

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

DENNIS K. SCHIMPF, M.D.

Plaintiff,

vs.

ZILLOW, INC.; ZILLOW GROUP
MARKETPLACE, INC.; ZILLOW HOME
LOANS, LLC; ZILLOW GROUP, INC.; JOHN
DOES; and RICHARD ROE CORPORATIONS,

Defendants.

Case No. 2:20-cv-00696-DCN

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendants Zillow, Inc., Zillow Group Marketplace, Inc., Zillow Homes Loans, LLC, and Zillow Group, Inc. (collectively, "Defendants"), above-named, answering the Complaint of the Plaintiff, above-named, allege and say:

1. Defendants admit, upon information and belief, the allegations of paragraph 1.
2. In answering the allegations of paragraph 2, Defendants would admit that Defendant Zillow, Inc. is a corporation formed under the laws of the State of Washington, with its headquarters in Seattle, Washington. Defendants would further admit that Defendant Zillow, Inc. is the entity that owns and operates zillow.com ("Zillow Website"). Defendants deny the remaining allegations of paragraph 2.
3. In answering the allegations of paragraph 3, Defendants would admit that Defendant Zillow Group Marketplace, Inc. ("ZGMI") is a corporation formed under the laws of the State of Washington, with its headquarters in Seattle, Washington. Defendants deny the remaining allegations of paragraph 3 and would further set forth that Defendant ZGMI is not a

proper party to the above-captioned litigation as it is not involved in any activity that is the subject matter of Plaintiff's Complaint.

4. In answering the allegations of paragraph 4, Defendants would admit that Defendant Zillow Home Loans, LLC is a Kansas limited liability company. Defendants deny the remaining allegations of paragraph 4 and would further set forth that Defendant Zillow Home Loans, LLC is not a proper party to the above-captioned litigation as it is not involved in any activity that is the subject matter of Plaintiff's Complaint.

5. In answering the allegations of paragraph 5, Defendants would admit that Defendant Zillow Group, Inc. is the parent company of Zillow, Inc. and is a corporation formed under the laws of the State of Washington with its headquarters in Seattle, Washington. Defendants deny the remaining allegations of paragraph 5.

6. Defendants do not believe the allegations of paragraph 6 require a response from them. To the extent any response is required, Defendants deny the same.

7. Defendants do not believe the allegations of paragraph 7 require a response from them. To the extent any response is required, Defendants deny the same.

8. In answering the allegations of paragraph 8, Defendants would set forth that the proper parties to this action, if any, are named Defendants Zillow, Inc. and Zillow Group, Inc. Defendants ZGMI and Zillow Home Loans, LLC are not proper parties as they are not involved in any activity that is the subject matter of Plaintiff's Complaint. As such, when answering on behalf of the Defendants, this shall be a reference to all named Defendants to ensure all paragraphs are answered. Defendant denies the remaining allegations of paragraph 8.

9. Defendants deny the allegations of paragraphs 9 through 11.

10. In answering the allegations of paragraph 12, Defendants would admit that Defendant Zillow, Inc. owns and operates the Zillow Website. Defendants deny the remaining allegations of paragraph 12.

11. Defendants admit the Zillow Website provides information regarding millions of homes across the United States, but deny the remaining allegations of paragraph 13.

12. Defendants do not believe a response is required to the allegations made in paragraphs 14 and 15; however, to the extent a response is required, Defendants respectfully refer the Court to the Zillow Website and 2018 Annual Report for Defendant Zillow Group, Inc. for the statements made therein.

13. Defendants lack knowledge and information sufficient to form a belief as to the allegations of paragraphs 16 and 17 and, therefore, deny the same.

14. Defendants do not believe the allegations of paragraph 18 require a response from them. To the extent any response is required, Defendants lack knowledge and information sufficient to form a belief as to the allegations made therein.

15. Defendants lack knowledge and information sufficient to form a belief as to the allegations of paragraphs 19 through 22 and, therefore, denies the same.

16. Defendants deny the allegations of paragraphs 23 and 24.

17. Defendants lack knowledge and information sufficient to form a belief as to the allegations of paragraph 25 and, therefore, deny the same.

18. Defendants deny the allegations of paragraphs 26 through 30.

19. Defendants lack knowledge and information sufficient to form a belief as to the allegations of paragraphs 31 through 34 and, therefore, deny the same.

20. Defendants deny the allegations of paragraph 35 and its subparts.

21. Defendants deny the allegations of paragraph 36.

FIRST CAUSE OF ACTION
DEFAMATION, LIBEL, SLANDER
(Against All Defendants)

22. Defendants reassert and reallege their responses to paragraphs 1 through 36 as if set forth herein fully verbatim. Defendants would further set forth that for the purpose of paragraphs 37 through 43, the proper parties to this cause of action, if any, are named Defendants Zillow, Inc. and Zillow Group, Inc. Defendants ZGMI and Zillow Home Loans, LLC are not proper parties as they are not involved in any activity that is the subject matter of Plaintiff's Complaint. As such, when answering on behalf of the Defendants, this shall be a reference to all named Defendants to ensure all paragraphs are answered.

23. Defendants deny the allegations of paragraphs 38 through 42.

24. Defendant deny the allegations of paragraph 43 and its subparts.

SECOND CAUSE OF ACTION
NEGLIGENCE
(Against All Defendants)

25. Defendants reassert and reallege their responses to paragraphs 1 through 43 as if set forth herein fully verbatim. Defendants would further set forth that for the purpose of paragraphs 45 through 59, the proper parties to this cause of action, if any, are named Defendants Zillow, Inc. and Zillow Group, Inc. Defendants ZGMI and Zillow Home Loans, LLC are not proper parties as they are not involved in any activity that is the subject matter of Plaintiff's Complaint. As such, when answering on behalf of the Defendants, this shall be a reference to all named Defendants to ensure all paragraphs are answered.

26. To the extent paragraph 45 contains conclusions of law which Defendants are neither required to admit or deny, Defendants deny the same. Defendants deny the remaining allegations of paragraph 45.

27. Defendants deny the allegations of paragraphs 46 through 58.

28. Defendants deny the allegations of paragraph 59 and its subparts.

29. Defendants deny each and every allegation of the Plaintiff's Complaint which is not hereinabove specifically admitted.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

30. Defendants hereby give Plaintiff notice that they intend to move to transfer venue under 28 U.S.C. § 1404(a) or, in the alternative, the doctrine of *forum non conveniens*, based on the forum selection clause Plaintiff assented to when he created a Zillow Website account on or about December 21, 2017.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

31. Defendants would set forth that based on the forum selection clause Plaintiff assented to when he created a Zillow Website account on or about December 21, 2017 venue is not proper in this Court pursuant Federal Rule of Civil Procedure 12(b)(3).

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

32. Defendants would set forth that Plaintiff has failed to state a claim, in whole or in part, on which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) and, therefore, Plaintiff's Complaint should be dismissed.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

33. Plaintiff's claims are barred by the applicable statute of limitations.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

34. Plaintiff has failed to mitigate his damages, if any.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

35. Any statement(s), if any, made by the Defendants enjoyed a qualified or conditional privilege so as to bar any recovery by the Plaintiff in this matter.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

36. Even if Defendants were negligent as alleged in the Plaintiff's Complaint, which is specifically denied, any damage suffered by the Plaintiff was due to his own comparative negligence so as to bar or partially bar any recovery in this matter.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

37. That, even if the Defendants were negligent, as alleged in the Plaintiff's Complaint, which is specifically denied, the negligence of Defendants is not the direct or proximate cause of any injury alleged by the Plaintiff and, therefore, Defendants are not liable for any damages allegedly sustained by the Plaintiff.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

38. Plaintiff's claims are barred by all equitable doctrines available to Defendants, including, but not limited to, laches, ratification, unclean hands, waiver, estoppel, and unjust enrichment.

**FURTHER ANSWERING AND AS AN ADDITIONAL DEFENSE,
DEFENDANTS ALLEGE AND SAY:**

39. To the extent Plaintiff is seeking punitive damages, Defendants rely on the applicable statutory caps limiting the recovery of punitive damages as set forth in S.C. Code Ann. 15-32-530.

RELIANCE ON OTHER AFFIRMATIVE DEFENSES

40. Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and, thus, reserve the right to amend their Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants Zillow, Inc., Zillow Group Marketplace, Inc., Zillow Homes Loans, LLC, and Zillow Group, Inc. pray that the same be dismissed.

HAYNSWORTH SINKLER BOYD, P.A.

By: /s/ Amy F. Bower

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February 12, 2020
Charleston, South Carolina
HSB 6148100 v.1