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REALTY NETWORK, INC. and  
JONATHAN J. CARDELLA

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 TRAVELERS CASUALTY INSURANCE  
12 COMPANY OF AMERICA, a Connecticut  
corporation, and TRAVELERS  
13 INDEMNITY COMPANY OF  
CONNECTICUT, a Connecticut  
14 corporation,

CASE NO. 3:13-cv-00360 SC  
(Related to Case No. 3:13-cv-00984 SC)

**JOINT STATUS REPORT**

15 Plaintiffs,

16 v.

17 AMERICAN HOME REALTY  
18 NETWORK, INC., a Delaware  
corporation, JONATHAN J. CARDELLA,  
19 an individual,

20 Defendants.

21 AND RELATED COUNTERCLAIM  
22

23  
24 Per the Court’s March 21, 2014 Order Granting Motion to Stay [ECF 112], plaintiffs and  
25 counterdefendants Travelers Casualty Insurance Company of America, Travelers Indemnity  
26 Company of Connecticut, and The Travelers Property Casualty Company of America (collectively  
27 “Travelers”), and defendants and counterclaimants American Home Realty Network, Inc.  
28 (“AHRN”) and Jonathan J. Cardella, submit this joint status report.

1 **I. STATUS OF THIS ACTION**

2 This insurance coverage dispute involves various insurance policies Travelers issued to  
3 AHRN, and an affiliated entity (“the Travelers Policies”). Travelers and AHRN dispute their  
4 rights and obligations under the Travelers Policies with respect to three civil actions filed against  
5 AHRN in different United States district courts (“the Underlying Actions”).<sup>1</sup>

6 On March 21, 2014, the Court granted AHRN’s motion to stay this action pending  
7 resolution of the Underlying Actions, and vacated all dates on the Court’s calendar. The Court  
8 also ordered the parties to provide updates every 60 days “advising the Court of (1) the status of  
9 this action and (2) resolution of the underlying actions.”

10 As previously reported, all three of the Underlying Actions were mediated on June 17,  
11 2014 before the Honorable Arthur J. Boylan (U.S. Mag. J., D. Minn., ret.). The process of  
12 negotiating and arbitrating the terms of the long-form settlement agreements took more than two  
13 months. Travelers contends that, as to all three Underlying Actions, AHRN attempted to renege  
14 on agreed settlements. AHRN contends that, as to all three Underlying Actions, the parties to the  
15 Underlying Actions could not agree to final language needed to effectuate the agreed settlements.  
16 Judge Boylan ultimately issued arbitration rulings that held that the settlement agreements were  
17 binding and enforceable against all parties, and resolved disputes over settlement language and  
18 other issues in all three Underlying Actions. All three of Judge Boylan’s arbitration rulings  
19 prescribed the terms of the long-form agreements among the parties. All parties have eventually  
20 signed the agreements as prescribed by Judge Boylan.

21 All the claims against AHRN in the Underlying Actions have now been resolved as a  
22 result, in part, of Travelers’ payments to the Underlying Plaintiffs as settlement consideration on  
23 AHRN’s behalf, as detailed below. Travelers contends it made these payments under a full  
24 reservation of rights to seek reimbursement of all sums paid if this court determines that Travelers  
25 owed no duty to indemnify AHRN in any of the Underlying Actions, AHRN contends otherwise.

26 \_\_\_\_\_  
27 <sup>1</sup> The Underlying Actions are *Metropolitan Regional Information Systems, Inc. v. AHRN, Inc. and Jonathan J.*  
28 *Cardella*, filed March 28, 2012, U.S.D.C., D. Md., Case No. 12-954 (“the *Metropolitan Action*”); *Regional*  
*Multiple Listing Service of Minnesota, Inc., d/b/a Northstar MLS v. AHRN, Inc.*, (April 18, 2012), U.S.D.C., D.  
Minn., Case No. 12-965 (“the *Regional Action*”); and *Preferred Carolinas Realty, Inc. v. AHRN, Inc., d/b/a/*  
*Neighborcity. com*, (March 4, 2013), U.S.D.C., M.D. N.C., Case No. 13-181 (“the *Preferred Action*”).

1 While all the affirmative claims against AHRN in the Underlying Actions have been resolved and  
2 dismissed, the settlements left pending some of AHRN's affirmative claims (namely antitrust  
3 claims against certain parties in the *Metropolitan* Action and the *Regional* Action).

4 As set forth below, Travelers asks the court to lift the stay of the coverage action. AHRN,  
5 on the other hand, asks the court to maintain the stay.

## 6 **II. THE UNDERLYING ACTIONS**

7 Plaintiffs in the *Metropolitan* action, the *Regional* action, and the *Preferred* action are  
8 regional real estate multiple listing services or brokers which maintain subscription-based  
9 databases of property listings and other copyrighted content. The plaintiffs in the Underlying  
10 Actions alleged that they own copyrights in and to the text and pictures displayed on the real estate  
11 databases they maintain, and that AHRN (and Cardella in the *Metropolitan* action) unlawfully  
12 copied and displayed on AHRN's website, www.neighborcity.com, allegedly copyrighted  
13 information taken from the respective plaintiffs' databases.

### 14 **A. The Metropolitan Action**

15 Among other things, Metropolitan Regional Information Systems, Inc. ("Metropolitan"),  
16 the plaintiff in the *Metropolitan* action, prayed for:

- 17 • a judgment that AHRN willfully infringed Metropolitan's copyrights;
- 18 • a judgment that AHRN is liable to Metropolitan for conversion and unjust enrichment;
- 19 • an Order requiring AHRN to account for and pay to Metropolitan all profits in  
20 accordance with 15 U.S.C. § 1117 and other applicable laws;
- 21 • a permanent injunction requiring AHRN to "cease directly or indirectly infringing, or  
22 causing, enabling, facilitating, ... and inducing or participating in the infringement of"  
23 any of Metropolitan's exclusive rights protected by the Copyright Act; and
- 24 • Metropolitan's costs, reasonable attorneys' fees, compensatory damages, treble  
25 damages, pre-judgment interest, and post-judgment interest.

26 AHRN asserted counterclaims against Metropolitan and the National Association of  
27 Realtors, alleging violations of the Sherman Act, the Lanham Act, and various state statutory and  
28 common law counts. The court dismissed AHRN's counterclaim against Metropolitan under Rules

1 12(b)(6) and 56 of the Federal Rules of Civil Procedure. AHRN's counterclaim against NAR,  
2 asserting violations of the Sherman Act § 1 and Maryland's unfair competition law, is pending.

3 The *Metropolitan* action was mediated on June 17, 2014. On July 31, 2014, Metropolitan  
4 invoked the arbitration provisions of the mediation settlement agreement signed on June 17, 2014.  
5 On August 25, 2014, AHRN and Metropolitan executed the "Settlement Agreement and Release."  
6 On August 28, 2014, on behalf of AHRN, Travelers sent Metropolitan the agreed settlement  
7 payment; Travelers contends this payment was subject to its express reservation of rights to seek  
8 reimbursement of the amount paid to settle, AHRN contends otherwise. On September 15, 2014,  
9 the court entered an order on the stipulation between Metropolitan and AHRN that provided in part  
10 that "all pending claims between the parties are hereby dismissed with prejudice pursuant to Fed.  
11 R. Civ. P. 41 and in accordance with the settlement agreement reached by the parties." See ECF  
12 No. 420, at p. 2. The Metropolitan-AHRN settlement did not resolve AHRN's counterclaims  
13 against NAR. NAR moved for summary judgment on AHRN's counterclaims on September 5,  
14 2014. No trial date has been set.

15 **B. The Regional Action**

16 Among other claims, Regional Multiple Listing Service of Minnesota, Inc. ("Regional"),  
17 the plaintiff in the *Regional* action, prayed that the court:

- 18 • "Enter judgment that AHRN has willfully infringed the Copyrighted Works;"  
19 • Preliminarily and permanently enjoin AHRN from infringing any of Regional's  
20 exclusive rights in the Copyrighted Works;  
21 • Order an accounting of AHRN's profits attributable to AHRN's infringement; and  
22 • Award Regional monetary relief, costs, attorneys' fees, and interest.

23 AHRN asserted counterclaims against Regional, Edina Realty, Inc., and HomeServices of  
24 America, Inc. AHRN's counterclaims allege violations of Section I of the Sherman Act, the  
25 antitrust statutes of Minnesota and California, and the Minnesota Deceptive Trade Practices Act.

26 The *Regional* action was mediated on June 17, 2014. On July 25, 2014, Regional invoked  
27 the arbitration provisions of the mediation settlement agreement executed on June 17, 2014. On  
28 August 25, 2014, Regional and AHRN signed the "Settlement Agreement" between them. On

1 August 28, 2014, Travelers, on behalf of AHRN, sent Regional the agreed settlement payment;  
 2 Travelers contends this payment was subject to its express reservation of rights to seek  
 3 reimbursement of the amount paid to settle, AHRN contends otherwise. On September 15, 2014,  
 4 the court entered its “order regarding copyright claims,” which stated in part: “[b]ased on the  
 5 settlement of the parties, all issues relating to RMLS’s Copyright Claims against AHRN in this  
 6 action are hereby fully resolved . . . The Court will defer entry of final judgment on the Copyright  
 7 Claims as requested by the parties pending disposition of AHRN’s [copyright right claims against  
 8 Regional] . . . [Regional’s] Motion for Summary Judgment on AHRN’s Antitrust Counterclaims  
 9 remain pending.” ECF No. 436 at p. 2.

10 AHRN has dismissed its counterclaims against Edina Realty, Inc., and HomeServices of  
 11 America, Inc.

12 AHRN’s counterclaims against Regional are pending, and there is no trial date set.

13 **C. The Preferred Action**

14 Preferred Carolina Realty, Inc. (“PCR”), plaintiff in the *Preferred* action, sought, inter alia:

- 15 • a judgment that AHRN willfully infringed PCR’s copyrights in the photographs used in  
 16 its listings, both directly and secondarily;”
- 17 • “preliminary and permanent injunctive relief requiring that AHRN . . . cease directly or  
 18 indirectly infringing, or causing, enabling, facilitating, encouraging, promoting, and  
 19 inducing or participating in the infringement of, any of PCR’s copyrights;”
- 20 • statutory damages in addition to disgorgement of AHRN’s profits from infringement;
- 21 • Reasonable attorneys’ fees and costs under 17 U.S.C. § 505, and interest.

22 The *Preferred* action was mediated on June 17, 2014. On August 6, 2014, PCR invoked the  
 23 arbitration provisions of the mediation settlement agreement executed on June 17, 2014. By August  
 24 28, 2014, PCR, certain of its affiliated entities, and AHRN had signed the “Confidential Settlement  
 25 Agreement and Release” among them. On September 2, 2014, Travelers, on behalf of AHRN,  
 26 made the settlement payment per the terms of the settlement agreement; Travelers contends the  
 27 payment was made subject to its express reservation of rights to seek reimbursement of the amount  
 28 paid to settle on AHRN’s behalf, AHRN contends otherwise.

1 On September 15, 2014, the court entered its order on PCR's and AHRN's stipulation,  
2 dismissing the entire action with prejudice, each party to bear its own costs. ECF No. 102.

3 **III. THE PARTIES' POSITIONS REGARDING THE COVERAGE ACTION**

4 **A. Travelers' Position**

5 Because the litigation of the copyright infringement claims against AHRN in the  
6 Underlying Actions has been resolved, in each instance by virtue of Travelers' payment of  
7 substantial sums on AHRN's behalf, Travelers requests that the court terminate the stay of this  
8 insurance coverage action. Travelers recognizes that it has previously joined in AHRN's request  
9 to the Court that this stay be maintained until after AHRN's affirmative claims in the *Metropolitan*  
10 and *Regional* Actions have been resolved in the trial court, either by way of judgment or  
11 settlement. Travelers now seeks to terminate the stay based on several developments since the  
12 parties' last report. First, all of the affirmative claims stated against AHRN are resolved; all of the  
13 claims against AHRN are definitively and finally terminated. There is nothing left for Travelers to  
14 defend and Travelers paid the entire settlement amounts on behalf of AHRN (subject to the right to  
15 seek reimbursement), and so it is now time to address the insurance coverage issues relating to  
16 AHRN's claims, and (which Travelers denies), Travelers' obligations in the litigation *against*  
17 AHRN. Second, there is tremendous uncertainty in the relationship between AHRN and the law  
18 firm Gustafson Gluek PLLC (AHRN's counsel in those actions), making further delay risky since  
19 AHRN is a volatile party.

20 The uncertainty regarding AHRN's relationship with its counsel is exemplified by AHRN's  
21 attempt to abrogate the settlement agreements negotiated by Gustafson Gluek, and Gustafson  
22 Gluek's motion to withdraw as counsel filed in the *Metropolitan* Action on September 12, 2014,  
23 which stated "the attorneys at Gustafson Gluek and AHRN have reached an impasse and are  
24 unable to move forward with their professional relationship[,] and that the "relationship has  
25 deteriorated [irreparably] due to fundamental disagreements regarding the nature of the case, the  
26 viability of the claims, and the ongoing and next steps for the matters." *Metropolitan* Action ECF  
27 No. 415 at pp. 1-2.<sup>2</sup>

28 <sup>2</sup> On September 12, 2014, the same day Gustafson Gluek filed the motion to withdraw, the court

1           Moreover, this court entered the stay in this action on the basis that “the profusion of issues  
2 in this case and the underlying cases counsels staying this case until the underlying cases are resolved.”  
3 See ECF No. 112 at 1:24-26. The underlying cases *against* AHRN are all now conclusively resolved,  
4 which plainly changes the calculus of whether the resumption of the coverage action could prejudice  
5 AHRN in any way. All discovery closed in the *Regional* Action on February 28, 2014. See *Regional*  
6 Action ECF No. 206. In the *Metropolitan* Action, non-expert discovery closed on June 30, 2014, and  
7 the deadline to complete expert discovery is September 22, 2014. *Metropolitan* Action ECF No. 376  
8 (Paperless Order re Mot. to Extend Time). As such, there is no longer any risk that discovery taken or  
9 orders entered in this action will affect the litigation of AHRN’s counterclaims in the two pending  
10 Underlying Actions, there is no plausible risk of “issue overlap” that could prejudice AHRN in any  
11 way, and it is appropriate to lift the stay.

12           Travelers will seek to amend its complaint to include new causes of action for a declaration  
13 that Travelers owes no duty to indemnify AHRN with respect to any of the Underlying Actions,  
14 and for reimbursement of (1) all attorney’s fees and expenses paid on AHRN’s behalf in each of  
15 the Underlying Actions on the grounds that Travelers did not owe a duty to defend AHRN in any  
16 of those actions, and (2) the settlement payments Travelers made on AHRN’s behalf pursuant to a  
17 full reservation of rights to seek reimbursement of such sums on the grounds that Travelers did not  
18 owe any duty to indemnify AHRN for any of the claims in the Underlying Action. Travelers will  
19 present its proposed amended complaint to AHRN’s counsel promptly, and will seek AHRN’s  
20 stipulation to such amendment, conditioned on the court’s approval of same. Travelers requests a  
21 status conference within 30 days.

22 \\\

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24 notified Gustafson Gluek that the motion did not conform with the local rules regarding such  
25 motions, which “must contain a certificate stating ... (b) that written notice has been mailed to  
26 or otherwise served upon the client at least ... (7) days previously the client of counsel’s  
27 proposed withdrawal and notifying it that it must have new counsel enter an appearance or be  
28 subject to the dismissal of its claims and/or default judgment on claims against it. On  
September 15, 2014, Gustafson Gluek withdrew the motion “in order to appropriately satisfy  
(the Local Rules).” *Metropolitan* Action ECF Nos. 416, 418. In Travelers’ view, this  
statement evinces a plain intent to *refile* the motion to withdraw. Travelers will file a  
supplemental statement regarding whether Gustafson Gluek refiles the motion to withdraw.

1           **B.     AHRN's Position**

2           AHRN's anti-trust claims against Regional remain at issue, and the legitimacy of the  
3 subject copyrights is one of many issues that has yet to be litigated there. Therefore, there has  
4 been and continues to be "issue over-lap." Just a few months ago AHRN asked Travelers to  
5 stipulate to a further stay for this reason and Travelers expressly agreed:

6           Since there remains a possibility of issue over-lap between those affirmative  
7 claims [anti-trust claims] and this action, the parties jointly request that this stay  
8 be maintained under after those [anti-trust claims] have been resolved . . .

9           (ECF 114, p. 2:16-19.)

10          Nothing has changed since July, there still remains a "possibility of issue over-lap."  
11 Therefore the continuance of the Stay due to issue overlap makes just as much sense now, as it did  
12 back in July.

13          AHRN questions Travelers motivation in apprising this Court over a Motion to Withdraw  
14 in the *Regional* Action that was not heard, taken off calendar, and not re-filed. To be clear, AHRN  
15 has been and is pursuing its anti-trust counterclaims against Regional. AHRN previously defeated  
16 Regional's Motion to Dismiss, and AHRN hopes to defeat Regional's pending Summary Judgment  
17 Motion. AHRN, like any client, may elect to proceed to trial with new counsel, but there is no  
18 evidence that such a change in counsel after the close of discovery and while dispositive motions  
19 are pending will have any effect on the pace of the proceedings.

20          AHRN's anti-trust claims in the Regional action were filed years ago, and the pending  
21 Motion for Summary Judgment was filed months ago. The pending motion and the anti-trust  
22 claims will be decided in due course, so the instant Stay is not open ended.

23          AHRN believes that Regional has and will continue to carefully monitor this coverage  
24 case, and of course would attempt to use any adverse factual findings here in Regional's defense of  
25 AHRN's anti-trust case. This issue overlap would be prejudicial to AHRN, a point conceded by  
26 Travelers just in July. Again, nowhere above does Travelers explain why they agreed there was  
27 potential issue over-lap in July, and somehow none now.

28          Finally, Travelers argued in opposition to AHRN's Motion to Stay that it was being  
prejudiced due to ongoing payment of defense expenses. Now that those defense expenses are no

1 longer being incurred, that “prejudice” to Travelers is no longer a factor.

2 In conclusion, Travelers already agreed and affirmatively stated to this Court that there is a  
3 possibility of “issue overlap” between this coverage case and the insured’s anti-trust claims. The  
4 coverage issues have not changed and AHRN’s anti-trust claims have not changed since July, ego  
5 the possibility for prejudicial “issue overlap” remains.

6 AHRN respectfully submits that the Stay should remain in effect until the anti-trust claims  
7 against Regional are resolved – as was jointly requested just a few months ago.

8  
9 DATED: September 19, 2014

SEDGWICK LLP

10  
11 By: /s/ Matthew C. Lovell

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13 Matthew C. Lovell  
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INDEMNITY COMPANY OF CONNECTICUT,  
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CASUALTY COMPANY OF AMERICA

17 DATED: September 19, 2014

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