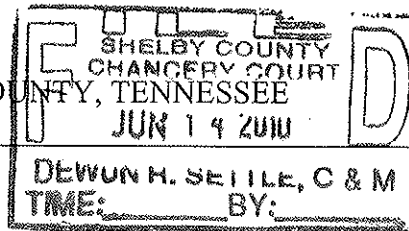


IN THE CHANCERY COURT OF SHELBY COUNTY,



LARRY MAYALL, FIRST NATIONAL REALTY, INC., MALCOLM SETTLES, OLENA KEENE, PAM WRIGHT, and Other Similarly Situated Agents of FIRST NATIONAL REALTY, INC.,

Plaintiffs,

v.

No. CH-10-0809-1

MEMPHIS AREA ASSOCIATION OF REALTORS®, INC.,

Defendant.

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ANSWER OF DEFENDANT

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For answer to the Complaint filed herein, the defendant, Memphis Area Association of Realtors®, Inc. (“Defendant” or “MAAR”), states as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Defendant.

SECOND DEFENSE

Defendant denies that the plaintiffs, Larry Mayall (“Mayall”), First National Realty Company, Inc. (“First National”), Malcolm Settles (“Settles”), Olena Keene (“Keene”), Pam Wright (“Wright”), and “Other Similarly Situated Agents of First National Realty, Inc.” (“Similarly-Situated Agents”), are entitled to the relief requested or any other relief. Mayall, First National, Settles, Keene, Wright, and Similarly-Situated Agents are hereinafter referred to collectively as “Plaintiffs.”

### THIRD DEFENSE

In answer to the separately numbered paragraphs of the Complaint, Defendant states as follows:

1. Admitted upon information and belief.
2. Denied as stated. First National has been administratively dissolved by the Tennessee Secretary of State since August 17, 2009.
3. Defendant denies that Settles is a member of Defendant. Defendant denies for lack of sufficient knowledge or information that Settles is an adult resident citizen of Shelby County, Tennessee.
4. Defendant denies that Keene is a member of Defendant. Defendant denies for lack of sufficient knowledge or information that Keene is an adult resident citizen of Shelby County, Tennessee.
5. Defendant denies that Wright is a member of Defendant. Defendant denies for lack of sufficient knowledge or information that Wright is an adult resident citizen of Shelby County, Tennessee.
6. Denied. As noted below, Defendant objects to the failure to specifically identify Similarly-Situated Agents.
7. Admitted.
8. It is admitted that Mayall is a real estate broker licensed by the Tennessee Real Estate Commission ("TREC"). Defendant denies that Settles, Keene, Wright, and Similarly-Situated Agents are members of Defendant. The remaining allegations in this numbered paragraph are denied for lack of sufficient knowledge or

information.

9. Denied as stated. It is admitted that Defendant is an association incorporated by the State of Tennessee and affiliated with the National Association of Realtors® (“NAR”). It is also admitted that MAAR operates a multiple listing service (“MLS”) and that participants in Defendant’s MLS must be members of Defendant or another local association of Realtors®.
10. Denied as stated. It is admitted that on or about March 10, 2010, Mayall and First National filed a Complaint for Temporary Restraining Order and Temporary and Permanent Injunctions in the case styled *Larry Mayall and First National Realty, Inc., Plaintiffs, v. Memphis Area Association of Realtors®, Inc., Defendant*, and assigned Docket No. CH-10-0457-1 in this Court. Said Complaint speaks for itself. Defendant did not “threaten” Mayall, First National, or First National’s real estate licensees; however, Defendant did notify Mayall, First National, and real estate licensees associated with First National by letter dated February 10, 2010, that Defendant had concluded, based upon information presented to or developed by Defendant and based upon Mayall’s failure or refusal to provide information, that Mayall was a principal of 9to5 Realty, LLC. Thus, pursuant to Article III, Section 1(C)(1)(a) of the NAR Constitution, Defendant determined, and notified Mayall, First National, and the real estate licensees associated with Mayall, that each sole proprietor, partner, or officer of 9to5 Realty, LLC was required to become a Realtor® Member of MAAR or some other local association of Realtors® (as per NAR’s “Board of Choice” policy) on or before March 12,

2010, and that if they did not do so, Mayall's membership in Defendant, including all MLS rights and privileges, would be suspended until such time as each sole proprietor, partner, or officer of 9to5 Realty, LLC became a Realtor® Member. Said letter also states that those Realtor® Members and Realtor®-Associate Members associated with Mayall would be suspended if Mayall were suspended. Moreover, the dispute by and among Mayall, First National, and Defendant concerning 9to5 Realty, LLC, was resolved by the Settlement Agreement and the Consent Order of Dismissal with Prejudice and is not relevant to the case at bar.

11. Denied as stated. The Temporary Restraining Order issued by the Court, the Consent Order Continuing Hearing on Plaintiffs' Application for Temporary Injunction entered by the Court, the Court's Consent Order of Dismissal with Prejudice, and the Settlement Agreement entered into by and among Defendant, Mayall, and First National speak for themselves. The Settlement Agreement states in part: "Mayall hereby resigns from membership in MAAR effective April 15, 2010, and agrees not to apply for readmission to MAAR for five years from the date of this Agreement."
12. Denied as stated. Defendant's letter dated April 16, 2010, to Mayall and First National, copies of which were sent to real estate licensees associated with Mayall, speaks for itself. Mayall's membership in MAAR was terminated on April 15, 2010, which is the effective date of his resignation from MAAR, as stated in the Settlement Agreement. The membership in MAAR of those Realtor® Members and Realtor®-Associate Members associated with Mayall

were terminated at the same time. As a courtesy, and as reflected in the April 16, 2010 letter, Defendant committed to continue to provide MAAR member services to said individuals until May 4, 2010.

13. Denied as stated. It is admitted upon information and belief that Settles submitted an application to TREC on April 16, 2010, to become First National's principal broker. It is also admitted upon information and belief that said application was approved by TREC on or about April 22, 2010.
14. Denied as stated. It is admitted that on April 22, 2010, Settles submitted to Defendant an application to become the Branch Designated Realtor® for First National. It is also admitted that a copy of said application is part of Exhibit 2 to the Complaint.
15. Denied as stated. It is admitted that a copy of the April 27, 2010 letter from Defendant to Settles is attached to the Complaint as Exhibit 3. Said letter speaks for itself. Settles' application to be Branch Designated Realtor® for First National was not processed because it was deficient and objectionable for the reasons described in said letter.
16. Denied as stated. The April 27, 2010 letter speaks for itself. Among other things, said letter states: "Please designate which of the individuals on the list attached to your application desire reinstatement as MAAR members and provide a check for their reinstatement fees." Such individuals were never designated and no reinstatement fees have been paid.
17. The allegations contained in this numbered paragraph are denied for lack of

sufficient knowledge or information. Defendant expressly denies the sentence:  
“Those fees would have to be paid by the individual Realtors®.”

18. Denied as stated. Defendant admits that Settles submitted a new application to Defendant on or about April 28, 2010; that Settles did not assert that Mayall had severed his connections with First National or provide documentation to that effect; that Settles did not provide payment of any reinstatement fees; and that, because Settles had not addressed all of the deficiencies and objections previously pointed out to him, Defendant did not process his application.
19. Denied.
20. Denied.
21. This numbered paragraph does not require a response.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. This numbered paragraph does not require a response.
30. Denied.
31. Denied.
32. Denied.

33. Denied.
34. Denied.
35. Denied.
36. This numbered paragraph does not require a response.
37. Denied as stated. Defendant knew that at certain times in the past Settles, Keene, and Wright were real estate licensees associated with Mayall.
38. Denied.
39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Denied.
45. This numbered paragraph does not require a response.
46. Denied.
47. Denied.
48. Denied.
49. Denied.
50. Denied.
51. Denied.
52. Denied.
53. Denied.

54. This numbered paragraph does not require a response.
55. Denied as stated. Defendant admits that Mayall, First National, and Defendant entered into the Settlement Agreement dated April 12, 2010, a copy of which is attached to the Complaint as Exhibit 5.
56. Denied, and it is expressly denied that the Settlement Agreement was intended to resolve all issues by and among Mayall, First National, and Defendant.
57. Denied as stated. The Settlement Agreement speaks for itself. It is unclear what Plaintiffs mean by the phrase “adverse consequences,” but it was not the responsibility of Defendant to specifically point out to Mayall or First National the ramifications of the Settlement Agreement, at least some of which would have been dependent upon Mayall’s and First National’s intentions, plans, and future conduct, all of which were unknown to Defendant. Moreover, Paragraph 5 of the Settlement Agreement provides: “The parties declare and represent that no compromise, inducement, or agreement not herein expressed has been made. This Agreement contains the entire agreement among them with regard to the settlement and supersedes any prior understanding, agreement, or discussion with respect thereto. Each party is represented by counsel and is relying upon said party’s own knowledge and investigation.”
58. Denied. It is unclear what Plaintiffs mean by the phrase “expected benefit,” but the actions described in Defendant’s April 16, 2010 letter are entirely consistent with MAAR’s Bylaws and other rules and policies. Moreover, Paragraph 5 of the Settlement Agreement provides: “The parties declare and represent that no



compromise, inducement, or agreement not herein expressed has been made. This Agreement contains the entire agreement among them with regard to the settlement and supersedes any prior understanding, agreement, or discussion with respect thereto. Each party is represented by counsel and is relying upon said party's own knowledge and investigation.”

59. Denied.

All other allegations of the Complaint not heretofore specifically admitted or denied are hereby denied.

In preparing this Answer, Defendant has interpreted the Complaint in light of the Notice of Withdrawal of Monetary Damages Claims by Plaintiffs Larry Mayall, Malcolm Settles, Olena Keene, Pam Wright, and Other Similarly Situated Agents of First National Realty, Inc., which Notice was filed and served upon Defendant on June 10, 2010.

#### FOURTH DEFENSE

Because First National is currently administratively dissolved by the Tennessee Secretary of State, First National may not carry on any business except such business as is necessary to wind-up and liquidate its business and affairs and to notify claimants, pursuant to T.C.A. § 348-24-202(c). Thus, First National is prohibited from conducting its customary business and from prosecuting this lawsuit.

#### FIFTH DEFENSE

Plaintiffs have not pled, and cannot establish, all of the elements of unlawful inducement of breach of contract in violation of T.C.A. § 41-50-109, as alleged in Count II of the Complaint; intentional interference with contractual relations, as alleged in Count III of the Complaint; or

intentional interference with business relations, as alleged in Count IV of the Complaint. Without limiting the generality of the foregoing, Defendant asserts that it has not acted intentionally, or with malice, with respect to any such alleged wrongs.

#### SIXTH DEFENSE

All of Defendant's actions as alleged in the Complaint have been pursuant to Defendant's Bylaws or other rules and policies to which Plaintiffs are required to adhere.

#### SEVENTH DEFENSE

If and to the extent that Plaintiffs claim that they did not understand the consequences of the Settlement Agreement under the terms of Defendant's Bylaws and other rules and policies, Defendant asserts that Plaintiffs are presumed to have understood such consequences and that Defendant had no duty to specifically point out such consequences.

#### EIGHTH DEFENSE

If and to the extent that Mayall and First National claim that they did not understand the consequences of the Settlement Agreement, Defendant asserts that Mayall and First National are presumed to have understood such consequences, and they expressly acknowledged in Paragraph 5 of the Settlement Agreement that they were represented by counsel and were relying upon their own knowledge and investigation. Thus, said Plaintiffs are estopped from asserting that the consequences of the Settlement Agreement somehow constitute a breach of the Settlement Agreement or are otherwise actionable. Said Plaintiffs are also estopped from asserting that Defendant had a duty to specifically point out possible consequences of the Settlement Agreement and that Defendant's failure to carry out any such alleged duty somehow constituted a breach of the Settlement Agreement or is otherwise actionable.

#### NINTH DEFENSE

If and to the extent that Mayall and First National claim that they did not understand the consequences of the Settlement Agreement, Defendant asserts that Mayall and First National never asked Defendant or Defendant's counsel about such consequences, and Mayall and First National expressly acknowledged in Paragraph 5 of the Settlement Agreement that they were represented by counsel and were relying upon their own knowledge and investigation. Thus, said Plaintiffs waived any right they might otherwise have to assert that the consequences of the Settlement Agreement somehow constitute a breach of the Settlement Agreement or are otherwise actionable. Said Plaintiffs also waived any right they might otherwise have to assert that Defendant had a duty to specifically point out possible consequences of the Settlement Agreement and that Defendant's failure to carry out any such alleged duty somehow constitutes a breach of the Settlement Agreement or is otherwise actionable.

#### TENTH DEFENSE

Any real estate licensees associated with First National who have allegedly been harmed, or who allegedly will be harmed, by the actions of Defendant are known to Plaintiffs and should be expressly and individually named as plaintiffs in this cause if they have any claim and wish to pursue it. Mayall, Settles, Wright, and Keene may be asserting that they are representatives of Similarly-Situated Agents and that this lawsuit is, in part, a class action. If so, Plaintiffs have not pled, and cannot satisfy, the requirements for a class action. Accordingly, the portions of the Complaint seeking relief for Similarly-Situated Agents should be dismissed and stricken.

#### ELEVENTH DEFENSE

If and to the extent that any or all Plaintiffs are asserting the rights of Similarly-Situated

Agents, said Plaintiffs do not have standing to do so, and for that reason as well, the portions of the Complaint seeking relief for Similarly-Situated Agents should be dismissed and stricken.

#### TWELFTH DEFENSE

If and to the extent that any or all of Plaintiffs are asserting the rights of Similarly-Situated Agents, said Plaintiffs are not the real parties in interest. Any claims asserted in this case on behalf of Similarly-Situated Agents should be dismissed, pursuant to Rule 17.01 of the Tennessee Rules of Civil Procedure, because such claims are not being presented by the real parties in interest.

#### THIRTEENTH DEFENSE

If any or all Plaintiffs are not suing on behalf of Similarly-Situated Agents but rather Plaintiffs' attorney claims that Similarly-Situated Agents are his clients and Similarly-Situated Agents are actual people that are before the Court, the portions of the Complaint seeking relief for Similarly-Situated Agents should be dismissed and stricken unless such persons are expressly and individually named as plaintiffs, as there is no provision in Tennessee law or the Tennessee Rules of Civil Procedure for not naming plaintiffs whose identities are known. Among other reasons why having Similarly-Situated Agents as plaintiffs is improper is that Rule 8.01 of the Tennessee Rules of Civil Procedure provides that a pleading that sets forth a claim for relief shall contain "a short and plain statement of the claims showing that the pleader is entitled to relief," and the Complaint in this case does not identify the actual pleaders.


#### CONCLUSION

WHEREFORE, above premises considered, Defendant prays that this cause be dismissed and that costs be assessed against Plaintiffs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon Kirk A. Caraway, Esq., and Jessica A. Benton, Esq., attorneys for plaintiffs, at their office at 80 Monroe Avenue, Suite 650, Memphis, Tennessee 38103, via regular U.S. mail, postage prepaid, on this 11<sup>th</sup> day of June, 2010.

