

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

JOSHUA SITZER AND AMY WINGER, SCOTT)	
AND RHONDA BURNETT, AND RYAN)	
HENDRICKSON, on behalf of themselves and all)	
others similarly situated,)	
)	Case No. 4:19-cv-00332-SRB
Plaintiffs,)	
)	COMPLAINT – CLASS ACTION
v.)	
)	JURY TRIAL DEMANDED
THE NATIONAL ASSOCIATION OF)	
REALTORS, REALOGY HOLDINGS CORP.,)	
HOMESERVICES OF AMERICA, INC., BHH)	<u>Oral Argument Requested</u>
AFFILIATES, LLC, HSF AFFILIATES, LLC,)	
THE LONG & FOSTER COMPANIES, INC.,)	
RE/MAX LLC, and KELLER WILLIAMS)	
REALTY, INC.)	
)	
Defendants.)	

**SUGGESTIONS IN SUPPORT OF MOTION OF DEFENDANT
NATIONAL ASSOCIATION OF REALTORS® TO TRANSFER
THIS CASE TO THE NORTHERN DISTRICT OF ILLINOIS**

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INTRODUCTION

Plaintiff home-sellers allege in this case that the National Association of Realtors® (“NAR”) and several defendant real estate firms (the “corporate defendants”) have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Missouri law by adopting and implementing a purported NAR rule that allegedly “requires all seller’s brokers to make a blanket, unilateral and effectively nonnegotiable offer of buyer broker compensation . . . when listing a property on a Multiple Listing Service.” (Am. Compl. ¶ 3.) Pursuant to 28 U.S.C. §§ 1406 and 1631, defendant NAR respectfully submits that this case should be transferred to the federal district court for the Northern District of Illinois because this Court lacks personal jurisdiction over it both under the Missouri long-arm statute, Mo. Rev. Stat. § 506.500.1, and under § 12 of the Clayton Act, 15 U.S.C. § 22. Indeed, in a recent case similarly asserting Sherman Act and state law claims against NAR in Indiana, the federal court in that State ruled that it lacked jurisdiction over NAR both under the state long-arm statute and under the Clayton Act. *See Data Research & Handling, Inc. v. Vongphachanh*, 310 F. Supp. 3d 956, 960-68 (N.D. Ind. 2018). As explained in this brief, the same conclusion should apply here.¹

Because the Court lacks personal jurisdiction over NAR, this case should be transferred to the Northern District of Illinois pursuant to 28 U.S.C. § 1631. That statute provides that when a “court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court . . . in which the action or appeal could have been brought at the time it was filed or noticed.” Alternatively, this case should be

¹ If this motion is denied, NAR will be filing a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) and to dismiss for failure of the Amended Complaint to state a cause of action pursuant to Rule 12(b)(6) in accordance with the briefing schedule set by this Court.

transferred to the Northern District of Illinois pursuant to 28 U.S.C § 1406 based on improper venue under the Clayton Act.

RELEVANT ALLEGATIONS

Plaintiffs are “home-sellers” whose homes were listed by local real estate brokers on one of four MLSs within the State of Missouri (the “Subject MLSs”). (Am. Compl. ¶¶ 1, 29.) An MLS is a database of properties listed for sale in a particular geographic region that conveys relevant information about listed properties to all brokers participating in the MLS. (*Id.* ¶ 4.) This information includes an offer by the listing broker of cooperation and compensation to any other MLS participant who brings a ready, willing, and able buyer for the property.

According to plaintiffs, the Subject MLSs are controlled by local Realtor® associations. (*Id.* ¶ 5.) A broker’s right to list homes on these MLSs is said to be conditioned on the broker following the rules set forth in the NAR Handbook. (*Id.*) There is no allegation that any of the Subject MLSs is owned or controlled by NAR – or that NAR has in any way been involved in any of the transactions alleged by the plaintiff home-sellers.

Defendant NAR is a professional association of real estate brokers and others engaged in the real estate industry. (*Id.* ¶ 43.) NAR has members who are located in and transact business across the United States, including in this District. (*Id.* ¶ 32.) NAR collects membership dues from its members. (*Id.*) NAR has a Professional Standards Committee that is involved with “drafting, reviewing, and publishing regularly updated editions of the ‘Interpretations of the Code of Ethics,’” which allegedly govern “arbitration of disputes among Realtors occurring in this District.” (*Id.* ¶ 34.) Plaintiffs also allege, albeit with no factual basis whatsoever, that NAR requires each of the corporate defendants to comply with NAR rules and policies and, upon information and belief, that NAR “actively monitors and polices the[corporate defendants] and other co-conspirators operating in this District” to “ensure” compliance with its rules. (*Id.* ¶ 35.)

ARGUMENT

I. This Court Lacks Personal Jurisdiction Over NAR Under The Missouri Long-Arm Statute.

Plaintiffs claim that this Court has personal jurisdiction over NAR based on assertions that NAR has “transacted business” in this District, has “substantial contacts” in this District, and “committed substantial acts in furtherance of its unlawful scheme” in this District. (Am. Compl. ¶ 31.) Each of these arguments fails. NAR does not transact business in Missouri, and its “contacts” with this State are not substantial. Moreover, NAR did not commit any acts in furtherance of the allegedly unlawful conduct in Missouri.

A. General Jurisdiction Does Not Exist Over NAR In Missouri.

“General jurisdiction over a defendant exists when that defendant’s contacts with the forum state ‘are so continuous and systematic as to render [the defendant] essentially at home’ in that state, regardless of how the plaintiff’s claim arose.” *Harrison v. Gen. Motors Co.*, No. 17-3128-CV-S-SRB, 2018 WL 6706697, at *2 (W.D. Mo. Dec. 20, 2018) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). The “paradigm” forums in which a corporate defendant is “at home” are “the corporation’s place of incorporation and its principal place of business” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler AG*, 571 U.S. at 137). “Missouri courts ‘rarely exercise general jurisdiction over non-resident defendants.’” *Matthews v. BNSF Ry. Co.*, No. 16-03211-CV-S-RK, 2017 WL 2266891, at *4 (W.D. Mo. May 23, 2017) (quoting *Sloan–Roberts v. Morse Chevrolet, Inc.*, 44 S.W.3d 402, 410 (Mo. App. 2001)). Accordingly, a corporate defendant such as NAR is only subject to general jurisdiction outside its state of incorporation or principal place of business in an “exceptional case.” *BNSF Ry. Co.*, 137 S. Ct. at 1558 (quoting *Daimler AG*, 571 U.S. at 139 n.19).

This is not such an “exceptional case.” NAR is an association of real estate professionals that is incorporated as a not-for-profit corporation in the State of Illinois. (Declaration of John Pierpoint (“Declaration”) ¶ 3.) NAR’s headquarters are in Chicago, Illinois, and it also has an office in Washington, D.C. (*Id.* ¶ 4.) NAR does not have an office or place of business in the State of Missouri, and it does not have any employees working in this State. (*Id.* ¶¶ 5, 9.) It does not hold a business license or certificate of authority to transact business in Missouri, is not registered to do business in this State, and has not appointed a registered agent for service of process here. (*Id.* ¶¶ 6-8.)

NAR does not supply, or contract to supply, services, goods, or materials in Missouri. (*Id.* ¶ 12.) It does not regularly do or solicit any business in Missouri, and does not engage in any other persistent course of conduct in Missouri. (*Id.* ¶ 13.) NAR does not derive substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in Missouri, and it does not specifically target Missouri residents for business solicitation or advertising. (*Id.* ¶¶ 13-14.) Finally, while NAR has approximately 1.35 million members located in all 50 States, only approximately 22,600 – or less than 1.7% – of those members reside in Missouri – and even fewer reside in the Western District. (*Id.* ¶ 15.) Similarly, less than 1.7% of NAR’s total dues revenue is derived from members in Missouri, and less than 1% of that revenue derives from members in the Western District. (*Id.* ¶¶ 16-17.)

These contacts are not enough to subject NAR to general jurisdiction under any long-arm statute. *See Data Research & Handling, Inc.*, 310 F. Supp. 3d at 963 (finding no general jurisdiction over NAR under the Indiana long-arm statute). Indeed, in a very recent case, NAR was held not to be subject to the general jurisdiction of a federal court in California by virtue of the California long-arm statute. *Silverman v. Move Inc.*, No. 18-CV-05919-BLF, 2019 WL

2579343, at *6 (N.D. Cal. June 24, 2019). NAR has more members in, and derives more revenue from, California than it does with respect to Missouri. *See also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 920 (2011) (holding that placement of a product into commerce in the forum state does not warrant the assertion of general jurisdiction there); *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 426 (7th Cir. 2010) (holding that a defendant who marketed and sold registrations for internet domain names, contracted with hundreds of thousands of Illinois customers, and hosted web sites accessible from Illinois, was not subject to general jurisdiction in Illinois).

The general jurisdiction inquiry under the Missouri long-arm statute “calls for the appraisal of a corporation’s activities in their entirety, nationwide and worldwide” because “[a] corporation that operates in many places can scarcely be deemed at home in all of them.” *InSite Platform Partners, Inc. v. Orbcomm, Inc.*, No. 16-0491-CV-W-BP, 2017 WL 4844900, at *5 (W.D. Mo. Oct. 26, 2017) (quoting *Daimler AG*, 571 U.S. at 139 n.20). Viewing NAR’s contacts with Missouri in their entirety, these contacts are no different from its contacts with the other 48 states in which it does not have employees or offices. NAR solicits, collects dues from, and provides services to members in 48 states no differently than it does in Missouri. In these circumstances, NAR is not subject to the general jurisdiction of a Missouri court. *See, e.g., Barron v. Pfizer, Inc.*, No. 4:15-CV-584 CAS, 2015 WL 5829867, at *2 (E.D. Mo. Oct. 6, 2015) (finding no personal jurisdiction where plaintiff alleged no facts to suggest that defendant’s activities in Missouri were “anything other than that of a business conducting activities in multiple states”); *Amazon.com, Inc. v. Nat’l Ass’n of Coll. Stores, Inc.*, 826 F. Supp. 2d 1242 (W.D. Wash. 2011) (holding that a trade association was not subject to general jurisdiction where the trade association solicited and served dues paying members, received revenue, and

advocated on its members' behalf, but had no offices or employees and was not licensed to do business).

B. Specific Jurisdiction Does Not Exist Over NAR In This Case.

Specific jurisdiction exists over a defendant in a state only where (1) the defendant has purposefully availed itself of the privilege of conducting business in that state, and (2) the plaintiff's alleged injury arises out of the defendant's forum-related activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 48 (Mo. 2017). The relevant inquiry is whether the defendant's intentional conduct "connects [it] to the forum in a meaningful way." *Walden v. Fiore*, 571 U.S. 277, 291 (2014). *See also Cepia, LLC v. Universal Pictures Visual Programming Ltd.*, 177 F. Supp. 3d 1129, 1143 (E.D. Mo. 2016) (holding that there was no specific jurisdiction over defendant whose conduct was not "uniquely or expressly aimed at Missouri"). This inquiry helps to ensure that an out-of-state defendant is "not hauled into court based on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff." *Walden*, 571 U.S. at 286.

"For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* at 284. Significantly, the "mere fact that [defendant's] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 291. Rather, the relation between the defendant and the forum "must arise out of contacts that the 'defendant himself' creates with the forum." *Id.* at 284 (quoting *Burger King*, 471 U.S. at 475). *See also Interocean Trade & Transp., Inc. v. Shanghai AnTong Int'l Freight Agency Co.*, No. 13-0176-CV-W-REL, 2014 WL 4983493, at *6 (W.D. Mo. Oct. 4, 2014) (explaining that specific jurisdiction exists only "when the suit arises out of or relates to the defendant's contacts with the forum"). Contacts between the plaintiff and the forum do not satisfy this requirement. *Walden*, 571 U.S. at 284.

The conduct of NAR alleged in the Amended Complaint does not involve a “substantial connection” with Missouri – just as the conduct of NAR alleged in *Data Research & Handling, Inc.*, 310 F. Supp. 3d 950, did not suffice to establish a “substantial connection” between NAR and Indiana. Notably, the Amended Complaint does not, and cannot, allege that NAR has had any substantial contact with this District or with Missouri. And there is, and can be, no allegation that the challenged NAR rule was developed in Missouri or “uniquely or expressly aimed at Missouri.” *See Cepia, LLC*, 177 F. Supp. 3d at 1143.

To be sure, the Amended Complaint alleges that four Missouri MLSs followed the challenged NAR rule. But that allegation hardly suffices to show a substantial connection between NAR and this State – any more than the American Bar Association would have a substantial connection with Missouri on the basis of general ethical rules that it has issued for lawyers around the United States. Thus, the Amended Complaint is more telling for what it does not allege than for what it alleges.

Specifically, the Amended Complaint does not, and cannot allege, that NAR implemented the challenged rule in the State of Missouri. (Declaration ¶ 24.) The “mere fact that [NAR’s] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction,” especially since none of NAR’s alleged unlawful actions took place in Missouri. *See Walden*, 571 U.S. at 291. Given that NAR’s only alleged unlawful conduct took place outside of Missouri, NAR does not have anywhere near the contacts with Missouri required to subject it to the specific jurisdiction of this Court. *See id.*; *Simmons v. Amsted Rail Co., Inc.*, No. 18-0786-CV-W-SRB, 2019 WL 1928530, at *3 (W.D. Mo. Apr. 30, 2019) (holding that specific jurisdiction was not proper in Missouri where Kansas defendant was sued by Missouri resident over conduct that occurred in Kansas).

Plaintiffs attempt to manufacture jurisdiction in this District over NAR through allegations of attenuated, and often non-existent, connections between NAR and this District. To begin, plaintiffs assert that NAR has members who are located and transact business in Missouri and who pay NAR member dues. (Am. Compl. ¶ 33.) But this assertion does not even suffice to establish general jurisdiction. *See* Part I.A above and Part II below. And because this assertion is unrelated to the alleged unlawful conduct, it cannot establish specific jurisdiction either. *See Data Research & Handling*, 310 F. Supp. 3d at 963 and cases discussed below with respect to the Clayton Act.

Plaintiffs also allege, “upon information and belief,” that NAR conducts business in this District through its Professional Standards Committee by being involved in “drafting, reviewing, and publishing regularly updated editions of the ‘Interpretations of the Code of Ethics,’ which allegedly govern “arbitration of disputes among Realtors occurring in this District.” (Am. Compl. ¶ 34.) But there is, and can be, no allegation, that any of this conduct occurred in Missouri. Moreover, plaintiffs’ claims are not about “arbitration of disputes among Realtors.” And, as noted above, the “mere fact that [NAR’s] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.” *See Walden*, 571 U.S. at 291.

Plaintiffs next allege, “upon information and belief,” that NAR “actively monitors and polices the [corporate defendants] and other co-conspirators operating in this District” to “ensure” compliance with its rules. (Am. Compl. ¶ 35.) Not surprisingly, plaintiffs do not allege any specific facts to support this allegation, and it is utterly baseless. In fact, NAR does not monitor or police the corporate defendants – or anyone else – to ensure compliance with its rules. (Declaration ¶ 21.) In any event, there is no allegation of any such “monitoring” or “policing” relating to the allegedly unlawful NAR rule.

Plaintiffs further allege, again “upon information and belief,” that NAR has transacted “lobbying business directed at Missouri and at this District.” (Am. Compl. ¶ 36.) Once again, it is telling that plaintiffs have failed to allege a single specific instance of such lobbying – let alone any lobbying directly related to the issues in such case. And the fact is that NAR does not engage in any lobbying in this State. (Declaration ¶ 22.)

Plaintiffs’ allegations that NAR publishes updated editions of its Interpretations of the Code of Ethics that govern arbitration of disputes in this District (Am. Compl. ¶ 34) do not relate to plaintiffs’ claims and therefore cannot support the exercise of specific jurisdiction over NAR. *See Murray v. Bates Show Sales Staff, Inc.*, 2006 WL 522465, at *3 (W.D. Mo. Mar. 3, 2006) (finding no specific jurisdiction because defendant’s sales in Missouri did not relate to the transaction that was the subject of the lawsuit).

In short, plaintiffs have not alleged, and cannot allege, any activity undertaken by NAR in Missouri that bears a substantial connection to their claims. Accordingly, “specific jurisdiction is lacking regardless of the extent of [NAR’s] unconnected activities in the State.” *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). Indeed, if NAR were held to be subject to the jurisdiction of this Court based on the facts of this case, it would be subject to suit in every state in the Union. And that is simply not the law and would not accord with due process of law.

II. This Court Lacks Personal Jurisdiction Over NAR Under Section 12 Of The Clayton Act.

In an attempt to persuade this Court to assert personal jurisdiction over NAR, plaintiffs also invoke § 12 of the Clayton Act, 15 U.S.C. § 22. That statute authorizes nationwide service of process where venue is proper under the Act’s special venue provisions. Here, however, precedent makes clear that venue is not proper under § 12 with respect to NAR in this District.

That statute provides as follows: “Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.” *Id.* Plaintiffs do not allege that NAR is an “inhabitant” of this District. Rather, they allege that NAR “transacts business” and is “found” in this District. (Am. Compl. ¶ 37.) These allegations are without merit.

A corporation such as NAR is “found” only in districts where it is present and carrying on continuous local activities. *United States v. Scophony Corp. of Am.*, 333 U.S. 795, 805 (1948) (explaining that “found” is equivalent to “presence,” to “doing business by its agents there,” and to “of a character warranting inference of subjection to the local jurisdiction”). The Amended Complaint makes no allegations of fact that NAR is present or carrying on any continuous local activities in this District. As demonstrated in Part I.A, NAR does not have an office or employees in Missouri, has not appointed a registered agent for service of process in Missouri, and is not registered to do business in Missouri. Accordingly, NAR is not “found” in this District.

Furthermore, plaintiffs do not allege any facts to support the conclusion that NAR “transacts business” in this District within the meaning of § 12. *See United States v. Scophony Corp.*, 333 U.S. 795, 807 (1948) (explaining that the “test of venue” under the Clayton Act is whether a party is engaged in the “practical, everyday business or commercial concept of doing or carrying on business of any substantial character”) (internal quotation marks omitted); *Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1173 (8th Cir. 1998) (citing *Scophony Corp.*, 333 U.S. at 807). Plaintiffs’ failure to plead such facts renders venue under the Clayton Act

improper. *See Sanderson*, 227 F. Supp. 2d at 1007 (“[A] plaintiff cannot merely plead that a defendant is ‘transacting business,’ but must plead sufficient facts demonstrating that the defendant transacts business of a substantial nature within the district.”); *Corr Wireless Commc’ns, L.L.C. v. AT&T, Inc.*, No. 12-cv-36, 2012 WL 5387356, at *6 (N.D. Miss. Nov. 1, 2012) (holding no venue under the Clayton Act where plaintiffs failed to show, “other than by general unsubstantiated allegations, that [defendant] was or is transacting business or found within [the] Court’s reach”).

Plaintiffs’ conclusory assertion that NAR “transacted business” in this District is without merit. (Am. Compl. ¶ 37.) NAR does not have an office, facilities, or employees in this District, and it is not registered to do business in Missouri. (Declaration ¶¶ 5, 7, 9.) Nor does NAR “advertise in publications specifically targeted to residents” (*Id.* ¶ 14) of this District. *See Sanderson v. Spectrum Labs, Inc.*, 227 F. Supp. 2d 1001, 1006-07 (N.D. Ind. 2000). NAR does not supply or contract to supply services rendered or to be rendered or goods or materials furnished in Missouri, does not regularly do or solicit any business or engage in any other persistent course of conduct, or derive substantial revenue or benefit from goods, materials, or services used, consumed, or rendered, in Missouri. (Declaration ¶¶ 12-13.) And it does not specifically target Missouri residents for business solicitation or advertising. (*Id.* ¶ 14.) Nor does NAR own any interest in or otherwise have or exercise any direction or control over any of the corporate defendants or exercise any direction or control over any employee, agent, or servant of any corporate defendant. (*Id.* ¶¶ 19-20.)

Several decisions confirm that venue cannot be predicated on the fact that NAR has members in, derives some revenue from, or has some limited connection with, this District. For example, the Fourth Circuit has held that the American Chiropractic Association did not transact

business in Virginia within the meaning of § 12. *Bartholomew v. Va. Chiropractic Ass’n*, 612 F.2d 812 (4th Cir. 1979), *abrogated on other grounds by Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982). The Court of Appeals noted as follows: “ACA’s solicitation of advertising time and its dissemination across Virginia boundaries of correspondence, informational materials, public service educational programs by mail, radio, television and newspaper (free of cost to ACA) was not transacting business in the State within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22.” *Id.* at 816. Likewise the transmittal of such items into Virginia by mass media for subsequent telecasting, broadcasting or publishing was not within the Act’s domain. Otherwise, every State in the Union into which such programs were aimed or thrust by media or mail would provide an acceptable forum for suit based on ‘transacting business’ therein.” *Id.* (internal citations and brackets omitted).

Likewise, in *Golf City, Inc. v. Wilson Sporting Goods, Co.*, 555 F.2d 426, 438 (5th Cir. 1977), the Fifth Circuit ruled that the Professional Golfers Association did not transact business in Louisiana within the meaning of § 12 even though it had members in that State and had conducted a five-day business school there. The Court of Appeals stated as follows: “[A] professional association does not ‘transact business’ in a judicial district merely because some of its members reside in the district and receive the association’s publications there.” *Id.* at 437-38. *See also Friends of Animals, Inc. v. Am. Veterinary Med. Ass’n*, 310 F. Supp. 620, 624 (S.D.N.Y. 1970) (“A professional association does not ‘transact business’ in a judicial district merely because some of its members reside in the district and receive the association’s publications there.”).

More recently, in *Daniel v. American Board of Emergency Medicine*, 428 F.3d 408, 428-30 (2d Cir. 2005), the Court of Appeals held that the American Board of Emergency Medicine

did not transact business in New York for purposes of § 12 even though it certified physicians in that State on an on-going basis. In reaching this conclusion, the Court noted that ABEM operates out of its headquarters in Michigan, did not develop its standards in New York, and had no “office, telephone, bank account, or mailing address” there. *Id.* at 430. Likewise here, NAR operates out of its headquarters in Illinois and its office in Washington D.C., did not develop the challenged rule in Missouri, and has no office, telephone, bank account, or mailing address in Missouri.

Because venue is not proper in this District under § 12 of the Clayton Act, the Court lacks personal jurisdiction over NAR under the nationwide service of process provisions of § 12. *See State of S.D. v. Kansas City S. Indus., Inc.*, 880 F.2d 40, 44 n.10 (8th Cir. 1989) (explaining that “the application of [§ 12’s] provision for extra-territorial service must *in every case* satisfy constitutional due process principles,” including the “familiar ‘minimum contacts’ requirements for personal jurisdiction”); *Data Research & Handling, Inc.*, 310 F. Supp. 3d at 968 n.4 (“Section 12 provides for nationwide service of process, but absent venue in the proper forum, the nationwide service provided for in § 12 is ineffective.” (internal quotation marks and ellipsis omitted)).

III. This Case Should Be Transferred To The Northern District Of Illinois.

Given that this Court lacks personal jurisdiction over NAR under the Missouri long-arm statute and that venue in this Court with respect to NAR is improper under § 12 of the Clayton Act, this case should be transferred to the Northern District of Illinois. It can be transferred pursuant to 28 U.S.C. § 1631 based on lack of personal jurisdiction. 28 U.S.C. § 1631 (establishing that when a “court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court . . . in which the action or appeal could have been brought at the time it was filed or noticed”); *see also Simmons*,

2019 WL 1928530, at *3 (granting request to transfer case where personal jurisdiction was lacking). Alternatively, this case can be transferred to the Northern District of Illinois pursuant to 28 U.S.C § 1406 based on improper venue under the Clayton Act.

This action could have been brought against NAR in the Northern District of Illinois because NAR is headquartered there and transacts business there. Moreover, each of the corporate defendants has consented to jurisdiction in the Northern District of Illinois for purposes of this litigation. And two virtually identical and earlier filed cases have been consolidated and are pending in the Northern District of Illinois.²

Finally, this case should be transferred to the Northern District of Illinois in the interest of justice to promote judicial economy and avoid inconsistent judgments. “Judicial economy is a critical factor to determine whether a case should be transferred.” *Williams v. GatherApp, Inc.*, No. 17-CV-00572-W-DW, 2017 WL 11025324, at *5 (W.D. Mo. Sept. 26, 2017) (transferring putative class action where “two other identical putative TCPA class actions” were pending against the same defendant in a different district court). “To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent.” *Id.* (internal quotation marks and brackets omitted) (quoting *Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990)). *See also Energizer Brands II LLC v. Serious Scents, Inc.*, No. 4:17 CV 876 RWS, 2018 WL 1378642, at *3 (E.D. Mo. Mar. 19, 2018) (transferring case to district court where “the companion case between the parties is pending” and noting that even if the defendants “were subject to personal jurisdiction in this District I would transfer the case to be

² *See Moehrl, et al. v. The National Association of Realtors, et al.*, No. 1:19-cv-01610 (N.D. Ill. filed Mar. 6, 2019); *Sawbill Strategies, Inc. v. National Association of Realtors*, No. 1:19-cv-01610 (N.D. Ill. filed Apr. 15, 2019).

consolidated with the California lawsuit in the interest of judicial economy”). Therefore, apart from the lack of jurisdiction and improper venue as to it, NAR joins in the motion of the corporate defendants to transfer this case to the Northern District of Illinois pursuant to 28 U.S.C. § 1404.

CONCLUSION

Because this Court lacks personal jurisdiction over NAR and venue in this District is improper with respect to NAR, this case should be transferred to the Northern District of Illinois.

Dated: July 10, 2019

/s/ Gregory B. Dickinson

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on July 10, 2019, the foregoing Suggestions In Support Of Motion Of Defendant National Association Of Realtors® To Transfer This Case To The Northern District Of Illinois was electronically filed with the Clerk of the Court by utilizing the CM/ECF System, which will provide electronic notification to all counsel of record:

/s/ Gregory B. Dickinson
Gregory B. Dickinson

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSHUA SITZER AND AMY
WINGER, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS®, et al.

Defendants.

Case No.: 4:19-cv-00332-SRB

DECLARATION OF JOHN PIERPOINT

I, John Pierpoint, declare as follows:

1. I am an adult person of sound mind, and am competent to make this Declaration.
2. I am the chief financial officer of the National Association of Realtors®, Inc.

(hereinafter, "NAR"), named as a defendant in the above-captioned action. I have served in that capacity since 2005. I have personal knowledge of the facts and matters set forth herein.

3. NAR is an association of real estate professionals. NAR is incorporated as a not-for-profit corporation in the State of Illinois.
4. NAR's principal office and place of business is in Chicago, Illinois. NAR also has an office in Washington, D.C.
5. NAR does not have any office or place of business in the State of Missouri.
6. NAR does not hold a business license or certificate of authority to transact business in the State of Missouri.
7. NAR is not registered to do business in the State of Missouri.

8. NAR has not appointed a registered agent for service of process in the State of Missouri.
9. NAR does not have any employees who work in the State of Missouri.
10. NAR does not maintain any bank account or telephone listing in the State of Missouri.
11. NAR does not engage in any public relations, publicity, solicitation of business, or any business activities in the State of Missouri.
12. NAR does not supply, or contract to supply, goods or services in the State of Missouri other than NAR publications to members.
13. NAR does not regularly do or solicit any business or engage in any other persistent course of conduct, or derive substantial revenue or benefit from goods, materials, or services used, consumed, or rendered, in the State of Missouri.
14. NAR does not specifically target Missouri residents for business solicitation or advertising.
15. NAR has over 1.35 million members located in all 50 States, with approximately 22,600 of those located in Missouri and even fewer in the Western District of Missouri.
16. Approximately 1.67% of NAR's total dues revenue is derived from members in Missouri.
17. Less than 1% of NAR's total dues revenue is derived from members in the Western District of Missouri.
18. NAR solicits, collects dues from, and provides services to members in 48 states no differently than it does in Missouri.
19. NAR does not own any interest in or otherwise have or exercise any direction or

control over Realogy Holdings, Corp., Homeservices of America, Inc., Re/Max Holdings, Inc., Keller Williams Realty, Inc., or any other defendant in this action. Indeed, none of these corporate defendants is even a member of NAR.

20. NAR has never had or exercised any direction or control over any employee, agent, or servant of Realogy, Homeservices, Re/Max, Keller Williams, or any other corporate defendant. Similarly, NAR has never had or exercised any direction or control over the hiring, firing, training, or supervision of any employee, agent, or servant of Realogy, Homeservices, Re/Max, Keller Williams, or any other corporate defendant.

21. NAR has never engaged in “monitoring” or “policing” activity to ensure compliance with NAR’s rules.

22. NAR does not lobby in the State of Missouri.

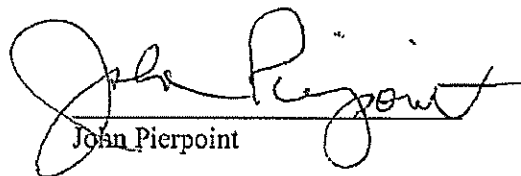
23. NAR has not consented to being sued in the State of Missouri or waived its right to object to being sued in the State of Missouri.

24. NAR has not implemented any of the rules that are challenged in this case in the State of Missouri.

25. NAR has not been involved in any way in any of the transactions on which plaintiffs’ claims and standing are predicated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2018.


John Pierpoint