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8
 9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 NATHANIEL WHALEY,
 12
 Plaintiff,

13 v.

14 NATIONAL ASSOCIATION OF
 15 REALTORS®; LAS VEGAS REALTORS®;
 NEVADA REALTORS; SIERRA NEVADA
 16 REALTORS; INCLINE VILLAGE
 REALTORS®; ELKO COUNTY REALTORS;
 17 MESQUITE REAL ESTATE ASSOCIATION;
 18 GREATER LAS VEGAS MLS; NORTHERN
 NEVADA REGIONAL MLS; JASON
 19 MITCHELL GROUP; OPENDOOR
 BROKERAGE LLC; eXp REALTY;
 20 BERKSHIRE HATHAWAY
 HOMESERVICES NEVADA PROPERTIES;
 21 SIMPLY VEGAS; URBAN NEST REALTY;
 22 LUXURY HOMES OF LAS VEGAS;
 HUNTINGTON AND ELLIS, KELLER
 23 WILLIAMS SOUTHERN NEVADA; KELLER
 WILLIAMS VIP; KELLER WILLIAMS
 24 REALTY LAS VEGAS; KELLER WILLIAMS
 REALTY THE MARKETPLACE; ENGELS &
 25 VOLKERS LAKE TAHOE; DOUGLAS

Case No. 2:24-cv-00105-ART-MDC

**AMENDED JOINT STIPULATED
 MOTION¹ AND [PROPOSED]
 ORDER TO EXTEND THE STAY
 OF ENTIRE CASE THROUGH
 FINAL APPROVAL OF
 NATIONWIDE SETTLEMENTS**

26
 27 ¹ This paper is styled as a stipulated joint motion pursuant to LR 7-1 rather than a
 stipulation for the sole reason that some Defendants have yet to be served with process and
 28 it is unclear when those named Defendants who are not signatories to this Joint Motion
 intend to appear in this action. The undersigned are unaware of any objection to the relief
 requested in this Joint Motion from any non-signatory Defendant.

1 ELLIMAN OF NEVADA; REDFIN
2 HOMESERVICES LLC; REDFIN
3 CORPORATION; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

4 Defendants.

5 AND CONSOLIDATED CASE

Case No. 2:24-cv-00340-ART-MDC

6 ANGELA BOYKIN, individually and on behalf
7 of all others similarly situated,

8 Plaintiff,

9 v.

10 NATIONAL ASSOCIATION OF
11 REALTORS®; UMRO REALTY CORP. d/b/a
The Agency; CHASE INTERNATIONAL,
12 INC.; DICKSON REALTY, INC.; COMPASS,
INC.; eXp WORLD HOLDINGS, INC.; THE
13 REAL ESTATE GUY INC.; BHH
14 AFFILIATES, LLC; DOUGLAS ELLIMAN
INC.; DOUGLAS ELLIMAN REALTY, LLC;
15 HOMESMART INTERNATIONAL LLC;
16 CRAIG TANN, LTD d/b/a HUNTINGTON &
ELLIS A REAL ESTATE AGENCY; REALTY
17 ONE GROUP; REALTY ONE GROUP
EMINENCE; REDFIN CORPORATION;
18 URBAN NEST REALTY, LLC; NEVADA
REALTORS; GREATER LAS VEGAS
19 ASSOCIATION OF REALTORS; GREATER
LAS VEGAS ASSOCIATION OF REALTORS
20 MULTIPLE LISTING SERVICE, INC.; ELKO
COUNTY REALTORS; INCLINE VILLAGE
21 REALTORS, INC.; SIERRA NEVADA
REALTORS; NORTHERN NEVADA
22 REGIONAL MULTIPLE LISTING SERVICE,
INC.; MESQUITE REAL ESTATE
23 ASSOCIATION, INC., A NEVADA NON-
24 PROFIT CORPORATION;

25 Defendants.

1 Plaintiff Nathaniel Whaley and Plaintiff Angela Boykin, on behalf of themselves
2 and all others similarly situated (individually, the “Whaley Plaintiffs” and the “Boykin
3 Plaintiffs” collectively, “Plaintiffs”), and the undersigned Defendants,² (together with
4 Plaintiffs, the “Stipulating Parties”), jointly move to extend the stay of proceedings in this
5 case through a determination on final approval of the nationwide settlement reached
6 between the National Association of REALTORS® (“NAR”) and plaintiffs in the Western
7 District of Missouri and the Northern District of Illinois (ECF No. 66-1). In support of this
8 joint stipulated motion, the Stipulating Parties provide as follows:

9 1. The Whaley Plaintiffs filed a Class Action Complaint (ECF No. 1) on
10 January 15, 2024.

11 2. The Whaley Plaintiffs filed a First Amended Class Action Complaint (the
12 “Amended Complaint”) (ECF No. 6) on January 25, 2024.

13 3. The Boykin Plaintiffs filed a Class Action Complaint on February 16, 2024.

14 4. On March 8, 2024, in the *Whaley* action, Defendant NAR filed a Joint
15 Stipulated Motion (“*Whaley Motion*”) to Stay Proceedings Pending Determination of the
16 Motion to Transfer (“MDL Motion”) by the Judicial Panel on Multidistrict Litigation (the
17 “JPML”) (ECF No. 28).

18 5. This Court granted the *Whaley Motion* on March 11, 2024, “stay[ing] the
19 entire case until the later of (i) 30 days after the [JPML] rules on the pending MDL Motion,
20 or (ii) 30 days after the date of service or waiver of service of the Amended Complaint on
21 such Defendant” (ECF No. 31).

22 6. Pursuant to the Court’s Order (ECF No. 56) issued in *Boykin* on March 21,
23 2024, the *Boykin* action was administratively closed and consolidated with the *Whaley*
24 action.

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27 ² Defendant Greater Las Vegas Association of REALTORS® Multiple Listing Service
28 consents to the stay requested herein but have not yet retained local counsel and thus cannot
sign this motion.

1 7. On March 15, 2024, the plaintiffs in *Burnett v. The National Association of*
2 *Realtors*, No. 4:19-cv-00332 (W.D. Mo.) (“*Burnett*”), *Moehrl v. The National Association*
3 *of Realtors*, No. 1:19-cv-01610 (N.D. Ill.) (“*Moehrl*”), *Gibson v. National Association of*
4 *Realtors*, No. 4:23-cv-00788 (W.D. Mo.) (“*Gibson*”), and *Umpa v. National Association of*
5 *Realtors*, No. 4:23-cv-00945 (W.D. Mo.) (“*Umpa*”), entered into a settlement agreement
6 (“NAR Settlement Agreement”), attached hereto as Exhibit A, with Defendant NAR which,
7 if approved, would constitute a nationwide settlement against the “Released Parties,” as
8 defined in the NAR Settlement Agreement (Ex. A ¶¶ 17-18).

9 8. On March 21, 2024, Defendant Compass, Inc., entered into a settlement
10 agreement with the plaintiffs in *Gibson* and *Umpa*, which would constitute a nationwide
11 settlement that may include similar claims at issue in this case. (*Gibson*, ECF No. 135).

12 9. On March 22, 2024, Defendant HomeSmart International LLC filed a Joint
13 Consent Motion to Stay Proceedings Pending Determination of Motion to Transfer (the
14 “MDL Motion”) by the Judicial Panel on Multidistrict Litigation (the JPML) as to the
15 *Boykin* Defendants (the “*Boykin* Motion”) (ECF No. 36).

16 10. On April 2, 2024, this Court granted the *Boykin* Motion, and further
17 instructed that if the MDL Motion was denied, “the parties shall promptly negotiate and
18 within 30 (thirty) days file a proposed schedule for this matter, including a schedule for
19 amended pleadings and a deadline for the defendants to file a responsive pleading or
20 otherwise respond to the operative Complaint.” (ECF No. 60).

21 11. On April 12, 2024, the JPML denied the MDL Motion (see ECF No. 62).

22 12. On April 19, 2024, the Motion for Preliminary Approval of the NAR
23 Settlement Agreement (“Preliminary Approval Motion”) as to NAR was filed in *Burnett*
24 (see *Burnett*, ECF No. 1458).

25 13. On April 22, 2024, the *Burnett* court granted the Preliminary Approval
26 Motion (*Burnett*, ECF No. 1460).

1 14. On April 23, 2024, Defendant Realty ONE Group entered into a settlement
2 agreement with the plaintiffs in *Gibson* and *Umpa*, which, if approved, would constitute a
3 nationwide settlement that may include similar claims at issue in this case.

4 15. On April 25, 2024, Defendants HomeServices of America, BHH Affiliates
5 LLC, and HSF Affiliates LLC (collectively “the HomeServices Defendants”) executed a
6 binding term sheet to settle all claims asserted against the HomeServices Defendants. Under
7 the terms of this settlement, a Released Party includes the HomeServices Defendants, its
8 officers, directors, employees, as well as direct or indirect subsidiaries among others. If
9 approved, this would constitute a nationwide settlement that may include similar claims to
10 those at issue in this case.

11 16. On April 29, 2024, the Motion for Preliminary Approval of the Realty ONE
12 Group Settlement Agreement was filed in *Gibson* and *Umpa*, which the Court granted on
13 April 30, 2024 (see *Gibson*, ECF No. 163).

14 17. On April 29, 2024, Defendant Douglas Elliman filed a Notice of Pending
15 Settlement in *Gibson* and *Umpa* advising the Court that Douglas Elliman had entered into a
16 settlement agreement with the plaintiffs in those actions, which would constitute a
17 nationwide settlement that may include similar claims at issue in this case. (*Gibson*, ECF
18 No. 157).

19 18. On April 30, 2024, the *Gibson*³ court granted the Motion for Preliminary
20 Approval related to Compass’ and Douglas Elliman’s respective settlements with the
21 *Gibson* and *Umpa* plaintiffs. (*Gibson*, ECF No. 163).

22 19. On June 26, 2024, Defendant Redfin Corporation entered into a settlement
23 agreement with the *Gibson* Plaintiffs, which would constitute a nationwide settlement that
24 may include similar claims at issue in this case. On July 15, 2024, the *Gibson* court also
25 granted the Motion for Preliminary Approval of Redfin’s settlement with the *Gibson*
26 Plaintiffs.

27
28 ³ On April 23, 2024, the Court in *Gibson* and *Umpa*, issued an order consolidating the
Umpa action into the *Gibson* action. (*Gibson*, ECF No. 145).

1 20. The NAR Settlement Agreement defines certain categories of entities,
2 including, for example, NAR, REALTOR-Associate® Members, REALTOR® Member
3 Boards, REALTOR® Multiple Listing Services, Non-REALTOR® Multiple Listing
4 Services, and brokerages, and identifies what steps, if any, each category must take to
5 qualify as a “Released Party” pursuant to the NAR Settlement Agreement. (Ex. A ¶ 18).

6 21. Certain entities had to expressly enter into an “opt in” agreement, and
7 comply with certain other terms, to qualify as “Released Parties.” (Ex. A ¶ 18).

8 22. Certain Defendants in the above-captioned litigation represent that they were
9 not required to enter an “opt in” agreement in order to be considered “Released Parties,”
10 (Ex. A. ¶ 18).

11 23. Certain other Defendants in the above-captioned litigation represent that they
12 entered an “opt in” agreement within 60 days from the date the first Motion for Preliminary
13 Approval was filed, and are required to comply with certain other terms, in order to be
14 considered “Released Parties.” (Ex. A ¶ 18(c-f)); *see also id.* ¶¶ 20, 66, 67).

15 24. On May 10, 2024, Defendant NAR filed a joint stipulated motion to stay
16 proceedings as to certain released defendants through final approval of the nationwide
17 settlements and to further stay the entire case for 60 days to allow the various remaining
18 defendants to determine whether they will “opt in” and otherwise comply with the NAR
19 Settlement Agreement, and therefore may also become “Released Parties” (the “Stay
20 Motion”) (ECF No. 66).

21 25. On May 13, 2024, this Court granted the Stay Motion, and further instructed
22 that any additional released parties must “file a status report, including whether the above-
23 captioned litigation should be stayed as to any new Released Parties through final approval
24 of the NAR Settlement Agreement,” no later than 14 days after the expiration of the 60-day
25 stay (ECF No. 67). This stay is scheduled to expire on July 12, 2024.

26 26. On June 18, 2024, the period within which a defendant could enter an “opt
27 in” agreement expired. Prior to that date, Defendants represent to the Court that all of the
28

1 Defendants in this case that were required to opt in to the Settlement Agreement did in fact
2 opt in.⁴

3 27. On July 12, 2024, Defendant HomeSmart International, LLC
4 (“HomeSmart”), entered into a settlement agreement with the plaintiffs in *Gibson*, which
5 would constitute a nationwide settlement that may include similar claims at issue in this
6 case. (*Gibson*, ECF No. 303).

7 28. On July 15, 2024, the *Gibson* Court granted the Preliminary Approval of
8 HomeSmart’s settlement. (*Gibson*, ECF No. 348).

9 29. On July 16, 2024, HomeSmart filed a Notice of Settlement and Motion to
10 Stay Case as to HomeSmart Holdings, Inc. and HomeSmart International, LLC in the
11 *Gibson* case. (*Gibson*, ECF No. 349).

12 30. On July 16, 2024 the *Gibson* Court granted HomeSmart’s Motion to Stay.
13 (*Gibson*, ECF No. 351).

14 31. Plaintiffs and Nevada REALTORS®, speaking on behalf of the undersigned
15 Defendants met and conferred regarding the status of this case in light of this Court’s
16 directive to “file a status report, including whether the above-captioned litigation should be
17 stayed as to any new Released Parties through final approval of the NAR Settlement
18 Agreement and/or propose a litigation and briefing schedule for any responses to the
19 Complaints and/or amended complaints for any remaining Defendants in the above-
20 captioned litigation who have not become Released Parties.” (ECF No. 67).

21 32. Given the current litigation landscape, Plaintiffs and the Defendants have
22 agreed that it is in the interest of judicial efficiency for this Court to modify the current
23 deadlines set forth in its May 13, 2024, Order (ECF No. 67), and enter an Order to:
24
25

26 ⁴ The Defendants have not provided the *Whaley* or *Boykin* Plaintiffs with the records
27 substantiating these “opt-ins.” Similarly, the *Whaley* and *Boykin* Plaintiffs are not able to
28 stipulate that any additional actions to comply with the terms of the NAR Settlement have
been undertaken by or on behalf of the Defendants and Plaintiffs reserve their rights to file
a motion to lift the stay at any time should any facts or circumstances come to light that cause
Defendants’ representations to be in dispute.

- 1 (1) Extend the stay as to HomeSmart through a decision on final approval of its
2 settlement agreement;
- 3 (2) Extend the stay as to all remaining Defendants through a decision on final
4 approval of the NAR Settlement Agreement;
- 5 (3) Order that no later than 14 days after the expiration of the period of appeal
6 from an order with respect to the final approval of the NAR Settlement
7 Agreement, the remaining parties would file a Joint Status Report informing
8 the court of the outcome of the motion for final approval of the NAR
9 Settlement Agreement, and/or propose a litigation and briefing schedule for
10 any responses to the Complaints and/or amended complaints for any
11 remaining Defendants in the above-captioned litigation who have not been
12 released.

13 33. Defendants do not waive any rights to arbitration or other forms of
14 alternative dispute resolution, and expressly reserve and assert, and do not waive, their
15 binding arbitration rights. Defendants reserve the right to file formal motions asserting these
16 rights at each phase of litigation.⁵

17 34. Defendants do not waive any rights to enforce provisions of any applicable
18 agreements including class waiver provisions and/or limitations periods, and expressly
19 reserve and assert, and do not waive, their binding and enforceable rights. Defendants
20 reserve the right to file formal motions asserting these rights at each phase of litigation.

21 35. Plaintiffs and the proposed class expressly reserve all rights available to them
22 in this or any other proceeding, including the right to move to lift the stay provided herein
23 at any time. Plaintiffs' agreement to stay this action as to certain Defendants who may have
24 not opted-in or otherwise settled claims against them in this or related proceedings is solely
25 for purposes of this Action in the interests of judicial economy.

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28 ⁵ Defendants also do not waive and expressly reserve any rights as to any personal
jurisdiction arguments.

1 DATED this 26th day of July, 2024.

DATED this 26th day of July, 2024.

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7 DATED this 26th day of July, 2024.

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DATED this 26th day of July, 2024.

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DATED this 26th day of July, 2024.

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ORDER

Dated this 22nd day of October, 2024.

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE