

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

1925 HOOPER LLC; ROBERT J. ARKO; and  
ANDREW M. MOORE; on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF  
REALTORS; *et al.*,

Defendants.

CASE NO.: 1:23-cv-05392-MHC

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 17 day of December, 2024 (the “Execution Date”), by and between defendant Higher Tech Realty, LLC, d/b/a Mark Spain Real Estate (“Higher Tech”) and plaintiffs 1925 Hooper LLC, Robert J. Arko and Andrew M. Moore (collectively “Plaintiffs”), who filed suit in the above captioned action, both individually and as representatives of one or more classes of home sellers. Plaintiffs enter this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below.

WHEREAS, Plaintiffs filed a Class Action Complaint (the “Original Complaint”) against Higher Tech and others on November 22, 2023, and on December 6, 2023, Plaintiffs filed an Amended Class Action Complaint (the “Amended Complaint”);

WHEREAS, the Amended Complaint alleges that Higher Tech, among others, engaged in a conspiracy to raise, fix, maintain, or stabilize real estate commissions, or to otherwise require sellers of residential property to make inflated payments to the brokers or agents representing buyers in violation of Section 1 of the Sherman Act and state laws;

WHEREAS, the above-captioned action is one of over twenty (20) known putative class actions

asserting antitrust claims under Section 1 of the Sherman Act based on similar facts and allegations, presently pending in fourteen (14) federal districts throughout the country;

WHEREAS, on March 15, 2024, plaintiffs in actions pending outside of this Court, *Burnett v. The National Association of Realtors*, Case No. 4:19-cv-00332 (W.D. Mo.), *Moehrl v. The National Association of Realtors*, Case No. 1:19-cv-01610 (N.D. Ill.), *Gibson v. National Association of Realtors*, Case No. 4:23-cv-00788 (W.D. Mo.), and *Umpa v. National Association of Realtors*, Case No. 4:23-cv-00945 (W.D. Mo.), entered into a settlement agreement (“NAR Settlement Agreement”), with Defendant National Association of REALTORS® (“NAR”), which, if approved, will constitute a nationwide settlement against the “Released Party,” as defined in the Settlement Agreement;

WHEREAS, on April 23, 2024, the court in *Burnett* granted a Motion for Preliminary Approval of the NAR Settlement Agreement as to NAR [*Burnett*, Case No. 4:19-cv-00332 (W.D. Mo.), ECF Nos. 1458, 1460];

WHEREAS, through counsel, extensive arm’s-length settlement negotiations have taken place between Plaintiffs and Higher Tech;

WHEREAS, Plaintiffs and Higher Tech agree to settle their claims in exchange for a payment made by Higher Tech of \$750,000 according to the terms set forth below;

WHEREAS, Plaintiffs have conducted an extensive investigation into the facts and the law regarding the claims asserted in the Amended Complaint, and have concluded that a settlement with Higher Tech according to the terms set forth below is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, the settlement terms set forth below are analogous, equivalent or otherwise comparable to those set forth in the NAR Settlement Agreement in connection with non-NAR brokers’ conduct, and treatment of Plaintiffs and Settlement Class Members;

WHEREAS, the above-captioned action will continue, including against certain other

defendants, unless Plaintiffs separately settle with those defendants;

WHEREAS, Higher Tech denies the allegations in the Amended Complaint, as well as any other action pending outside this Court, and believes that it is not liable for the claims asserted. Higher Tech believes it has good defenses to Plaintiffs' claims, and meritorious dispositive motions, including to dismiss and for summary judgment, as well as post-trial motions, but nevertheless has decided to enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the nationwide releases, orders, and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that Plaintiffs and Settlement Class Members have or could have asserted against Higher Tech;

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and other good and valuable consideration, and intending to be legally bound, it is agreed by and between Higher Tech and the Plaintiff that the above-captioned action be settled, compromised, and dismissed with prejudice as to Higher Tech only, without costs to Plaintiffs, the Settlement Class, or Higher Tech, except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

**A. Definitions**

The following terms, as used in this Settlement Agreement, have the following meanings:

1. "Action" means the current case pending the United States District Court for the Northern District of Georgia, *1925 Hooper et al. v. The National Association of Realtors*, Case No. 1:23-cv-05392-MHC.
2. "Corporate Defendants" means any defendant aside from the National Association of Realtors named in the Action.
3. "Co-Lead Counsel" means the following law firms:

KNIGHT PALMER LLC  
1360 Peachtree Street, Suite 1201

Atlanta, GA 30309

KABAT, CHAPMAN & OZMER LLP  
17th Street NW, Suite 1550  
Atlanta, GA 30363

4. "Court" means the United States District Court for the Northern District of Georgia.
5. "Defendants" means all defendants named in *Hooper*.
6. "Effective" means that all conditions set forth below in the definition of "Effective Date" have occurred.
7. "Effective Date" means the date when both: (a) the Court has entered a final judgment order approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action against Higher Tech with prejudice has been entered; and (b) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement and the entry of a final judgment has expired or, if appealed, approval of the Settlement and the final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. Any appeal or other proceedings unrelated to this Settlement Agreement initiated by any other defendant are expressly excluded from this Paragraph, and any such appeal or other proceedings shall not delay this Settlement Agreement from becoming final, and shall not apply to this Paragraph. This Paragraph shall not be construed as an admission that such parties have standing or other rights of objection or appeal with respect to this Settlement. It is agreed that neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be considered in determining the above-stated times.
8. "Higher Tech" means Defendant Higher Tech Realty, LLC, d/b/a Mark Spain Real Estate.
9. "*Hooper*" means Northern District of Georgia Case No. 1:23-cv-05392, which is currently pending.



10. “MLS(s)” means any and all Multiple Listing Service anywhere in the United States, as defined in the Amended Complaint in the Action.

11. “Opt-Out Sellers” means members of the Settlement Class who have timely exercised their rights to be excluded from the Settlement Class or have otherwise obtained Court approval to exercise such rights.

12. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, affiliates and assignees. For the avoidance of doubt, Persons include all real estate brokerages.

13. “Plaintiff(s)” means Plaintiffs 1925 Hooper LLC; Robert J. Arko; and Andrew M. Moore, including their counsel of record in the Action.

14. “Settlement” means the settlement contemplated by this Settlement Agreement.

15. “Settlement Class” means the class of persons that will be certified by the Court for Settlement purposes only, namely, all persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home from October 31, 2019 to the date of Class notice. For avoidance of doubt, Plaintiffs and Higher Tech intend this Settlement Agreement to provide for a nationwide class with a corresponding nationwide settlement and release.

16. “Settlement Class Member” means a member of the Settlement Class who does not file a valid request for exclusion from the Settlement Class.

17. “Settling Parties” means Plaintiffs and Higher Tech.

18. “Released Claims” means any and all manner of claims against Higher Tech, regardless of the cause of action, arising from or relating to conduct that was alleged or could have been alleged

in the Action, based on any or all of the same factual predicates for the claims alleged in the Action, including but not limited to commissions negotiated, offered, obtained, rebated, or paid to brokerages in connection with the sale of any residential home.

19. “Released Party” means Higher Tech, and all of its respective past, present, and future, direct and indirect, subsidiaries, predecessors, successors, affiliates (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), institutes, societies, councils, parent companies, stakeholders, and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns.

20. “Releasing Parties” means Plaintiffs and any Settlement Class Members (including any of their immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates, acting in their capacity as such; and for entities including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such solely with respect to the claims based on or derived from claims of the Plaintiffs or Settlement Class Members).

21. “Total Monetary Settlement Amount” means \$750,000. All costs of settlement, including all payments to Settlement Class Members, all attorneys’ fees and costs, and all costs of Class Notice and administration, will be paid out of the Total Monetary Settlement Amount, and Higher Tech will pay nothing apart from the Total Monetary Settlement Amount, except as any applicable interest as provided in Paragraphs 32 and 34 of this Settlement Agreement.

**B. Stipulation to Class Certification**

22. The Settling Parties hereby stipulate, for purposes of this Settlement only, that the

requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied, and, subject to Court approval, the Settlement Class shall be certified for Settlement purposes as to Higher Tech. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement not become Effective, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void.

23. Neither this Settlement Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Settlement Agreement should be intended to be, construed as, or deemed to be evidence of an admission or concession by Higher Tech that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

**C. Approval of this Settlement Agreement and Dismissal of the Action**

24. The Settling Parties agree to make reasonable best efforts to effectuate this Settlement Agreement, including, but not limited to, seeking the Court's approval of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e); scheduling a final fairness hearing) to obtain final approval of the Settlement and the final dismissal with prejudice of the Action as to Higher Tech. Within 30 days of the Execution Date, Plaintiffs will submit to the Court a motion requesting that the Court preliminarily approve the Settlement (the "Motion"). The Motion shall include a proposed form of order preliminarily approving the Settlement and enjoining Releasing Parties from prosecuting any Released Claims in any forum until the Effective Date of this Settlement. The proposed form of the preliminary approval order shall be acceptable to Higher Tech provided that it is substantially in the form of the orders proposed in connection with settlements in *Gibson v. NAR, et al*, 4:23-cv-00788-SRB pending in the Western District of Missouri ("*Gibson*"). The Settling Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the Settlement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the

Settling Parties will negotiate in good faith to modify the Settlement Agreement directly or with the assistance of a qualified mediator.

25. The Settling Parties agree that Plaintiffs may at their sole discretion: (i) seek to include notice of this Settlement to the Settlement Class and for claim administration along with any settlement with another Defendant or (ii) seek approval of a separate plan for providing class notice of this Settlement in a manner that meets the requirements of due process and Federal Rule of Civil Procedure 23. The Settling Parties agree that the method and form of notice shall not be subject to Higher Tech's review or approval so long as they are substantially in the form of the Court-approved notice of the settlements in *Gibson*. To the extent Plaintiffs seek to vary the method or form of notice, Higher Tech must provide any edits or objections within 72 hours, and the Settling Parties shall promptly meet and confer to resolve any such objection. The Settling Parties agree to the use CPT Group, Inc. ("CPT") as a claims and notice administrator. The timing of any request to disseminate notice to the Settlement Class will be at the discretion of Co-Lead Counsel. Co-Lead Counsel shall include an objection deadline for this settlement no later than 45 days after the dissemination of notice to the Settlement Class.

26. Within 10 calendar days after the filing of the first motion for preliminary approval of this Settlement Agreement, the claims administrator shall, at Higher Tech's expense, to be credited against the Total Monetary Settlement Amount, cause notice of this Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

27. If the Settlement is preliminarily approved by the Court, Plaintiffs shall timely seek final approval of the Settlement and entry of a final judgment order as to Higher Tech:

- a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b), solely for purposes of this Settlement;
- b) granting final approval of the Settlement as fair, reasonable, and adequate within the

meaning of Federal Rule of Civil Procedure 23(e) and directing the consummation of the Settlement according to its terms;

- c) determining that the Settlement notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- d) requiring Practice Changes in accordance with Section I of this Settlement Agreement.
- e) directing that, as to Higher Tech only, the Action be dismissed with prejudice and, except as provided for herein, without costs;
- f) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including reserving exclusive jurisdiction over the administration and consummation of this Settlement to the Court; and
- g) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of final judgment as to Higher Tech.

28. This Settlement Agreement will become Effective only after the occurrence of all conditions set forth in the definition of the Effective Date.

**D. Releases, Discharge, and Covenant Not to Sue**

29. Upon the occurrence of the Effective Date, the Releasing Parties expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the

date of Class Notice of the Settlement arising from or related to the Released Claims. The Released Claims include but are not limited to the antitrust and consumer protection claims brought in the Action and similar state and federal statutes. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (a) shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties that accrued from the beginning of time through the date of Class Notice; and (b) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims. For avoidance of doubt, this release extends to, but only to, the fullest extent permitted by law.

30. The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, the Releasing Parties expressly, fully, finally, and forever settle and release, and, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, without regard to the subsequent discovery or existence of such other, different, or additional facts, as well as any and all rights and benefits existing under (a) Cal. Civ. Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES  
NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
FAVOR AT THE TIME OF EXECUTING THE RELEASE  
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR OR RELEASED PARTY.

or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction,

including but not limited to Section 20-7-11 of the South Dakota Codified Laws, which provides that “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;” or (b) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other, different, or additional facts. The Releasing Parties acknowledge that the inclusion of unknown claims in the definition of Released Claims was separately bargained for and was a material element of this Settlement Agreement.

31. The Releasing Parties intend by this Settlement Agreement to settle with and fully release only the Released Party, and the Settling Parties do not intend this Settlement Agreement, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract, tort, or statutory claim, based on any factual predicate in the Action), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury. The release does not extend to any individual claims that a class member may have against other broker or agent based on a breach of contract, breach of fiduciary duty, malpractice, negligence or other tort claim, other than a claim that a class member paid an excessive commission or home price due to the claims at issue in the Action.

**E. Payment of the Settlement Amount**

32. Plaintiffs will open a special interest-bearing settlement escrow account or accounts, established for that purpose as a qualified settlement fund as defined in Section 1.468B-1(a) of the United States Treasury Regulations (the “Escrow Account”). Within 30 days following the filing of the first motion for preliminary approval of this Settlement Agreement, or after Co-Lead Counsel has



provided wire instructions to Higher Tech, whichever occurs later, Higher Tech will deposit \$375,000 into the Escrow Account (the "First Payment"). Within one year of the First Payment, Higher Tech will deposit \$375,000 into the Escrow Account (the "Final Payment). All accrued interest shall be for the benefit of the Settlement Class unless the Settlement is not approved, in which case the interest shall be for the benefit of Higher Tech.

33. The obligation to make the First and Final payments reflected above will be evidenced by a promissory note ("Note") that will be assignable by Plaintiffs, acting on behalf of the Settlement Class, with advance written notice of any assignment provided to Higher Tech. The obligation and Note will be enforceable by the Court upon motion by Plaintiffs or Plaintiffs' assignee, and the Court shall retain continuing jurisdiction over the Settling Parties regarding its enforcement notwithstanding the entry of a final judgment.

**F. The Settlement Fund**

34. The Total Monetary Settlement Amount, any interest earned thereon, and any payments by a Released Party pursuant to this Settlement Agreement shall be held in the Escrow Account and constitute the "Settlement Fund." The full and complete cost of the Class Notice, claims administration, Settlement Class Members' compensation, attorneys' fees and reimbursement of all actual expenses of the Actions, any other litigation costs of Plaintiffs (all as approved by the Court), and all applicable taxes, if any, assessable on the Settlement Fund or any portion thereof, will be paid out of the Settlement Fund.

35. The Settling Parties and their counsel will not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing Class Notice to the Settlement Class or administering the settlement except as provided in Paragraphs 38 and 44 of this Settlement Agreement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund with Court approval. The balance of the Settlement Fund shall be disbursed to Settlement Class Members as

provided in a Plan of Allocation (as defined below) approved by the Court. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund.

36. After preliminary approval of the Settlement and approval of a Class Notice plan, Plaintiffs may utilize a portion of the Settlement Fund to provide Class Notice of the Settlement to potential members of the Settlement Class. Higher Tech will not object to Co-Lead counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, to pay the costs for Class Notice. If Plaintiffs settle with one (or more) Non-Higher Tech Corporate Defendants and notice of one or more other settlements is included in the notice of the Higher Tech settlement, then the cost of such notice will be apportioned equitably between (or among) the Higher Tech Settlement Fund and the other settling Defendant(s)' settlement funds. The amount spent or accrued for notice and notice administration costs is not refundable to Higher Tech in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become Effective.

37. Higher Tech will not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, use or administration except as expressly otherwise provided in this Settlement Agreement. Higher Tech's only payment obligation is to pay the Total Monetary Settlement Amount.

38. Subject to Co-Lead Counsel's sole discretion as to timing, except that the timing must be consistent with rules requiring that Settlement Class Members be given the opportunity to review fee applications, Co-Lead Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, to be paid out of the Settlement Fund. Within 14 business days after any order by the Court awarding attorneys' fees, expenses, or costs, the escrow agent for the Settlement Fund shall pay any approved attorneys' fees, expenses, or costs, up to the amount specified in Paragraph 21 above for such fees, expenses, and costs by wire transfer as directed by Co-Lead Counsel in accordance with and

attaching the Court's Order, provided that each Co-Lead Counsel receiving payment signs an assurance, in the form attached hereto as Appendix A, attesting that they will repay all awarded amounts if this Settlement Agreement does not become Effective.

39. The Settlement Fund will be invested in United States Government Treasury obligations or United States Treasury money market funds.

40. There will be no reduction of the Total Monetary Settlement Amount based on Opt-Out Sellers. The Settlement will be non-reversionary except as set forth below in Section H. If the Settlement becomes Effective, no proceeds from the Settlement will revert to Higher Tech regardless of the claims that are made.

41. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Settlement Agreement except as described in Paragraphs 36 and 38 of this Settlement Agreement.

42. The distribution of the Settlement Fund shall be administered pursuant to a plan of allocation (the "Plan of Allocation") proposed by Co-Lead Counsel in their sole and absolute discretion and subject to the approval of the Court. Higher Tech will have no participatory or approval rights with respect to the Plan of Allocation. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation, including, but not limited to, any adjustments to an authorized claimant's claim, is completely independent of and is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement. The Settlement Class, Plaintiffs, and Higher Tech shall be bound by the terms of this Settlement Agreement, irrespective of whether the Court or any other court, including on any appeal, disapproves or modifies the Plan of Allocation, and any modification or rejection of the Plan of Allocation shall not affect the validity or enforceability of this Settlement Agreement or otherwise operate to terminate, modify, or cancel that Agreement.

43. The Releasing Parties will look solely to the Settlement Fund for settlement and

satisfaction against the Released Party of all Released Claims and shall have no other recovery against the Released Party.

**G. Taxes**

44. Co-Lead counsel is solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Higher Tech has no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the Settlement does not become Effective and the Settlement Fund is returned to Higher Tech. In the event the Settlement does not become Effective and any funds including interest or other income are returned to Higher Tech, Higher Tech will be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest or other income. Higher Tech makes no representations regarding, and will not be responsible for, the tax consequences of any payments made pursuant to this Settlement Agreement to Co-Lead counsel or to any Settlement Class Member.

**H. Rescission**

45. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if such approval is modified in or set aside on appeal in any material respects, or if the Court does not enter final approval, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for the Effective Date do not occur, then this Settlement

Agreement may be rescinded by Higher Tech or by Plaintiffs on behalf of the Settlement Class by written notice to the Court and to counsel for the other Settling Party filed and served within 10 business days of the entry of an order not granting court approval or having the effect of disapproving or materially modifying the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' fees or litigation expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment order.

46. If the Settlement or Settlement Agreement is rescinded or terminated for any reason, then the balance of the Total Monetary Settlement Amount in the Settlement Fund will be returned to Higher Tech. If this Settlement Agreement is rescinded, the funds already expended from the Settlement Fund for the costs of Class Notice and administration will not be returned to Higher Tech. Funds to cover Class Notice and administration expenses that have been incurred but not yet paid from the Settlement Fund will also not be returned to Higher Tech.

47. If the Settlement or Settlement Agreement is rescinded or terminated for any reason permitted under this Settlement Agreement, then the Settling Parties will be restored to their respective positions in the Action as of the Execution Date. The Settling Parties agree that any rulings or judgments that occur in the Action after Execution Date and before this Settlement Agreement is rescinded will not bind them. The Settling Parties agree to waive any argument of claim or issue preclusion against Plaintiffs and/or Higher Tech arising from such rulings or judgments. In the event of a rescission or termination for any reason permitted under this Agreement, the Action will proceed as if this Settlement Agreement had never been executed and this Settlement Agreement, and representations made in conjunction with this Settlement Agreement, may not be used in the Action or otherwise for any purpose. Higher Tech and Plaintiffs expressly reserve all rights if this Settlement Agreement does not become Effective or if it is rescinded or terminated as permitted by this Agreement

by Higher Tech or the Plaintiffs, including Higher Tech's rights to seek review, including appeal, of any judgment entered in the Action on any available ground.

48. The Settling Parties agree that pending deadlines for pleadings or motions not yet filed, and all deadlines (whether pending or past) for motions that will be withdrawn pursuant to this Settlement Agreement, shall be tolled for the period from Execution Date, until the date this Settlement Agreement is rescinded, and no Settling Party shall contend that filing or renewal of such motions was rendered untimely or waived by the operation of this Settlement Agreement. The Settling Parties further agree that, within five business days of the Execution Date, they will jointly petition the courts overseeing the Action to request a stay of all pending deadlines as to Higher Tech only.

49. Higher Tech warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time the Settlement Term Sheet was executed, and, will warrant and represent, that it is not "insolvent" within the meaning of applicable bankruptcy laws at the time that payments of the Settlement Amount are actually transferred or made. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of Higher Tech to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the U.S. Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of Higher Tech, then, at the election of Co-Lead Counsel, the Settlement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

50. The Settling Parties' rights to terminate this Settlement Agreement and withdraw from this Settlement Agreement are a material term of this Settlement Agreement.

**I. Practice Changes**

51. As soon as practicable, a and in no event later than three months after the Effective Date,

Higher Tech will implement the following practice changes:

- a. When acting as a seller broker, eliminate any practice of making offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate any requirement that such offers, if made, must be blanket, unconditional, or unilateral.
- b. Agree not to make offers of compensation on the MLSs to buyer brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on the MLSs listing broker compensation or total broker compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);
- c. Agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers). However, this provision is not violated by receiving data or data feeds, unless said data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers.
- d. Unless inconsistent with state or federal law or regulation, before or during the operation this Paragraph, when working with a buyer, enter into a written agreement before the buyer tours any home with the following:
  - i. To the extent that Higher Tech will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;
  - ii. The amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., "buyer broker compensation shall be whatever



amount the seller is offering to the buyer”); and

- iii. Higher Tech may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;
- e. Not represent to a client or customer that Higher Tech’s brokerage services are free or available at no cost, unless Higher Tech will receive no financial compensation from any source for said services;
- f. When acting for sellers, Higher Tech must conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment.
- g. Disclose to prospective sellers and buyers in conspicuous language that Higher Tech’s commissions are not set by law and are fully negotiable (a) in its listing agreement if it is not a government-specified form, (b) in its agreement with buyers if it is not a government-specified form, and (c) in pre-closing disclosure documents if there are any and they are not government-specified forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then Higher Tech must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable. Any form listing agreements, buyer representation agreements, and pre-closing disclosure documents published by Higher Tech must conform to this Paragraph.

- h. Higher Tech must not filter out or restrict listings communicated to its customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer.
- i. Rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Settlement Agreement.
- j. Develop educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

52. The practice changes in Paragraph 51 of this Settlement Agreement shall not prevent (a) offers of compensation to buyer brokers or other buyer representatives off of the MLSs; or (b) sellers from offering buyer concessions (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

53. The obligations set forth in Paragraph 51 of this Settlement Agreement will terminate 7 (seven) years after the Effective Date. Moreover, if in an action brought against Higher Tech by the United States Department of Justice, United States Federal Trade Commission, any State Attorney General, or any other federal or state agency, and a final judgment is entered by a court (with all stay rights exhausted) which requires Higher Tech to adopt any practice changes that are inconsistent with the practice changes required by this Settlement Agreement, Higher Tech may comply with the terms of such judgment, unless the judgment is reversed or vacated, notwithstanding the practice changes specified in this Settlement Agreement. In such circumstance, Higher Tech will continue to be obligated to observe the practice changes specified in this Settlement Agreement that are not affected by such judgment.

54. Higher Tech acknowledges that the practice changes set forth here are a material

component of this Settlement Agreement and agrees to use its best efforts to implement the practice changes specified in Paragraph 51 of this Settlement Agreement.

**J. Cooperation**

55. Higher Tech (defined for purposes of this Paragraph to include only present and future, direct and indirect corporate subsidiaries, related entities and affiliates, predecessors, and successors but not franchisees) will provide valuable cooperation to Plaintiffs as follows in the Action, including to the extent that it is consolidated pursuant to *In re Real Estate Commission Antitrust Litigation* (MDL No. 3100) or to any other case. The cooperation obligations set forth in this paragraph shall be the full extent of any further obligations by Higher Tech or any of its past, present or future officers, directors, employees, or agents to provide evidence in, or otherwise cooperate in connection with the Action. Any disputes regarding the scope of these provisions or compliance with these provisions can be referred to a qualified mediator, mutually chosen by the parties, for binding resolution.

- i. Higher Tech will use reasonable best efforts to produce relevant summary-level, companywide transactional data limited to the class period. This data will be aggregated on a quarterly basis and will provide transactional volume, transactional value, and commissions paid on a state by state basis. The data will be sufficient to show volume of commerce and the average commission percentage. To the extent reasonably feasible, the data will be produced at a generally similar time to when other Defendants produce transactional data in the Action.
- ii. Higher Tech will produce documents sufficient to show its and its officers, employees, and agents' membership in NAR, that it was subject to, and complied

- with the challenged NAR rules during the class period, including whether and how Higher Tech accepted, adopted and implemented the challenged NAR rules.
- iii. Higher Tech will provide up to seven hours of 30(b)(6) testimony and up to seven hours of 30(b)(1) testimony of one 30(b)(1) witnesses in this Action. The time only includes Plaintiffs' questioning and does not include questioning by any other party. Notwithstanding anything to the contrary in this Paragraph, no Higher Tech deposition witness will sit for more than seven hours on the record of questioning, including questioning from Plaintiffs and any other party, provided that Plaintiffs get up to 4.5 hours. Higher Tech will make one, mutually agreed upon, witness available at trial, as necessary, and provide access via counsel to that witness prior to trial testimony for up to two (2) hours, if there is a trial in this Action.
  - iv. Higher Tech will use reasonable best efforts to authenticate documents and/or things produced by it in the Action where the facts indicate that the documents and/or things at issue are authentic, by declarations or affidavits if possible, or at hearings or trial if necessary;
  - v. Higher Tech will use reasonable best efforts to provide the facts necessary to establish that documents and/or things produced by it in the Action are "business records," a present sense impression, an excited utterance, a recorded recollection, or are otherwise admissible under the Federal Rules of Evidence, by declarations or affidavits if possible, or at hearings or trial if necessary;
  - vi. Higher Tech will use reasonable best efforts at its expense to provide relevant class member and listing data and answer questions about that data to support

the provision of class notice, administration of any settlements, or the litigation of the Action;

- vii. if another Defendant in this Action includes a witness on a witness list who is then a current officer or employee of Higher Tech or its subsidiaries, Higher Tech will cooperate in providing access via counsel to that witness prior to trial testimony for up to two (2) hours;
- viii. Higher Tech agrees not to provide greater assistance in discovery or trial to any defendant than to the Plaintiffs, unless required by subpoena or other compulsory process.

- 56. Higher Tech's cooperation obligations, as set forth in Paragraph 55, shall not require the production of information, testimony, and/or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine.
- 57. Higher Tech's obligation to cooperate will not be affected by the release set forth in this Settlement Agreement or the final judgment orders with respect to eXp. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to become Effective, the obligation to cooperate as set forth here will continue until the date that final judgment has been entered in the Action against the non-eXp Defendants and the time for appeal or to seek permission to appeal from the from the entry of a final judgment has expired or, if appealed, any final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.
- 58. Higher Tech acknowledges that the cooperation set forth here is a material component of this Settlement Agreement and agrees to use its reasonable best efforts to provide the

cooperation specified in this Section.

**K. Miscellaneous**

59. This Settlement Agreement and any actions taken to carry out the Settlement are not intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or point of fact or law on the part of any Settling Party. Neither this Settlement Agreement, nor the fact of Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Higher Tech, or be offered in evidence as an admission, concession, presumption, or inference of any wrongdoing by Higher Tech in any proceeding.

60. This Settlement Agreement was reached with the assistance of counsel after arm's-length negotiations. The Settling Parties reached this Settlement Agreement after considering the risks and costs of litigation. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation.

61. Any disputes relating to this Settlement Agreement will be governed by Georgia law without regard to conflicts of law provisions.

62. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any other Settlement Class Member against (a) any Non-Higher Tech Defendant or (b) any alleged co-conspirator or other person or entity other than the Released Parties. All rights of any Settlement Class Member against any Non-Higher Tech Defendant or an alleged co-conspirator or other person or entity other than the Released Parties are specifically reserved by Plaintiffs and the other Settlement Class Members.

63. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Higher Tech pertaining to the Settlement of the Actions against Higher Tech. This Settlement Agreement may be modified or amended only by a writing executed by the Settling Parties. This Settlement Agreement

does not waive or otherwise limit the Parties' rights and remedies for any breach of this Agreement. Any material breach of this Settlement Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Settlement Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.

64. This Settlement Agreement may be executed in counterparts by Plaintiffs and Higher Tech, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

65. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party, Plaintiff, member of the Settlement Class or Co-Lead Counsel.

66. Neither Plaintiffs nor Higher Tech shall be considered the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, the common law, or rule of interpretation that would or might cause any provision of this Settlement Agreement to be construed against the drafter.

67. The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

68. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and the Settlement.

69. The terms of this Settlement Agreement are and shall be binding upon and inure to the benefit of, to the fullest extent possible, the Released Party, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, Released Party, and any Settlement Class Members.



70. Any disputes between Higher Tech and Plaintiffs concerning this Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be resolved through a mediator agreed to by the Settling Parties for assistance in mediating a resolution and, if a resolution is not reached, to the Court.

71. Each Settling Party acknowledges that he, she or it has been and is being fully advised by competent legal counsel of such Settling Party's own choice and fully understands the terms and conditions of this Settlement Agreement, and the meaning and import thereof, and that such Settling Party's execution of this Settlement Agreement is with the advice of such Settling Party's counsel and of such Settling Party's own free will. Each Settling Party represents and warrants that it has sufficient information regarding the transaction and the other parties to reach an informed decision and has, independently and without relying upon the other parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Settlement Agreement and was not fraudulently or otherwise wrongfully induced to enter into this Settlement Agreement.

72. The Settling Parties shall have the right to amend this Settlement Agreement, upon mutual written consent, to correct any scrivener's errors in this Settlement Agreement, provided that the amendment does not materially adversely affect the rights of the Settling Parties.

73. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier. A copy of such notice shall also be provided by email.

If directed to Plaintiffs, the Settlement Class, or any member of the Settlement Class, to:

Bryan Knight  
Jonathan Palmer  
KNIGHT PALMER LLC  
1360 Peachtree Street, Suite 1201  
Atlanta, GA 30309  
[bknight@knightpalmerlaw.com](mailto:bknight@knightpalmerlaw.com)  
[jpalmer@knightpalmerlaw.com](mailto:jpalmer@knightpalmerlaw.com)

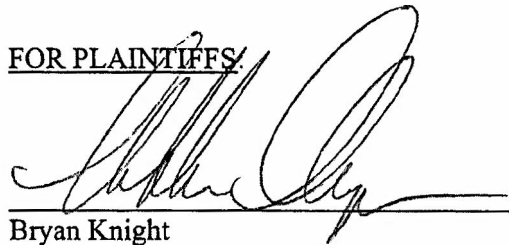
Nathan Chapman  
KABAT, CHAPMAN & OZMER LLP  
171 17th Street NW, Suite 1550  
Atlanta, GA 30363  
*nchapman@kcozlaw.com*

If directed to Higher Tech:

B. Parker Miller  
Alston & Bird LLP  
1201 W. Peachtree Street  
Atlanta, GA 30309  
*Parker.miller@alston.com*

74. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

FOR PLAINTIFFS:



Bryan Knight  
Jonathan Palmer  
KNIGHT PALMER LLC  
1360 Peachtree Street, Suite 1201  
Atlanta, GA 30309

Date

12/16/24

Nathan Chapman  
KABAT, CHAPMAN & OZMER LLP  
171 17th Street NW, Suite 1550  
Atlanta, GA 30363

FOR HIGHER TECH REALTY, LLC, D/B/A MARK SPAIN REAL ESTATE:



B. Parker Miller  
Alston & Bird LLP  
1201 W. Peachtree St., Suite 4900  
Atlanta, GA 30309

Date

12/17/24

**APPENDIX A**

1925 HOOPER LLC; ROBERT J. ARKO;  
and ANDREW M. MOORE; on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,  
*et al.*,

Defendants.

Case No. 1:23-cv-05392-MHC

Plaintiffs 1925 Hooper LLC, Robert J. Arko, and Andrew M. Moore (collectively “Plaintiffs”) and defendant Higher Tech Realty, LLC, d/b/a Mark Spain Real Estate (“Higher Tech”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, each firm defined in the Settlement Agreement as Co-Lead Counsel desires to give an undertaking (the “Undertaking”) for repayment of the award of attorneys’ fees, costs, and expenses approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned counsel, individually and as agent for his/her law firm, hereby submits both to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, Co-Lead Counsel and their shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for

the Northern District of Georgia for the enforcement of, and any and all disputes relating to or arising out of, the reimbursement obligation set forth herein and in the Settlement Agreement.

In the event that the Settlement Agreement does not receive final approval or any part of the final approval is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Co-Lead Counsel shall, within thirty (30) days, repay to Higher Tech, based upon written instructions provided by Higher Tech, the full amount of the attorneys' fees, expenses and costs paid to Co-Lead Counsel from the Settlement Fund, including any accrued interest.

In the event the Settlement Agreement becomes Effective, but the attorneys' fees, costs, and expenses awarded by the Court or any part of them are vacated, overturned, modified, reversed, or rendered void as a result of an appeal, Co-Lead Counsel shall within thirty (30) days repay to the Settlement Fund, based upon written instructions provided by the settlement administrator, the attorneys' fees, expenses and costs paid to Co-Lead Counsel from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all appeals of the final settlement order and judgment pertaining to attorneys' fees, such that the finality of those fees no longer remains in doubt.

In the event Co-Lead Counsel fails to repay to Higher Tech any of the attorneys' fees, expenses and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application Higher Tech, and notice to Co-Lead Counsel, summarily issue orders, including but not limited to judgments and attachment orders against Co-Lead Counsel.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of each firm identified as

Co-Lead Counsel. This agreement will only be effective upon its execution by each firm identified in the Settlement Agreement as Co-Lead Counsel.

Co-Lead Counsel acknowledge that this Undertaking is a material component of the Settlement Agreement and agree to use its reasonable efforts to timely effect the terms specified in this Undertaking. Each undersigned Co-Lead Counsel warrants and represents that it is not "insolvent" within the meaning of applicable bankruptcy laws as of the time this Undertaking is executed.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

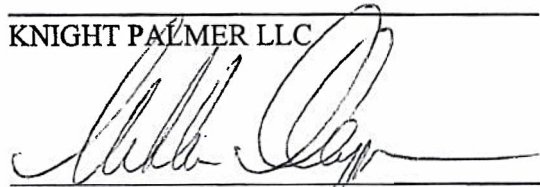
Signatures by facsimile or PDF shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States and the State of Georgia that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

CO-LEAD COUNSEL

KNIGHT PALMER LLC



KABAT, CHAPMAN & OZMER LLP

HIGHER TECH REALTY, LLC:



B. Parker Miller  
Alston & Bird LLP