

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

IN THE MATTER OF)
MV REALTY PBC, LLC)

**MV REALTY, INC.'S PETITION TO MODIFY OR SET ASIDE
THE CIVIL INVESTIGATIVE DEMAND**

Pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), MV Realty PBC, LLC respectfully submits this Petition to Modify or Set Aside the Civil Investigative Demand issued to it by the Bureau on August 11, 2023. The CID is not enforceable because the Bureau does not have any enforcement, supervisory, or regulatory powers over MV Realty. MV Realty is a licensed real estate broker under the laws of Florida, and is thus exempt from the Bureau's purview pursuant to 12 U.S.C. § 5517(b)(1). Similarly, because MV Realty is not subject to the Bureau's enforcement powers, the automatic stay under 11 U.S.C. § 362(a)(1) applies, and prohibits the Bureau from taking any enforcement action at this time.

Background

MV Realty is a real estate brokerage licensed by the State of Florida. Its principal business is representing sellers and buyers of real property throughout the United States. In its efforts to compete against other brokers in the marketplace and provide its customers the best service possible, MV Realty created a program it called the Homeowner Benefit Program. Under the HBP, MV Realty paid property owners for the future right to represent that owner if the owners ever decided to sell their property. There is no obligation on the homeowners to repay the amount MV Realty pays them, and their only obligation is to utilize MV Realty as the homeowner's real estate agent if and when the homeowner decides to sell.

On August 11, 2023, the CFPB issued a CID to MV Realty under 12 C.F.R. § 1080.6 and 12 U.S.C. § 5562. The CID purports to seek information related to potential violations of the following statutes: the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and its implementing regulations at 12 C.F.R. part 1026; the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and its implementing regulations at 12 C.F.R. part 1002; and the Consumer Financial Protection Act (the “CFPA”), specifically the unfair, deceptive, and abusive practices authorities located at 12 U.S.C. §§ 5531 and 5536. The CID seeks oral testimony through an investigational hearing, originally scheduled to occur on September 28 and 29, 2023. After discussions with MV Realty’s previous counsel, Holland & Knight, the Bureau agreed to modify the date of the investigational hearing to October 12-13, 2023.

On September 13, 2023, MV Realty filed a voluntary bankruptcy petition under chapter 11 of title 11 of the United States Code. *See In re: MV Realty PBC, LLC*, Case No. 23-bk-17590-EPK (S.D. Fla.). At the beginning of October, MV Realty hired new counsel at Saul Ewing LLP. After discussions with new counsel at Saul Ewing, the Bureau agreed to two additional extensions, first to November 2-3, 2023, and then to November 16-17, 2023. After multiple conference calls in which MV Realty attempted to negotiate a streamlined discovery schedule with the Bureau in relation to the bankruptcy case and a variety of other litigation MV Realty is currently engaged in, the Bureau informed MV Realty that it expects MV Realty to appear for the November 16-17 investigational hearing. On November 14, 2023, MV Realty informed the Bureau it would file this petition, and informed Bureau counsel of the bases stated herein.

Legal Standard

“Federal agencies are creatures of statute. They possess only those powers that Congress confers upon them.” *Judge Rotenberg Educ. Ctr., Inc. v. U.S. Fed. Drug Admin.*, 3 F.4th 390, 399 (D.C. Cir. 2021) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). “If no statute confers authority to a federal agency, it has none. If Congress has forbidden an agency from taking an action, the agency cannot so act.” *Id.* (citing *FDA v. Brown & Williamson Tobacco Co.*, 529 U.S. 120, 132-33, 155-56 (2000)). While the Bureau has the authority to issue CIDs, the matter inquired into must be within its statutory authority. *Consumer Financial Protection Bureau v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 688 (D.C. Cir. 2017). *See also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). “[C]ourts will not enforce a CID when the investigation’s subject matter is outside the agency’s jurisdiction.” *ACICS*, 854 F.3d at 689. Courts must deny enforcement of a CID where “there is a patent lack of jurisdiction in an agency to regulate or investigate.” *FTC v. Ken Roberts Co.*, 276 F.3d 583, 587 (D.C. Cir. 2001) (cleaned up).

Argument

The CFPB patently lacks jurisdiction to investigate MV Realty. The Dodd-Frank Act limits the CFPB’s authority over real estate brokers, such as MV Realty, prohibiting it from exercising *any* powers over real estate brokers unless the real estate broker is engaged in offering a consumer financial product or service. While the Bureau attempts to satisfy this exception by claiming its CID is seeking to determine whether MV Realty’s HBA product violates TILA or ECOA, the HBA cannot be considered anything other than an offer to engage in real estate broker services or act in a capacity as a real estate broker or agent for sellers of real property. The CFPB’s authority simply does not extend to MV Realty: because the CFPB can only take

those actions authorized by Congress, it cannot act here where Congress has explicitly prohibited it from doing so.

And because Congress has explicitly limited the Bureau’s powers with respect to real estate brokers such as MV Realty, the automatic stay pursuant to 11 U.S.C. § 362 applies to the Bureau’s issuance and enforcement of the CID. MV Realty filed a chapter 11 bankruptcy petition on September 13, 2023. As of that date, all administrative process, such as CIDs and the enforcement of them, were stayed by operation of 11 U.S.C. § 362. The Bureau does not qualify for the exemption under § 362(b)(4) because it is not exercising powers or authority that it actually possesses. Any further action on the CID before the bankruptcy court extinguishes the effect of § 362 is a violation of that statute.

Finally, the CFPB’s funding mechanism is unconstitutional. Because the funds used to issue and pursue enforcement of the CID were obtained in violation of the appropriations clause of the U.S. Constitution, the CID is null and void.

I. The CFPB Patentlly Lacks Jurisdiction over MV Realty

The CID is not enforceable because the Bureau has no authority over real estate brokers. 12 U.S.C. § 5517(b)(1) explicitly limits the Bureau’s jurisdiction:

“the Bureau may not exercise *any rulemaking, supervisory, enforcement, or other authority under this title* with respect to a person that is licensed as a real estate broker or real estate agent, in accordance with state law, to the extent that such person—(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property; (B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property; (C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or (D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).”

(emphasis added). “[Section] 5517 . . . reflects that when Congress intended to limit the Bureau's authority, it did so explicitly. With great specificity, 12 U.S.C. § 5517 delineates that

the Bureau lacks authority over . . . *real estate brokerage activities*. . . .” *Consumer Fin. Prot. Bureau v. Great Plains Lending, LLC*, 846 F.3d 1049, 1056-1057 (9th Cir. 2017) (contrasting Congress’s explicit exclusion of real estate brokers from the CFPA’s grasp with the failure to mention tribal-owned lending entities to find the Bureau has jurisdiction over tribal lenders) (emphasis added).

Congress expressly denied the Bureau *any authority* under the CFPA through this provision, including enforcement authority. The issuance and enforcement of CIDs are delineated as enforcement powers under the CFPA. *See* 12 U.S.C. Ch. 53, Subch. V, Part E – Enforcement Powers (12 U.S.C. §§ 5561-67). The CFPB patently lacks jurisdiction over real estate brokers and agents, and this CID is outside the CFPB’s jurisdiction. *See ACICS*, 854 F.3d at 689.

A. *MV Realty is Licensed as a Real Estate Broker by the State of Florida*

MV Realty is licensed by the State of Florida as a real estate broker. *See* Exhibit A (screen shot of Florida Department of Business and Professional Regulation identifying MV Realty as a licensed real estate broker). MV Realty promotes itself as a real estate broker, noting that it is a “real estate brokerage” that “provides an efficient, smart way to conduct real estate transactions” *See* Exhibit B (<https://mvrealtyfl.com/about>). Indeed, the members of MV Realty’s “team” listed on its website are all real estate brokers and realtors. *See* Exhibit C (<https://mvrealtyfl.com/team>). MV Realty is a real estate broker licensed by the State of Florida, in accordance with Florida law, and meets the parameters of 12 U.S.C. § 5517(b)(1). The Bureau has no authority to exercise any powers over it, and the CID must be set aside.

B. *The Plain Language of the HBA's Demonstrates They Are An Offer to Engage in Activity Exempted from the CFPA*

MV Realty's Home Buyer's Agreements ("HBA"), by their clear terms, demonstrate unequivocally that MV Realty is offering to act in a capacity described in § 5517(b)(1). For instance, a copy of the MVR HBA from North Carolina states: "In exchange for Company's payment of six hundred and no/100 dollars (\$600) (the "Promotion Fee") to Property Owner, Property Owner hereby agrees to the terms of this Agreement and that Company, or Company's designee, shall have the exclusive right to act as listing agent (as a transaction broker) for any sale of the Property on or after the Effective Date" See Exhibit D. MV Realty provides homeowners with a payment in exchange for the *right to list their home for sale*, should the homeowner decide to sell it. MV Realty, through its HBAs, offers to act as a real estate broker for a seller of real property, activity that is squarely within the defined area wherein the CFPB "may not exercise any rulemaking, supervisory, enforcement, or other authority. . . ." 12 U.S.C. §5517(b)(1).

While the CFPA provides a narrow exception to the Bureau's prohibition on exercising its authorities over real estate brokers, this narrow exception does not apply here. 12 U.S.C. § 5517(b)(2). The exception requires the real estate broker to be offering or providing a consumer financial product or service, or to be otherwise subject to an enumerated consumer law. *Id.* Notably, this exception is further narrowed by restricting the Bureau's authority in these instances to only that activity: *i.e.*, the Bureau cannot expand any investigation beyond the offering of a consumer financial product or service, or the engagement in activity subject to an enumerated consumer law. The CFPB can meet neither of these narrow exceptions here.

The CFPA defines both "consumer financial product or service" and "enumerated consumer law." See 12 U.S.C. § 5481. Neither of these definitions alters the express exclusion

of § 5517(a). Section 5481 defines “consumer financial product or service” to include a laundry list of credit-related activities, but does not include real estate brokering activities. Indeed, given the specific exclusion for such activities in § 5517, standard canons of statutory construction dictate that § 5481 cannot swallow § 5517’s exclusion whole. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one. But the canon has full application as well to statutes such as the one here, in which a general authorization and a more limited, specific authorization exist side by side. There the canon avoids not contradiction but the superfluity of a specific provision that is swallowed by the general one, violating the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.”) (cleaned up).

Similarly, none of the enumerated consumer laws identified in § 5481(12) apply to real estate brokers. Instead, MV Realty would have to be engaging in an activity that is both outside of the exemption provided in § 5517(a), **and** be engaging in activity defined as a consumer financial product or service or covered by an enumerated consumer law in order to be covered by the Bureau’s jurisdiction. Neither applies to the HBA, and the CID must be set aside because the Bureau has no jurisdiction to issue it.

C. *Neither TILA Nor ECOA Applies to MV Realty*

The CID purports to be investigating potential violations of the Truth in Lending Act (15 U.S.C. § 1601 *et seq.*) and the Equal Credit Opportunity Act (15 U.S.C. §§ 1691-1691f). But neither of these statutes apply to MV Realty and its real estate brokerage business. Congress passed TILA “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available” 15 U.S.C. §1601(a). TILA

obligations apply to creditors, which “refers only to a person who both (1) regularly extends . . . consumer credit which is payable in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable” 15 U.S.C. § 1602(g). Credit “means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.” 15 U.S.C. § 1602(f).

ECOA also applies only to creditors, making it “unlawful for any creditor to discriminate against any applicant” on specific prohibited bases. 15 U.S.C. § 1691(a). “Creditor” is defined as “any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.” 15 U.S.C. § 1691a(e). Credit is defined in the same way as TILA. 15 U.S.C. § 1691a(d).

As noted above, MV Realty’s HBAs are merely an offer to act as a real estate broker for a seller in a real property transaction. MV Realty does not meet the definition of creditor in either TILA or ECOA. Because MV Realty is not engaging in any activity covered by an enumerated consumer law by offering its HBA program, the Bureau has no jurisdiction to exercise any authority over it. 12 U.S.C. § 5517(b)(1). The CID must be set aside.

II. 11 U.S.C. § 362 Prohibits the Bureau From Taking Any Further Action

The filing of a bankruptcy petition under Chapter 11 “operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, or a judicial, administrative, or other action or proceeding against the debtor” 11 U.S.C. § 362(a)(1). While there is an exception to the automatic stay for government agencies, this exception applies only “to enforce such governmental unit’s or organization’s police or

regulatory power.” (11 U.S.C. § 362(b)(4)). Because Congress has not granted any authority to the Bureau over real estate brokers conducting real estate brokerage activities, it has no “police or regulatory power” to enforce, and this exception does not apply.

III. The Bureau’s Funding Mechanism is Unconstitutional

The CFPB cannot enforce the CID because its funding mechanism violates the U.S. Constitution’s appropriations clause. *See Community Financial Services Ass’n of Am., Ltd. v. Consumer Financial Protection Bureau*, 51 F.4th 616 (5th Cir. 2022). Because the funds the CFPB is using to issue and enforce the CID were obtained through unconstitutional means, the CID is unenforceable. *See id.* at 643.

While the Bureau has appealed this decision to the Supreme Court, the ruling remains valid, and courts around the country have stayed matters in which the CFPB is currently engaged in anticipation of the Supreme Court’s ruling. *See, e.g., Consumer Financial Protection Bureau v. Credit Acceptance Corp.*, No. 23-cv-38, 2023 U.S. Dist. LEXIS 137992 (S.D.N.Y. Aug. 7, 2023); *Consumer Financial Protection Bureau v. Noh*, No. 8:21-cv-488, 2023 U.S. Dist. LEXIS 127575 (C.D. Cal. March 6, 2023); *Consumer Financial Protection Bureau v. Moneygram Int’l, Inc.*, No. 22-cv-3256, 2022 U.S. Dist. LEXIS 223995 (S.D.N.Y. Dec. 9, 2022). This includes the Bureau’s attempts to enforce CIDs. *See Consumer Financial Protection Bureau v. Check City Partnership, LLC*, No. 2:23-cv-939 (D. Nev. Nov. 2, 2023) (Dkt. No. 23) (“A brief stay to avoid conducting wasteful and unrecoverable investigation efforts and enforcement proceedings on a matter that may be dismissed pending the Supreme Court’s decision is justified.”). At the very least, enforcement of the CID and the attendant disputes regarding the Bureau’s jurisdiction noted above should be held in abeyance until the Supreme Court has delivered its opinion.

CONCLUSION

The CFPB is a creature of statute. And that statute, the CFPB, explicitly prohibits the CFPB from exercising any authority over real estate brokers conducting their business of representing buyers and sellers of real property. MV Realty and its HBP program fall squarely outside of the CFPB's jurisdiction as a result, because MV Realty is doing nothing more than acting or offering to act as a real estate agent or broker for sellers of real property through the HBP program. Because the CFPB has no authority whatsoever over MV Realty, its CID is *ultra vires* and unenforceable. The CID should be set aside.

Date: November 14, 2023

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***Counsel for Petitioner MV Realty PBC,
LLC***

CERTIFICATION

Pursuant to 12 C.F.R. § 1080.6(e)(1), counsel for Petitioner states that he met and conferred with counsel for the Bureau on the following dates: October 30, 2023, and November 7, 2023. During these meetings, the parties discussed various ways that Petitioners' concerns with the CID may be resolved, but were unable to reach any agreement. On November 14, 2023, Petitioner identified its objections to the Bureau's jurisdiction under 12 U.S.C. § 5517, as well as its objection due to the constitutional challenge to the Bureau's funding mechanism. Undersigned counsel was not retained by Petitioner within 10 days of the issuance of the CID, but has nonetheless met and conferred with Bureau counsel on multiple occasions to discuss various concerns with the CID. As of the date of this Petition, the parties have not come to any agreement with respect to Petitioners concerns and objections.

/s/ Jason W. McElroy

CERTIFICATE OF SERVICE

I certify that on the 14th day of November, 2023, pursuant to 12 C.F.R. § 1080.6(e), I caused the foregoing Petition to Modify or Set Aside Civil Investigative Demand to be filed with the Executive Secretary of the Bureau, and served on the Assistant Director of the Office of Enforcement, as well as the enforcement attorneys listed below, via the following methods:

Executive Secretary of the Bureau
(via hand delivery to 1700 G St. NW, Washington, DC 20552, and via electronic mail to ExecSec@cfpb.gov)

Eric Halperin, Assistant Director of Enforcement
(via hand delivery to 1700 G St. NW, Washington, DC 20552, and via electronic mail to Eric.Halperin@cfpb.gov)

David Dudley, Enforcement Attorney
(via electronic mail to David.Dudley@cfpb.gov)

Benjamin Konop, Enforcement Attorney
(via electronic mail to Benjamin.Konop@cfpb.gov)

/s/ Jason W. McElroy

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Exhibit A



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LICENSEE DETAILS

12:12:14 PM 11/14/2023

Licensee Information

Name:	MV REALTY PBC LLC (Primary Name) MV REALTY (DBA Name)
Main Address:	851 BROKEN SOUND PARKWAY NW SUITE 155 BOCA RATON Florida 33487
County:	PALM BEACH
License Location:	851 BROKEN SOUND PARKWAY NW SUITE 155 BOCA RATON FL 33487
County:	PALM BEACH

License Information

License Type:	Real Estate Corporation
Rank:	RE Corp.
License Number:	CQ1046757
Status:	Current,Active
Licensure Date:	08/12/2014
Expires:	09/30/2024

Special Qualifications

Qualification Effective

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Alternate Names

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Exhibit B

About

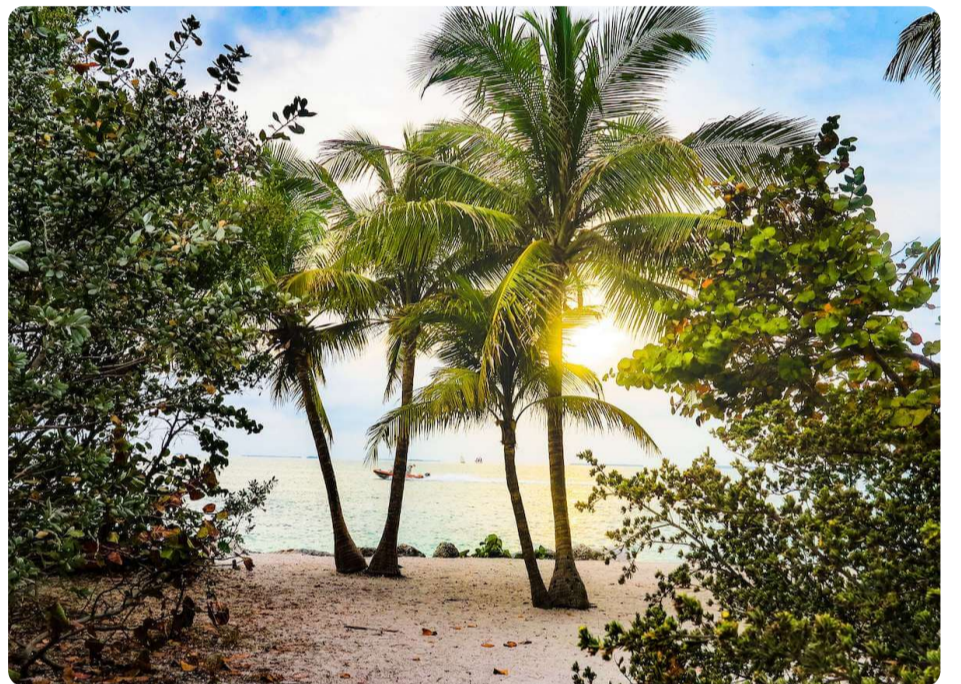
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About Us

MV Realty

[MV Realty](#) is a real estate brokerage created by seasoned, technologically savvy, real-estate professionals to meet the needs of the modern broker, buyer, and seller. Our company provides an efficient, smart way to conduct real estate transactions, to ensure satisfaction to our consumer. We leverage data from more than just the MLS – we tap into detailed financial and property data, and utilize the latest mapping and search tools to help connect people with the properties they truly want. At [MV Realty](#), we believe it's time for the real estate community to simply work smarter.

Looking for Something Different? We Were Too. MV Realty is changing the world of real estate with the Homeowner Benefit Program®. We're building lifelong relationships with clients through our innovative loyalty program, and offering support and guidance every step of the way.



Executive Team



Founder/CSO - Amanda Zachman

Amanda Zachman is an entrepreneur, business leader, and mom of 3 with more than 12 years of experience in the real estate industry. In 2014, Zachman founded MV Realty, a disruptive tech-focused real estate brokerage and proptech firm dedicated to meeting the needs of the modern broker, home buyer, and home seller. She is also part of the team that developed the company's innovative Homeowner Benefit Program®, which pays homeowners a cash payment in exchange for agreeing to use MV Realty as its real estate agency, should they ever choose to sell their home. In 2017, Zachman arranged the signing of the first Homeowner Benefit agreement in Florida.

Under Amanda's leadership, the rapid evolution of MV Realty has generated significant traction in a brief period. The company's Homeowner Benefit Program has grown from 7,778 contracts in 2021 to 32,000 as of August 2022. MV now averages 3,480 new HBP contracts a month and is on track to expand its portfolio to over 100,000 over the next 12 months. It is increasing the minimum future listing commission value from \$55 million to \$288 million. It is projected to reach +425 million worth by December 2022. MV Realty has grown from 75 to 500+ agents in 33 states and is expected to have 800+ agents by December 2022.

Zachman manages the company's real estate and legal departments, overseeing all real estate transactions, supervising principal brokers, and spearheading the expansion of the Homeowner Benefit Program across 33 states. She also devotes much of her time to raising awareness of the company's mission and offerings on a local, regional, and national level.

Previously, Zachman was a realtor with Berkshire Hathaway Florida Realty and Coldwell Realty. Earlier in her career, she worked in TV production in various roles. Zachman is an active National Association of Realtors member and a licensed broker in Florida, Georgia, Illinois, Massachusetts, Pennsylvania, and Connecticut. She studied musical theater at The American Musical and Dance Academy in New York. Subsequently, she moved to Florida: Today, she resides in Boca Raton with her husband Michael and their two children, with one on the way, Madison and Ford. She enjoys Pilates, watching movies, and traveling in her spare time.



CEO - Tony Mitchell

Tony (Antony) Mitchell is a specialty financial services and turnaround specialist with more than 30 years' experience in developing and growing organizations focused on alternative financial asset classes. During his career, he helped pioneer, develop, institutionalize and raise money for new asset classes for companies marketing structured settlements for lottery and litigation award recipients, annuities and life settlements.

He joined MV Realty in 2018 in order to help the company expand market penetration of its novel Homeowner Benefit Program® which provides homeowners with a cash payment in exchange for agreeing to use MV Realty as its real estate agency, should they ever choose to sell their home. Mitchell views the company as a proptech real estate organization with plans to leverage its technology platform to attract agents and consumers and grow nationwide.

Previously, Mitchell was brought in by investors in 2017 to help grow Los Angeles-based Film Finance (FFI), the world leader in film industry completion contracts. FFI grew from \$12 million in revenues to going public with a \$300 million valuation. The company suffered setbacks when The Weinstein Company, which was a significant contributor to the company's revenues, shut down due to its well documented scandals. Mitchell then took Film Finance private and helped it survive the entertainment industry shutdown due to COVID-19. The company has since rebounded in 2021 and 2022 with record revenues; Mitchell remains on its board.

For more than 10 years through 2017, Mitchell was CEO and a director of Emergent Capital (formerly Imperial Holdings), a company that invested in life settlements. From October 2013 through December 2015, he served as CEO and a board member of DRB Capital, a structured settlement and annuity company and Blackstone affiliate.

Mitchell, from 2001 through 2007, was chief operating officer and executive director of Peach Holdings, a holding company which through its subsidiaries, was a provider of specialty factoring services. Peach Holdings completed its initial public offering in March 2006 and was subsequently acquired by an affiliate of Credit Suisse in November 2006.

He was also a co-founder of Singer Asset Finance Company (a subsidiary of Enhance Financial Services Group) which was involved in acquiring insurance policies, structured settlements and other types of receivables.

His past board memberships include director, and later executive chair, of Ram Power, a renewable energy company listed on the Toronto Stock Exchange; and a past chair of the board of Polaris Geothermal, a company focused on the generation of renewable energy projects.



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Exhibit C

Team

🏠 / Team



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Canton, MI

Broker - Realtor®

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MINNESOTA

Minneapolis, MN

Sandra Williamson

Broker - Realtor®
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MISSOURI

St. Louis, MO

Ed Berberich

Broker - Realtor®
[\(314\) 304-0218](#)

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NORTH CAROLINA

Charlotte, NC

Darryl Cook

Broker - Realtor®
[\(704\) 445-2406](#)

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Trenton, NJ

David Reiner

Broker - Realtor®
[\(908\) 341-1816](#)

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MV REALTY OF NEVADA LLC

Las Vegas, NV

Lita B Kaufman

Broker - Realtor®
[\(702\) 287-0488](#)

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NEW YORK

New York, NY

Kirk Ruffin

Broker - Realtor®
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Columbus, OH

Diana Remar

Broker - Realtor®
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Sandra Williamson

Broker - Realtor®
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OREGON

Portland, OR

Denise Swanson

Broker - Realtor®
[\(509\) 539-7439](tel:(509)539-7439)

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PENNSYLVANIA

Philadelphia, PA

Kirk Ruffin

Broker - Realtor®
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SOUTH CAROLINA

Charleston, SC

Kirk Ruffin

Broker - Realtor®
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TENNESSEE

Nashville, TN

Brent Davidson

Broker - Realtor®
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TEXAS

Houston, TX

Susan Kinder

Broker - Realtor®
[\(832\) 665-0791](tel:(832)665-0791)

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UTAH

Provo, UT

Richard Curtis

Broker - Realtor®
[\(801\) 458-5428](tel:(801)458-5428)

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VIRGINIA

Richmond, VA

David Reiner

Broker - Realtor®
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[View Agents](#)



WASHINGTON

Seattle, WA

Denise Swanson

Broker - Realtor®
[\(509\) 539-7439](tel:(509)539-7439)

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WISCONSIN

Madison, WI

Travis Wesche

Broker - Realtor®
[\(920\) 574-1399](tel:(920)574-1399)

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UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

IN THE MATTER OF)
MV REALTY PBC, LLC)
)

**MV REALTY, INC.'S PETITION TO MODIFY OR SET ASIDE
THE CIVIL INVESTIGATIVE DEMAND**

Exhibit D

MVR HOMEOWNER BENEFIT AGREEMENT

THIS MVR HOMEOWNER BENEFIT AGREEMENT ("Agreement") is made and entered into as of the effective date referenced below (the "Effective Date"), by and between MV REALTY of NORTH CAROLINA, LLC, a North Carolina limited liability company [License Number: 2016333] (the "Company"), having its principal place of business at 1016 Dickinson Cir, Raleigh, NC 27614, and [REDACTED] having an address of [REDACTED], Charlotte, NC, 28215 (the "Property Owner").

RECITALS

- A. Property Owner owns 100% of that certain property located at [REDACTED] Charlotte, NC, 28215, Parcel # [REDACTED] (the "Property").
- B. Property Owner desires to enter into an agreement to engage the Company or its designee to act as listing agent should Property Owner decide to market the Property for sale, all in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and the payment of the Promotion Fee (as defined below) to Property Owner, the Company and Property Owner hereby agree as follows:

1. Exclusive Right to List

- a. In exchange for Company's payment of six hundred and No/100 Dollars (\$600) (the "Promotion Fee") to Property Owner, Property Owner hereby agrees to the terms of this Agreement and that Company, or Company's designee, shall have the exclusive right to act as listing agent (as a transaction broker) for any sale of the Property on or after the Effective Date, except as otherwise expressly provided herein. Without limiting the foregoing, Property Owner shall not engage, hire or otherwise employ any other real estate brokerage, licensed broker or sales agent, which for purposes of this Agreement, includes listing the Property as "for sale by owner" through a third-party service that offers advertising, marketing services or who is otherwise compensated for generating interest in the Property, whether paid a commission or flat fee (collectively, the "Prohibited Engagements").
- b. No later than ten (10) business days prior to the date Property Owner wishes to market the Property for sale, it shall deliver written notice to the Company by mail and email to the addresses listed in Section 6 below, indicating its intent to sell the Property (the "Intent to List"). Within ten (10) business days after Company's receipt of the Intent to List, Company or its designee shall provide Property Owner with a listing agreement similar to the listing agreement attached hereto as Exhibit A (each, a "Listing Agreement"). As specifically discussed and agreed to between Company and Property Owner, the Listing Agreement shall provide for the payment of a commission to the Company (plus applicable sales tax) in an amount equal to six percent (6%) of the total sales price for the Property provided, however, that the Company shall not receive less than 3% of \$199,900.00, the Property's current home value estimate (the "Commission"). Except when not in Property Owner's best interest, Company's policy is to cooperate with all brokers who, in addition to the Company, participate in the sale of the Property (e.g., a broker for the buyer) ("Cooperating Broker") and offer compensation in the amount of three percent (3%) of the purchase price ("Cooperator's Commission") to a Cooperating Broker. To the extent there is more than one Cooperating Broker, Company will offer each Cooperating Broker an equal portion of the Cooperator's Commission (e.g., if there are two Cooperating Brokers, then Company will offer each Cooperating Broker compensation in the amount of one and one-half percent (1.5%) of the purchase price). A Cooperating Broker may include a broker who is employed and/or affiliated with the same brokerage as the listing agent.
- c. The Listing Agreement shall indicate the purchase price for the Property desired by the Property Owner. Property Owner shall, within three (3) business days after receipt of the draft Listing Agreement, sign and return the Listing Agreement in accordance with the instructions included therewith.
- d. Subject to the provisions of this Agreement, Company or its designee shall act as Property Owner's listing agent should Property Owner decide to market the Property for sale during the term of this Agreement. However, notwithstanding anything to the contrary in this Agreement or the Listing Agreement, Company will act strictly as a transaction broker.

2. **Term.** This Agreement shall be effective from and after the Effective Date through the earlier of: (i) the date the Property is sold in an arms-length bona-fide transaction, and the Commission is paid to the Company, in accordance with the terms herein, and (ii) the date that is forty (40) years after the Effective Date (the "Term"), unless this Agreement is cancelled in writing by Company or terminated in accordance with Section 3 below. For the avoidance of doubt, Company and Property Owner acknowledge and agree that this Agreement shall continue in full force and effect through the Term notwithstanding that the Property Owner and the Company may have entered into a Listing Agreement. Subject to the provisions of Section 4 below, should any Listing Agreement expire or otherwise terminate without the payment of the Commission to Company, Company shall retain the exclusive listing rights set forth in Section 1 above for any future listing, all on the terms and conditions set forth in this Agreement. At the expiration of the Term, this Agreement shall terminate without prior notice.

3. **EARLY TERMINATION FEE AND OWNER LISTING PERIOD.**

THIS AGREEMENT PROVIDES A PENALTY FOR EARLY TERMINATION AS SET FORTH IN THIS SECTION 3.

- a. In the event either (A) the Property Owner fails to perform any of its obligations under this Agreement, including, without limitation, entering into any Prohibited Engagements, or (B) an Early Termination Event (as defined below) shall occur, then the Property Owner shall immediately pay Company, as agreed upon liquidated damages and not as a penalty, an early termination fee (the "Early Termination Fee") in the amount of three percent (3%) of the greater of (i) \$199,900.00, the Property's current Realtors Valuation Model home value estimate, or (ii) the fair market value of the Property at the time of the Property Owner's breach or Early Termination Event, as reasonably determined by the Company. The Company and Property Owner agree that the damages resulting from a Property Owner default or Early Termination Event would be difficult to ascertain and that the foregoing means of calculating the Early Termination Fee is fair and reasonable.
- b. As used herein, the term "Early Termination Event" means the occurrence of any one or more of the events mentioned in subparagraph 3(c) below.
- c. A sale or other transfer of the Property occurs that does not result in the Company being paid the Commission, except that a transfer to a spouse, heir(s) or devisee(s) or a transfer for estate planning purposes shall not constitute an Early Termination Event if, within ten (10) days thereafter, the transferee spouse or other individual or entity receiving an interest in the Property, or in the case of a transfer arising out of the death of the Property Owner, the administrator or personal representative, as applicable, together with any known heirs or devisees in which title to the Property shall have vested as a matter of law, executes an assumption of this Agreement, in form and substance satisfactory to Company, whereby such spouse or other persons or party, if any, agrees to be bound by this Agreement, with the same effect as if they had originally been the Property Owner hereunder. In addition, the following subparagraphs 3(c)(i) and 3(c)(ii) shall each be considered an Early Termination Event (and therefore included in the definition of an Early Termination Event):
 - i. Property Owner terminates, or attempts to terminate, the Company's right to act as the exclusive listing agent for the Property; or
 - ii. Property Owner ceases to be the owner of the Property as a result of foreclosure, forfeiture or other transfer of interests in the Property, whether voluntary or involuntary, subject to the provisions of subparagraph 3(c) above.

4. Owner Listing Period.

- a. Notwithstanding the provisions of Section 1 above, if after six (6) months following the execution and delivery of a Listing Agreement (an "Exclusive Listing Period"), Company is unable to procure a ready, willing, and able buyer for the Property on terms and conditions consistent with the applicable Listing Agreement, then for the sixty (60) day period immediately following the Exclusive Listing Period (that sixty (60) day period, the "Owner Listing Period"), Property Owner may attempt to procure a buyer independent of Company's efforts.
- b. In the event that Property Owner exercises his or her rights under subparagraph 4(a) above and enters into a contract with a Qualified Buyer (as defined below) during the Owner Listing Period, which contract closes and title to the Property transfers (i) on terms identical to those set forth in paragraph 3(a) of the then applicable Listing Agreement¹, and (ii) no later than the sixtieth (60th) day following the expiration of the Owner Listing Period, then no Commission will be due and payable to Company in connection with that sale. For purposes of this subparagraph, the term "Qualified Buyer" means a ready, willing and able buyer who (i) is unaffiliated with the Property Owner, (ii) enters into an arm's length transaction for the purchase of the Property on the identical terms set forth in the Listing Agreement, and (iii) is not a person to whom Company showed the Property or was otherwise identified as a prospect by Company in accordance with the terms and conditions of the Listing Agreement.

¹ Seller acknowledges that in determining whether the sale terms were identical to those set forth in the applicable Listing Agreement, Company will consider the total purchase proceeds received by the Seller in connection with the sale of the Property, including all credits involved in the transaction and the sale of all related property (including, without limitation, personal property and furniture). Seller agrees to fully cooperate with Company in connection with the preceding (including, without limitation, providing all documentation related to the sale of the Property).

5. Notice of Agreement.

- a. Property Owner's obligations hereunder shall constitute covenants running with the land and shall bind future successors in interest to title to the Property. Should Property Owner default under this Agreement, any amounts owed by Property Owner to Company as a result of such default shall be secured by a security interest and lien in and against the Property as security for the amounts owed by Property Owner to Company.
- b. Company reserves the right to record a memorandum of this Agreement, in form and substance similar to the Memorandum of MVR Homeowner Benefit Agreement attached hereto as Exhibit B (the "Memorandum"), to provide constructive notice of Company's rights hereunder. Upon Company's request from time to time, Property Owner shall provide Company with a written certificate or recordable amendment to the Memorandum confirming the existence of this Agreement and that this Agreement remains in full force and effect.

6. Notice. Any notice required or in connection with this Agreement shall be sent to Company and Property Owner to the following mailing and email addresses:

COMPANY

MV Realty of North Carolina, LLC
1016 Dickinson Cir,
Raleigh, NC 27614

with Copy to: AGENT Darryl Cook
EMAIL darrylcook@homesatinv.com

PROPERTY OWNER

[REDACTED] Charlotte, NC, 28215

Email Address: [REDACTED]

*MV Realty would like to send you an electronic copy of your agreement. Please provide your email address above or confirm that the email address listed above is correct. Initials: [REDACTED]

7. Arbitration: Lis Pendens. Any and all disputes, claims, or controversies whatsoever between the Property Owner and the Company (collectively, the "Parties"), whether based on contract, tort, or any other legal right or claim, including alleged violation of consumer or privacy laws, shall be referred to and resolved exclusively by binding arbitration (the "Arbitration"). However, in the event of any dispute, claim or controversy between the Parties, the Company shall retain the right to file a judicial action to enable the recording of a notice of pending action or lis pendens. The Company's filing of such judicial action shall not constitute a waiver of the Parties' right under this Agreement to arbitrate all disputes, claims, or controversies (without exception), which right to arbitrate shall be enforced at all times. The Arbitration shall be governed by the commercial rules under the American Arbitration Association (the "AAA Rules"). In the event of a conflict between this arbitration provision and the AAA Rules, this arbitration provision shall prevail. A single arbitrator shall be appointed by the Parties and shall apply North Carolina law. If the Parties cannot agree on the selection of an arbitrator within twenty (20) days of the commencement of the Arbitration, the American Arbitration Association shall appoint an independent neutral arbitrator. The Arbitration shall take place in North Carolina and the arbitrator shall (i) resolve all disputes and issues between the parties, including issues of arbitrability and the validity of this arbitration provision, (ii) enforce every provision of this Agreement and any other agreement between the parties, including this arbitration provision, (iii) temporarily and permanently enjoin a breach of this Agreement or any other agreement between the parties, (iv) award compensatory damages in the event damages are suffered by the victim of a breach of this Agreement or any other agreement between the parties, and (v) award to the prevailing party reimbursement of all attorney's fees and arbitration costs incurred by that party in the Arbitration. The arbitrator's award shall be in writing, with findings of fact and conclusions of law, shall not include or allow for punitive or exemplary damages, and shall provide a breaching party no more than twenty (20) days to comply with every

provision of this Agreement and every other agreement between the parties. If the arbitrator issues an award or partial award that is inconsistent with this arbitration provision, the award shall be null and void and each party shall have fifteen (15) days to appeal before a panel of three neutral arbitrators (the "Appellate Panel") to be promptly appointed by the American Arbitration Association. The Appellate Panel shall issue a final award that follows and enforces this arbitration provision within one hundred and twenty (120) days of the appointment by the American Arbitration Association of the full Appellate Panel. The Appellate Panel shall provide the Parties an equal and fair opportunity to present their case. This arbitration provision shall survive the termination, voidance or annulment of this Agreement or any other provision of this Agreement.

8. WAIVER OF RIGHT TO CLASS ACTION RELIEF: THIS CONTRACT PROVIDES FOR THE EXCLUSIVE RESOLUTION OF DISPUTES THROUGH INDIVIDUAL ARBITRATION PROCEEDINGS ON PROPERTY OWNER'S OWN BEHALF INSTEAD OF THROUGH ANY CLASS ACTION IN COURT OR ARBITRATION. EVEN IF AN APPLICABLE LAW PROVIDES OTHERWISE, PROPERTY OWNER WAIVES ALL RIGHTS TO BE PART OF A CLASS ACTION AND PROPERTY OWNER AGREES THAT ALL DISPUTES WITH THE COMPANY OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED ONLY BY PROPERTY OWNER INDIVIDUALLY IN ARBITRATION. THE ARBITRATOR OR APPELLATE PANEL APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS. IF FOR ANY LEGAL REASON THIS CLASS ACTION WAIVER IS UNENFORCEABLE AS TO ANY PARTICULAR CLAIM, THEN AND ONLY THEN SUCH CLAIM ONLY SHALL NOT BE SUBJECT TO ARBITRATION.

9. Representations and Warranties. Property Owner represents and warrants that (i) it has no other written, oral or other contractual arrangement relating to the sale or listing for sale of the Property, including no other agreement with any real estate broker, agent or salesperson related to the Property, (ii) it is not in default of any loan, including any mortgage loan, currently encumbering the Property, and (iii) is not in default, or past due, on any taxes, assessments (including, without limitation, any home owners association or condominium assessments), or any other payment(s) that may result in a lien being placed on the Property.

10. Additional Representations and Warranties by Property Owner. Property Owner represents and warrants to Company that at the time that Property Owner executes this Agreement Property Owner has () or does not have () an interest or intention to market, sell or list the Property. Property Owner understands that Company is relying on the representations made by Property Owner in this Section 10 to ensure that Company complies with all applicable laws that may apply should Property Owner intend to market, sell or list the Property at this time.

Initials: 

11. Miscellaneous.

- a. Marketing Materials. Property Owner hereby agrees that Company may utilize any photographs, descriptions, and renderings generated by Company in relation to this Agreement, including, without limitation, any and all photographs, descriptions, and renderings, in any manner deemed fit by Company, in its sole and absolute discretion including, without limitation, utilizing such materials in Company's general marketing initiatives and efforts. In agreeing to use of such materials, Property Owner consents to the Company's use of Property Owner's likeness or image in any materials that are promoting, advertising or marketing Company's business or services and hereby expressly releases any claim relating to the use of image or likeness, including any right to publicity relating to the same.
- b. Assignment. This Agreement and the rights, duties, obligations and privileges hereunder may not be assigned by Property Owner without the prior written consent of Company, which may be withheld in Company's sole discretion. Property Owner agrees that Company may delegate some or all of its obligations under this Agreement and any future Listing Agreement, and Company may transfer or assign some or all of its rights hereunder, including the right to receive the Commission and/or the Early Termination Fee. Following delegation of duties or assignment of rights by Company, all terms of this Agreement shall remain binding on Property Owner and all rights and privileges inure to the benefit of Company's successors or assigns.
- c. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter contained herein and all prior negotiations and agreements are merged herein. In the event any provisions of this Agreement are held to be invalid or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement shall remain unaffected.
- d. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina.

- e. Waiver. The failure by Company to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.
- f. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. This Agreement will not be binding on the Company unless and until it is signed by a duly authorized officer and broker of the Company.
- g. Cooperation. Property Owner agrees to fully cooperate with the Company in implementing and enforcing the terms of this Agreement, including executing any documents necessary to ensure enforcement of the Agreement.
- h. Binding Effect. This Agreement shall be binding on the Property Owner's personal representatives, heirs, administrators, successors, and assigns.
- i. Working with Real Estate Agents Brochure. Property Owner represents and warrants to Company that at the time that Property Owner executes this Agreement, Company has provided and reviewed with Property Owner the Working with Real Estate Agents brochure attached as **Exhibit D**. Property Owner represents and warrants to Company that Company answered all of Property Owner's questions with regard to the Working with Real Estate Agents Brochure.

Agreed to, signed, sealed and delivered:
PROPERTY OWNER:

By : [Redacted]
Name : [Redacted]

Date: 11-13-20

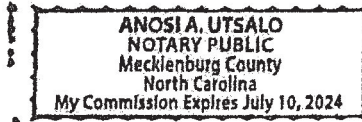
State of North Carolina
County of Mecklenburg

I, Anosi A. Utsalo, Notary Public, do certify that [Redacted] (name of individual(s) whose acknowledgement is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13 day of 11, 2020.

[OFFICIAL SEAL]

Notary Public



Anosi A. Utsalo
Official Signature of Notary
Anosi A. Utsalo
Notary's print or typed name

My Commission Expires: July 10, 2024

COMPANY:

MV REALTY OF NORTH CAROLINA, LLC, a North Carolina limited liability company

By: [Signature]
Name: Amanda J. Zachman
Title: Officer
Date: _____

Effective Date of Agreement: 11-13-2020