

1 Robert J. Hicks, State Bar #204992
2 Email: Robert.Hicks@streamkim.com
3 Theodore K. Stream, State Bar #138160
4 Email: Ted.Stream@streamkim.com
5 Andrea Rodriguez, State Bar #290169
6 Email: Andrea.Rodriguez@streamkim.com
7 **STREAM KIM HICKS WRAGE & ALFARO, PC**
8 3403 Tenth Street, Suite 700
9 Riverside, CA 92501
10 Telephone: (951) 783-9470
11 Facsimile: (951) 783-9475

12 Attorneys for Defendant,
13 CALIFORNIA REGIONAL MULTIPLE
14 LISTING SERVICE, INC.

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 The PLS.com, LLC, a California limited
18 liability company,

19 Plaintiff,

20 vs.

21 The National Association of Realtors;
22 Bright MLS, Inc.; Midwest Real Estate
23 Data, LLC; and California Regional
24 Multiple Listing Service, Inc.,

25 Defendants.

CASE NO. 2:20-cv-04790-PA (RAOx)

**NOTICE OF MOTION AND
SPECIAL MOTION TO STRIKE
PLAINTIFF’S SECOND CLAIM
FOR VIOLATION OF THE
CARTWRIGHT ACT PURSUANT
TO CALIFORNIA CODE OF
PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE) AND
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6) FILED BY
DEFENDANT CALIFORNIA
REGIONAL MULTIPLE LISTING
SERVICE, INC.; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

*[Filed concurrently with Motion To
Dismiss First Amended Complaint
Pursuant To Federal Rule Of Civil
Procedure 12(b)(6) Filed By
Defendant California Regional
Multiple Listing Service, Inc.]*

Honorable Percy Anderson

Date: September 14, 2020
Time: 1:30 p.m.
Courtroom: 9A

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN THAT on September 14, 2020, at 1:30 p.m. before the Honorable Percy Anderson, in Courtroom 9A of the United States District Court, Central District of California, Western Division, First Street Courthouse, 350 W. 1st Street, Los Angeles, California, Defendant California Regional Multiple Listing Service, Inc. (“CRMLS”) will and hereby does move the Court to Strike the Second Claim from Plaintiff’s First Amended Complaint (Dkt. No. 46) pursuant to California Code of Procedure Section 425.16 (Anti-SLAPP Statute) and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. This motion is made on the grounds that the state law claim for violation of the Cartwright Act (Cal. Bus. & Prof. Code § 16720(a)-(c)) improperly challenges protected petitioning activity and the First Amended Complaint (“FAC”) fails to allege facts sufficient to establish antitrust injury or anticompetitive conduct, that CRMLS entered into an unlawful agreement or concerted action, and that CRMLS has market power within the relevant market as set forth in CRMLS’s Motion to Dismiss filed concurrently.

This Motion is made following the conference of counsel pursuant to L. R. 7-3, which took place on August 5, 2020.

This Motion is based on this Notice of Motion and Motion; accompanying Memorandum of Points and Authorities; the Motion To Dismiss First Amended Complaint Pursuant To Federal Rule Of Civil Procedure 12(b)(6) Filed By Defendant California Regional Multiple Listing Service, Inc. (“Motion to Dismiss”); the pleadings and papers filed in this action; and such further argument

///

///

///

///

///

1 and matters as may be offered at the time of the hearing of this Motion.

2 Dated: August 13, 2020

STREAM KIM HICKS WRAGE & ALFARO PC

3

4

/s/ Robert J. Hicks

5

Robert J. Hicks
Theodore K. Stream
Andrea Rodriguez
Attorneys for Defendant,
CALIFORNIA REGIONAL MULTIPLE
LISTING SERVICE, INC.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

STREAM|KIM
ATTORNEYS AT LAW
3403 TENTH STREET,
STE 700
RIVERSIDE, CA 92501
951-783-9470

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 1

II. FACTUAL BACKGROUND..... 2

III. LEGAL STANDARD 4

 A. An Anti-SLAPP Motion To Strike May Be Filed In Federal Court Against Pendent State Law Claims..... 4

 B. An Anti-SLAPP Motion Based On Legal Arguments Is Analyzed Under The Standards Set Forth Under Federal Rule Of Civil Procedure 12(b)(6)..... 5

IV. ARGUMENTS 6

 A. The Court Should Grant CRMLS’s Anti-SLAPP Motion Because (1) PLS’s State Law Claim Arises Out Of Protected Activity Under The Anti-SLAPP Statute; And (2) PLS Has Failed To State A Claim Under The Cartwright Act..... 6

 1. PLS’s State Claim Arises From Acts In Furtherance Of CRMLS’s Rights of Petition And Free Speech (Step One). 6

 a) All of CRMLS’s alleged “advocacy activities” were in connection with an issue of “public interest” and therefore are protected under California Code of Civil Procedure sections 425.16(e)(3) and 425.16(e)(4)..... 9

 b) CRMLS’s white paper and alleged communications were made in a public forum because they were published and made on websites available to the public and are therefore protected under California Code of Civil Procedure sections 425.16(e)(3)..... 13

 2. PLS Fails To State A Claim Under The Cartwright Act (Step Two). 15

 3. The Court Must Award Attorneys’ Fees To CRMLS If It Prevails. 16

V. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

1

2

3 *Averill v. Superior Court*, 42 Cal. App. 4th 1170 (1996)..... 10

4 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) 3

5 *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036 (1997)..... 7

6 *Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.*, 448 F. Supp. 2d
 7 1172 (C.D. Cal. 2006) 5

8 *Cty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148 (9th Cir. 2001)..... 15

9 *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468 (2000) 10, 11, 14

10 *Du Charme v. Int'l Bhd. of Elec. Workers*
 11 110 Cal. App. 4th 107 (2003)..... 10, 11, 12, 13

12 *G.H.I.I. v. MTS, Inc.*, 147 Cal.App. 3d 256 (1978) 3, 15

13 *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d
 14 1127 (N.D. Cal. 1999) 5

15 *Grenier v. Taylor*, 234 Cal. App. 4th 471 (2015)..... 13

16 *In re Bah*, 321 B.R. 41 (B.A.P. 9th Cir. 2005) 5

17 *In re TFT-LCD Antitrust Litigation*, 586 F.Supp.2d 1109 (N.D. Cal. 2008) 3

18 *Macias v. Hartwell* 55 Cal. App. 4th 669 (1997) 14

19 *Maloney v. T3Media, Inc.*, 853 F.3d 1004 (9th Cir. 2017)..... 6

20 *Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers*, 795
 21 F.3d 1124 (9th Cir. 2015)..... 15

22 *Navellier v. Sletten*, 29 Cal. 4th 82 (2002) 6

23 *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d
 24 828 (9th Cir.), amended, 897 F.3d 1224 (9th Cir. 2018) 5

25 *Rivero v. Amer. Federation of State, County and Muni. Employees, AFL–*
 26 *CIO*, 105 Cal. App. 4th 913 (2003)..... 10, 12

27 *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973 (C.D. Cal.
 28 1999)..... 5, 6, 15, 16

Ruiz v. Harbor View Cmty. Assn., 134 Cal. App. 4th 1456 (2005) 10

Terry v. Davis Community Church 131 Cal. App. 4th 1534 (2005) 10

U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc., 190 F.3d 963
 (9th Cir.1999) 5

1 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003)7, 8

2 *Wilbanks v. Wolk* 121 Cal. App. 4th 883 (2004)..... 10

3 **Statutes**

4 California Code of Civil Procedure section 425.16 1, 15

5 California Code of Civil Procedure section 425.16(b)(1)2, 4

6 California Code of Civil Procedure section 425.16(c)6, 16

7 California Code of Civil Procedure section 425.16, subdivision (e) 7

8 California Code of Civil Procedure section 425.16(e)(3)7, 9, 10, 11, 13, 14

9 California Code of Civil Procedure section 425.16(e)(4)7, 9, 10, 11, 13

10 Federal Rule Of Civil Procedure 85

11 Federal Rule Of Civil Procedure 12(b)(6).....2, 5, 6, 7, 15, 16

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff The PLS.com, LLC’s (“PLS”) claim under California’s Cartwright Act against Defendant California Regional Multiple Listing Service, Inc. (“CRMLS”) arises entirely from CRMLS’s alleged speech and conduct protected under section 425.16 of California Code of Civil Procedure, which is commonly referred to as California’s anti-SLAPP statute. The anti-SLAPP statute was enacted to mitigate the chilling effect of lawsuits directed against free speech and petitioning activities and establishes a procedure—followed by federal as well as state courts in California—for prompt review and disposal of state law claims arising from acts “in furtherance of the person’s right of petition or free speech under the United States or California Constitution in connection with a public issue.” Cal. Civ. Proc. Code § 425.16.

It is clear from the allegations in PLS’s First Amended Complaint (“FAC”) that its second claim for violation of the Cartwright Act arises from activity expressly protected under the anti-SLAPP statute. First, the FAC alleges that the National Association of Realtors’ (“NAR”) MLS Technology and Emerging Issues Advisory Board *voted to recommend* the adoption of a policy requiring a listing broker who markets property to the public to also submit the listing to the multiple listing services affiliated with NAR (the “Policy”). Next, the FAC describes how CRMLS *participated in discussions* on the Policy, *authored and published a white paper* on the future of multiple listing services, and *attended a conference and/or meetings* where the Policy was discussed.¹ These alleged debates, discussions,

¹ While it is clear *protected activity* is being alleged in FAC, it is unclear from the allegations in the FAC *what protected activity is being attributed to CRMLS versus the other named Defendants versus NAR-Affiliated MLSs*. As discussed in more detail in CRMLS’s Motion to Dismiss, which is being filed concurrently with this Motion, CRMLS is alleged to have engaged in activity in furtherance of the alleged conspiracy to adopt and implement the Policy. (Motion to Dismiss, pg. 9-17.) But the specific factual allegations in paragraphs 71-90 of the FAC regarding how the

1 meetings, advocacy, and adoption of the Policy are the only conduct PLS alleges
 2 against CRMLS to support its conspiracy allegations. They are all protected
 3 activities that the anti-SLAPP statute seeks to protect.

4 Finally, in order to be protected, the conduct or speech must be in
 5 connection with an issue of “public interest.” Case law defines matters of public
 6 interest as conduct that could directly affect a large number of people beyond the
 7 direct participants or a topic of widespread public interest. The FAC asserts
 8 repeatedly that the lobbying, meetings, advocacy, and ultimate adoption of the
 9 Policy is a nationwide issue that profoundly affects buyers, sellers, brokers, and
 10 multiple listing companies alike. It is without doubt a matter of public interest.

11 Accordingly, because PLS’s second claim for violation of the Cartwright
 12 Act arises from CRML’s alleged speech and conduct in connection with a matter
 13 of public interest the burden is on PLS to show that it will prevail. Cal. Civ. Proc.
 14 Code § 425.16(b)(1). Because PLS cannot meet this burden, for the reasons set
 15 forth in CRMLS’s concurrently filed Motion to Dismiss under Rule 12(b)(6), the
 16 Cartwright Claim must be stricken from PLS’s FAC.

17 II.

18 FACTUAL BACKGROUND

19 CRMLS operates a listing service for real estate professionals representing
 20 buyers and sellers of residential real estate in California. (FAC, ¶ 18.) CRMLS is
 21 a member of the National Association of Realtors (“NAR”), which is a trade
 22 association that, among other things, implements rules and policies governing any
 23 multiple listing service (MLS) that is affiliated with NAR. (FAC, ¶¶ 17-18.) In
 24 November 2019, NAR voted to approve and adopt the Clear Cooperation Policy
 25 (the “Policy”), which requires a listing broker to submit a listing to the MLS within
 26

27 Policy was formulated, approved, and adopted all describe protected activity and vary
 28 as to what activity was contributed by each Defendant. Therefore, to the extent
 CRMLS is alleged to have engaged in any of this activity, that conduct would be
 covered by California’s anti-SLAPP statute.

1 one business day of marketing a property to the public. (FAC, ¶¶ 86-89.) The
2 Policy was effective on January 1, 2020, and as a NAR-affiliated MLS, CRMLS
3 was obligated to adopt and implement the Policy. (FAC, ¶ 90.)

4 Prior to NAR adopting the Policy, PLS complains that CRMLS (or “NAR-
5 Affiliated MLSs” or “MLS Defendants”) advocated for the adoption of the Policy
6 as follows:²

- 7 1. “NAR’s MLS Technology and Emerging Issues Advisory Board voted to
8 recommend the adoption of what would become the Clear Cooperation
9 Policy at the upcoming NAR Convention in San Francisco, California. The
10 members present for this vote included executives of NAR-affiliated MLSs,
11 and Defendant MRED.” (FAC ¶ 71);
- 12 2. “NAR-affiliated MLSs around the country communicate frequently and
13 privately among themselves regarding pocket listings, using internet forums
14 and social media, and through CMLS.” (FAC ¶ 73);
- 15 3. “[P]rivate interfirm communications among NAR-affiliated MLSs, MRED,
16 and the other MLS Defendants, were the means by which the Clear
17 Cooperation Policy was formulated and advanced.” (FAC ¶ 74);
- 18 4. CRMLS authored and published a white paper “to address the threat to the
19 MLS system presented by the rise of pocket listings and the prospect of a
20 competing listing network that would aggregate to such listings.” (FAC ¶¶

21
22 ² Again, it is unclear from these allegations in the FAC what specific activity CRMLS is
23 alleged to have engaged in, and as discussed thoroughly in CRMLS’s Motion to
24 Dismiss, the allegations in paragraphs 71-90 of the FAC fall short of the pleading
25 standard for alleging specific facts about how CRMLS entered into any sort of
26 unlawful agreement related to the Policy. *See G.H.I.I. v. MTS, Inc.*, 147 Cal.App. 3d
27 256, 265-66 (1978); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). General
28 allegations about all defendants or specific categories of defendants is insufficient to
put CRMLS on notice of the claims against it specifically. *See In re TFT-LCD
Antitrust Litigation*, 586 F.Supp.2d 1109, 1117 (N.D. Cal. 2008). Because it is
unclear from the allegations in the FAC what specific “advocacy” CRMLS is alleged
to have engaged in, this Motion will address all the activity alleged in the FAC
regarding how the Policy was formulated, approved, and adopted. But this does not
represent an admission that CRMLS actively advocated for the Policy (or that the
FAC adequately alleges it did).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11, 25, 75);

- 5. “On October 17 and 18, 2019, NAR-affiliated MLS, MRED and the other MLS Defendants met at a CMLS conference in Salt Lake City, Utah to discuss the competitive threat presented by pocket listings and the need for NAR to take action at the upcoming NAR Convention to eliminate that threat through adoption of the Clear Cooperation Policy.” (FAC ¶ 78); and
- 6. “In November 2019, the Defendants gathered in San Francisco to take action on the Clear Cooperation Policy. On November 9, 2019, NAR’s Multiple Listing Issues and Policies Committee approved the Clear Cooperation Policy by a voice vote, sending the Policy to NAR’s Board of Directors. Executives of the NAR-affiliated MLS, including Bright MLS and MRED attended the meeting and spoke in support of the Clear Cooperation Policy. As had been discussed and planned at the October CMLS conference, other NAR-affiliated MLSs did the same.” (FAC ¶ 86).

PLS alleges that CRMLS committed the above “overt acts” in an attempt to show that CRMLS and the other named Defendants in the FAC conspired and acted in concert to formulate, adopt, implement, and enforce the Policy in an effort to unreasonably restrain trade. (FAC ¶¶ 25, 102, 104-105.) Specifically, PLS alleges that CRMLS “advocated for and/or adopted the . . . Policy as a means of preventing the continued exponential growth of a competitor that was providing a lower cost nationwide listing service.” (FAC, ¶ 119.)

III.

LEGAL STANDARD

A. An Anti-SLAPP Motion To Strike May Be Filed In Federal Court Against Pendent State Law Claims.

Pursuant to California’s anti-SLAPP statute, a defendant may move to strike a cause of action in a plaintiff’s complaint if it “aris[es] from any act of that person in furtherance of the person's right of petition or free speech under the United

1 States or California Constitution in connection with a public issue.” Cal. Civ. Proc.
 2 Code § 425.16(b)(1). A defendant may bring an anti-SLAPP motion in federal
 3 court against state law claims. *U.S. ex rel. Newsham v. Lockheed Missiles & Space*
 4 *Co., Inc.*, 190 F.3d 963, 970–73 (9th Cir.1999).

5 Moreover, an anti-SLAPP motion may be brought against a plaintiff's
 6 pendent state law claims that are joined in federal question cases. *Globetrotter*
 7 *Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d 1127, 1129–1130
 8 (N.D. Cal. 1999); *In re Bah*, 321 B.R. 41, 46 (B.A.P. 9th Cir. 2005); see also
 9 *Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.*, 448 F. Supp. 2d 1172,
 10 1180-82 (C.D. Cal. 2006) (holding anti-SLAPP motion could be considered as to
 11 the state law antitrust claims for which the court had supplemental jurisdiction).
 12 PLS's state law claim for violation of the Cartwright Act is pendent to its federal
 13 claim (violation of the Sherman Act) under federal question jurisdiction.
 14 Therefore, having supplemental jurisdiction as to the state law claim, the Court
 15 should consider CRMLS's anti-SLAPP Motion.

16 **B. An Anti-SLAPP Motion Based On Legal Arguments Is Analyzed Under**
 17 **The Standards Set Forth Under Federal Rule Of Civil Procedure**
 18 **12(b)(6).**

19 “Special procedural rules apply where an anti-SLAPP motion is brought in
 20 federal court.” *Bulletin Displays*, 448 F. Supp. 2d at 1180. “If a defendant makes
 21 an anti-SLAPP motion to strike founded on purely legal arguments, then the
 22 analysis is made under Fed. R. Civ. P. 8 and 12 standards; if it is a factual
 23 challenge, then the motion must be treated as though it were a motion for summary
 24 judgment and discovery must be permitted.” *Planned Parenthood Fed'n of Am.,*
 25 *Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th Cir.), amended, 897 F.3d
 26 1224 (9th Cir. 2018). (Internal quotations omitted.) *Rogers v. Home Shopping*
 27 *Network, Inc.*, 57 F. Supp. 2d 973, 983 (C.D. Cal. 1999). *Bulletin Displays*, 448 F.
 28 Supp. 2d at 1180.

1 Moreover, “[i]f a defendant makes a special motion to strike based on
2 alleged deficiencies in the plaintiff’s complaint, the motion must be treated in the
3 same manner as a motion under Rule 12(b)(6) *except that the attorney’s fee*
4 *provision of § 425.16(c) applies.*” *Rogers*, 57 F. Supp. 2d at 983 (Emphasis
5 added.) Here, CRMLS has brought an anti-SLAPP motion based on legal
6 arguments (i.e., PLS’s failure to state a claim), and therefore, the Court should
7 analyze CRMLS’s anti-SLAPP motion under Federal Rules of Civil Procedure
8 Rule 12(b)(6) and award attorneys’ fees to CRMLS if it prevails on its anti-SLAPP
9 Motion against PLS.

10 IV.
11 ARGUMENTS

12 **A. The Court Should Grant CRMLS’s Anti-SLAPP Motion Because (1)**
13 **PLS’s State Law Claim Arises Out Of Protected Activity Under The**
14 **Anti-SLAPP Statute; And (2) PLS Has Failed To State A Claim Under**
15 **The Cartwright Act.**

16 California’s anti-SLAPP statute requires a two-part analysis. “At step one of
17 the anti-SLAPP analysis, the moving defendant must make a prima facie showing
18 that the plaintiff’s suit arises from an act in furtherance of the defendant’s
19 constitutional right to free speech. At step two, assuming that showing has been
20 made, the burden shifts to the plaintiff to establish a reasonable probability that it
21 will prevail on its claim[s].” *Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1009 (9th
22 Cir. 2017). (Internal quotations and citations omitted.)

23 **1. PLS’s State Claim Arises From Acts In Furtherance Of CRMLS’s**
24 **Rights of Petition And Free Speech (Step One).**

25 A defendant can meet the threshold burden under the first step by showing
26 “that the challenged cause of action is one arising from protected activity.”
27 *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). “A defendant meets this burden by
28 demonstrating that the act underlying the plaintiff’s cause fits one of the categories

1 spelled out in section 425.16, subdivision (e).” *Id.* quoting *Braun v. Chronicle*
 2 *Publ’g Co.*, 52 Cal. App. 4th 1036, 1043 (1997). “A protected act of free speech
 3 includes ‘any written or oral statement or writing made in a place open to the
 4 public or a public forum in connection with an issue of public interest,’ and ‘any
 5 other conduct in furtherance of the exercise of the constitutional right of petition or
 6 the constitutional right of free speech in connection with a public issue or an issue
 7 of public interest.’” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1110 (9th Cir.
 8 2003) quoting Cal. Civ. Proc. Code § 425.16(e)(3)-(4). Notably, California Code of
 9 Civil Procedure sections 425.16(e)(3) and 425.16(e)(4) both require that the free
 10 speech and/or conduct be *in connection with an issue of public interest.*”
 11 (Emphasis added.)

12 A good example of the type of conduct protected by the anti-SLAPP statute
 13 is demonstrated by the Ninth Circuit opinion in *Vess v. Ciba-Geigy Coro. USA*,
 14 317 F.3d 1097 (9th Cir. 2003). In *Vess*, the plaintiff alleged that defendants
 15 (Novartis Pharmaceuticals, American Psychiatric Association (“APA”), Children
 16 and Adults with Attention Deficit/Hyperactivity Disorder (“CHADD”)) conspired
 17 to increase the sales and availability of Ritalin in violation of the California
 18 Consumers Legal Remedies Act and California’s unfair business practice laws. *Id.*
 19 at 1100-01. In response to the first amended complaint, APA and CHADD each
 20 filed motions to dismiss under Rule 12(b)(6) and motions to strike under
 21 California’s anti-SLAPP statute. *Id.* at 1102. The district court granted the motions
 22 to dismiss and strike under the anti-SLAPP statute after the plaintiff declined to
 23 amend his complaint again. *Id.* Plaintiff appealed. *Id.*

24 The Ninth Circuit in *Vess* affirmed “the district court’s grant of the APA and
 25 CHADD’s motion to strike under the anti-SLAPP statute.” *Id.* at 1110. The Ninth
 26 Circuit Court found that APA and CHADD made a sufficient showing under the
 27 first prong of the anti-SLAPP statute analysis by showing protected conduct under
 28 California Civil Code of Procedure sections 425.16(e)(3)-(4) because “APA’s

1 protected speech, within the meaning of the statute, consists of the *publication of*
 2 the DSM [and] CHADD’s protected speech consists of its public *advocacy*
 3 *activities* in connection with the use of Ritalin.” *Id.* at 1110. (Emphasis added.)

4 Like the defendant in *Vess*, CRMLS’s protected speech and conduct consists
 5 of alleged *advocacy activities* in connection with the adoption of the Policy, as
 6 concluded by PLS in its FAC (FAC, ¶ 119), including:

- 7 1. Authoring and publishing a white paper “to address the threat to the
 8 MLS system presented by the rise of pocket listings and the prospect
 9 of a competing listing network that would aggregate to such listings”
 10 (FAC ¶¶ 11, 25, 75);
- 11 2. Attending a meeting where “NAR’s MLS Technology and Emerging
 12 Issues Advisory Board voted to recommend the adoption of what
 13 would become the Clear Cooperation Policy at the upcoming NAR
 14 Convention in San Francisco, California” (FAC ¶ 71);
- 15 3. “Communicat[ing] frequently . . . regarding pocket listings, using,
 16 internet forums and social media, and through CMLS” (FAC ¶ 73);
- 17 4. “Communicat[ing] frequently and privately among themselves
 18 regarding pocket listing” [and] engaging in “private interfirm
 19 communications . . . by which the Clear Cooperation Policy was
 20 formulated and advanced” (FAC ¶¶ 73, 74);
- 21 5. Attending the CMLS conference “to discuss the competitive threat
 22 presented by pocket listings and the need for NAR to take action at
 23 the upcoming NAR Convention . . .” (FAC ¶ 78); and
- 24 6. Attending the meeting where “NAR’s Multiple Listing Issues and
 25 Policies Committee approved the Clear Cooperation Policy by a voice
 26 vote . . .” (FAC ¶ 86).³

27
 28 ³ Again, as stated above, because it is unclear from the allegations in the FAC what
 specific activity CRMLS is alleged to have engaged in in paragraphs 71-90 of the

1 All of the above conduct and speech as alleged in the FAC is protected
2 activity under California Code of Civil Procedure sections 425.16(e)(4) because it
3 is all “conduct in furtherance of the exercise of the constitutional right of petition
4 or . . . free speech in connection with a public issue or an issue of public interest.”
5 Moreover, CRMLS’s above purported acts of authoring and publishing of the
6 white paper (FAC ¶¶ 11, 25, 75) and communications on the internet form and
7 social media (FAC ¶ 73) were written statements made in a public forum, and
8 therefore, are also protected under California Code of Civil Procedure sections
9 425.16(e)(3), in addition to being protected conduct under California Code of Civil
10 Procedure section 425.16(e)(4).

11 PLS alleges that CRMLS’s conduct and speech was the product of an
12 agreement and/or conspiracy to restrain trade in violation of the Cartwright Act.⁴
13 (FAC ¶¶ 25, 102, 104-105.) But PLS also concedes that CRMLS “advocated for”
14 the Policy, and that its actions in “advocating for” the Policy resulted in a restraint
15 on trade. (FAC, ¶ 119.) Therefore, PLS’s second claim for violation of the
16 Cartwright Act arises from CRMLS’s alleged *advocacy activity* in furtherance of
17 the its rights of petition or free speech, which is protected activity under
18 California’s anti-SLAPP statute.

19 a) All of CRMLS’s alleged “advocacy activities” were in
20 connection with an issue of “public interest” and therefore
21 are protected under California Code of Civil Procedure
22 sections 425.16(e)(3) and 425.16(e)(4).

23 As mentioned above, California Code of Civil Procedure sections
24 425.16(e)(3) and 425.16(e)(4) both require that the conduct and written/oral
25 statements be made in connection with an issue of “public interest.” But section
26 425.16(e)(4) does not require that the conduct take place in a public forum, while

27 FAC, this Motion will address all the activity alleged against CRMLS, “MLS
28 Defendants” and “NAR-Affiliated MLSs.”

1 section 425.16(e)(3) does require written statements to have been made in a public
 2 form. This means that section 425.16(e)(3) does not include private
 3 communications on public issues, but section 425.16(e)(4) does. *Ruiz v. Harbor*
 4 *View Cmty. Assn.*, 134 Cal. App. 4th 1456, 1467 (2005), citing to *Averill v.*
 5 *Superior Court*, 42 Cal. App. 4th 1170, 1175 (1996), *Wilbanks v. Wolk* 121 Cal.
 6 App. 4th 883, 897, fn. 4 (2004), and *Terry v. Davis Community Church* 131 Cal.
 7 App. 4th 1534, 1546 (2005). Because all of the acts underlying PLS’s state law
 8 claim against CRMLS were *in connection with an issue of public interest*, all of
 9 CRMLS’s conduct, including its written and oral statements, is protected conduct
 10 under California Code of Civil Procedure section 425.16(e)(4).

11 Public interest “has been broadly construed to include not only
 12 governmental matters, but also private conduct that impacts a broad segment of
 13 society and/or that affects a community in a manner similar to that of a
 14 governmental entity. [M]atters of public interest ... include activities that involve
 15 private persons and entities, especially when a large, powerful organization may
 16 impact the lives of many individuals.” *Damon v. Ocean Hills Journalism Club*, 85
 17 Cal. App. 4th 468, 479 (2000). Three categories have emerged in which California
 18 Courts have found that a public interest exists. These categories include: “[1]the
 19 subject statements either concerned a person or entity in the public eye, [2] conduct
 20 that could directly affect a large number of people beyond the direct participants or
 21 [3] a topic of widespread, public interest.” *Rivero v. Amer. Federation of State,*
 22 *County and Muni. Employees, AFL–CIO*, 105 Cal. App. 4th 913, 924 (2003).
 23 (Internal citations omitted.)

24 In *Du Charme v. Int’l Bhd. of Elec. Workers*, the court found that an
 25 announcement on a website informing union members that the plaintiff had been
 26 removed from office was not an issue of public interest because although the
 27 announcement was of interest to the union members, it was merely informational,
 28 and “[m]embers of the [union] were not being urged to take any position on the

1 matter.” 110 Cal. App. 4th 107, 118 (2003). As a result, the court of appeal in *Du*
 2 *Charme* held that “in order to satisfy the public issue/issue of public interest
 3 requirement of section 425.16, subdivision (e)(3) and (4) of the anti-SLAPP
 4 statute, in cases where the issue is not of interest to the public at large, but rather to
 5 a limited, but definable portion of the public (a private group, organization, or
 6 community), the constitutionally protected activity must, at a minimum, occur in
 7 the context of an ongoing controversy, dispute or discussion, such that it warrants
 8 protection by a statute that embodies the public policy of encouraging participation
 9 in matters of public significance.” *Id.* at 119. A dispute that involves a large group
 10 is exactly what is alleged here.

11 NAR’s adoption of the Policy is a quintessential issue of public interest. It is
 12 a topic of widespread public interest and directly affects a large number of people
 13 beyond the direct participants. First, PLS concedes in its FAC that CRMLS is the
 14 largest MLS in the United States, with over 100,000 members and is owned and
 15 controlled by NAR members who operate through 39 local associations.⁵ (FAC ¶
 16 18.) Because CRMLS is a “large” private entity that could impact many, its
 17 activities tend to involve matters of public interest. *Damon*, 85 Cal. App. 4th at
 18 479. Thus, there is no dispute that the matter affects a large group.

19 Second, in its FAC, PLS concedes that CRMLS’s conduct occurs in the
 20 context of an ongoing controversy, dispute, or discussion about the Policy.
 21 Specifically, the FAC alleges that CRMLS’s “conduct . . . harmed (i) real estate
 22 professionals serving both buyers and sellers of residential real estate services that
 23 desired to use listing networks other than those operated by the NAR-affiliated
 24 MLSs, and also (ii) those buyers and sellers of residential real estate.” (FAC ¶
 25 114.) Specifically, the FAC alleges that the Policy has eliminated the ability and
 26

27 ⁵ Notably, PLS also concedes NAR is a national organization with “over 1.4 million
 28 members,” whereby all NAR-affiliated MLS members are required to adopt NAR’s
 rules, including the Policy. (FAC ¶ 17, 30, 90.) Therefore, the Policy applies to all
 NAR-affiliated MLSs nationally making the affect of the Policy even larger.

1 incentive of licensed real estate professionals to market pocket listings (FAC ¶
 2 112) and prevents home sellers from retaining privacy and discretion (FAC ¶ 8).
 3 Thus, the FAC alleges that the Policy is a matter of dispute and controversy.

4 The CRMLS’s purported advocacy for the Policy, which was adopted by
 5 NAR, has “directly affected a large number of people” beyond the CRMLS, and
 6 other NAR members, who are required to adopt the Policy, because real estate
 7 professions, buyers, sellers, and PLS are also affected by the Policy. *Rivero*, 105
 8 Cal. App. 4th at 924. Thus, the FAC alleges that CRMLS’s purported advocacy
 9 activity has harmed real estate professions, buyers, and sellers of residential real
 10 estate, in addition to PLS because the Policy requires listing brokers to submit a
 11 property listing to the MLS within one day of marketing the property to the public.
 12 Therefore, because CRMLS’s purported advocacy activity directly affects a large
 13 number of people and involves an ongoing discussion on a controversial issue, it is
 14 a matter of public interest.

15 Moreover, PLS concedes that “NAR promulgates rules and codes of conduct
 16 for its members and for its state, territorial and local associations. These
 17 associations, in turn, are required to adopt NAR’s rules and bylaws and to enforce
 18 NAR-promulgated rules upon the licensed real estate professionals comprising the
 19 associations [including the Policy.]” (FAC ¶¶ 30, 90.) This means that NAR’s
 20 proposed rules and policies concern associations and members, such as CRMLS,
 21 because they are required to implement all of NAR’s rules. While NAR’s MLS
 22 Technology and Emerging Issues Advisory Board voted to recommend adopting
 23 the Policy, NAR still needed to vote on whether or not to adopt the Policy. The
 24 FAC alleges that “the Defendants advocated for . . . the [Policy],” (FAC, ¶ 119)
 25 at a time when there were ongoing communications and conferences/meetings
 26 were taking place to formulate and advance the Policy (FAC, ¶¶ 72-86). Therefore,
 27 protection is warranted under the anti-SLAPP statute to encourage public
 28 participation on a matter of public significance. *Du Charme*, 110 Cal. App. 4th at

1 119.⁶ In summary, because CRMLS’s conduct—according to PLS’s own
 2 allegations—directly affects a large, definable portion of the public and relates to
 3 an ongoing controversy, dispute, or discussion, it is quintessentially a matter of
 4 public interest.

5 Therefore, because PLS’s second claim for violation of the Cartwright Act
 6 arises out of CRMLS’s purported “conduct in furtherance of the exercise of the
 7 constitutional right of petition or . . . free speech in connection with a public issue
 8 or an issue of public interest” (i.e., CRMLS’s alleged *advocacy activity*), the
 9 burden shifts to PLS to show probability of success on its claim for violation of
 10 Cartwright Act, which it cannot do, as discussed further below.

11 **b) CRMLS’s white paper and alleged communications were**
 12 **made in a public forum because they were published and**
 13 **made on websites available to the public and are therefore**
 14 **protected under California Code of Civil Procedure sections**
 15 **425.16(e)(3).**

16 All of CRMLS’s acts alleged in the FAC fall under “conduct in furtherance
 17 of the exercise of the constitutional right of petition or . . . free speech in
 18 connection with a public issue or an issue of public interest” under California Code
 19 of Civil Procedure sections 425.16(e)(4) as discussed above. But CRMLS’s alleged
 20 acts of authoring and publishing the white the paper (FAC ¶¶ 11, 25, 75) and
 21 communicating on the internet form and social media (FAC ¶ 73) are written
 22 statements made in a public forum, and therefore are also protected under
 23 California Code of Civil Procedure section 425.16(e)(3).

24 A public forum is not limited to a physical setting, but also includes other
 25 forms of public communication, such as statements made on a website. *Grenier v.*
 26 *Taylor*, 234 Cal. App. 4th 471, 481 (2015). In addition, California courts have

27 ⁶ Notably, the context of this situation is distinguishable from *Du Charme v. Int’l Bhd. of*
 28 *Elec. Workers* because CRMLS, as alleged in the FAC, did more than just announce
 information, it allegedly “advocated for” the Policy. (FAC, ¶ 119.)

1 broadly construed the public forum requirement under section 425.1(e)(3) to
2 include publications with a single viewpoint. See *Damon v. Ocean Hills*
3 *Journalism Club* 85 Cal. App. 4th 468, 478 (2000), where the court of appeal
4 found that a newsletter published to residents of a homeowners’ association was a
5 public forum because it provided “open discussion of public issues and was widely
6 distributed to all interested parties;” see also *Macias v. Hartwell* 55 Cal. App. 4th
7 669, 674 (1997), where the court of appeal found the mailing of a union campaign
8 flyer was a “recognized public forum under the SLAPP statute.”

9 PLS alleges that CRMLS authored and published a white paper regarding
10 pocket listings (FAC ¶¶ 11, 25, 75) and communicated on “internet forums and
11 social media” regarding pocket listings (FAC ¶ 73). First, the white paper is a
12 publication with a single viewpoint because as stated by PLS in its FAC the white
13 paper was “to address the threat to the MLS system presented by the rise of pocket
14 listings and the prospect of a competing listing network that would aggregate such
15 listings.” (FAC ¶ 75.) Therefore, because the white paper that is alleged to have
16 been authored and published by CRMLS is a publication expressing a single
17 viewpoint to invoke discussion on a public issue, it was made on a public forum,
18 and is therefore a protected written statements under California Code of Civil
19 Procedure sections 425.16(e)(3). *Damon*, 85 Cal. App. 4th at 478.

20 In addition, PLS alleges that NAR-affiliated MLSs around the country
21 communicated among themselves regarding pocket listings “using internet forum
22 and social media.” (FAC ¶ 73.) Because these alleged communications were made
23 on websites (i.e., internet forum and social media) as stated by PLS in its FAC,
24 they were made on a public forum, and are therefore, protected written statements
25 under California Code of Civil Procedure sections 425.16(e)(3).

26 ///

27 ///

28 ///

1 **2. PLS Fails To State A Claim Under The Cartwright Act (Step**
 2 **Two).**

3 “A correlative outcome is required regarding a special motion alleging legal
 4 deficiencies. By this, the Court refers to a motion that only identifies legal defects
 5 on the face of the pleading, analogous to a Rule 12(b)(6) motion to
 6 dismiss.” *Rogers*, 57 F. Supp. 2d at 982. Thus, if a plaintiff fails to state a claim
 7 under Rule 12(b)(6), the plaintiff has failed to show the probability of prevailing
 8 on its claim.

9 Because CRMLS has made a prima facie showing that PLS’s second claim
 10 for violation of the Cartwright Act falls within California Code of Civil Procedure
 11 section 425.16, PLS must now establish that there is a probability it will prevail on
 12 the merits of this challenged claim. Although the burden has been shifted to PLS,
 13 CRMLS expressly incorporates by reference the arguments made in the
 14 concurrently filed Motion to Dismiss. And, as set forth in CRMLS’s Motion to
 15 Dismiss filed currently with this Motion, PLS does not have a probability of
 16 prevailing on this claim.

17 To summarize CRMLS’s argument in its concurrently filed Motion to
 18 Dismiss, PLS asserts two claims in its FAC: (1) violation of the Section 1 of the
 19 Sherman Act; and (2) violation of the Cartwright Act. The Sherman Act and
 20 Cartwright are analyzed under the same legal standard. *Cty. of Tuolumne v. Sonora*
 21 *Cmty. Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001); *G.H.I.I.*, 147 Cal. App. 3d at
 22 265-66; see also *Name.Space, Inc. v. Internet Corp. for Assigned Names &*
 23 *Numbers*, 795 F.3d 1124, 1131 n.5 (9th Cir. 2015). As set forth in CRMLS’s
 24 Motion to Dismiss, PLS has failed to state a claim under the Sherman Act and
 25 Cartwright Act because the FAC fails to allege facts sufficient to establish antitrust
 26 injury or anticompetitive conduct, that CRMLS entered into an unlawful agreement
 27 or concerted action, and that CRMLS has market power within the relevant market.
 28 By failing to state a claim under Rule 12(b)(6) for violation of the Cartwright Act,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLS has failed to show the probability of prevailing on its state law claim. Therefore, CRMLS’s anti-SLAPP motion must be granted.

3. The Court Must Award Attorneys’ Fees To CRMLS If It Prevails.

California Code of Civil Procedure section 425.16(c) provides that “a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs.” Cal. Code Civ. Proc. § 425.16(c); see also *Rogers*, 57 F. Supp. 2d at 983. Because PLS’s state law claim arises out of protected activity under the anti-SLAPP statute and PLS has failed to state a claim pursuant to Rule 12(b)(6), PLS’s state law claim for violation of the Cartwright must be stricken from the FAC, and therefore, CRMLS should be awarded attorneys’ fees pursuant to California Code of Civil Procedure section 425.16(c).

V.

CONCLUSION

For the foregoing reasons, CRMLS requests that the Court grant CRMLS’s Special Motion to Strike PLS’s second claim for violation of the Cartwright Act and order PLS to pay CRMLS’s attorneys’ fees.

Dated: August 13, 2020

STREAM KIM HICKS WRAGE & ALFARO PC

/s/ Robert J. Hicks

Robert J. Hicks
Theodore K. Stream
Andrea Rodriguez
Attorneys for Defendant,
CALIFORNIA REGIONAL MULTIPLE
LISTING SERVICE, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I electronically filed the foregoing **NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF’S SECOND CLAIM FOR VIOLATION OF THE CARTWRIGHT ACT PURSUANT TO CALIFORNIA CODE OF PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE) AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) FILED BY DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.;** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the ECF registrants at the email addresses indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 13, 2020, Riverside, California.

/s/ Kimberly Trease

Kimberly Trease

STREAM KIM HICKS WRAGE & ALFARO, PC
3403 Tenth Street, Suite 700
Riverside, CA 92501
(951) 783-9470 Fax: (951) 783-9450
Email: Kimberly.trease@streamkim.com

SERVICE LIST

Electronic Mail Notice List:

<p>Scott R. Commerson Davis Wright Tremaine LLP 865 South Figueroa Street, Suite 2400 Los Angeles, CA 90017-2566 Telephone: (213) 633-6800 Fax: (213) 633-6899 Email: scottcommerson@dwt.com Email: elizabetharellano@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC (LEAD ATTORNEY)</p>	<p>Ashlee Aguiar David Wright Tremaine LLP 1300 SW Fifth Avenue, Ste. 2400 Portland, OR 97201 Telephone: (503) 241-2300 Fax: (503) 778-5299 Email: ashleeaguiar@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>Christopher G. Renner David Wright Tremaine LLP 1919 Pennsylvania Ave. NW, Ste. 800 Washington, DC 20006 Telephone: (202) 973-4200 Fax: (202) 973-4499 Email: chrisrenner@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>	<p>Douglas E. Litvack David Wright Tremaine LLP 1919 Pennsylvania Ave. NW, Ste. 800 Washington, DC 20006 Telephone: (202) 973-4200 Fax: (202) 973-4499 Email: douglitvack@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>Everett W. Jack, Jr. Davis Wright Tremaine LLP 865 South Figueroa Street, 24th Floor Los Angeles, CA 90017-2566 Telephone: (213) 633-6800 Fax: (213) 633-6899 Email: everettjack@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>	<p>John F. McGrory, Jr. Davis Wright Tremaine LLP 1300 SW Fifth Avenue, Ste. 2400 Portland, OR 97201 Telephone: (503) 241-2300 Fax: (503) 778-5299 Email: johnmcgrory@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>///</p>	

<p>1 Ethan C. Glass 2 Quinn Emanuel Urquhart 3 and Sullivan, LLP 4 1300 I Street NW, Suite 900 5 Washington, DC 20005 6 Telephone: (202) 538-8265 7 Fax: (202) 538-8100 8 Email: ethanglass@quinnemanuel.com 9 Email: peterbenson@quinnemanuel.com 10 11 Attorneys for Defendant, 12 The National Association of Realtors 13 (LEAD ATTORNEY)</p>	<p>Michael D. Bonanno Quinn Emanuel Urquhart and Sullivan, LLP 1300 I Street NW, Suite 900 Washington, DC 20005 Telephone: (202) 538-8000 Fax: (202) 538-8100 Email: mikebonanno@quinnemanuel.com Attorneys for Defendant, The National Association of Realtors</p>
<p>11 Robert Patrick Vance, Jr. 12 Quinn Emanuel Urquhart 13 and Sullivan, LLP 14 865 South Figueroa Street, 10th Floor 15 Los Angeles, CA 90017-2543 16 Telephone: (213) 443-3000 17 Fax: (213) 443-3100 18 Email: bobbyvance@quinnemanuel.com 19 20 Attorneys for Defendant, 21 The National Association of Realtors</p>	<p>William A. Burck Quinn Emanuel Urquhart and Sullivan, LLP 1300 I Street NW, Suite 900 Washington, DC 20005 Telephone: (202) 538-8000 Fax: (202) 538-8100 Email: williamburck@quinnemanuel.com Attorneys for Defendant, The National Association of Realtors</p>
<p>19 Jerrold E. Abeles 20 Arent Fox LLP 21 555 West Fifth Street, 48th Floor 22 Los Angeles, CA 90013-1065 23 Telephone: (213) 629-7400 24 Fax: (213) 629-7401 25 Email: jerry.abeles@arentfox.com 26 27 Attorneys for Defendants, 28 Bright MLS, Inc. and Midwest Real Estate Data, LLC (LEAD ATTORNEY)</p>	<p>Brian D. Schneider Arent Fox LLP 1717 K. Street NW Washington, DC 20006-5344 Telephone: (202) 857-6000 Fax: (202) 857-6395 Email: brian.schneider@arentfox.com Attorney for Defendants Bright MLS, Inc. and Midwest Real Estate Data, LLC</p>
<p>/// ///</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wendy Qiu
Arent Fox LLP
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013
Telephone : (213) 629-7400
Fax: (213) 629-7401
Email: wendy.qiu@arentfox.com

Attorneys for Defendants,
Bright MLS, Inc. and
Midwest Real Estate Data, LLC



1 Robert J. Hicks, State Bar #204992
2 Email: Robert.Hicks@streamkim.com
3 Theodore K. Stream, State Bar #138160
4 Email: Ted.Stream@streamkim.com
5 Andrea Rodriguez, State Bar #290169
6 Email: Andrea.Rodriguez@streamkim.com
7 **STREAM KIM HICKS WRAGE & ALFARO, PC**
8 3403 Tenth Street, Suite 700
9 Riverside, CA 92501
10 Telephone: (951) 783-9470
11 Facsimile: (951) 783-9475

12 Attorneys for Defendant,
13 CALIFORNIA REGIONAL MULTIPLE
14 LISTING SERVICE, INC.

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 The PLS.com, LLC, a California limited
18 liability company,

19 Plaintiff,

20 vs.

21 The National Association of Realtors;
22 Bright MLS, Inc.; Midwest Real Estate
23 Data, LLC; and California Regional
24 Multiple Listing Service, Inc.,

25 Defendants.

CASE NO. 2:20-cv-04790-PA (RAOx)

**[PROPOSED] ORDER IN
SUPPORT OF SPECIAL MOTION
TO STRIKE PLAINTIFF’S
SECOND CLAIM FOR
VIOLATION OF THE
CARTWRIGHT ACT PURSUANT
TO CALIFORNIA CODE OF
PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE) AND
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6) FILED BY
DEFENDANT CALIFORNIA
REGIONAL MULTIPLE LISTING
SERVICE, INC.; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Honorable Percy Anderson

Date: September 14, 2020
Time: 1:30 p.m.
Courtroom: 9A

26 ///

27 ///

28 ///

1 Defendant California Regional Multiple Listing Service, Inc.’s (“CRMLS”)
2 Special Motion to Strike Plaintiff, The PLS.com, LLC’s (“Plaintiff”) Second Claim
3 For Violation of the Cartwright Act Pursuant to California Code of Procedure
4 Section 425.16 (Anti-SLAPP Statute) and Federal Rule of Civil Procedure 12(b)(6)
5 came on for hearing on September 14, 2020 at 1:30 p.m. in Courtroom 9A of the
6 United States District Court, Central District of California, Western Division, First
7 Street Courthouse, 350 W. 1st Street, Los Angeles, California. All appearances
8 were made as reflected on the record.

9 Having considered documents filed by the parties, arguments, and good
10 cause appearing therefore:

11 **IT IS HEREBY ORDERED THAT**, pursuant to California Code of Civil
12 Procedure Section 415.16, CRMLS’s Special Motion to Strike Plaintiff’s Second
13 Claim For Violation of the Cartwright Act is granted on the grounds that the state
14 law claim for violation of the Cartwright Act improperly challenges protected
15 petitioning activity and the First Amended Complaint fails to state a claim upon
16 which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).
17 CRMLS is also awarded attorneys’ fees against Plaintiff under California Code of
18 Procedure Section 425.16(c)(1).

19 **IT IS SO ORDERED.**

20
21 DATED: _____
22 The Honorable Percy Anderson
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I electronically filed the foregoing **[PROPOSED] ORDER IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF’S SECOND CLAIM FOR VIOLATION OF THE CARTWRIGHT ACT PURSUANT TO CALIFORNIA CODE OF PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE) AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) FILED BY DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.;** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the ECF registrants at the email addresses indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 13, 2020, Riverside, California.

Kimberly Trease
STREAM KIM HICKS WRAGE &
ALFARO, PC
3403 Tenth Street, Suite 700
Riverside, CA 92501
(951) 783-9470 Fax: (951) 783-9450
Email: Kimberly.Trease@streamkim.com

SERVICE LIST

Electronic Mail Notice List:

<p>Scott R. Commerson Davis Wright Tremaine LLP 865 South Figueroa Street, Ste. 2400 Los Angeles, CA 90017-2566 Telephone: (213) 633-6800 Fax: (213) 633-6899 Email: scottcommerson@dwt.com Email: elizabetharellano@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC (LEAD ATTORNEY)</p>	<p>Ashlee Aguiar David Wright Tremaine LLP 1300 SW Fifth Avenue, Ste. 2400 Portland, OR 97201 Telephone: (503) 241-2300 Fax: (503) 778-5299 Email: ashleeaguiar@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>Christopher G. Renner David Wright Tremaine LLP 1919 Pennsylvania Ave. NW, Ste. 800 Washington, DC 20006 Telephone: (202) 973-4200 Fax: (202) 973-4499 Email: chrisrenner@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>	<p>Douglas E. Litvack David Wright Tremaine LLP 1919 Pennsylvania Ave. NW, Ste. 800 Washington, DC 20006 Telephone: (202) 973-4200 Fax: (202) 973-4499 Email: douglitvack@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>Everett W. Jack, Jr. Davis Wright Tremaine LLP 865 South Figueroa Street, 24th Floor Los Angeles, CA 90017-2566 Telephone: (213) 633-6800 Fax: (213) 633-6899 Email: everettjack@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>	<p>John F. McGrory, Jr. Davis Wright Tremaine LLP 1300 SW Fifth Avenue, Ste. 2400 Portland, OR 97201 Telephone: (503) 241-2300 Fax: (503) 778-5299 Email: johnmcgrory@dwt.com</p> <p>Attorneys for Plaintiff, The PLS.com, LLC</p>
<p>/// ///</p>	<p></p>

<p>1 Ethan C. Glass 2 Quinn Emanuel Urquhart 3 and Sullivan, LLP 4 1300 I Street NW, Suite 900 5 Washington, DC 20005 6 Telephone: (202) 538-8265 7 Fax: (202) 538-8100 8 Email: ethanglass@quinnemanuel.com 9 Email: peterbenson@quinnemanuel.com 10 11 Attorneys for Defendant, 12 The National Association of Realtors 13 (LEAD ATTORNEY)</p>	<p>Michael D. Bonanno Quinn Emanuel Urquhart and Sullivan, LLP 1300 I Street NW, Suite 900 Washington, DC 20005 Telephone: (202) 538-8000 Fax: (202) 538-8100 Email: mikebonanno@quinnemanuel.com Attorneys for Defendant, The National Association of Realtors</p>
<p>11 Robert Patrick Vance, Jr. 12 Quinn Emanuel Urquhart 13 and Sullivan, LLP 14 865 South Figueroa Street, 10th Floor 15 Los Angeles, CA 90017-2543 16 Telephone: (213) 443-3000 17 Fax: (213) 443-3100 18 Email: bobbyvance@quinnemanuel.com 19 20 Attorneys for Defendant, 21 The National Association of Realtors</p>	<p>William A. Burck Quinn Emanuel Urquhart and Sullivan, LLP 1300 I Street NW, Suite 900 Washington, DC 20005 Telephone: (202) 538-8000 Fax: (202) 538-8100 Email: williamburck@quinnemanuel.com Attorneys for Defendant, The National Association of Realtors</p>
<p>19 Jerrold E. Abeles 20 Arent Fox LLP 21 555 West Fifth Street, 48th Floor 22 Los Angeles, CA 90013-1065 23 Telephone: (213) 629-7400 24 Fax: (213) 629-7401 25 Email: jerry.abeles@arentfox.com 26 27 Attorneys for Defendants, 28 Bright MLS, Inc. and Midwest Real Estate Data, LLC (LEAD ATTORNEY) ///</p>	<p>Brian D. Schneider Arent Fox LLP 1717 K. Street NW Washington, DC 20006-5344 Telephone: (202) 857-6000 Fax: (202) 857-6395 Email: brian.schneider@arentfox.com Attorney for Defendants Bright MLS, Inc. and Midwest Real Estate Data, LLC</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wendy Qiu
Arent Fox LLP
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013
Telephone : (213) 629-7400
Fax: (213) 629-7401
Email: wendy.qiu@arentfox.com

Attorneys for Defendants,
Bright MLS, Inc. and
Midwest Real Estate Data, LLC

