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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VHT, INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW GROUP, INC., a Washington
corporation; and ZILLOW, INC., a Washington
corporation,

Defendants.

No. 2:15-cv-1096-JLR

**THIRD AMENDED
COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

JURY DEMAND

Plaintiff VHT, Inc., d/b/a VHT Studios (“VHT”) by its undersigned attorneys, Davis Wright Tremaine LLP, as and for its third amended complaint against defendants Zillow Group, Inc. (“Zillow Group”) and Zillow, Inc. (“Zillow, Inc.” and Zillow Group, “Zillow”),¹ alleges as follows:

INTRODUCTION

1. This is an action arising from Zillow’s massive and intentional infringement of copyrights that VHT owns in thousands of unique photographic images of real estate properties around the United States. Zillow claims to be the world’s largest online marketplace for real estate property listings, but as its CEO has publicly admitted, “we sell ads, not houses.”²

¹ Zillow consented to VHT’s filing of this Third Amended Complaint in an email from Zillow counsel Jenna Farleigh on October 24, 2016.

² Ben Lane, Housing Wire.com, *Zillow CEO: “We sell ads not houses”* (quoting Zillow CEO Spencer Rascoff) <http://www.housingwire.com/articles/33882-zillow-ceo-we-sell-ads-not-houses>.

1 Zillow’s infringement arises principally from two distinct unauthorized uses of VHT-owned
2 photographs.

3 2. First, Zillow continues to display VHT-owned photographs on its central listing
4 site for the sale and rental of properties (“the Listing Site”) after the properties depicted in those
5 photographs are no longer on the market. As Zillow well knows, VHT – the leading full-
6 service provider of professional photographs for the real estate industry – owns the copyrights
7 in many of these photographs. Zillow is also abundantly aware that the VHT-owned
8 photographs transmitted by listing agents and brokers to the Zillow Listing Site are licensed by
9 VHT only for purposes of marketing the properties for sale and the broker or agent who is
10 representing that property (VHT’s clients). Zillow’s continued display of not-for-sale listings
11 on the Listing Site – including VHT’s photographs – is not for the purpose of marketing the
12 properties, but to enhance Zillow’s own web presence and allow it to sell more advertising to
13 real estate agents, mortgage brokers, home improvement businesses, and others.

14 3. Second, Zillow uses VHT-owned photographs on Zillow Digs – an independent
15 section of the Zillow website and a stand-alone mobile app (together, the “Digs Site”) – which
16 showcases groups of photographs of particular elements of home design, such as kitchen
17 countertops, plumbing fixtures, or art deco sofas, and pairs them with marketing for vendors
18 who sell the goods depicted in the photographs or offer related services.

19 4. With full knowledge of the limited scope of the VHT license, Zillow initially
20 launched its Digs Site populated with thousands of VHT-owned photographs taken from the
21 Listing Site – not for the purpose of marketing the subject properties – but rather for the
22 purpose of promoting design elements depicted in these photographs. Zillow also now actively
23 induces users of the Listing Site to themselves select VHT-owned images for Digs and Zillow
24 itself picks images to display publicly on the Digs Site from those user selections.

25 5. As of today, VHT’s photographs remain on the Digs Site and on the Listing Site
26 for homes that are not currently for sale. VHT’s photographs are extremely valuable assets,
27 each of which has independent economic value for multiple purposes. VHT is just now poised

1 to leverage the very significant economic value of these photographs. It has taken great pains
2 to get to this point. It currently offers listing agents and brokers non-exclusive license
3 agreements that are specifically tailored to permit use of VHT's photographs only for the
4 marketing of the properties listed for sale and the broker or agent representing those specific
5 properties. VHT retains control over all other and future use of these photographs to maximize
6 its future business prospects and to ensure it can make its own business decisions as to the
7 proper manner, means and extent of future exploitation of these photographs, both individually
8 and as a database.

9 6. That Zillow knew the value of VHT's photographs cannot be questioned.
10 Shortly after it launched the Digs Site in 2013, Zillow and VHT specifically discussed the
11 possibility of Zillow licensing VHT's photographs for use on the Digs Site. No deal was ever
12 reached because Zillow advised VHT at that time that it had decided *not* to use the VHT
13 photographs displayed on the Zillow Listing Site on the Digs Site. Yet, that is exactly what
14 Zillow did and continues to do, without license or authority, and in blatant derogation of VHT's
15 copyrights.

16 7. Despite transparent efforts to immunize itself from copyright infringement
17 claims by pointing its corporate finger at its users and the listing agents and brokers, and those
18 acting on their behalf, who post their photographs on Zillow to sell their properties, it is Zillow
19 itself that originally posted many of VHT's images to the Digs Site; Zillow who reviews photos
20 saved or selected by users and selects some of them for display to the general public on the
21 Digs Site; and it is Zillow itself who marks properties "sold" or "off market" but nonetheless
22 leaves the photographs of those properties on the Listing Site, making no effort whatsoever to
23 remove those images from either the Digs Site or the Listing Site once properties are sold.
24 Zillow induces users to post images to the Digs Site; it uses or plans to use those images to
25 induce advertisers and investors to fill Zillow's coffers with advertising revenue; and it tags and
26 groups the photographs and pastes promotions for third-party vendors directly on top of VHT's
27 images. Zillow cannot blame others for its own brazen theft.

1 14. Defendant Zillow, Inc. is a Washington corporation with its principal place of
2 business in Seattle, Washington. Zillow claims to be the leading online real estate purchase,
3 sale and rental marketplace. It also claims to have partnered with the owners of over 180
4 newspapers and with Yahoo! Real Estate to create the largest real-estate advertising network on
5 the web.

6 15. Defendant Zillow Group was formed in 2014, following the announcement of
7 the planned merger of Zillow, Inc. and Trulia, Inc. (“Trulia”). Zillow Group is a Washington
8 corporation, with its principal place of business in Seattle, Washington. Following the closing
9 of the merger transaction on or about February 17, 2015, Zillow Group owns 100% of the stock
10 of both Zillow, Inc. and Trulia. The Listing Site and the Digs Site that are the subject of this
11 action are controlled by Zillow, Inc. On information and belief, Zillow, Inc. is currently a
12 wholly-owned subsidiary of Zillow Group, which controls or has the power to control Zillow,
13 Inc. with respect to the operation of the Digs Site and the Listing Site.

14 **FACTUAL BACKGROUND**

15 **A. VHT’s Business Model**

16 16. VHT is the leading full-service provider of visual marketing services specially
17 designed for the real estate industry. VHT serves over 75,000 real estate professionals
18 nationwide by commissioning high quality photographs of properties that listing agents and
19 brokers have listed for sale, and then licensing them the right to use to those photographs to
20 market the properties for sale.

21 17. When a real estate broker or an individual agent prepares to put a house on the
22 market, one of the first and most important steps she or he needs to undertake is to obtain
23 photographs of that property. In today’s world, nearly every home buyer begins their search on
24 the Internet rather than in person, which makes having high-quality photographs of the property
25 a paramount concern for home sellers and their listing agents and brokers. In order to attract
26 buyers, listing agents and brokers need photographs that are attractive, and that effectively use
27 lighting and camera angles to best showcase the property. The properties must be

1 photographed thoroughly, covering interior and exterior spaces, and highlighting the positive
2 features that are unique to each property.

3 18. To achieve these results, listing agents and brokers need photographs taken by
4 experienced professional photographers. Many agents and brokers turn to VHT to provide
5 them with professional photographs of the highest quality. VHT has invested considerable
6 resources in building a network of reliable, highly-skilled photographers, who are independent
7 contractors. Not only must these professionals be talented and experienced photographers,
8 knowledgeable about real estate and capable of taking high-quality images, they also must be
9 extremely trustworthy. People allow photographers into their homes because they recognize
10 that photographs are crucial to selling a property in today's Internet-driven marketplace, and
11 listing agents and brokers rely on VHT's trusted network to insure that this process is
12 conducted in a secure and professional manner. Therefore, VHT conducts background checks
13 on and/or otherwise investigates each of the photographers it contracts, reviews their portfolio
14 of work, and provides training for them.

15 19. The photographers receive a monetary payment from VHT for each shoot they
16 conduct and, in exchange, all photographs they take of the properties are owned by VHT.
17 Under the terms of the photographers' contracts, these photographs are created as works-for-
18 hire for VHT's benefit and subject to its ownership. For the avoidance of doubt, the
19 photographers also assign any arguable rights in those photographs to VHT by contract. Thus,
20 VHT owns all copyright interest in and to all of these photographs.

21 20. VHT takes these pains to obtain and retain ownership of its photographs for
22 good reason. The professional-quality photographs of real property it commissions are the
23 primary asset VHT owns, and the entire basis of its business model. VHT invests substantial
24 resources to that end, including but not limited to creating and maintaining its network of
25 photographers, the relationships it has cultivated with listing agents and brokers, its state-of-
26 the-art post-production facility and its sophisticated website. VHT has invested these resources
27 and years of "sweat equity" into creating this system, not just so it can license the photographs

1 to listing agents and brokers, but also because each of the photographs in its database has
2 additional, independent value beyond its initial use to market property listed for sale.

3 21. VHT places a copy of the photographs it commissions, owns and selects for
4 dissemination (as described below) into a master database that currently contains more than 4
5 million unique images of the interiors and exteriors of residential properties. The photographs
6 are extremely high-quality, professionally taken and digitally finished to meet the highest
7 aesthetic standards. VHT believes that its database is the largest of its kind in the country.

8 22. The millions of photographs in the VHT database have significant monetary
9 value, both individually and as a collective whole. Professional photographs like those in
10 VHT's database are in high demand in the marketplace and are used everywhere, from listing
11 agents' and brokers' active property listings, to television shows, to magazines, to websites.

12 23. It is for this reason that VHT grants all but one of its brokerage clients only a
13 non-exclusive license to use the photographs for the narrowly limited purpose of marketing the
14 specific properties they depict and the listing broker, and then only while those properties are
15 on the market. VHT retains ownership of the copyright in these photographs so it can realize
16 the full fruits of its labors by licensing the photographs in its database, either collectively or
17 individually, to third parties for a myriad of other purposes.

18 24. But VHT has been, and continues to be, deprived of the fruits of those labors
19 because Zillow has been stealing its photographs *en masse* and illegally using them for its own
20 profit and gain, as hereinafter detailed.

21 **B. Creation of VHT's Photographs**

22 25. The process begins when a listing agent or broker contacts VHT and requests
23 photographs of a particular property. VHT then sends one of its photographers to the site of the
24 property to do the photo shoot, capturing high-quality images of both the interior and exterior
25 of the property.

26 26. VHT maintains its own state-of-the-art production studio. Once a photographer
27 transmits to VHT the photographs of a particular property s/he has been commissioned to take,

1 the VHT studio then selects the best of them and digitally edits and enhances those images
2 selected for aesthetic purposes.

3 27. When the photographs are ready for dissemination, high-resolution digital
4 copies are uploaded to the VHT website, where they can be accessed by the listing agent or
5 broker licensed to use them to market the subject property. A typical shoot results in
6 approximately 16 finished, high-quality photographs of each property. Prices paid by VHT's
7 customers vary, but generally range from \$60-\$600 per property or \$10 to \$100 per
8 photograph.

9 **C. VHT's Copyright Registrations**

10 28. Given the unique and valuable nature of its photographs, VHT takes all steps
11 necessary to protect its rights in and to those photographs.

12 29. Because of the sheer volume of photographs at issue—over 4 million images in
13 its database to date – VHT registers its copyrights in those images (both individually and as a
14 whole) by filing periodic group registrations with the United States Copyright Office. It began
15 filing its applications to register the photographs in its database in January of 2014. As VHT
16 continues to create new photographs, it has been filing additional registrations, generally on a
17 quarterly basis. In addition, because these photographs have independent economic value to
18 VHT long after the property has been sold, in 2014, VHT also filed applications to register
19 many of the photographs that were already in its database before it started filing on a periodic
20 basis. As of today, VHT has filed applications to register photographs in its database created
21 from the beginning of 2010 through the end of the second quarter of 2016. True and correct
22 copies of the applications for VHT's registrations filed through the end of the second quarter of
23 2016 are annexed hereto as **Exhibits 1-14**.

24 30. Although the Copyright Office initially denied eight of VHT's applications on
25 technical grounds, VHT requested reconsideration, as permitted by Copyright Office
26 procedures. On reconsideration, the Copyright Office determined that it would reverse the
27 denials of some of those applications and issue registrations in due course, and subsequently

1 issued registrations for eleven of VHT's fourteen total applications; the remaining three are still
2 under consideration on review, again on technical issues only. True and correct copies of the
3 granted registrations are annexed hereto as **Exhibit 15**.

4 31. While the request for reconsideration was pending, on April 18, 2016, VHT
5 served notification of the pendency of this action on the Copyright Office, pursuant to 17
6 U.S.C. 411(a) and 37 C.F.R. § 205.13. The sixty-day deadline imposed by those provisions for
7 the Copyright Office to appear in this action passed on June 17, 2016 but the Office did not
8 elect to appear. If and to the extent any of the registrations on the three remaining applications
9 do not timely issue, VHT will ask the Court to determine registrability as expressly provided
10 for in 17 U.S.C. 411(a).

11 32. VHT has duly maintained the copyrights that it has registered and applied to
12 register with the Copyright Office, which provide valid and subsisting copyright protection for
13 each of the photographs therein.

14 **D. VHT's Licensing of Images for Use In Marketing Properties Listed for Sale**

15 33. Listing agents and brokers either hire VHT on a project-by-project basis, or
16 enter into longer-term umbrella agreements with VHT under which they automatically contract
17 with VHT to provide photographs of some or all new properties the agent or broker represents;
18 VHT grants the listing agent or broker a non-exclusive license that gives them the right to use
19 the photographs to market that property for sale. (The *only* exception is one brokerage agency
20 which, by agreement, owns the copyright in the photographs of its listings. Those photographs
21 are not the subject of VHT's copyright applications, are not maintained in the VHT database,
22 and no allegation of copyright infringement of that brokerage's photographs is made herein).
23 (*see* ¶ 8 and Exhibits 15-16).

24 34. The umbrella agreements provide that VHT licenses the photographs to the
25 listing agent or broker for the limited purpose of "the sales and marketing of the subject
26 property or the company/agent representing the property." The scope and term of this umbrella
27 license, both for marketing the property and for marketing the agent "representing" the

1 property, is, by definition, limited to the time while the property is on the market and the agent
2 is trying to sell it.

3 35. For those listing agents and brokers who contract with VHT on a one-off basis,
4 the Terms of Use on the VHT website govern their use of the VHT images. Those Terms of
5 Use provide that “[a]ll images and media (‘Content’) created by VHT is the sole property of
6 VHT. VHT retains ownership and licensing rights to all Content. Content is made available to
7 clients for property specific marketing purposes only. Any publication of content for non-
8 specific property marketing purposes is strictly prohibited by law without the express written
9 consent of VHT.” See <https://www.vht.com/Terms-Of-Use.aspx>.

10 36. The listing agents and brokers then incorporate VHT’s photographs into their
11 property listings and, in many cases, send those listings to Multiple Listing Services
12 (“MLS’s”). MLS’s are database services that aggregate property listings for the convenience of
13 real estate industry professionals. Generally speaking, listing agents and brokers pay
14 membership dues to join an MLS, which allows them to upload all of their new listings to the
15 MLS’s database. Some MLS’s then serve as a “middleman” by bundling a large number of
16 listings together and transmitting them to consumer-facing real-estate websites such as Zillow,
17 and to other brokers.

18 37. In many cases, MLS’s feed their aggregated listings to an additional
19 “middleman” such as ListHub, which has been described as a “listing syndicator.” ListHub
20 receives the data feeds from many different MLS’s and aggregates them into an even larger
21 bundle of listings, which it then provides to consumer-facing websites such as Zillow in a daily
22 “feed.” There are approximately 800 separate MLS’s in the country, many of which ultimately
23 feed (whether through ListHub or directly) into consumer-facing sites.

24 38. In this way, the listing agents and brokers are able to utilize VHT’s photographs
25 for the licensed purpose, *i.e.*, to market their properties for sale.
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1 **E. Independent Economic Value of VHT's Photographs**

2 39. Notwithstanding the group registration of its copyrights, each of the photographs
3 in the VHT database has independent economic value, both on an aggregate basis and/or on a
4 per photograph basis for various purposes, including but not limited to home design, use in
5 television or film, on news, entertainment and social media websites, and on mobile apps;
6 indeed, in virtually any other medium where there is a need for high-quality photographic
7 content.

8 40. Over the past several years, VHT has been approached by various third parties
9 about potential licenses of some or all of its photographs for purposes other than use in active
10 real estate listings, including requests to potentially license the entire database as a resource for
11 websites and other media entities that require a large supply of professional photographs to
12 create visually-striking content for their audiences. In addition, VHT has been approached by
13 TV producers about the possibility of licensing photographs from its database for use on
14 lifestyle and design programs. VHT has also licensed certain of its photos on an individual or
15 small-group basis, including for a coffee table book and a residential community website.

16 41. For example, both HGTV and Better Homes and Gardens have approached VHT
17 about potentially licensing access to its entire database for use in connection with proposed web
18 pages for home design applications, such as remodeling and/or redecorating projects.

19 42. In or around February of 2013, shortly after Zillow launched the Digs Site,
20 Zillow and VHT began discussing the possibility of Zillow licensing VHT's images for use on
21 the Digs Site. Although the negotiations never advanced to the point of monetary offer or
22 demand, the mere fact that Zillow discussed a license with VHT demonstrates *both* that Zillow
23 knew it needed permission to use the photographs on the Listing Site for the Digs Site, and that
24 Zillow recognized that those photographs have independent economic value, either on a
25 database or individual license basis. When Zillow terminated these negotiations in May 2013,
26 it advised VHT that it did not intend to use photographs from the Listing Site on the Digs Site.
27 Yet that is exactly what Zillow did: without obtaining a license from VHT, Zillow used

1 thousands of VHT's photographs on the Digs Site in order to line its own pockets, in willful
2 infringement of VHT's copyrights.

3 43. As more fully described hereinafter, Zillow's own unauthorized use of VHT's
4 images on both the Listing Site and the Digs Site also underscores the independent economic
5 value in each of the photographs. Zillow monetizes many of the VHT photographs which
6 appear on the portions of the Listing Site that do not advertise homes for sale by pairing them
7 with advertisements for real estate agents and brokers who may or may not have ever
8 represented the property, as well as mortgage brokers, home improvement services, and other
9 related businesses.

10 44. Zillow also monetizes some of the VHT photographs which appear on the Digs
11 Site by pairing them with vendors who sell goods and services depicted in, or illustrated by,
12 those photographs; in some cases, Zillow actually implants those promotions directly into
13 VHT's copyright-protected photographs. While Zillow claims that in most cases these are not
14 paid advertisements, it admits that it has or has had paid arrangements with a few vendors and
15 has entered a partnering deal with Amazon to sell other products depicted in these photographs.
16 Upon information and belief, Zillow plans and intends to solicit many more paid
17 advertisements for the Digs Site and to monetize the site in other ways.

18 **F. Zillow's Overall Business Model**

19 45. Zillow, founded in 2005, features a "database of more than 110 million U.S.
20 homes - including homes for sale, homes for rent and homes not currently on the market." *See*
21 <http://www.zillow.com/corp/About.htm>. Many of those homes are included in its Listing Site.

22 46. Until recently, Zillow paid ListHub a fee to receive its feed of listings, but its
23 agreement with ListHub ended in April 2015 and, upon information and belief, Zillow now
24 obtains the bulk of its listings directly from MLS's or from individual listing agents or brokers.

25 47. Zillow has been on an aggressive campaign to consolidate and indeed
26 monopolize the market for online real estate listings. In April 2011, it acquired Postlets, an
27 online real estate listing creation and distribution platform. In November of that year, it

1 acquired Diverse Solutions, which provides technology and websites to real estate
2 professionals. In May 2012, it acquired Rent Juice, an online real estate marketplace for rental
3 listings. Next, Zillow acquired Buyfolio, a real estate shopping and collaboration platform in
4 October 2012. The very next month, it acquired both Mortech, a mortgage technology
5 company, and Hot Pads, which provides real estate listings on a map-based web interface.
6 Continuing its path to domination, in August 2013 Zillow acquired Street Easy, an online real
7 estate sale and rental marketplace for New York City. Then in July of 2014, it acquired Retsly,
8 which helps developers access data from MLSs. In February 2015, Zillow purchased Trulia, its
9 biggest competitor for \$3.5 billion. According to the *New York Times*, the new combined
10 entity, Zillow Group, will now have 137 million users, controlling 61% of the Internet market
11 for the real estate listings category, and “will dominate the traffic for online home listings.”³

12 48. As described above, VHT licenses its photographs to listing agents and brokers
13 for the limited purpose of marketing the subject properties and, in some cases, the broker
14 representing that particular property. They in turn incorporate the photographs into their real
15 estate listings, which they then transmit, individually or through the MLS’s and/or ListHub, to
16 consumer-facing websites such as Zillow. Because Zillow is by far the most prominent
17 consumer-facing real estate website, VHT’s photographs are routinely posted to Zillow’s
18 Listing Site as part of listing agents’ and brokers’ efforts to sell the properties depicted. There
19 are literally tens of thousands of VHT-owned photographs appearing on Zillow’s Listing Site at
20 any given time, many of properties that have already been sold.

21 **G. Zillow’s Listing Site**

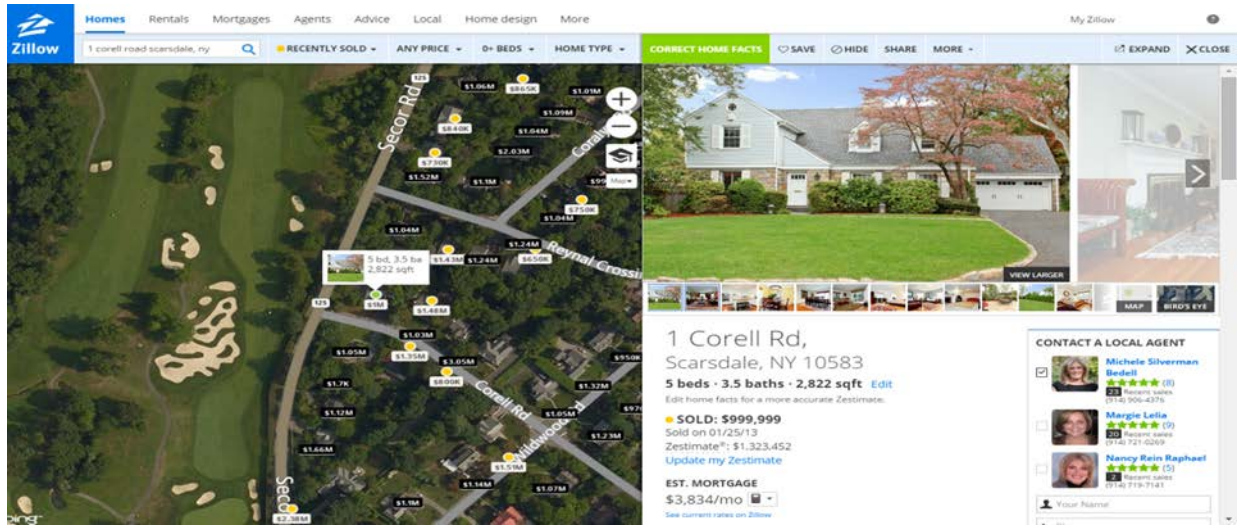
22 49. Zillow’s Listing Site is a searchable database of property listings that consumers
23 can search by inputting their desired specifications (such as price range, location, number of
24 bedrooms, etc.). Zillow then provides users with lists of properties matching those
25 specifications. For each property, Zillow displays relevant information, such as asking price,
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27 ³ Michael J. De La Merced, *The New York Times*, July 28, 2014, http://dealbook.nytimes.com/2014/07/28/zillow-to-buy-trulia-for-3-5-billion/?_r=0.

1 square footage and amenities, and allows consumers to contact the listing agent directly.
2 Zillow also offers a mobile app that provides substantially the same services.

3 50. The most prominent feature of the Listing Site is the display of multiple
4 photographs of each of the listed properties. On information and belief, it is these photographs
5 that attract users to the Zillow website.

6 51. Each listing on the Zillow Listing Site has several medium-sized photographs of
7 the property displayed prominently at the top, as well as numerous smaller, thumbnail-sized
8 photographs below. Users can scroll through the photographs in slideshow format and click on
9 any of them to enlarge it so that it nearly fills the entire screen. Here is an example:



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19 52. Alongside each listing, Zillow displays a menu of other, similar properties, each
20 one also accompanied by thumbnail photographs. Clicking on those thumbnails takes the user
21 to the listing page for that property where there are still more photographs, each of which can
22 likewise be scrolled through and enlarged.

23 53. Zillow does not charge consumers to shop for real estate on its Listing Site.
24 Rather, as its CEO recently admitted, Zillow makes its money primarily from advertising.
25 Agents and brokers who pay for ads on Zillow's Listing Site are advertised all over that Site,
26 not just next to listings of properties those agents and brokers represent. Many times, the name
27 and face of an agent or broker who has paid Zillow for advertising will appear next to a

1 particular property, even though that agent or broker has nothing whatsoever to do with that
2 property. In those cases, the listing agent or broker to whom the listing actually belongs (and
3 who has a license to use the photographs to sell the property) may be identified only in a
4 barely-noticeable position at the bottom of the page.

5 **H. Zillow’s Continued Inclusion of Photographs**
6 **of Sold Properties On the Listing Site**

7 54. Because most MLS’s require that individual listing agents and brokers keep
8 their listings in the feeds up to date, when an agent or broker sells a property, s/he promptly
9 either removes it from the feed or changes the description in the feed to indicate that it is
10 “SOLD.” Thus, the feed that Zillow receives from the MLS’s, the agents, and/or in the past
11 from ListHub, explicitly advises Zillow which of the properties on its Listing Site are no longer
12 on the market.

13 55. Notwithstanding that express notice, Zillow does not remove all of the “SOLD”
14 listings from its site. Instead, Zillow continues to display many of the SOLD listings with the
15 accompanying photographs in an apparent effort to drive further web traffic to its site and to
16 sell more ads. It is readily apparent that the continued appearance of these “SOLD” listings is
17 not the result of some automated process by which any data that comes in through the feeds is
18 automatically posted to Zillow; to the contrary, in some cases, Zillow appears to take
19 affirmative steps to remove the listing agent’s or broker’s name from appearing on the property
20 detail page (except when buried in a hidden Price/Tax History portion of that page), and yet
21 fails to remove the listings or the photographs of the sold property, even when they have been
22 removed from the feeds.

23 56. Zillow well knows that VHT owns the copyright in all of its photographs and
24 that VHT licenses listing agents and brokers to use the photographs solely for marketing of the
25 homes and the agent or broker representing that property. These facts are not only widely
26 known in the real estate industry, but VHT has expressly informed Zillow of those facts.
27 VHT’s ownership of the copyrights was central in the discussions between VHT and Zillow

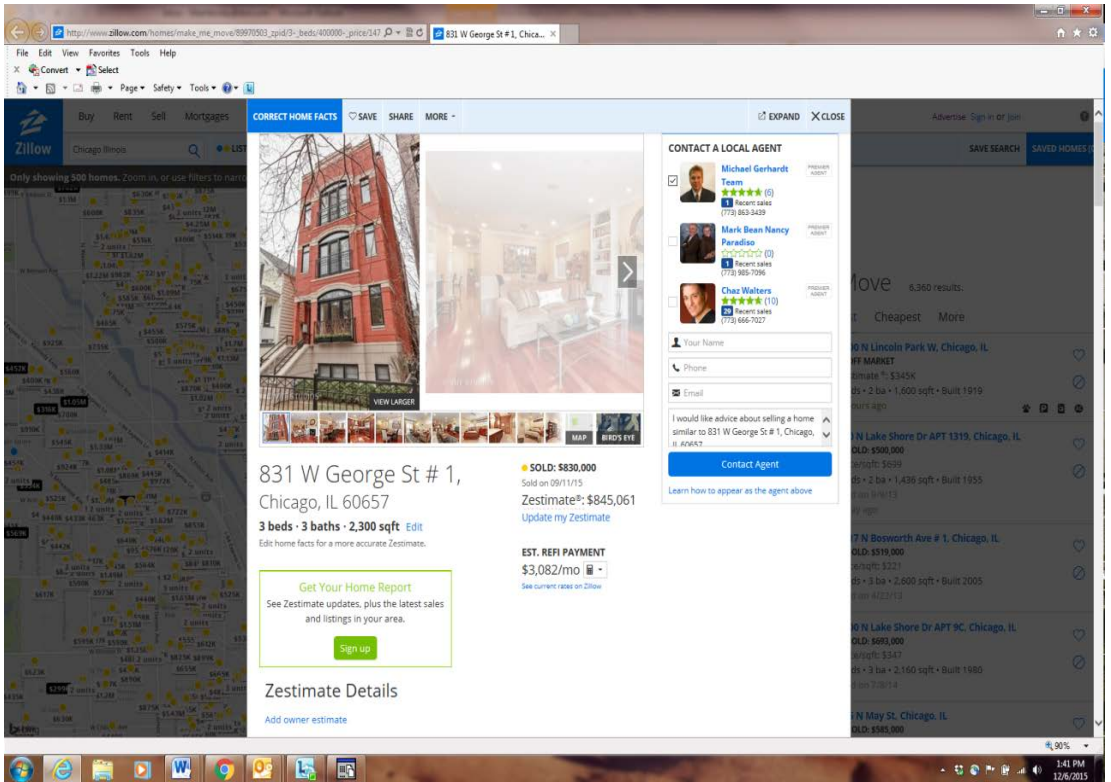
1 back in the spring of 2013 about potentially licensing VHT images for use on the Digs Site, and
2 VHT reiterated that point and highlighted the limitations on the licenses it grants to listing
3 agents and brokers in letters from its counsel to Zillow detailed hereinafter.

4 57. Nonetheless, Zillow continues to date to use photographs owned by VHT in
5 listings for properties that were sold weeks, months, or even years ago, even after notice and
6 after the filing of the original complaint in this action. These uses of the photographs cannot
7 serve to market or advertise the properties that are pictured because the properties have already
8 been sold and there is no longer a listing agent or broker “representing” that property. To the
9 contrary, Zillow appears to be selling advertising space to other agents and brokers, not the
10 listing agent or broker who had the listing, and features those advertisements alongside the
11 subject photographs.

12 58. Zillow has also created an entire section of the Listing Site that is specially
13 dedicated to displaying images of homes that have already been sold: Recently Sold Homes.
14 Once a user has entered her zip code or address into the search box on the Zillow home page,
15 she is directed to a screen that contains a menu, allowing her to choose from options such as
16 “For Sale By Owner,” “For Sale By Agent,” “Foreclosures” or “For Rent.” Among these
17 choices is an option for “Recently Sold.” When the user checks the box marked “Recently
18 Sold,” she is directed to a page that consists entirely of homes that have already been sold and
19 that therefore are not on the market. Users can then click on any of the images associated with
20 the sold properties, many of which are owned by VHT, and enlarge them in the same way as
21 any other photo on the site.

22 59. Zillow’s purpose in maintaining a section of the Listing Site dedicated to
23 showcasing photos of properties that have already been sold is clear, and it is decidedly *not* to
24 promote these properties or the listing agents and brokers who sold them. A cursory look at
25 one of the pages Zillow has created for these sold properties reveals the true purpose: selling
26 advertising to third parties.

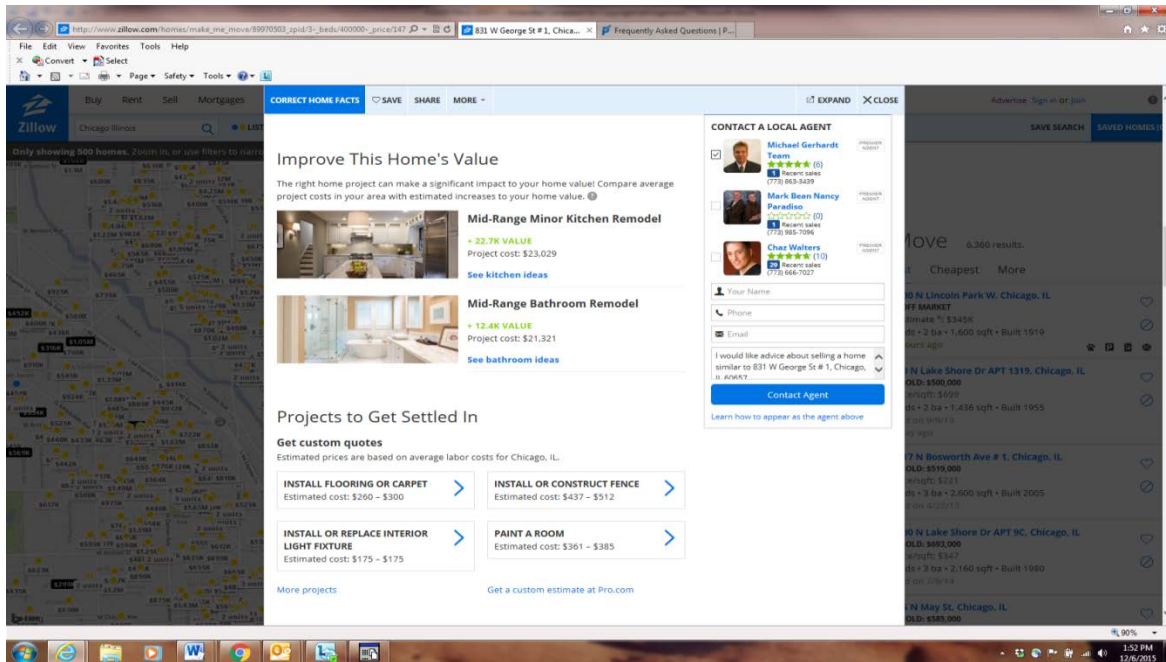
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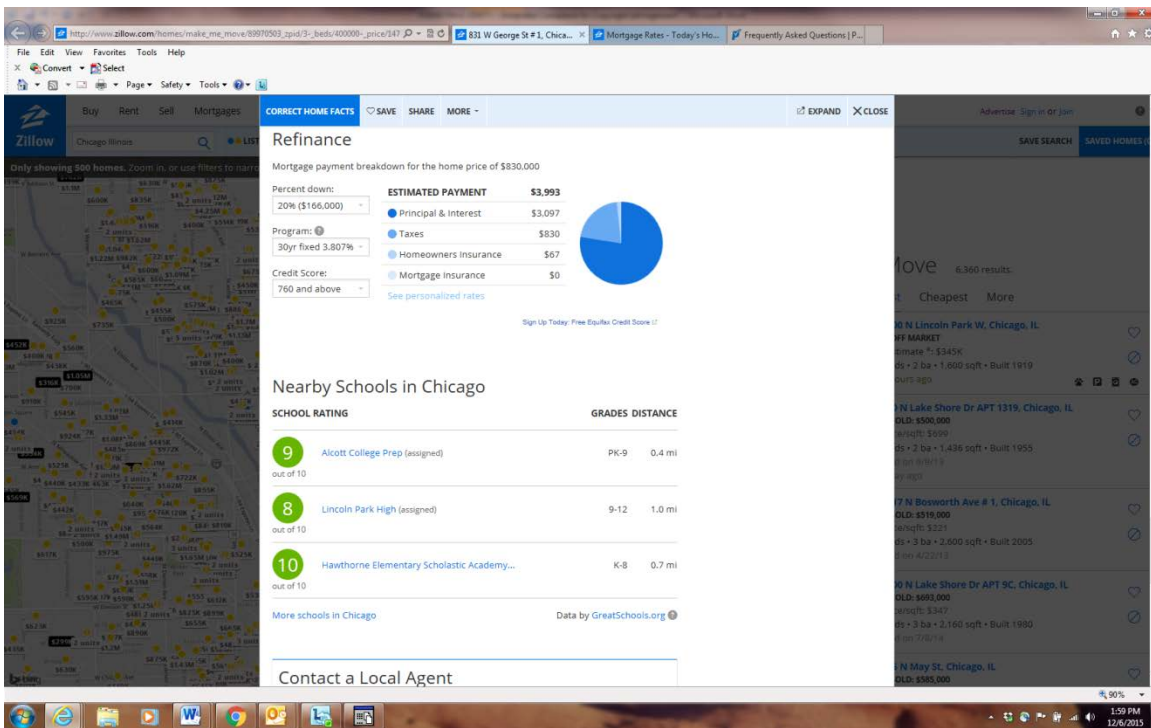
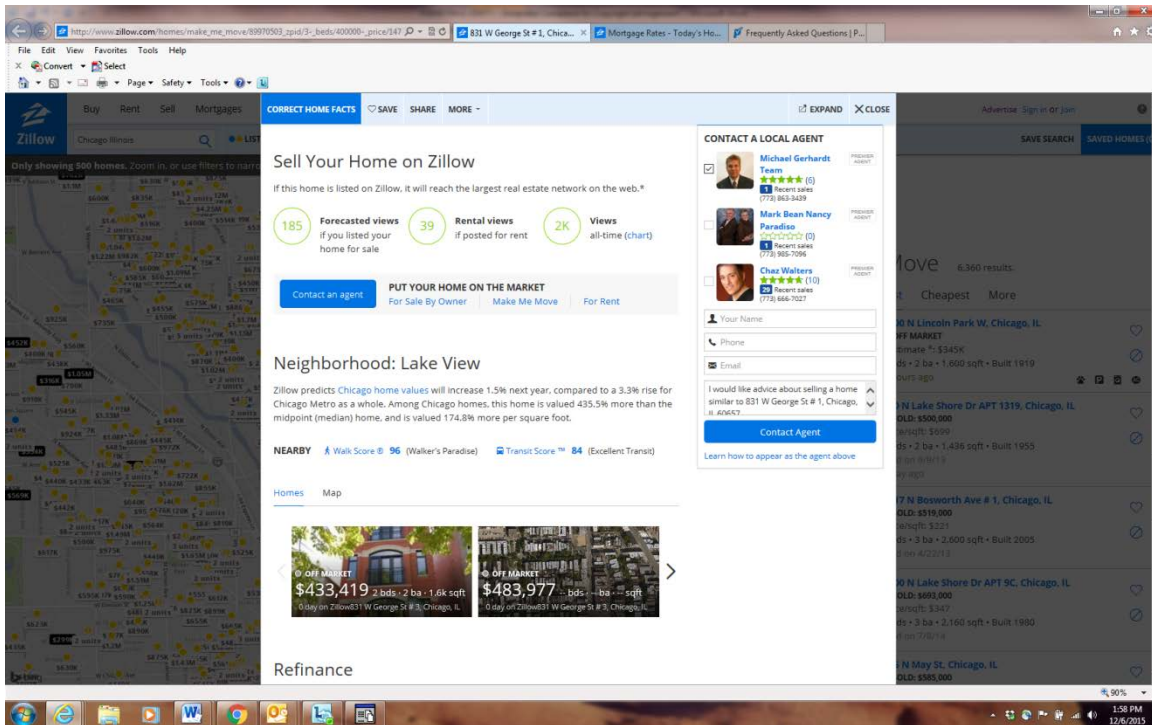
60. VHT licensed the photos used in the listing above to real estate agent Paul Barker with Baird & Warner-Lincoln Park. The use of the photographs cannot serve to market this property, as it sold in September of 2015 and is not currently on the market. Zillow appears to recognize this fact by encouraging viewers to contact agents (not Mr. Barker) *not* to buy this home, but rather in search of “advice about *selling* a home *similar to*” the listed property. Similarly, the use of the photos cannot serve to market Mr. Barker, as his name does

1 not appear on this portion of the Listing Site, and can only be found buried in the hidden
2 Price/Tax History portion of that page.

3
4 61. By scrolling down through this listing, the viewer sees advertisements for Zillow
5 Digs and, on information and belief, paid advertisements for remodeling services:



18
19 62. Further scrolling reveals links encouraging homeowners to list their home for
20 sale with Zillow-approved real estate agents, and to refinance their property, with a link to
21 Zillow's mortgage listing tool. On information and belief, both real estate agents and mortgage
22 brokers pay Zillow to be listed on these sites. The page also includes advertisements for other
23 real-estate related businesses.



63. Zillow's use of VHT's photographs on listings of properties which are not for sale thus markets real estate agents, mortgage brokers, home remodelers, and Zillow Digs, but not the property itself nor the agent or broker who represented it. This is another blatant

1 example of Zillow’s deliberate use of images owned by VHT in manner far outside the scope of
2 VHT’s license for Zillow’s own profit without compensating the copyright owner.

3 64. In addition, Zillow uses VHT photographs in its “Make Me Move” function,
4 another option that a user can select from the menu described above, which directs the user to a
5 page full of properties, none of which are on the market. Instead, these are homes for which
6 “the owner(s) set a ‘dream price’ - a price they'd be willing to sell it for, as well as to test the
7 waters and gauge interest.” A dialogue box prompts the user to email the owner of the home to
8 “find out more” about the property. While the use of VHT’s photos in this section may, in
9 some cases, result in owners of the properties putting their properties on the market, those
10 property owners do not own the *copyright* in the images and have no license to use them.
11 VHT’s license extended only to the listing agents and brokers who earlier represented the
12 property and only while they had the listing. Yet their names and contact information appears
13 nowhere on the “Make Me Move” pages.

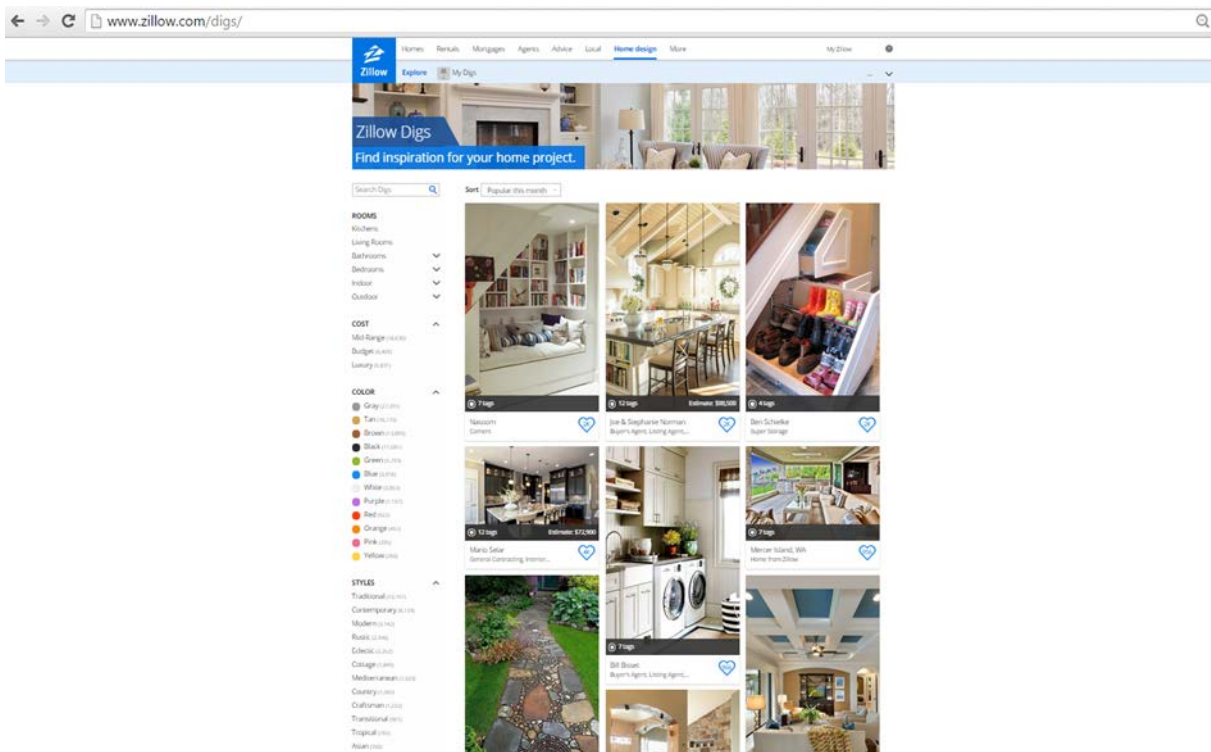
14 **I. Zillow Digs**

15 65. In or around February of 2013, Zillow first introduced the Digs Site, a home
16 design section of its website that is separate from its Listing Site. Unlike the Listing Site,
17 which is devoted to listing properties for sale and advertises brokers and listing agents offering
18 similar properties, Digs is not designed for or aimed at the marketing of real property in any
19 way. Rather, Zillow touts Digs as a place where users can go to “[f]ind inspiration for your
20 home project.” <http://www.zillow.com/digs/>.

21 66. Zillow has launched an aggressive marketing campaign to promote Digs,
22 including but not limited to promotional efforts by Zillow on Facebook and Pinterest. Zillow
23 also encourages its users to share photos from Digs on social media. Consequently, images
24 from Digs also appear on a wide variety of highly-trafficked sites and mobile applications such
25 as Twitter, Tumblr and Instagram.

26 67. The home page of Zillow.com features a link at the top of the page labeled
27 “Home Design,” which leads users to the Digs Site.

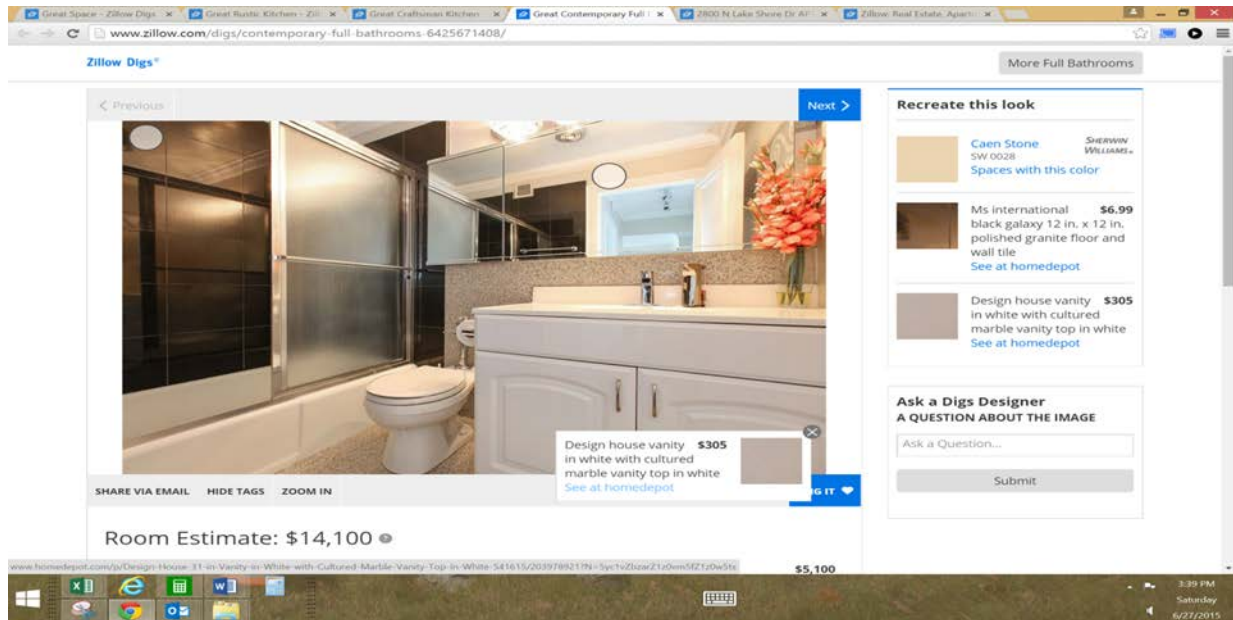
1 68. Once a user clicks on that link, s/he is directed to the main landing page of the
2 Digs Site where s/he sees a screen filled with medium-sized photographs of all different
3 elements of home design. The user can scroll through thousands upon thousands of
4 photographs grouped by Zillow to depict various elements of home design—everything from
5 roofs to bathroom fixtures to kitchen tables, to chandeliers to dining room chairs to marble
6 countertops. For example:



20 69. A menu on the left side of the Digs landing page allows the user to refine their
21 search in various ways. For example, a user can search for only “kitchens” or only items in a
22 “mid-range” budget, or only items in the “art deco” style.” The top of the page also has a
23 “search box” which allows users to enter their own search terms.

24 70. The user can click on the images to view larger versions which appear centered
25 on a new screen page. Whenever a user clicks to view an enlarged photograph, s/he becomes
26 the target of advertisements or promotions that have absolutely nothing to do with the
27 marketing of the homes depicted in the photographs. These advertisements or promotions

1 appear in at least two different forms on the Digs website, both of which appear in the
2 following screenshot.



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14 71. First, Zillow has affixed small bubbles to targeted areas of many of the enlarged
15 photographs, indicating where a particular product can be seen in the image. For example, a
16 picture of a bathroom might have bubbles marking the cabinets, the paint on the wall and tile in
17 the shower. When a user clicks on the bubble, a box appears showing the name of the product,
18 the price and a link to where users can buy the product directly from a vendor.

19 72. Second, to the right of the enlarged photo, under the heading “Recreate this
20 look”, Zillow posts a list of vendors with prices and links to those vendors’ websites,
21 advertising and promoting those vendors.

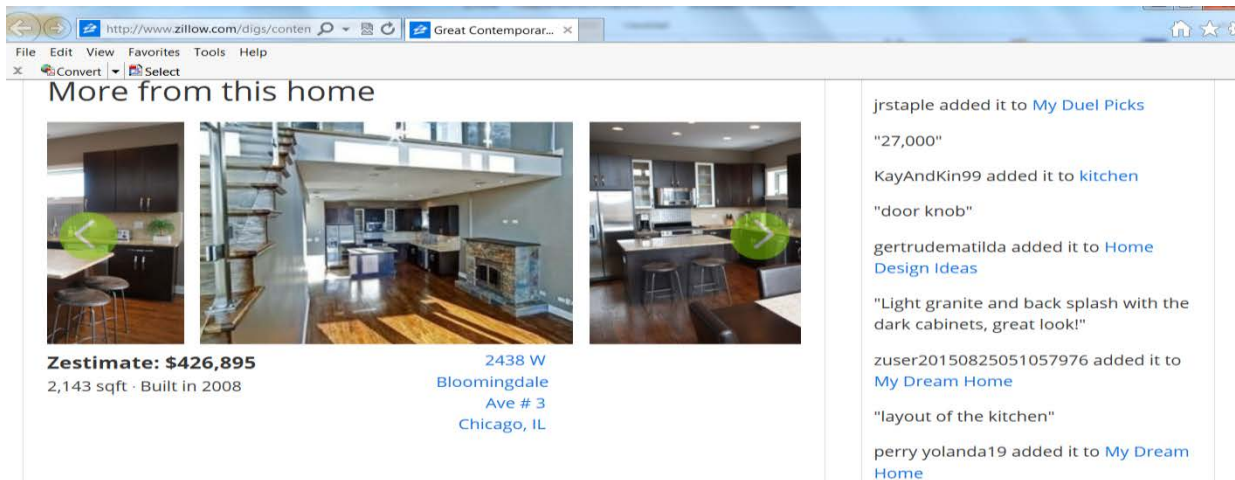
22 73. Zillow has publicly admitted that it has hired a team of designers to go through
23 each photograph individually and insert the advertising bubbles, which it calls “product tags,”
24 onto the copyright-protected photographs.⁴ Zillow can thus advertise or promote vendors based

25
26 ⁴ March 18, 2015 Zillow Press Release, “From Inspiration to Realization: Zillow Digs Now Helps Consumers Find
27 Products Similar to Those Featured In Popular Home Design Photos.” Available at
<http://zillow.mediaroom.com/2015-03-18-From-Inspiration-to-Realization-Zillow-Digs-Now-Helps-Consumers-Find-Products-Similar-to-Those-Featured-In-Popular-Home-Design-Photos>.

1 on items that are depicted in the particular photograph, and their advertisements will then
2 appear each time future users see the photograph on the Digs Site.

3 74. Zillow has carefully designed the Digs Site as a tool for it to sell advertising
4 space, generating advertising revenue for itself from sources other than those trying to sell or
5 rent out real estate. On information and belief, these features of the Digs Site have been
6 intentionally designed to encourage browsing (and shopping). The more photographs on the
7 site to browse, the longer users are likely to stay on the site, and thus Zillow can sell more ads
8 at higher prices to vendors advertising the wares shown in the photographs or to others who
9 advertise on the Zillow platform.

10 75. Many of the images that Zillow displays on Digs are accompanied by
11 **additional**, smaller-sized photos from the same property as the featured image, under the
12 heading “More From This Home.” Although, upon information and belief, users who click on
13 the “More From This Home” photos are directed back to the Listing Site’s page for the subject
14 property, many users will, out of curiosity, look at the images distributed to and displayed on
15 the Digs Site, but never bother to click through, and therefore never see the page that actually
16 markets the home (assuming that it is still even on the market). Instead, the “More From This
17 Home” feature simply allows Zillow to use still more high-quality photographic images
18 belonging to VHT as an additional draw of user eyeballs to the Digs platform, increasing its
19 value to Zillow’s advertisers and investors.



1 76. On information and belief, Zillow also uses a practice called Search Engine
2 Optimization (“SEO”) so that Zillow’s links will be more prominently or more highly
3 displayed in results on search engines such as Google. Having a large number of professional
4 quality photographs on its site, with accompanying descriptions of the features in those
5 photographs, regardless of whether the photographs are actually being used to market
6 properties, necessarily increases Zillow’s ranking in search results. It has been publicly
7 reported that “Zillow dominates SEO in the real estate space.”⁵ On information and belief,
8 Zillow touts its high-ranking position in web searches, driven in large part by its huge database
9 of copyright-protected photographs owned by others, including VHT, to its investors and
10 advertisers.

11 **J. The Digs App**

12 77. Separate and apart from the Digs platform on the Zillow website (referred to
13 herein as “Digs Desktop”), Zillow also offers a mobile application by which users can access
14 Digs on their iPads and iPhones (the “Digs App”). The Digs App provides functionality that is
15 very similar to that of Digs Desktop, featuring the same types of advertisements, including both
16 advertising bubbles and “recreate this look” links to vendor websites.

17 78. In addition, the Digs App offers a game that users can play using the
18 photographic images on Digs, called “Dueling Digs.” In the game, users are asked to pick their
19 favorite example of an image from a particular category – for example, their favorite “cottage
20 kitchen” – and Zillow displays two different photographs of kitchens from the Digs database;
21 the user is invited to eliminate whichever image she likes the least and the remaining image is
22 the “winner” of the “duel.” The rejected image is automatically replaced with a new image
23 which again faces off against the “winning” image. After several rounds of round-robin, the
24 tournament ends and the user is invited to type comments into a dialogue box explaining their
25 choice, or to “share” their “favorite” with other users.

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27 ⁵ Rohin Dhar, “The SEO Dominance of Zillow,” Pricenomics.com (Nov. 6, 2014). Available at
<http://pricenomics.com/theseodominanceofzillow/>.

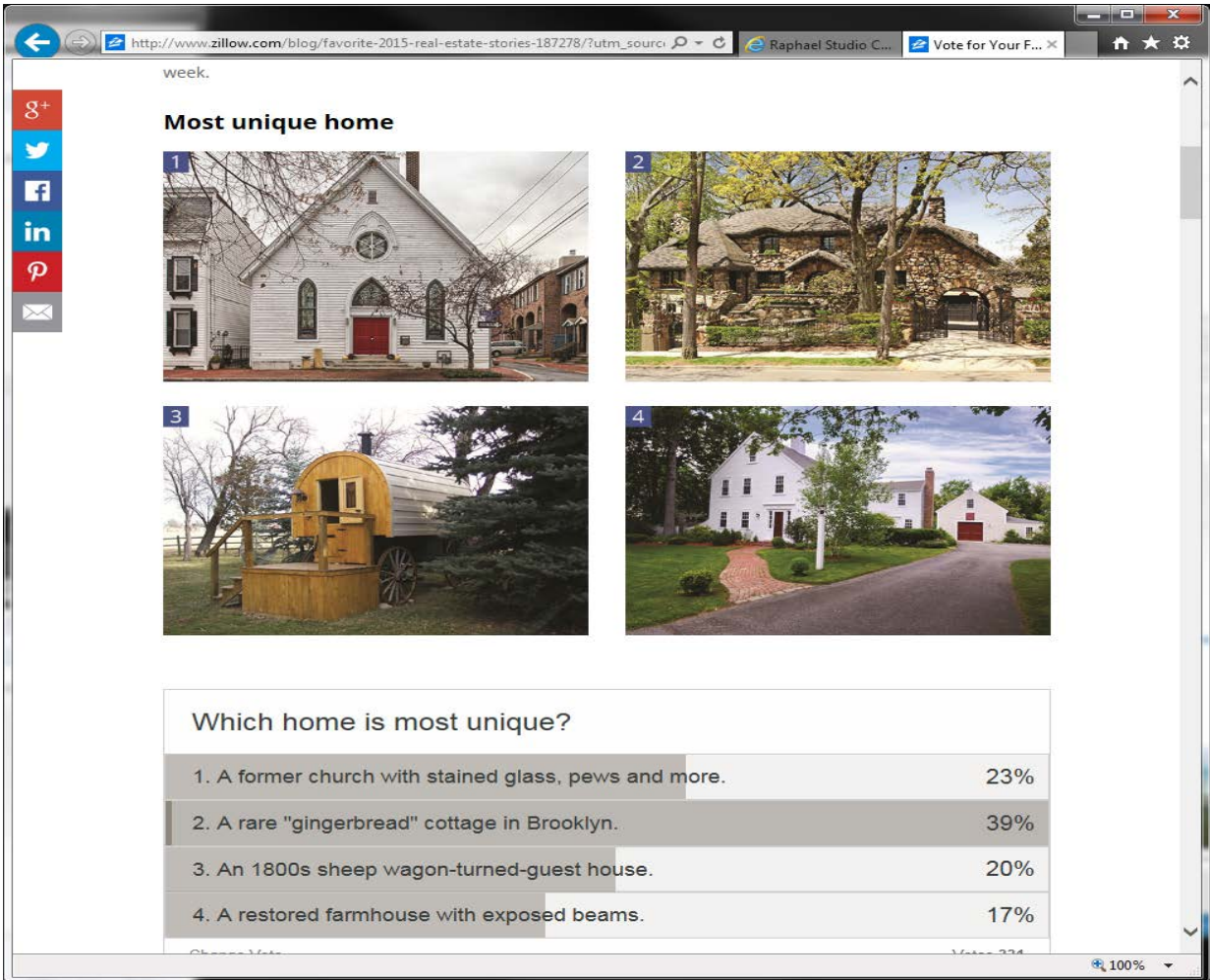
1 79. The “Dueling Digs” game provides no opportunity whatsoever for users to view
2 the underlying real estate listings from which the copyright-protected photographs have been
3 taken. And like the rest of the Digs Site, the game has nothing whatsoever to do with
4 marketing the underlying properties. It serves only as a means to keep people using the Digs
5 App, remaining in the Zillow online universe, and thereby increasing the number of eyeballs
6 for which Zillow can charge its advertisers. Indeed, Zillow itself has publicly boasted that “the
7 Zillow Digs iPad App experiences 10 times the page views per session versus the desktop.”⁶

8 80. On information and belief, every time one of VHT’s copyrighted photographs
9 appears on the Digs App, Zillow makes and distributes another copy of the infringing
10 photograph.

11 **K. Zillow’s Other Uses of VHT’s Photographs**

12 81. In addition to Digs and the Listing Site, Zillow uses VHT’s photographs in a
13 variety of ways which drive web traffic to Zillow without marketing the home for sale or the
14 agent who represents it. For example, Zillow’s blog recently featured an online poll to
15 determine which home was the “Most Unique”:

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27 ⁶ May 15, 2013 Zillow Press Release, “Zillow Digs' User-Generated Content Drives Rapid Growth.” Available at
<http://zillow.mediaroom.com/2013-05-15-Zillow-Digs-User-Generated-Content-Drives-Rapid-Growth>.



82. VHT owns the photograph of home #2, which ended up winning Zillow’s poll. At the time this poll appeared, that property was not for sale and the use of the photograph in Zillow’s online poll therefore could not market it. On information and belief, this poll – including VHT’s photograph – was emailed to thousands if not millions of people. On information and belief, Zillow’s other blog posts, email blasts, and other marketing efforts similarly use VHT’s photographs. These uses impermissibly take VHT-owned photographs and use them to market Zillow itself, rather than using them to market the homes for sale.

83. In addition, certain photos that Zillow displays have been edited by Zillow using a digital “sharpening” tool, which alters the coloration of individual pixels within the photo in order to increase contrast and decrease blurring. In addition to the copies of the photos that it actually displays, Zillow makes multiple duplicate copies of each image, which it stores in its

1 database. Both the creation of duplicate copies and the alteration of the images to create
2 derivative works thereof are beyond the scope of the limited license granted by VHT.

3 **L. Zillow’s Involvement and Control of Postings on the Digs Site**

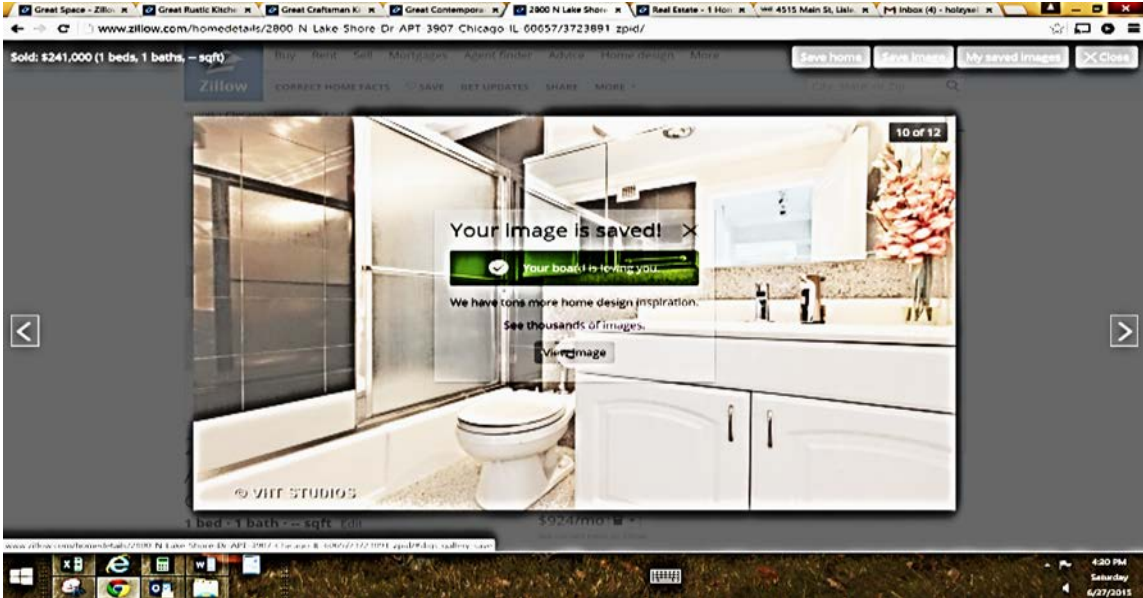
4 84. Photos on the Digs Site appear in one or both of two distinct sections of the site.
5 The first, the “Public Board” is the main, publicly-facing page of the Digs Site. When a user
6 clicks on the “Home Design” button on the Listing Site, which transfers them to the Digs Site,
7 the first thing the user sees is the Public Board. The Public Board consists of thousands upon
8 thousands of photos, any and all of which can be freely viewed by the general public.

9 85. On information and belief, when Zillow launched Digs, it initially populated the
10 Digs Public Board with photographs from the Listing Site. Thus, a vast quantity of the
11 photographs on the Digs Site were selected, copied and displayed by Zillow for uses that it
12 knew or should have known were outside the scope of the limited license the listing agents and
13 brokers had to use those photographs. At some point in late 2013, *after* VHT had expressly
14 told Zillow that the use of VHT-owned photographs on the Digs Site was unauthorized, Zillow
15 began encouraging users of its Listing Site to add photographs to the Digs Site. When an
16 image is added to Digs, whether by users or by Zillow itself, Zillow makes multiple duplicate
17 copies of that image for use on and in connection with Digs that are stored in its database.

18 86. The second section of the site in which photos are displayed is Digs users’
19 “Personal Boards” (also referred to on the Site as “My Digs”). The Personal Boards are
20 webpages within Digs that are curated by a particular user. When a user sees a photo she likes
21 on the Digs Public Board, she need only click a button marked “Dig It” and a copy of the photo
22 is saved to that user’s Personal Board. In addition, since late 2013, when a user views a
23 photograph on the Listing Site, s/he is presented with a button marked “Add to Digs” or “Save”
24 or “Save Image.” If the user clicks on that button, the photograph is then saved directly to their
25 Personal Board on the Digs Site. A user’s Personal Board can also be viewed by that user’s
26 “followers.” That is to say, the photos that a user saves to her Personal Board can be seen by
27

1 anyone else in the general public who sets up a free Digs account and simply clicks a button
2 marked “follow,” indicating that they would like to see content posted by that user.

3 87. Zillow itself also reviews all photos that users have saved from the Listing Site
4 to their Personal Boards and selects those photos that Zillow would like to display to a wider
5 audience. Zillow then reproduces the photos it has selected from the users’ Personal Boards on
6 the Public Board.



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18 88. Since sometime in 2014, Zillow has itself added images by using a process
19 which it refers to as “Implicit” or “Inferred” Digging. Namely, when a user starts to save an
20 image by clicking the “Save” button but does not complete the process by clicking “Save
21 Image to Zillow Digs” or “Add to Board” in the dialogue box that follows, Zillow deems the
22 image to merit further review for possible inclusion on the Digs public board. Zillow’s
23 employees review all such images that are “implicitly dug” in this way, selecting certain of
24 them to import into the Digs public board.

25 89. Zillow tags many of the photos that appear on the Public Board with Digs
26 description tags (e.g., “living room,” “lamps,” “art deco”) that are viewable to all members of
27 the general public who are browsing on the Digs Site. If the user clicks on one of the

1 description tags, s/he is directed to another screen page with still more photographs of other
2 items in that same product category.

3 90. On information and belief, the photographs added to the Digs Desktop by users
4 and/or by Zillow itself are copied and then displayed with corresponding advertising, on the
5 Digs App.

6 91. On all Boards on both the Digs Desktop and on the Digs App, Zillow has the
7 right and ability to control what the users post, and actively induces them to post photographs
8 by providing them with prominently placed buttons urging them to save every photograph,
9 even photographs of homes that have already been sold, and exhorting users to “keep filling up
10 your board,” and reminding them that “tons more” images are available.

11 92. Since Zillow knows that the Listing Site contains tens of thousands of VHT-
12 owned images and that VHT has licensed the use of those photographs solely for the marketing
13 of the subject properties, these exhortations to users are blatant invitations to post infringing
14 content. Indeed, Zillow even brags in the “About” section of its Listing Site that it features
15 photographs of “homes not currently on the market,” so by inviting users to take photographs
16 from its Listing Site and post them to the Digs Site, Zillow is specifically inducing users to post
17 material that Zillow knows is infringing or will be infringing as soon as the home is sold.

18 93. Zillow continues to take active steps to monetize the specific infringing content,
19 even when posted by users. It does not passively host those images, but rather itself actually
20 goes through the photographs to select the ones appropriate for inclusion in the Digs Public
21 Board and to categorize them with its “tags” so that they are searchable by pre-defined groups
22 on the Digs Site, and can be married to advertisements and promotions based on that
23 categorization. In addition, Zillow has publicly admitted it uses a team of human designers to
24 go through the photographs and superimpose the “bubbles” on at least some of the photographs
25 so that users will click on them to see the prices for goods depicted in the photographs, along
26 with links to vendor websites where they can purchase those goods.

1 94. On information and belief, the promotions which appear in the bubbles and
2 alongside the images, are specifically matched to the particular photograph. That is to say, a
3 picture of a kitchen will feature the names of vendors selling kitchen wares; a dining room
4 picture will feature ads for sellers of home furnishings.

5 95. On information and belief, vendors are more likely to advertise their goods and
6 services in connection with photographs that are of sufficient aesthetic quality to induce users
7 to copy or recreate the look depicted in those photographs. The more high-end the vendor, the
8 greater the need for eye-catching, high-quality photographs, and the more money Zillow can
9 charge vendors for related advertising.

10 96. Therefore, Zillow's profits that it has earned and will continue to earn from the
11 advertising on Digs is *directly* attributable to the use of *specific* photographs owned by VHT.

12 **M. VHT's Written Notices to Zillow and Zillow's Knowing and Continuing**
13 **Intentional Infringement**

14 97. On or about July 7, 2014, VHT's then attorneys sent a letter to Zillow
15 demanding that Zillow take down VHT-owned images of sold properties from the Listing Site
16 and take down all VHT-owned images from the Digs Site. The letter expressly advised that
17 VHT owns and retains copyrights in those works and grants a license to its customers for use of
18 the photographs in the sales or marketing of the subject properties, but that no other rights or
19 uses are permitted without VHT's prior written consent, nor are VHT's clients permitted to
20 assign their rights to any third-party without VHT's written consent. Thus, as early as July 7,
21 2014 (and, indeed, earlier than that, by reason of Zillow's February 2013 discussions with VHT
22 about licensing the VHT database for Digs as discussed above), Zillow was on notice of VHT's
23 ownership of these images, the limited nature of the license VHT grants to its customers, and
24 VHT's objection to Zillow's continuing display of those images.

25 98. By letter dated July 21, 2014, then counsel for Zillow responded to that VHT
26 letter claiming, *inter alia*, that it could not evaluate the terms of the licenses without seeing
27 copies of all of them and that "one sale or rental [of a property] does not foreclose additional

1 transactions on that property, and posted photos promote future sales and marketing of the
2 imaged property, and other properties, for the real estate professional”.

3 99. VHT’s then counsel responded by letter dated July 28, 2014, specifically
4 quoting the terms of the license that VHT grants to its customers. Nonetheless, Zillow failed
5 and refused to remove the VHT-owned images from either the Listing Site or the Digs Site.

6 100. Thereafter, the original complaint in this action (limited to the Digs Site) was
7 served on or about July 10, 2015, identifying 316 VHT-owned images that appear on the Digs
8 Site and indicating that the complaint would be amended when, through the course of
9 discovery, VHT was able to identify additional such images that had been and were being
10 infringed.

11 101. Because Zillow took the position that it was entitled to the safe-harbor
12 protections of the Digital Millennium Copyright Act (“DMCA”) with respect to the Listing
13 Site, on or about November 19, 2015, counsel for VHT dispatched a letter demand, identifying
14 thousands of URLs with VHT-owned images on the Listing Site, depicting properties which
15 had already been marked sold or off the market. (That letter expressly stated that it was being
16 dispatched without waiver of VHT’s position that Zillow was not entitled to the safe-harbor
17 protection of the DMCA.)

18 102. By letter dated December 2, 2015, counsel for Zillow responded, reiterating
19 Zillow’s position that it was in fact entitled to the protections of that safe-harbor and rejecting
20 VHT’s contention that its use was outside the scope of the license that VHT grants to its
21 customers.

22 103. By letters dated March 10, 2016, June 20, 2016, July 18, 2016, and September
23 16, 2016, counsel for VHT demanded that Zillow remove from the Listing Site images
24 identified on accompanying spreadsheets, depicting properties which had already been marked
25 sold or off the market.

1 104. On information and belief, to date, Zillow failed to timely remove from the
2 Listing Site VHT-owned images identified in the letters from VHT's counsel, including all
3 images identified in the letters dated March 10, 2016 and June 20, 2016.

4 105. Even assuming *arguendo* that Zillow is an Internet service provider and is
5 otherwise entitled to the benefits of DMCA safe-harbor, its failure to remove the aforesaid
6 images in response to written notifications compliant with the statute, strips it of any such safe-
7 harbor protection for user posts.

8 **N. Specific Acts of Infringement Identified to Date**

9 106. There are tens of thousands of photographs on the Digs Site at any given time, a
10 substantial portion of which are photographs that were submitted to Zillow for use on the
11 Listing Site in order to market the properties they depict. Given VHT's leading role in creating
12 and licensing to listing agents and brokers a significant number of the photographs that end up
13 on Zillow's Listing Site and the professional quality of the VHT images, a large number of
14 VHT's images are being used or have been used on the Digs Site over the past three years and
15 continuing to date.

16 107. VHT has attempted to determine just how many of its photographs have been
17 infringed by Zillow and/or by users on the Digs Site by comparing the photographs it owns to
18 the photographs appearing on the Digs Site. VHT has thus far been able to identify 32,134 of
19 its photographs displayed on the Digs website (together with the images identified in Paragraph
20 109, the "Infringed Images"). Annexed hereto as **Exhibit 16** is a spreadsheet listing each of the
21 specific Infringed Images identified on the Digs Site to date, the copyright application disc on
22 which that Infringed Image was submitted to the Copyright Office for registration, and a URL
23 at which that Infringed Image appears or has appeared during the past three years on the Digs
24 Site.

25 108. VHT has also attempted to determine just how many of its photographs have
26 been infringed by Zillow on the Listing Site by comparing the photographs it owns to the
27 photographs appearing on portions of the Listings Site which do not market homes currently for

1 sale. To date, VHT has been able to identify 54,257 of its photographs displayed on those
2 portions of the Listings Site. Annexed hereto as **Exhibit 17** is a spreadsheet listing each of the
3 specific Infringed Images identified on the Listing Site to date, the copyright application disc
4 on which that Infringed Image was submitted to the Copyright Office for registration, and a
5 URL at which that Infringed Image appears or has appeared during the past three years on the
6 Listing Site.

7 **CLAIMS FOR RELIEF**

8 **COUNT I**

9 **(Direct Copyright Infringement – Listing Site)**

10 109. VHT incorporates by reference paragraphs 1 through and including 108 set forth
11 hereinabove, as if the same were fully set forth herein.

12 110. VHT is, and at all relevant times has been, the owner of all copyright interest in
13 and to each of its works at issue and the subject of pending registration issuance, and has the
14 exclusive rights under 17 U.S.C. § 106 to, *inter alia*, reproduce, publicly display and distribute
15 those works, and to create derivative works therefrom.

16 111. Each of VHT's works at issue is copyrightable subject matter under 17 U.S.C.
17 §102(a)(5).

18 112. VHT has complied in all respects with the provisions of the Copyright Act and
19 all regulations thereunder, including timely applications to register its works and the copyrights
20 therein are valid and subsisting.

21 113. Beginning at a time currently unknown, and continuing through the present,
22 defendants, without the permission or consent of VHT, and without authority, have caused
23 VHT-owned images to continue to appear on the Listing Site after the properties have been
24 sold, in some instances even taking affirmative steps to remove the listing agent's or broker's
25 name but failing to remove the listings or the photographs of the sold property, even when they
26 have been removed from the feeds provided by the MLS's and even though defendants have
27 actual and constructive knowledge that these actions exceed the scope of the license granted by

1 VHT. On information and belief, Zillow has also kept archival copies of VHT-owned images
2 and later republished them without authorization long after the listing for the depicted property
3 expired. By so doing, defendants have publicly reproduced, displayed and distributed
4 unauthorized copies of the Infringed Images on the Listing Site.

5 114. Defendants' conduct in connection with the Listing Site constitutes direct
6 infringement of VHT's exclusive rights under the Copyright Act to reproduce, publicly display
7 and distribute the Infringed Images and make derivative works thereof under 17 U.S.C. §§ 106
8 (1), (2), (3) and (5).

9 115. Defendants' acts of direct infringement have been willful, intentional, and
10 purposeful, in wholesale disregard of and indifferent to the rights of VHT.

11 116. As a direct and proximate result of defendants' infringement of VHT's
12 copyrights and exclusive rights under the Copyright Act, VHT is entitled to the maximum
13 statutory damages for each photograph infringed on the Listing Site, under and pursuant to 17
14 U.S.C. § 504(c), for those of the Infringed Images first infringed by Zillow after the effective
15 date of VHT's registration thereof, or before the effective date, if the effective date is within
16 three months of first publication.

17 117. Alternatively, at VHT's election pursuant to 17 U.S.C. § 504(b) for all Infringed
18 Images on the Listing Site, and for any images first infringed by Zillow prior to the effective
19 date of VHT's registration thereof (if the effective date is not within three months of first
20 publication), VHT is entitled to its actual damages, plus all of defendants' profits attributable to
21 the infringements, in an amount to be proved at trial.

22 118. Defendants' conduct is causing, and unless enjoined by this Court will continue
23 to cause VHT great and irreparable injury that cannot be fully compensated or measured in
24 money. VHT has no adequate remedy at law.

COUNT II

(Direct Copyright Infringement – Digs Public Board and “Dueling Digs” Game)

119. VHT incorporates by reference paragraphs 1 through and including 108 set forth hereinabove, as if the same were fully set forth herein.

120. VHT is, and at all relevant times has been, the owner of all copyright interest in and to each of its works at issue and the subject of pending registrations, and has the exclusive rights under 17 U.S.C. § 106 to, *inter alia*, reproduce, publicly display and distribute those works, and to create derivative works therefrom.

121. Each of VHT’s works at issue is copyrightable subject matter under 17 U.S.C. §102(a)(5).

122. VHT has complied in all respects with the provisions of the Copyright Act and all regulations thereunder, including timely applications to register its works and the copyrights therein are valid and subsisting.

123. Beginning at a time currently unknown, and continuing through the present, defendants, without the permission or consent of VHT and without authority, have taken VHT-owned images from the Listing Site and reproduced, displayed and/or distributed those images and created unauthorized derivative works thereof, on the Digs Public Board where they are viewable by the general public on both Desktop Digs and the Digs App, and where they are used by Zillow to market its own business and services, not the subject properties, and to generate revenues for Zillow, not VHT.

124. Beginning at a time currently unknown, and continuing through the present, defendants, without the permission or consent of VHT and without authority, have taken VHT-owned images from the Digs Personal Boards and reproduced, displayed and/or distributed those images and created unauthorized derivative works thereof, on the Digs Public Board, where they are viewable by the general public through both Desktop Digs and the Digs App, and where they are used by Zillow to market its own business and services, not the subject properties, and to generate revenues for Zillow, not VHT.

1 125. Beginning at a time currently unknown, and continuing through the present,
2 defendants, without the permission or consent of VHT, and without authority, have also
3 reproduced, displayed and/or distributed VHT-owned images, taken either from the Personal
4 Boards maintained by users on the Digs Site or from the Public Board on the Digs Site, and
5 used them to populate the “Dueling Digs” game in the Digs App, in which they are used by
6 Zillow to market its own business and services, not the subject properties, and to generate
7 revenues for Zillow, not VHT.

8 126. By so doing, defendants have:

- 9 a. made unauthorized copies of the Infringed Images;
- 10 b. publicly displayed unauthorized copies of the Infringed Images;
- 11 c. distributed the Infringed Images; and
- 12 d. created unauthorized derivative works.

13 127. Defendants’ above-described conduct constitutes direct infringement of VHT’s
14 exclusive rights under the Copyright Act to reproduce, publicly display and distribute the
15 Infringed Images, and to create derivative works therefrom, under 17 U.S.C. §§ 106(1), (2), (3)
16 and (5).

17 128. Defendants’ acts of direct infringement have been willful, intentional, and
18 purposeful, in wholesale disregard of and indifferent to the rights of VHT.

19 129. As a direct and proximate result of defendants’ infringement of VHT’s
20 copyrights and exclusive rights under the Copyright Act, VHT is entitled to the maximum
21 statutory damages for each photograph infringed on the Digs Site, under and pursuant to 17
22 U.S.C. § 504(c), for those of the Infringed Images first infringed by Zillow after the effective
23 date of VHT’s registration thereof.

24 130. Alternatively, at VHT’s election pursuant to 17 U.S.C. § 504(b) for all Infringed
25 Images, and for any images first infringed by Zillow prior to the effective date of VHT’s
26 registration thereof, VHT is entitled to its actual damages, plus all of defendants’ profits
27 attributable to the infringements, in an amount to be proved at trial.

1 131. Defendants' conduct is causing, and unless enjoined by this Court will continue
2 to cause VHT great and irreparable injury that cannot be fully compensated or measured in
3 money. VHT has no adequate remedy at law.

4 **COUNT III**

5 **(Contributory Copyright Infringement by Material
6 Contribution – Digs Personal Boards)**

7 132. VHT incorporates by reference paragraphs 1 through and including 108 and 120
8 through and including 126 set forth hereinabove, as if the same were fully set forth herein.

9 133. If and to the extent VHT's photographs were posted to the Digs Site (including
10 both Desktop Digs and the Digs App) by Zillow Digs users, those users have infringed and are
11 infringing VHT's rights in its registered works by, *inter alia*, posting infringing copies of
12 VHT's copyrighted works onto their Personal Boards on the Digs Site (where they are viewable
13 by other users of Digs) and publicly displaying such infringing copies, without authorization.
14 Those Zillow Digs users are consequently directly infringing VHT's exclusive rights of
15 reproduction, distribution, and public display under 17 U.S.C. §§ 106(1), (3) and (5).

16 134. Defendants are liable as contributory copyright infringers for the above-
17 described infringing acts of Digs users because they have enabled, facilitated, and materially
18 contributed to each of those acts of direct infringement.

19 135. Defendants designed the Digs Site with features specifically intended to enable
20 and facilitate infringement, such as the ability for users to save copyright-protected images,
21 including the Infringing Images, from the Listing Site to the Digs Site (where they would be
22 used to market home goods) and to select particular images they favor on the Digs App.
23 Defendants do not themselves remove VHT images, or advise users that those images must be
24 removed from the Personal Boards, after the subject properties are sold. Defendants did all of
25 this with the specific intention of facilitating and enabling infringement.

26 136. Defendants have actual and constructive knowledge that certain Digs users are
27 using the features provided by the Digs Site for the copying, distribution and public display of

1 VHT's copyrighted works without VHT's authorization or consent, as defendants know of the
2 limited scope of the VHT license and therefore know that that license is limited to use to
3 market the properties, *not* to market home design goods and services, nor for game play, and
4 *not* for any purpose whatsoever once the subject property has been sold. Despite this
5 knowledge, defendants have taken no steps to prevent users from using the Digs Site to
6 infringe.

7 137. Acting with this actual and constructive knowledge, defendants have enabled,
8 facilitated, and materially contributed to Digs users' copyright infringement, which could not
9 occur without defendants' enablement.

10 138. Defendants directly profit from enabling users' infringement, by inserting
11 advertising that is directly tied to, and generated by reason of, specific Infringing Images.

12 139. Defendants' acts of infringement have been willful, intentional, and purposeful,
13 in wholesale disregard of and indifferent to the rights of VHT.

14 140. As a direct and proximate result of defendants' contributory infringement of
15 VHT's copyrights and exclusive rights under the Copyright Act, VHT is entitled to the
16 maximum statutory damages for each photograph infringed on each of the Digs Desktop and
17 the Digs App, under and pursuant to 17 U.S.C. § 504(c) for those of the Infringed Images first
18 infringed by Zillow after the effective date of VHT's registration thereof.

19 141. Alternatively, at VHT's election, pursuant to 17 U.S.C. § 504(b), for all
20 Infringing Images, and for any images first infringed by Zillow prior to the effective date of
21 VHT's registration thereof, VHT is entitled to its actual damages, plus all of defendants' profits
22 attributable to the infringements, in an amount to be proved at trial.

23 142. Defendants' conduct is causing, and unless enjoined by this Court, will continue
24 to cause VHT great and irreparable injury that cannot be fully compensated or measured in
25 money. VHT has no adequate remedy at law.

COUNT IV

**(Contributory Copyright Infringement by
Inducement – Digs Personal Boards)**

1
2
3 143. VHT incorporates by reference paragraphs 1 through and including 108 and 120
4 through and including 126 set forth hereinabove, as if the same were fully set forth herein.

5 144. If and to the extent VHT's photographs were posted to the Digs Site (including
6 both Desktop Digs and the Digs App) by Zillow Digs users, those users have infringed and are
7 infringing VHT's rights in its registered works by, *inter alia*, posting infringing copies of
8 VHT's copyrighted works onto their Personal Boards on the Digs Site (where they are viewable
9 by other users of Digs) and publicly displaying such infringing copies, without authorization.
10 Those Zillow Digs users are consequently directly infringing VHT's exclusive rights of
11 reproduction, distribution, and public display under 17 U.S.C. §§ 106(1), (3) and (5).

12 145. Defendants are liable for inducing those infringing acts by those Zillow Digs
13 users since they operate the Digs Site with the object of promoting its use to infringe VHT's
14 copyrights and, by their clear expression and other affirmative steps including but not limited to
15 (i) inviting and encouraging Digs users to post for unauthorized and unlicensed uses; (ii) failing
16 to monitor the Digs Site for infringements; (iii) inviting users to post copyright-protected
17 images from Digs to social media; (iv) failing to provide filtering tools or other means to
18 prevent or discourage users from importing infringing images to the Digs Site; and (v) inserting
19 advertising and/or promotion that is directly linked to specific Infringing Images. In so doing,
20 defendants are actively, knowingly and intentionally taking steps to induce copyright
21 infringement by Zillow Digs users.

22 146. Defendants at all times have been and are fully aware that VHT's works,
23 including the Infringing Images, are subject to valid and subsisting copyright protection and
24 available for authorized licensing. Defendants at all times have been and are also aware that
25 Digs users are employing the Digs Site and the services provided through that site to
26 unlawfully reproduce, distribute and publicly display VHT's copyrighted works. Defendants
27

1 intend, encourage, and induce Zillow Digs users to employ the Digs Site in this fashion so that
2 defendants have monetary gain directly attributable to those infringements.

3 147. Defendants' acts have been willful, intentional, and purposeful, in wholesale
4 disregard of and indifferent to the rights of VHT.

5 148. As a direct and proximate result of defendants' contributory infringement of
6 VHT's copyrights and exclusive rights under the Copyright Act, VHT is entitled to the
7 maximum statutory damages for each photograph infringed on each of the Digs Desktop and
8 the Digs App, under and pursuant to 17 U.S.C. § 504(c) for those of the Infringed Images first
9 infringed by Zillow after the effective date of VHT's registration thereof.

10 149. Alternatively, at VHT's election, pursuant to 17 U.S.C. § 504(b), for all
11 Infringing Images, and for any images first infringed by Zillow prior to VHT's registration
12 thereof, VHT is entitled to its actual damages plus all of defendants' profits attributable to the
13 infringements, in an amount to be proved at trial.

14 150. Defendants' conduct is causing, and unless enjoined by this Court, will continue
15 to cause VHT great and irreparable injury that cannot be fully compensated or measured in
16 money. VHT has no adequate remedy at law.

17 **COUNT V**

18 **(Vicarious Copyright Infringement – Digs Site Personal Boards)**

19 151. VHT incorporates by reference paragraphs 1 through and including 108 and 120
20 through and including 126 set forth hereinabove, as if the same were fully set forth herein.

21 152. If and to the extent VHT's photographs were posted to the Digs Site (including
22 both Desktop Digs and the Digs App) by Zillow Digs users, those users have infringed and are
23 infringing VHT's rights in its registered works by, *inter alia*, posting infringing copies of
24 VHT's copyrighted works onto their Personal Boards on the Digs Site (where they are viewable
25 by other users of Digs) and publicly displaying such infringing copies, without authorization.
26 Those Zillow Digs users are consequently directly infringing VHT's exclusive rights of
27 reproduction, distribution, and public display under 17 U.S.C. §§ 106(1), (3) and (5).

1 153. Defendants are vicariously liable for the infringing acts of Zillow Digs users.
2 Defendants provide a forum, *i.e.* the Digs Site, to which users can post and do post, reproduce
3 and display the Infringing Images. Defendants have both the right and the ability to supervise
4 and/or control Digs users' posting, reproduction and display of infringing content, and to
5 prevent Digs users from infringing VHT's copyrighted works and purposefully and wantonly
6 fail to do so.

7 154. Defendants significantly and directly benefit from the infringement by Zillow
8 Digs users. On information and belief, the availability of the additional infringing copyrighted
9 works on the Digs Site (in addition to the images posted by Zillow itself) acts as a substantial
10 added draw, attracting more users to the Digs Site and to the Listing Site and increasing the
11 amount of time they spend there once they visit, optimizing search engine results, and
12 maximizing Zillow's revenues therefrom.

13 155. On information and belief, defendants derive substantial advertising revenue tied
14 directly to the volume of traffic they are able to attract to the Digs Site and to the Listing Site as
15 the direct and proximate result of the number, quality, popularity, and variety of copyrighted
16 images, including the Infringed Images, which appear on the site.

17 156. Defendants' acts of infringement have been willful, intentional, and purposeful,
18 in wholesale disregard of and indifferent to the rights of VHT.

19 157. As a direct and proximate result of defendants' infringement of VHT's
20 copyrights and exclusive rights under the Copyright Act, VHT is entitled to the maximum
21 statutory damages for each photograph infringed on each of the Digs Desktop and Digs App,
22 under and pursuant to 17 U.S.C. § 504(c) for those of the Infringed Images first infringed by
23 Zillow after the effective date of VHT's registration thereof.

24 158. Alternatively, at VHT's election pursuant to 17 U.S.C. § 504(b) for all
25 Infringing Images and for any images first infringed by Zillow prior to VHT's registration
26 thereof, VHT is entitled to its actual damages plus all of defendants' profits attributable to the
27 infringements, in an amount to be proved at trial.

1 159. Defendants' conduct is causing, and unless enjoined by this Court, will continue
2 to cause VHT great and irreparable injury that cannot be fully compensated or measured in
3 money. VHT has no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, VHT prays for judgment against defendants and each of them as
6 follows:

7 A. For a declaration that defendants have infringed VHT's copyrights in each of the
8 Infringed Images which appear on the Listing Site and the Digs Site, both directly and
9 secondarily, including in both Desktop Digs and the Digs App.

10 B. For a permanent injunction requiring that defendants and their agents, servants,
11 employees, officers, attorneys, successors, licensees, partners and assigns, and all persons
12 acting in concert or participation with each or any of them, cease directly or indirectly
13 infringing, or causing, enabling, facilitating, encouraging, promoting, inducing or participating
14 in the infringement of any of VHT's copyrights or exclusive rights protected by the Copyright
15 Act, whether now in existence or hereafter created.

16 C. For maximum statutory damages including such damages for willful
17 infringement for each separate act of infringement in each of the Listing Site, Digs Desktop,
18 and the Digs App, pursuant to 17 U.S.C. § 504(c).

19 D. Alternatively, at VHT's election pursuant to 17 U.S.C. § 504(b), for each VHT-
20 owned image or derivative thereof first posted, reproduced, displayed, or distributed on the
21 Digs Site prior to the effective date of VHT's registration thereof, and for each VHT-owned
22 image or derivative thereof of a home that is not for sale posted, reproduced, displayed, or
23 distributed on the Listing Site prior to the effective date of VHT's registration thereof, actual
24 damages plus defendants' infringing profits attributable to the infringements, in an amount to
25 be proved at trial.

26 E. For VHT's costs, including its reasonable attorneys' fees, pursuant to 17 U.S.C.
27 § 505.

1 F. For pre- and post-judgment interest according to law.

2 G. For such other and further relief as this Court may deem just and proper.

3 Dated this 24th day of October, 2016.

4 DAVIS WRIGHT TREMAINE LLP
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CERTIFICATE OF SERVICE

1 I hereby certify that on October 24, 2016, I electronically filed the foregoing with the
2 Clerk of the Court using the CM/ECF system, which will send notification of such filing to
3 those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be
4 served in accordance with the Federal Rules of Civil Procedure.
5

6 DATED this 24th day of October, 2016.

7 Davis Wright Tremaine LLP
8 Attorneys for Plaintiff VHT, Inc.

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