years (since 2019). By his own admission, in the 2019-to2022-time frame, prevailing rates were $950 for a partner, $450 for an associate, and $175 for a paralegal. Yet, those weren't the rates he was charging to the *Burnett* plaintiffs. Mr. Dameron was "billing" the *Hayes* plaintiffs at a rate of $950/hour and the *Burnett* plaintiffs at a rate of $1,250/hour. Similarly, Brittani Strickland (a paralegal) was "billing" the *Hayes* plaintiffs at a rate of $175/hour and the *Burnett* plaintiffs at a rate of $300/hour."	113
	There are also anomalies in billing rates for Marc Seltzer, the highest billing attorney in this case. His purported hourly rate (from 2019-2024) was $2,200. Yet, in 2017,273 his hourly rate was $1,000/hour lower	115
	"Similar patterns appear with other attorneys in this case. As of late 2021, according to a U.S. magistrate judge in Kansas, "[Attorney] Boulware's hourly rate is $575, . . ." . . . Somehow, that "reasonable" rate magically increased to $1,250/hour—a 117% increase—for this case. Mr. Boulware is one of the highest-billing attorneys in this case."	116
	"From an outside perspective, it looks like counsel created special billing rates just for this case which are highly inflated and different from what they have publicly represented constitute their normal billing rates."	116
	#8: Plaintiffs Have Not Submitted Evidence of Appropriate Billing Practices "There are no billing records submitted so we have no ability to see what sort of work was being done and billed at these extremely high rates. Was travel time being billed at rates of $2,200/hour? Clerical or administrative work? This Court and class members have no ability to gauge what the lead attorneys in this case were doing to bill these hours at these rates."	116
	#9: Plaintiffs Should Not Receive Lodestar Multiplier for Non-Attorney Time "[U]sing a multiplier for these non-legal roles means that class members are "paying" upwards of $1,500/hour for paralegal work and over $2,300/hour for investigative work. Plaintiffs are seeking almost $20 million in inflated "fees" for non-legal staff. The money would not go to the paralegals, law clerks, and investigators. It would go into the pockets of the lawyers."	117
	"Where does it end? Why not bill at 3.62 times normal rates for administrative assistants, couriers, accounting clerks, and anyone else with a non-attorney role? It may well be the standard in class actions that anyone who "bills" gets to have their rates multiplied by some ridiculous number. But someone needs to call attention to what seems like an unscrupulous attempt to pad already very generous billing rates."	117
Relief Requested	"I don't think this Court wants to be known as the one who provided a few dollars to class members and a private jet to each of the attorneys in the case."	122
	"Additionally, it is within the Court's inherent jurisdiction to award attorneys' fees to an objector. Accordingly, I ask this Court to award attorneys' fees as follows: ➢ My normal rate for consulting is $250/hour. ➢ Since I am taking a risk in not being paid and doing all this work for nothing, my new hourly rate is $1,250 (to match Plaintiffs' expert). ➢ I have worked approximately 50 hours on this submission. ➢ This would make my fee $62,500. ➢ Then, I would like to request a multiplier of 3.62 (like the Plaintiffs requested), making the total fee I request $226,250. I trust you understand that this is intended tongue-in-cheek to illustrate the absurdity of Plaintiffs' fee petition. Instead, if this Court determines that this submission provided meaningful value to the class, I request reasonable attorney fees determined as the Court deems appropriate."	122