

The Honorable James L. Robart

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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. 15-cv-1096-JLR

**PRETRIAL ORDER**

1 **I. JURISDICTION**

2 Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331, because this case  
3 raises federal questions, including under the Copyright Act, 17 U.S.C. § 101 *et seq.*

4 **II. CLAIMS FOR RELIEF**

5 **A. Plaintiff's Claims**

6 The plaintiff will pursue at trial the following claims:<sup>1</sup>

7 Plaintiff claims that Defendants infringed its exclusive rights as copyright owners of  
8 27,358 photographs by reproducing, distributing, and displaying those photographs on the Digs  
9 home improvement platform on Zillow's website, www.zillow.com (the "Digs Site"). VHT  
10 also maintains that Zillow created unauthorized derivative works of each of those photographs.  
11 VHT also asserts claims against Zillow for secondary liability with regard to user posting of  
12 images to the Digs Site by reason of Zillow's material contribution to that infringement and its  
13 inducement of users to infringe. Zillow is also liable for vicarious liability as it has the right and  
14 ability to control those user posts and has a direct financial benefit from use and/or display of  
15 the VHT Photographs on the Digs Site.

16 VHT holds copyright registrations for 27,358 images infringed directly or secondarily  
17 by Zillow on the Digs Site, creating a *prima facie* presumption of ownership and validity as to  
18 each of them. Each of the photographs is an original work of authorship and copyrightable  
19 subject matter, owned by VHT pursuant to work-for-hire agreements and/or assigned by each  
20 photographer who created the photographs to VHT for all purposes. The effective date of  
21 registration for each photograph at issue in this case is the date of filing of the applications,  
22 regardless of whether registration was granted by the Office or is granted by the Court. VHT

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25 <sup>1</sup> This statement of VHT's claims reflects the Court's Order entered December 23, 2016 [Dkt. 211]. However, to  
26 the extent the Court reconsiders any portion of that Order in response to either VHT's pending Motion for  
27 Reconsideration [Dkt. 212] or its Renewed Motion for Summary Judgment Regarding Pending Copyright  
Applications [Dkt. 215], VHT plans to pursue appropriate additional claims at trial, including as to the 4,759  
images infringed on the Digs Site that are the subject of two pending copyright applications. VHT reserves the  
right to later bring suit against Zillow for the photographs that are the subject of pending applications not granted  
by either the Copyright Office or the Court.

1 also asks the Court, as a matter of law, to grant protection for an additional 4,759 photographs  
2 for which the Copyright Office has refused to grant registration.

3 VHT seeks actual damages and/or infringing profits to the extent non-duplicative or, at  
4 its election at any time prior to final judgment, statutory damages for willful copyright  
5 infringement by Zillow. Actual damages will be determined by the amount that a reasonable  
6 willing buyer and a willing seller in all the attendant circumstances would have negotiated as of  
7 the time of the infringement for licenses to use the images on the Digs Site. VHT is entitled to  
8 a statutory damages award for each photograph effectively registered prior to Zillow's  
9 infringement and that it can prove has independent economic value, to be determined by the  
10 jury within the statutory ranges which vary with the level of Zillow's culpability. VHT  
11 maintains that Zillow's conduct was willful.

12 **B. Defendants' Defenses**

13 The Defendants will pursue the following defenses:

14 1. **License**

15 Zillow holds an implied or express license authorizing the uses of VHT photographs  
16 that VHT challenges in this case. The photographs at issue in this case were created by VHT at  
17 the request of its customers and clients. When VHT delivered the photographs to its customers  
18 and clients, VHT intended that those customers and clients would distribute and copy the  
19 photographs. VHT also understood and intended that those customers and clients would submit  
20 the photographs to websites, including Zillow, which would themselves copy and display the  
21 photographs.  
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23 Evidence supporting the existence and scope of Zillow's license includes: (1) custom  
24 and practice in the real estate industry; (2) the course of dealing between relevant parties,  
25 including VHT, VHT's clients, Zillow, and other websites; (3) the terms of VHT's written  
26 license agreements with many of its clients, including provisions granting those clients rights to  
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1 use VHT's photographs in marketing efforts and rights to post the photographs to an  
2 unrestricted number of websites; (4) the terms of VHT's "Terms of Use," contained on its  
3 website, which Zillow contends does not constitute an enforceable agreement with any  
4 customer or client but which nevertheless demonstrate VHT's intent to license its customers  
5 and clients with rights to copy and distribute the images on any unrestricted number of  
6 marketing platforms, including websites; (5) the terms of the implied license between VHT and  
7 any customer or client with whom it does not have a written license agreement, which include,  
8 at the very least, the permission to use VHT photographs on an unrestricted number of websites  
9 for unrestricted purposes.

## 11 2. Fair Use

12 Zillow will show that any copying of VHT images in connection with the operation of  
13 the Digs site was fair use. All such copying undertaken by Zillow is performed solely to  
14 facilitate operation of the website, primarily for the purpose of improving the display  
15 characteristics of the image in various contexts (e.g. display on different devices, or display in  
16 different sections of the Zillow website, including Digs). Because this copying is an inevitable  
17 and necessary part of operating the Zillow website, because it is overwhelmingly authorized,  
18 and because it had no effect on any market for those images, this copying constitutes protected  
19 fair use. Zillow asserts that fair use is a complete defense to VHT's allegations of infringement  
20 based on the copying of VHT images in order to make them available on Digs. Zillow will not  
21 contend that fair use is a defense to allegations of copyright infringement based on the display,  
22 as opposed to copying, of images.

## 23 3. Unclean Hands Doctrine/Defective Registration

24 Zillow contends that VHT is barred from recovering because of unclean hands/defective  
25 registration with respect to its representations to the Copyright Office that resulted in the  
26 registrations.

### III. ADMITTED FACTS

#### The Parties

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1. VHT is a Delaware corporation with its principal place of business in Rosemont, Illinois.

2. VHT's primary business involves the creation and curation of photographs of residential real properties listed for sale, and the licensing of those photographs to real estate brokers and agents.

3. Zillow, Inc. ("Zillow") is a Washington corporation with its principal place of business in Seattle, Washington.

4. Zillow Group, Inc. ("Zillow Group") is a Washington corporation with its principal place of business in Seattle, Washington. Zillow Group was formed following the announcement of the planned merger of Zillow, Inc. and Trulia, Inc.

5. Zillow is a wholly owned subsidiary of Zillow Group.

6. Zillow was founded in 2005 and launched the Zillow.com website in 2006.

#### VHT's Photographs

7. VHT has a network of professional real estate photographers (the "VHT Photographer Network").

8. When a broker or agent requests that VHT obtain and license photos of a residential real estate property, VHT dispatches one of the photographers in the VHT Photographer Network (the "dispatched photographer") to shoot photographs of that property.

9. The United States Copyright Office has issued copyright registrations to VHT for 27,358 of the photographs that are the subject of this action ("VHT Photographs").

#### Zillow's Systems

10. Zillow owns and maintains a database containing data about more than 110 million U.S. homes which it refers to internally as a "living database of all homes."

11. Since February 2013, Zillow's website has included a content area called Zillow "Digs," which is themed around the topic of home design and renovation.

#### IV. ISSUES OF LAW

The following are the issues of law to be determined by the Court:

##### A. Plaintiff's Issues of Law

1. Is VHT entitled to copyright protection for the 27,358 images in dispute in this action?
2. Is VHT entitled to copyright protection for an additional 4,759 photographs in dispute, covered by two pending copyright applications for which the Copyright Office has refused registration?
3. Is VHT entitled to an award of statutory damages for each copyright-protected photograph that (a) Zillow directly or secondarily infringed; (b) was registered effective before the first infringement on the Digs Site or within 30 days of first publication; and (c) has independent economic value?
4. Does Zillow bear the burden of proving both the existence and terms of any license it claims to hold that authorized use of VHT's photographs on the Digs Site?

##### B. Defendants' Issues of Law

1. Does VHT possess valid registrations for the 27,358 images in dispute in this action?
2. Does 17 U.S.C. § 504(c)(1) limit VHT to a single award of statutory damages for all infringements of any number of images that it registered under an express claim of compilation in a single database?
3. Is VHT judicially estopped from denying that Zillow possesses an express or implied license to copy and display the VHT images on Zillow's website for at least some purposes?

#### V. EXPERT WITNESSES

Unless expert witnesses are precluded from testifying by the Court pursuant to the parties' *Daubert* motions, each party shall be limited to four (4) expert witnesses.

The names and addresses of the expert witnesses to be used by each party at the trial

1 and the issue on which each will testify are:

2 **A. On behalf of plaintiff:**

- 3 1. Robert Henson  
4 837 NE 95th Street  
5 Seattle, WA 98115

6 Mr. Henson will testify live. The general nature of Mr. Henson's expected testimony  
7 will include the fact of the independent economic value of each of the VHT photographs at  
8 issue in this lawsuit and the amount of that value on a per image basis; the price that a willing  
9 buyer and a willing seller in all the attendant circumstances would have paid for licenses to use  
10 the VHT photographs at issue on each of the Listing Site, the Digs Site, and the Dueling Digs  
11 game; and will also offer background testimony with regard to stock photography, the stock  
12 photography industry, and the licensing of stock photographs. Mr. Henson may be reached  
13 through counsel.

- 14 2. Dr. Ward Hanson  
15 2450 West Bayshore, #10  
16 Palo Alto, CA 94303

17 Depending on the Court's ruling on VHT's pending Motion for Reconsideration [Dkt.  
18 212], Dr. Hanson will testify live. The general nature of Dr. Hanson's expected testimony will  
19 include the benefits to Zillow from use of the VHT photographs, including but not limited to an  
20 empirical analysis he performed of a portion of that benefit based upon Zillow revenue derived  
21 from zip codes of homes that VHT has photographed. Dr. Hanson may be reached through  
22 counsel.

- 23 3. Victor Lund  
24 291 Falcon Crest Dr.  
25 Arroyo Grande, CA 93420

26 Mr. Lund will testify live. The general nature of Mr. Lund's expected testimony will  
27 include the relationships between and among brokers, agents, multiple listing services, the  
National Association of Realtors, aggregators and other entities in the real estate industry; the  
general structure of the real estate industry; the structure and operation of the online real estate  
industry in general and Zillow's role in that industry in particular; the nature of listing

1 agreements held by brokers and agents; efforts of brokers and agents to market themselves and  
2 respective properties they have listed; and the fact that Zillow's challenged uses of VHT's  
3 photographs neither market specific properties nor brokers and agents. Mr. Lund may be  
4 reached through counsel.

- 5 4. Jeffrey Sedlik  
2797 East Foothill Boulevard, Suite 120  
6 Pasadena, California 91107

7 Mr. Sedlik may testify live or by deposition, subject to VHT's pending motion, Dkt.  
8 No. 131. The general nature of Mr. Sedlik's expected testimony will include the fact of  
9 independent economic value of each of the VHT photographs at issue and certain aspects of  
10 stock photography. Mr. Sedlik may be reached through Zillow's counsel.

11 **B. On behalf of defendants:**

- 12 1. Jeffrey Sedlik  
2797 East Foothill Boulevard, Suite 120  
13 Pasadena, California 91107

14 Mr. Sedlik will testify concerning the flaws and problems with the expert opinions of  
15 VHT's expert Robert Henson, the quality of the VHT photographs, the type of licensing model  
16 they would be able to command on the secondary licensing market, and on the VHT license  
17 agreements.

- 18 2. Patrick F. Gannon  
Kaufman Rossin  
19 2699 S. Bayshore Drive  
20 Miami, FL 33133

21 Mr. Gannon will testify concerning the flaws and problems with the expert opinions of  
22 VHT's expert Robert Henson, the flaws and problems with the expert opinions of VHT's  
23 expert Ward Hanson, and what VHT should recover if it prevails on its infringement claims.

- 24 3. John H. Vogel, Jr.  
P.O. Box 1653  
25 Norwich, VT. 05065

26 Mr. Vogel will testify concerning how technology and the internet have changed the  
27 role of a real estate agent, how real estate agents market themselves and obtain qualified leads,



1 what role Zillow plays in agents' marketing efforts and in the real estate industry generally,  
2 whether it is reasonable for a real estate agent or broker to market himself or herself by giving  
3 Zillow a license to use listing data and photographs even after a property has been sold, and  
4 what role photographs play in the home buying process.

5 Each party reserved the right to call any witnesses identified by the other party.

6 **VI. OTHER WITNESSES**

7 The names and addresses of witnesses, other than experts, to be used by each party at  
8 the time of trial and the general nature of the testimony of each are as follows:

9 **A. On behalf of plaintiff:**

10 1. **Brian Balduf**, Chief Executive Officer of VHT, will testify live. The general  
11 nature of Mr. Balduf's expected testimony will include VHT's business operations; the history  
12 of the company; its licenses to brokers and agents; VHT's database of residential real estate  
13 photographs; the importance of photos in marketing real property; the identities and functions  
14 of various parties in the real estate industry, including brokers, listing agents, MLS's and  
15 consumer-facing real estate websites, and the inter-relationships among them; custom and  
16 practice in the real estate industry regarding the licensing and use of photographs; his  
17 discussions with Zillow regarding potential licensing of photographs; VHT's copyright  
18 applications and registrations; VHT's efforts to identify and match VHT-owned images with  
19 images used by Zillow on the Digs Site; VHT's notifications to Zillow regarding its  
20 infringement and Zillow's refusal to cease infringing; VHT's licensing efforts past and  
21 planned; the market value of VHT's unique copyright-protected images, both individually and  
22 as a database; VHT's efforts to enforce the terms of its licenses to its clients; the impact of  
23 Zillow's use of VHT's photographs on the Digs Site on VHT's actual and potential licensing of  
24 its photographs; and the damages VHT has suffered due to Zillow's copyright infringement.  
25 Mr. Balduf may be reached through counsel.

26 2. **Michael Emerson**, Member of the Board of Directors of VHT, will testify live.  
27 The general nature of Mr. Emerson's expected testimony will include his decision to join VHT;

1 his evaluation of the VHT database of residential real estate properties; his evaluation of the  
2 past and future potential to license photographs from the VHT residential real estate database  
3 for collateral uses; VHT's licensing efforts past and planned; the market value of VHT's  
4 copyright-protected images, both individually and as a database; the impact of Zillow's use of  
5 VHT's photographs on the Digs Site on VHT's actual and potential licensing of its  
6 photographs; his knowledge of communications between VHT and Zillow with regarding to  
7 negotiation of potential licenses; and damage that VHT has suffered due to Zillow's copyright  
8 infringement. Mr. Emerson may be reached through counsel.

9         3.         **John Bosch**, Vice President of Product Management at VHT, will testify live.  
10 The general nature of Mr. Bosch's expected testimony will include the services VHT provides  
11 and the creation of its copyright-protected images; the VHT database of residential real estate  
12 properties; VHT's network of professional real estate photographers; VHT's Studio and  
13 processing of photographs received from those photographers; its transmittal of those  
14 photographs to brokers and agents who license them from VHT; and the physical properties of  
15 the photographs in the VHT residential real estate database. Mr. Bosch may be reached  
16 through counsel.

17         4.         **Kevin McGuire**, Vice President Sales at VHT, may testify live. The general  
18 nature of Mr. McGuire's expected testimony will include communications between VHT on the  
19 one hand and prospective and actual clients of VHT on the other with regard to licenses to use  
20 VHT photographs; VHT's relationships with its customers; VHT's licenses to brokers, agents  
21 and other customers; and communications between VHT and Zillow with regard to negotiation  
22 of licenses for Zillow to use VHT photographs on the Listing Site and on the Digs Site. Mr.  
23 McGuire may be reached through counsel.

24         5.         **Chris Baker**, Team Lead, Web and Development, Davis Wright Tremaine LLP,  
25 will testify live. The general nature of Mr. Baker's expected testimony will include his review  
26 and compilation of all of the efforts undertaken by VHT, its outside consultants, and its  
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1 counsel, as well as Mr. Baker himself, to identify and match the VHT-owned images used by  
2 Zillow on the Digs Site. Mr. Baker may be reached through counsel.

3 6. **Doug Angelaccio**, Manager of Client Services at VHT, may testify live. The  
4 general nature of Mr. Angelaccio's expected testimony will include VHT's efforts to identify  
5 and match VHT-owned images with images used by Zillow on the Digs Site and depending on  
6 the Court's ruling on VHT's pending Motion for Reconsideration [Dkt. 212], on the Listing  
7 Site. Mr. Angelaccio may be reached through counsel.

8 7. **Flatworld Solutions, Inc.** may testify live by a corporate representative,  
9 depending on the Court's ruling on VHT's pending Motion for Reconsideration [Dkt. 212].  
10 The general nature of Flatworld's expected testimony will include its efforts to identify and  
11 match VHT-owned images used by Zillow on the Listing Site. Flatworld may be reached  
12 through counsel.

13 8. **MicrostockSolutions, LLC**, may testify live by a corporate representative  
14 depending on the Court's ruling on VHT's pending Motion for Reconsideration [Dkt. 212].  
15 The general nature of Microstock's expected testimony will include its efforts to identify and  
16 match VHT-owned images used by Zillow on the Listing Site. Microstock may be reached  
17 through counsel.

18 9. **Kristin Acker**, Senior Vice President at Zillow, will testify live and may also  
19 testify by deposition. The general nature of Ms. Acker's expected testimony will include the  
20 sources of photographs Zillow used on the Listing Site and on the Digs Site; the importance of  
21 photographs to Zillow for use on its website and in its database; Zillow's classification of  
22 listing feeds; the planning and launch of the Digs Site; Zillow's efforts to obtain photographs  
23 for use on the Digs Site; the use of photographs by Zillow on the Listing Site and on the Digs  
24 Site; Zillow's "trumping rules"; Zillow's failure to take down images from the Listing Site and  
25 the Digs Site in response to VHT's notification thereof; Zillow's efforts to monetize the Digs  
26 Site; Zillow's revenues and profits; various copyright infringement demands sent to Zillow and  
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1 copyright infringement actions instituted against Zillow and Zillow's settlement thereof. Ms.  
2 Acker may be reached through Zillow's counsel.

3 10. **Ben Schielke**, Group Manager at Zillow, may testify live and may also testify  
4 by deposition. The general nature of Mr. Schielke's expected testimony will include the design  
5 and appearance of Zillow's Digs Site and related applications; the importance of photographs  
6 to Zillow for use on its website and in its database; the origin and functionality of the "More  
7 From This Home," "Save to Digs," "Like" and "Dig It" features of the Digs Site, the Digs App  
8 and the Dueling Digs game; Zillow's efforts to obtain photographs for use on the Digs Site; the  
9 means by which VHT's images are uploaded to and displayed on the Digs Site; Zillow's  
10 internal procedures for reviewing images selected by users and determining which images to  
11 add to the publicly-viewable section of the Digs Site; the review process used by Zillow and its  
12 agents, representatives and employees for determining which photos will appear on the public  
13 Digs board; Zillow's efforts to attract users to the Digs Site; and Zillow's actual and  
14 prospective efforts to generate revenue from the Digs Site. Mr. Schielke may be reached  
15 through Zillow's counsel.

16 11. **Jonas Boli**, Senior Group Manager at Zillow, may testify live and may also  
17 testify by deposition. The general nature of Mr. Boli's expected testimony will include the  
18 design and appearance of Zillow's Listing Site and Digs Site and related applications, including  
19 Zillow's use of property statuses on HDPs on the Listing Site; the importance of photographs to  
20 Zillow for use on its website and in its database; Zillow's classification of listing feeds;  
21 Zillow's "trumping rules"; and Zillow's communications with real estate agents and brokers.  
22 Mr. Boli may be reached through Zillow's counsel.

23 12. **Jason Gurney**, Group Manager at Zillow, will testify live and may also testify  
24 by deposition. The general nature of Mr. Gurney's expected testimony will include Zillow's  
25 current and legacy image management systems, including its creation of multiple scaled copies  
26 of photos, including VHT photos, and its use or non-use of those copies on Zillow's websites;  
27 Zillow's distribution and display of photographs, including VHT photographs, including to

1 users of the Listing Site and the Digs Site; the design and appearance of Zillow's Digs Site and  
2 related applications; the design and functioning of Zillow's trumping rules; Zillow's back-end  
3 systems, including database tables, and its living database of all homes; and Zillow's deletion  
4 and failure to delete photographs. Mr. Gurney may be reached through Zillow's counsel.

5 13. **Greg Schwartz**, Chief Business Officer at Zillow, may testify live and may also  
6 testify by deposition. The general nature of Mr. Schwartz's expected testimony will include  
7 Zillow's revenues and profits; the importance of search engine optimization to Zillow; and his  
8 discussions with VHT representatives regarding potential licensing of VHT images by Zillow.  
9 Mr. Schwartz may be reached through Zillow's counsel.

10 14. **Curt Beardsley**, Vice President Industry Relations at Zillow, may testify live  
11 and may also testify by deposition. The general nature of Mr. Beardsley's expected testimony  
12 will include Zillow's efforts to obtain evergreen rights to photos from listing sources; its  
13 negotiations with multiple listing services and brokers; the termination of the contractual  
14 arrangement between Zillow and a listing aggregator called ListHub and Zillow's consequent  
15 actions; his conversations with John Vogel, one of Zillow's expert witnesses; the allegations of  
16 theft of trade secrets against Zillow in the *Move* litigation and the settlement thereof. Mr.  
17 Beardsley may be reached through Zillow's counsel.

18 15. **Sara Bonert**, Vice President of Broker Services at Zillow, may testify live and  
19 may also testify by deposition. The general nature of Ms. Bonert's expected testimony will  
20 include the evolution and application of Zillow's trumping rules. Ms. Bonert may be reached  
21 through Zillow's counsel.

22 16. **Alex Kutner**, Senior Development Manager at Zillow, may testify live and may  
23 also testify by deposition. The general nature of Mr. Kutner's expected testimony will include  
24 the technical operations of Zillow's Digs Site; Zillow's use of images on the Digs Site;  
25 Zillow's actions in response to VHT's takedown notices; Zillow's costs and expenses, or lack  
26 thereof, in responding to VHT's takedown notices; and the lack of evidence in support of  
27 Zillow's counterclaims. Mr. Kutner may be reached through Zillow's counsel.

1           17.     **Lynette Lewis**, Digital Marketing Manager at @properties, will testify by  
2 deposition. The general nature of Ms. Lewis's expected testimony will include the use of  
3 photographs on Zillow's website; @properties' use of photographs to market its properties,  
4 agents and itself; @properties' lack of use of the Digs Site to market itself, its agents or its  
5 properties; and @properties' lack of direction to its agents to use the Digs Site to market  
6 themselves or the properties they are representing. Ms. Lewis may be reached through Aaron  
7 Stanton of Burke, Warren, MacKay & Serritella, P.C. at 312-840-7078.

8     **B.     On behalf of defendants:**

9           1.     Kristin Acker will testify live. Ms. Acker is Zillow's Vice President of Product  
10 Teams. The general nature of her testimony will include Zillow's history and general  
11 operations; the accused Zillow webpages and websites; the development of Digs; and the  
12 agreements and arrangements through which Zillow obtains data, including photographs. VHT  
13 has indicated that it will call Ms. Acker in its case, but VHT has not agreed that Zillow may  
14 examine Ms. Acker in VHT's case outside the scope of her direct testimony in order to  
15 streamline the presentation to the jury and prevent Ms. Acker from having to appear to testify  
16 twice.

17           2.     Greg Schwartz will testify live. Mr. Schwartz is Zillow's Chief Business Officer.  
18 The general nature of his testimony will include Zillow's agreements and business dealings  
19 with real estate brokerages and other providers of data as well as business discussions between  
20 Zillow and VHT on several topics. VHT has indicated that it will call Mr. Schwartz in its case,  
21 but VHT has not agreed that Zillow may examine Mr. Schwartz in VHT's case outside the  
22 scope of his direct testimony in order to streamline the presentation to the jury and prevent Mr.  
23 Schwartz from having to appear to testify twice.

24           3.     Jason Gurney will testify live. Mr. Gurney is a Zillow Group Manager working  
25 on the technology team. The general nature of his testimony will include technical aspects of  
26 the operation of Zillow's websites, including feed ingestion, image processing, platform  
27 evolution and migration, and user interactions. VHT has indicated that it will call Mr. Gurney

1 in its case, but VHT has not agreed that Zillow may examine Mr. Gurney in VHT's case  
2 outside the scope of his direct testimony in order to streamline the presentation to the jury and  
3 prevent Mr. Gurney from having to appear to testify twice.

4 4. Alex Kutner will testify live. Mr. Kutner is a Zillow Development Manager for  
5 home improvement. The general nature of his testimony will include technical aspects of the  
6 operation of Zillow's websites, including Zillow's inability to identify VHT's images in listing  
7 feeds, the posting and moderation of images on Digs, and the quantity and kinds of images and  
8 content stored on Zillow's systems, as well work undertaken by Zillow to remove VHT images  
9 from those systems. VHT has indicated that it will call Mr. Kutner in its case, but VHT has not  
10 agreed that Zillow may examine Mr. Kutner in VHT's case outside the scope of his direct  
11 testimony in order to streamline the presentation to the jury and prevent Mr. Kutner from  
12 having to appear to testify twice.

13 5. Ben Schielke will testify live. Mr. Schielke is a Zillow Principal Program  
14 Manager. The general nature of his testimony will include the history, development, and  
15 operations of Zillow Digs. VHT has indicated that it will call Mr. Schielke in its case, but VHT  
16 has not agreed that Zillow may examine Mr. Schielke in VHT's case outside the scope of his  
17 direct testimony in order to streamline the presentation to the jury and prevent Mr. Schielke  
18 from having to appear to testify twice.

19 6. Jonas Boli will testify live. Mr. Boli is a Zillow Group Manager. The general  
20 nature of his testimony will include the history, development, and operation of Zillow's Home  
21 Detail Pages, Real Estate Agent Profile Pages, and related Zillow websites and properties,  
22 including the "Listing Site." VHT has indicated that it will call Mr. Boli in its case, but VHT  
23 has not agreed that Zillow may examine Mr. Boli in VHT's case outside the scope of his direct  
24 testimony in order to streamline the presentation to the jury and prevent Mr. Boli from having  
25 to appear to testify twice.

26 7. Sarah Bonert will testify live. Ms. Bonert is Zillow's Vice President of Broker  
27 Services. The general nature of her testimony will include Zillow's agreements and

1 relationships with real estate brokers and other data providers and Zillow's systems for  
2 determining what data to display concerning a particular property. VHT has indicated that it  
3 will call Ms. Bonert in its case, but VHT has not agreed that Zillow may examine Ms. Bonert in  
4 VHT's case outside the scope of her direct testimony in order to streamline the presentation to  
5 the jury and prevent Ms. Bonert from having to appear to testify twice.

6 8. Errol Samuelson will testify live. Mr. Samuelson is Zillow's Chief Industry  
7 Development Officer. The general nature of his testimony will include Zillow's business  
8 relationships with real estate brokers and other data providers and the terms of Zillow's  
9 agreements with such data providers.

10 9. Kathleen Philips will testify live. Ms. Philips is Zillow's Chief Financial Officer.  
11 The general nature of her testimony will include negotiations and interactions between Zillow  
12 and VHT.

13 10. Brian Balduf will testify live and may also appear by video deposition. Mr.  
14 Balduf is VHT's Chief Executive Officer. The general nature of his testimony will include  
15 communications between VHT and Zillow; the terms of VHT's license agreements; VHT's  
16 communications with its clients and customers, including communications concerning Zillow  
17 and concerning the scope of VHT's licenses; VHT's efforts to license its images; and VHT's  
18 copyright registrations and communications with the copyright office.

19 11. Mike Emerson will testify live and may also appear by video deposition. Mr.  
20 Emerson is a member of VHT's Board of Directors. The general nature of his testimony will  
21 include communications between VHT and Zillow concerning the licensing of images and  
22 Zillow's alleged infringement of VHT's copyrights; and VHT's efforts to license its images.

23 12. Kimber VanRy will testify by deposition. Mr. VanRy was a consultant to VHT.  
24 The general nature of his testimony will include his efforts to identify potential customers for  
25 the VHT photographs and other efforts to obtain secondary license agreements for the VHT  
26 photographs.





1 be excluded in its entirety. All evidence and argument concerning litigation or disputes with  
2 funders, including insurance carriers, is also excluded in its entirety.

3 2. With the exception of non-privileged communications between VHT and its  
4 lawyers relating to VHT's copyright applications and registrations, neither party may introduce  
5 any evidence regarding the fact or substance of any consultation with its attorneys on any issue  
6 in this lawsuit.

7 3. No counsel shall personally vouch for the contentions of his or her own client.

8 4. No counsel shall refer to assertions of privilege by the other party or to the  
9 supposed contents of any privileged communication.

10 In an attempt to streamline the issues at trial and to reduce the jury's confusion, the  
11 parties are working on a stipulation as to the number of images that exist in various categories  
12 that are relevant to this lawsuit.

13 **IX. ACTION BY THE COURT**

14 (a) This case is scheduled for trial before a jury on January 23, 2017.

15 (b) Trial briefs are scheduled to be submitted to the court on or before January 17,  
16 2017.

17 (c) Jury instructions requested by either party shall be submitted to the court on or  
18 before 12 noon Pacific time on January 9, 2017. Suggested questions of either party to be asked  
19 of the jury by the court on voir dire shall be submitted to the court on or before January 17,  
20 2017.

21 This order has been approved by the parties as evidenced by the signatures of their  
22 counsel. This order shall control the subsequent course of the action unless modified by a  
23 subsequent order. This order shall not be amended except by order of the court pursuant to  
24 agreement of the parties or to prevent manifest injustice.

1 DATED this \_\_\_\_\_ day of January, 2017.

2  
3 \_\_\_\_\_  
4 JAMES L. ROBART  
5 United States District Judge

6 FORM APPROVED

7 DAVIS WRIGHT TREMAINE LLP

SUSMAN GODFREY LLP

8 s/ James E. Howard

s/ Genevieve Vose Wallace

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