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11 Association of REALTORS®

12 *Additional Parties on Signature Page*

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 THE PLS.COM, LLC, a California  
limited liability company,

17 Plaintiff,

18 vs.

19 THE NATIONAL ASSOCIATION OF  
20 REALTORS, BRIGHT MLS, INC.,  
21 MIDWEST REAL ESTATE DATA,  
LLC, and CALIFORNIA REGIONAL  
22 MULTIPLE LISTING SERVICE,  
INC.,

23 Defendants.

Case No. 2:20-cv-04790-JWH-RAO

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO STAY  
DISCOVERY; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Hearing Date: February 5, 2021

Time: 9:00 a.m.

Place: Courtroom 2

Judge: Hon. John W. Holcomb

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on February 5, 2021, at 9:00 a.m., before the  
3 Honorable John W. Holcomb, in Courtroom 2, at the George E. Brown, Jr. Federal  
4 Building and United States Courthouse, 3470 12th St., Riverside, California 92501,  
5 Defendants The National Association of REALTORS®; Bright MLS, Inc.; Midwest  
6 Real Estate Data, LLC; and California Regional Multiple Listing Service, Inc.  
7 (“Defendants”) will and hereby do move the Court for an Order staying discovery in  
8 this matter pending resolution of Defendants’ Motions to Dismiss (ECF 50, 53, 55).

9 This motion is based on the notice of motion; the attached memorandum of  
10 points and authorities; the records and papers on file in this action; all matters of which  
11 the Court may take judicial notice; and such other written or oral argument as may be  
12 presented at or before the time this motion is taken under submission by the Court.

13 This motion is made following a conference of counsel pursuant to L.R. 7-3,  
14 which took place on November 20, 2020.

15  
16 DATED: January 4, 2021

Respectfully submitted,

17  
18 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

19  
20 By /s/ Ethan Glass

21 Ethan Glass (Bar No. 216159)

22 Attorneys for Defendant NATIONAL  
23 ASSOCIATION OF REALTORS®

1 DATED: January 4, 2021

ARENT FOX LLP

2  
3 By /s/ Jerrold Abeles

4 Jerrold Abeles (SBN 138464)

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5 Brian Schneider (*pro hac vice*)

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11 Attorneys for Defendants

12 BRIGHT MLS, INC. and MIDWEST

13 REAL ESTATE DATA, LLC

14 DATED: January 4, 2021

STREAM KIM HICKS WRAGE & ALFARO PC

15  
16 By /s/ Robert J. Hicks

17 Robert J. Hicks, State Bar #204992

Robert.Hicks@streamkim.com

18 Theodore K. Stream, State Bar #138160

19 Ted.Stream@streamkim.com

20 Andrea Rodriguez, State Bar #290169

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25 Attorneys for Defendant

26 CALIFORNIA REGIONAL MULTIPLE

27 LISTING SERVICE, INC.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendants respectfully ask the Court to stay discovery until the Court rules on Defendants’ pending motions to dismiss. Defendants have filed dispositive motions that do not require discovery, a stay of discovery would not harm PLS in any way, and the discovery sought by PLS would impose significant burdens on Defendants. Defendants therefore respectfully submit that a stay of discovery is warranted.

**I. A Stay Is Appropriate Because PLS Cannot Plead Antitrust Injury and That Fatal Pleading Defect Is the Subject of Pending Dispositive Motions**

“The purpose of [Federal Rule of Civil Procedure] 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.” *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). Accordingly, district courts have broad, discretionary power to stay discovery pending resolution of a dispositive motion. *See Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002) (holding the district court did not err in staying discovery pending resolution of a motion to dismiss).

A district court may “stay discovery when it is convinced that the plaintiff will be unable to state a claim for relief.” *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (per curiam). Consistent with that principle, district courts in California often apply “a two-part test providing that it is appropriate to stay discovery if (1) the pending motion is potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is aimed, and (2) the pending, potentially dispositive motion can be decided absent additional discovery.” *Quezambra v. United Domestic Workers of Am. AFSCME Local 3930*, No. 8:19-927, 2019 WL 8108745, at \*2 (C.D. Cal. Nov. 14, 2019) (cleaned up). Where “both elements are satisfied,” there is good cause to stay discovery “pending the Court’s resolution of Defendants’ motions to dismiss.” *Id.*

Both parts of the *Quezambra* test are met here. **First**, Defendants’ motions to dismiss are “potentially dispositive of the entire case.” *Quezambra*, 2019 WL

1 810745, at \*1 (quoting *Mlejnecky v. Olympus Imaging Am., Inc.*, No. 2:10-2630,  
 2 2011 WL 489743, at \*6 (E.D. Cal. Feb. 7, 2011)). Each motion asks the Court to  
 3 dismiss PLS’s entire case with prejudice because, among other things, PLS has not  
 4 alleged facts to plausibly suggest it sustained an antitrust injury. *See* ECF 50 at 17-  
 5 22; ECF 53 at 5-9; ECF 55 at 6-10. The Court may dismiss PLS’s complaint for that  
 6 reason alone. *See Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1200 (9th Cir.  
 7 2012). **Second**, Defendants’ motions to dismiss can “be decided absent additional  
 8 discovery.” *Quezambra*, 2019 WL 8108745, at \*1 (quoting *Mlejnecky*, 2011 WL  
 9 489743, at \*6). The arguments raised in Defendants’ motions rest on pure questions  
 10 of law, most notably, whether PLS pleaded antitrust injury by claiming the Clear  
 11 Cooperation Policy shifts listings away from PLS and to its competitors (multiple  
 12 listing services and, in the case of office exclusives, brokerage firms). Discovery is  
 13 not required to address the questions raised in Defendants’ motions. Because both  
 14 prongs of the *Quezambra* test are satisfied, there is good cause for issuance of a stay.

## 15 **II. PLS Will Not Be Harmed by a Stay of Discovery**

16 In addition to the two-part *Quezambra* test, “[w]hen evaluating a motion to  
 17 stay, district courts inevitably must balance the harm produced by a delay in  
 18 discovery against the possibility that the motion will be granted and entirely eliminate  
 19 the need for such discovery.” *Spearman v. I Play, Inc.*, No. 2:17-1563, 2018 WL  
 20 1382349, at \*1 (E.D. Cal. Mar. 19, 2018) (quotations omitted). In this case, however,  
 21 no balancing is required because a stay of discovery will not cause any harm at all.

22 PLS previously **agreed** that no harm would come from a stay of discovery.  
 23 When the parties stipulated to a schedule for PLS to amend its initial complaint, they  
 24 “agree[d] they [would] not serve discovery until Defendants file an Answer or the  
 25 Motions to Dismiss are denied, whichever occurs first.” ECF 42 at 1. Without  
 26 receiving arguments on the merits of the requested stay, Judge Anderson “denie[d]  
 27 the portion of the Stipulation that ‘the parties will not serve discovery until  
 28 Defendants file their Answers or the Motions to Dismiss are denied, whichever

occurs first.” ECF 43. Before the case was reassigned from Judge Anderson to this Court, PLS served its initial document requests and Defendants served their written objections to those requests. Defendants, however, never agreed to collect and produce documents before the Court ruled on their pending motions to dismiss.

As recently as December 23, 2020, PLS indicated that it was willing to stay discovery, but only if Defendants agreed to produce all documents responsive to PLS’s outstanding requests within 14 days after the Court rules on the pending motions. *See* Ex. A. Defendants rejected PLS’s proposal because it would require them to incur the costs of document review and production—the very costs they seek to avoid through a stay—before the Court rules on their motions to dismiss. But PLS’s proposal confirmed that nothing has changed since PLS first agreed to stay discovery that even suggests a stay of discovery would harm PLS in any way.

### III. Discovery Would Impose Substantial Burdens on Defendants

“Staying discovery in antitrust cases pending the resolution of a motion to dismiss may be particularly appropriate,” *Top Rank, Inc. v. Haymon*, No. 15-4961, 2015 WL 9952887, at \*2 (C.D. Cal. Sept. 17, 2015), because “the costs of discovery in such actions are prohibitive,” *Rutman Wine*, 829 F.2d at 738. Indeed, in *Twombly*, the Supreme Court emphasized that antitrust complaints must be properly scrutinized at the pleading stage because discovery in antitrust cases is so costly. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (“[I]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.” (citation omitted)). Recognizing the burdens associated with such discovery, courts commonly stay discovery in antitrust cases until the complaint has moved past the pleading stage. *See Haymon*, 2015 WL 9952887, at \*3, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-5944, 2013 WL 5425183, at \*3 (N.D. Cal. Sept. 26, 2013) (discovery stayed pending resolution of motion to dismiss challenging plaintiff’s conspiracy allegations); *In re Graphics Processing Units Antitrust Litig.*, No. 06-07417, 2007

1 WL 2127577, at \*5-6 (N.D. Cal. July 24, 2007) (discovery stayed pending resolution  
 2 of motions to dismiss challenging, among other things, the antitrust conspiracy  
 3 allegations); *In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 313, 321 (N.D. Cal.  
 4 2007) (discovery stayed pending motion to dismiss for failure to allege antitrust  
 5 injury).

6 In this case, allowing discovery to proceed before the Court rules on  
 7 Defendants’ motions to dismiss would impose substantial costs on Defendants.  
 8 PLS’s complaint, among other things, includes allegations concerning several wide-  
 9 ranging conspiracies, involving millions of purported co-conspirators, ECF 46  
 10 ¶¶ 103-04 (alleging conspiracies involving all “members of NAR” and “each NAR-  
 11 affiliated MLS and their members”), and events that occurred as early as 2013, *id.*  
 12 ¶ 48. And PLS has already sought expansive discovery concerning virtually all  
 13 matters relating to MLS operations. For example, PLS has already asked NAR to  
 14 produce “[a]ll documents relating to any benefit for licensed real estate professionals  
 15 from membership in a MLS” and “[a]ll documents relating to any complaint or  
 16 concern about the price or quality of services provided by MLSs.” Decl. of Ethan  
 17 Glass, Ex. B (PLS RFP Nos. 9, 18). Should discovery proceed, Defendants would  
 18 incur significant costs to (1) meet and confer with PLS to properly narrow the scope  
 19 of PLS’s discovery requests, including through the use of search terms and  
 20 custodians; (2) litigate any disputes concerning those requests; (3) collect potentially  
 21 responsive documents; (4) review those documents to identify non-privileged,  
 22 responsive materials; and (5) produce non-privileged, responsive documents. All of  
 23 those efforts would be wholly unjustified because PLS’s complaint has threshold  
 24 pleading defects that cannot be cured.

25 \* \* \* \* \*

26 For all these reasons, Defendants respectfully submit that the Court should  
 27 exercise its discretion to stay discovery until it rules on Defendants’ pending  
 28 dispositive motions.



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DATED: January 4, 2021

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Ethan Glass  
Ethan Glass (Bar No. 216159)

Attorneys for Defendant NATIONAL  
ASSOCIATION OF REALTORS®

DATED: January 4, 2021

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Attorneys for Defendants  
BRIGHT MLS, INC. and MIDWEST  
REAL ESTATE DATA, LLC



1 DATED: January 4, 2021

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2  
3 By /s/ Robert J. Hicks

4 Robert J. Hicks, State Bar #204992

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13 LISTING SERVICE, INC.  
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**Signature Certification**

I hereby attest that all signatories listed above, on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

By /s/ Ethan Glass  
Ethan Glass

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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 THE PLS.COM, LLC, a California  
limited liability company,

17 Plaintiff,

18 vs.

19 THE NATIONAL ASSOCIATION OF  
20 REALTORS, BRIGHT MLS, INC.,  
21 MIDWEST REAL ESTATE DATA,  
22 LLC, and CALIFORNIA REGIONAL  
MULTIPLE LISTING SERVICE,  
INC.,

23 Defendants.

Case No. 2:20-cv-04790-JWH-RAO

**DECLARATION OF ETHAN  
GLASS IN SUPPORT OF MOTION  
TO STAY**

1 I, Ethan Glass, declare as follows:

2 1. I am a member of the State Bar of California, admitted to practice before  
3 this Court, and a partner in the law firm of Quinn Emanuel Urquhart & Sullivan,  
4 LLP, attorneys for Defendant National Association of REALTORS®. I have  
5 personal knowledge of the facts set forth in this declaration.

6 2. I make this declaration in support of the motion to stay filed herewith  
7 by Defendants The National Association of REALTORS®; Bright MLS, Inc.;  
8 Midwest Real Estate Data, LLC; and California Regional Multiple Listing Service,  
9 Inc.

10 3. A true and correct copy of a December 23, 2020, email from counsel for  
11 Plaintiff to counsel for Defendants is attached hereto as Exhibit A.

12 4. A true and correct copy of PLS's First Request to the National  
13 Association of Realtors for Production of Documents is attached hereto as Exhibit B.

14 \* \* \*

15 I declare under penalty of perjury that the foregoing is true and correct.  
16 Executed January 4, 2021, in Washington, DC.

17  
18 DATED: January 4, 2021

Respectfully submitted,

19 QUINN EMANUEL URQUHART &  
20 SULLIVAN, LLP

21  
22 By /s/ Ethan Glass

23 Ethan Glass (Bar No. 216159)

24 Attorneys for Defendant NATIONAL  
25 ASSOCIATION OF REALTORS®  
26  
27  
28

# **Exhibit A**

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**From:** Renner, Chris <ChrisRenner@dwt.com>  
**Sent:** Wednesday, December 23, 2020 9:01 AM  
**To:** Mike Bonanno; Peter Benson; Aguiar, Ashlee; Litvack, Doug; Jack, Everett; McGrory, John; Arellano, Elizabeth; Robert Hicks; Andrea Rodriguez; Abeles, Jerry; Schneider, Brian; Qiu, Wendy; Sieff, Adam  
**Cc:** William Burck; Ethan Glass; Bobby Vance; Kat Lanigan  
**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

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Counsel,

As you recall, we met and conferred on November 20th regarding Defendants' refusal to produce documents, and Defendants' intent to file a motion to stay discovery. We understood from that conference, and the correspondence below, that Defendants would be promptly filing such a motion.

As I explained at our last conference, PLS would like to avoid burdening the Court with unnecessary motion practice. However, given that discovery is open and the parties' prior effort to procure a stay was denied, we believe discovery should proceed absent a contrary order from the Court.

PLS would join a joint motion seeking a stay of discovery pending resolution of the motions to dismiss and to strike pursuant to PLS's earlier proposal, provided that motion includes a non-argumentative recitation of the parties' efforts to date and their positions. Alternatively, we ask that Defendants file their motion for a stay of discovery.

Thank you,

Chris

**Christopher Renner** | Davis Wright Tremaine LLP  
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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | **Washington, D.C.**

---

**From:** Renner, Chris  
**Sent:** Thursday, November 19, 2020 1:04 PM  
**To:** 'Mike Bonanno' <mikebonanno@quinnemanuel.com>; Peter Benson <peterbenson@quinnemanuel.com>; Aguiar, Ashlee <AshleeAguiar@dwt.com>; Litvack, Doug <DougLitvack@dwt.com>; Jack, Everett <everettjack@DWT.COM>; McGrory, John <johnmcgrory@DWT.COM>; Arellano, Elizabeth <ElizabethArellano@dwt.com>; Robert Hicks <robert.hicks@streamkim.com>; Andrea Rodriguez <andrea.rodriguez@streamkim.com>; Abeles, Jerry <jerry.abeles@arentfox.com>; Schneider, Brian <Brian.Schneider@arentfox.com>; Qiu, Wendy <wendy.qiu@arentfox.com>; Sieff, Adam <AdamSieff@dwt.com>  
**Cc:** William Burck <williamburck@quinnemanuel.com>; Ethan Glass <ethanglass@quinnemanuel.com>; Bobby Vance <bobbyvance@quinnemanuel.com>; Kat Lanigan <katlanigan@quinnemanuel.com>  
**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

Mike,

Thank you for your emails. We are available to meet and confer tomorrow other than 9:30-10:30 am ET and 4:00-6:00 pm ET.

Chris

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---

**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>

**Sent:** Thursday, November 19, 2020 12:54 PM

**To:** Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>; Sieff, Adam <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>; Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

---

Hi Doug – I see I have a voicemail from you. I'm tied up most of the day in meetings; if you want to discuss the stay of discovery, let's please coordinate a convenient time for a call that involves counsel for all parties. If it's something else, let me know and I'll find time to circle back to you tomorrow.

-Mike

---

**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>

**Date:** Thursday, November 19, 2020 at 8:48 AM

**To:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>, Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>, "Sieff, Adam" <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

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**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

Chris,

This dispute concerns case management and the case schedule. It is not a discovery dispute, and an informal discovery conference is not the appropriate vehicle to resolve our differences.

Defendants intend to file a motion seeking a stay of discovery. Please let us know when you are available this week to meet and confer about the motion so that we can satisfy our obligations under Local Rule 7-3 prior to filing.

Best,



Mike

---

**From:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>

**Date:** Monday, November 16, 2020 at 11:01 AM

**To:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>, "Sieff, Adam" <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>, Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>, Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>, Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

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Mike,

Thank you for your email.

We appreciate your provision of citations to the hearing transcript in support of Defendants' contention that the Court "expressed clear skepticism toward [PLS's] claims," although we do not agree that the citations support that contention, and we continue to be concerned that the Defendants' unilateral stay of discovery on those grounds is improper and contrary to the prior rulings in this case.

We also appreciate the counterproposal of Defendants, although we cannot accept it. The parties appear to be at impasse regarding Defendants' obligations to produce documents they previously agreed to produce in a case where discovery is ongoing and prior efforts to obtain from the Court the same stay that Defendants now unilaterally claim for themselves were rejected. We also do not understand why Defendants are unwilling to send the proposal they earlier committed to sending regarding a resolution of the parties' outstanding disagreements regarding the scope of discovery, and on custodians and search terms. In September, nearly one month before the oral argument that Defendants now cite as the basis for their refusal to participate in discovery, we were told that this proposal would be forthcoming "soon." This impasse is all the more unfortunate in our mind given that Defendants have declined our requests to meet and confer telephonically about these issues. (We do acknowledge and appreciate Bright and MRED separately conferring on the limited and narrow issue of PLS's views of the relevance of the RFPs for which Bright and MRED have declined to produce any documents, although our understanding is that Bright and MRED join the other Defendants in otherwise refusing to participate in discovery, including producing documents that they previously agreed to produce, or negotiating search terms, custodians, or disputed RFPs.)

We suggest that the parties avail themselves of the Informal Discovery Conference provided for in Magistrate Judge Oliver's procedures. Please let us know if Defendants agree to pursue this opportunity.

Thank you.

Chris

**Christopher Renner** | Davis Wright Tremaine LLP

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**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>

**Sent:** Tuesday, November 10, 2020 11:09 AM

**To:** Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>; Sieff, Adam <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>; Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

Chris,

On your first point, I encourage you to review at least the following parts of the hearing transcript:

8:9:12  
9:4-11  
11:7-12  
12:13-23  
15:24-16:7  
18:5-9  
18:17-22  
19:15-18  
20:1-13  
23:7-14  
24:6-11  
25:5-6  
37:16-24  
45:3-5  
47:14-20  
48:14-49:2

With respect to the stay of discovery, Defendants appreciate but cannot accept PLS's proposal as presented. PLS's proposal would not allow the parties to avoid the costs and burdens of document discovery while Defendants' motions are pending because all parties would need to collect and review documents during that time. Those are precisely the costs we believe the parties (including your client and its principals) should not have to incur before the Court rules on Defendants' motions.

Defendants, however, are willing to offer the following counterproposal for PLS's consideration:

- (i) No party shall have any obligation to produce documents before there is an operative complaint that survives Defendants' motions to dismiss;
- (ii) Defendants will meet and confer with PLS about search terms and custodians within 14 days of the entry of an order denying Defendants' pending motions; and

- (iii) Defendants will not argue that any subsequent motion(s) to compel related to PLS's First Set of RFPs is untimely on the grounds that the motion(s) should have been filed before the entry of an order denying the pending motions. By the same token, PLS will not argue that any motion by any Defendant seeking a protective order is untimely for the same reason.

Please let us know if PLS will accept this proposal.

Best,

Mike

---

**From:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>

**Date:** Thursday, November 5, 2020 at 1:47 PM

**To:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>, "Sieff, Adam" <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>, Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>, Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>, Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

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Mike,

Thank you for your email.

We disagree with Defendants' assessment of the merits of the pending motions, and with Defendants' assessment of the Court's views of the merits of those motions. Please identify the section(s) of the hearing transcript that substantiate Defendants' claim that the Court "expressed clear skepticism toward [PLS's] claims."

We are disappointed that Defendants' declined our offer to meet and confer regarding this issue. We have legitimate concerns with Defendants' unilateral and procedurally improper stay of discovery, and it may be that motion practice is necessary. However, we believe that a negotiated resolution that addresses the concerns of all parties may be possible, and that the Court should not be burdened with unnecessary and duplicative briefing on the merits of the pending motions.

We propose the following compromise. PLS will agree to a stay of party discovery until the resolution of the pending motions, provided that Defendants agree (i) to enter into a stipulation that they will produce the documents they have already agreed to produce within 14 days of the entry of an order resolving the pending motions other than through a dismissal with prejudice; and (ii) not to argue that any subsequent motion(s) to compel related to PLS's First Set of RFPs is untimely on the grounds that the motion(s) should have been filed before the entry of an order resolving the pending motions.

Thank you.

Chris

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Tel: (202) 973-4274 | Fax: (202) 973-4474  
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**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>  
**Sent:** Wednesday, November 4, 2020 10:24 AM  
**To:** Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>; Sieff, Adam <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>  
**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>; Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>  
**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

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Chris,

The Court has expressed clear skepticism toward your client's claims and we remain confident that PLS's suit will be dismissed. Under the circumstances, it makes little sense for anyone—including your client and its principals—to incur any expenses associated with document collection and review.

Please let us know whether you will reconsider your position. If PLS will not agree to stay discovery, Defendants will formally move for a stay of discovery pending the Court's decisions on their motions to dismiss, and that motion will need to be addressed before any party incurs any additional costs related to discovery.

-Mike

---

**From:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>  
**Date:** Monday, November 2, 2020 at 12:32 PM  
**To:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>, "Sieff, Adam" <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>  
**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>, Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>, Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>, Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>  
**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

Mike,

Thank you for your email.

As you recall, the parties' stipulation to delay discovery until the Court rules on the Defendants' pending motions was denied. ECF 43. PLS served discovery and the Defendants responded without interposing objections based on the rejected stipulation and without seeking a protective order to stay discovery. We believe that the proper procedure in the current circumstances is for Defendants to either (i) produce the documents they have agreed to produce, and to send the proposal that you stated in September that Defendants were preparing to resolve PLS's concerns with the scope of discovery that Defendants had proposed in their Responses and Objections to PLS's First Requests for Production, or (ii) seek a protective order. If Defendants decline to take either step, PLS is prepared to file a motion to compel.

Please identify a time Defendants are available to meet and confer this week.

Thank you.

Chris

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Email: [chrisrenner@dwt.com](mailto:chrisrenner@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)

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**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>

**Sent:** Wednesday, October 21, 2020 11:14 PM

**To:** Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Commerson, Scott <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>; Sieff, Adam <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>  
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**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

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Chris,

In light of the Court's comments during the hearing last week on our motion to dismiss, which raised serious questions about the viability of your client's claims, we think the parties should dedicate their resources to the supplemental briefing requested by the Court. Defendants would therefore like to revert to the original agreement amongst the parties to hold off on discovery until the Court rules on Defendants' pending motions.

There is no need for any party to incur the cost and burden of discovery until the Court establishes whether the case proceeds, and if so, on what terms. There are a number of issues before the Court that could limit the scope of discovery and we cannot negotiate the proper bounds of discovery without further guidance from the Court (e.g., if the case proceeds, the scope of discovery will depend on, among other things, whether PLS is permitted to pursue a case based on a "national" geographic market).

Best,

Mike

---

**From:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>

**Date:** Wednesday, October 21, 2020 at 10:20 AM

**To:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Commerson, Scott" <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>, "Sieff, Adam" <[AdamSieff@dwt.com](mailto:AdamSieff@dwt.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>, Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>, Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>, Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

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Counsel,

Please let us know when we may expect to receive Defendants' proposal to resolve the parties' outstanding differences regarding the Defendants' responses and objections to PLS's RFPs, and when we may expect to receive the documents that Defendants have already agreed to produce. If a meet and confer is necessary to advance this process, please propose a time.

Thank you.

Chris

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**From:** Renner, Chris

**Sent:** Wednesday, October 14, 2020 8:22 AM

**To:** 'Mike Bonanno' <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Commerson, Scott <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>

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**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

Mike,



Please let us know when we can expect to receive the proposal described in your email, below. Now that we have a Protective Order in place we would like to make progress on resolving the open issues involving PLS's First Set of RFPs to Defendants.

Thank you,

Chris

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Email: [chrisrenner@dwt.com](mailto:chrisrenner@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | **Washington, D.C.**

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**From:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>

**Sent:** Thursday, September 17, 2020 1:50 PM

**To:** Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>; Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Commerson, Scott <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>

**Cc:** William Burck <[williamburck@quinnemanuel.com](mailto:williamburck@quinnemanuel.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Bobby Vance <[bobbyvance@quinnemanuel.com](mailto:bobbyvance@quinnemanuel.com)>; Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>

**Subject:** Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

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Chris,

We are working up a proposal for search terms and custodians for your consideration. Defendants believe it would be most efficient to schedule a single, joint meet and confer regarding all of the document discovery issues you have raised, to be scheduled sometime after you have a chance to review our forthcoming proposal. We'll circle back soon on that.

Best,

Mike

---

**From:** "Renner, Chris" <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>

**Date:** Thursday, September 17, 2020 at 11:07 AM

**To:** Peter Benson <[peterbenson@quinnemanuel.com](mailto:peterbenson@quinnemanuel.com)>, "Aguiar, Ashlee" <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>, "Commerson, Scott" <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>, "Litvack, Doug" <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>, "Jack, Everett" <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>, "McGrory, John" <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>, "Arellano, Elizabeth" <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>, Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>, Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>, "Abeles, Jerry" <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>, "Schneider, Brian" <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>, "Qiu, Wendy" <[wendy.qiu@arentfox.com](mailto:wendy.qiu@arentfox.com)>

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**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs



[EXTERNAL EMAIL]

NAR counsel,

I am following up on my email, below. Please let me know a time when you are available to meet and confer about the topics identified in my email.

Thank you,

Chris

**Christopher Renner** | Davis Wright Tremaine LLP

1301 K Street NW, Suite 500 East | Washington, D.C. 20005

Tel: (202) 973-4274 | Fax: (202) 973-4474

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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | **Washington, D.C.**

**From:** Renner, Chris

**Sent:** Thursday, September 10, 2020 12:31 PM

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**Subject:** RE: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

Counsel,

We would like to meet and confer regarding NAR's responses and objections, including (i) General Objection No. 7 and (ii) NAR's Response to Request No. 22. We would also like to discuss custodians, search terms, and ESI protocols.

Please let us know a convenient time.

Thank you.

Chris

**Christopher Renner** | Davis Wright Tremaine LLP

1301 K Street NW, Suite 500 East | Washington, D.C. 20005

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**From:** Peter Benson <[peterbenenson@quinnemanuel.com](mailto:peterbenenson@quinnemanuel.com)>

**Sent:** Thursday, August 27, 2020 8:04 PM

**To:** Aguiar, Ashlee <[AshleeAguiar@dwt.com](mailto:AshleeAguiar@dwt.com)>; Renner, Chris <[ChrisRenner@dwt.com](mailto:ChrisRenner@dwt.com)>; Commerson, Scott <[ScottCommerson@dwt.com](mailto:ScottCommerson@dwt.com)>; Litvack, Doug <[DougLitvack@dwt.com](mailto:DougLitvack@dwt.com)>; Jack, Everett <[everettjack@DWT.COM](mailto:everettjack@DWT.COM)>; McGrory, John <[johnmcgrory@DWT.COM](mailto:johnmcgrory@DWT.COM)>; Arellano, Elizabeth <[ElizabethArellano@dwt.com](mailto:ElizabethArellano@dwt.com)>; Robert Hicks <[robert.hicks@streamkim.com](mailto:robert.hicks@streamkim.com)>; Andrea Rodriguez <[andrea.rodriguez@streamkim.com](mailto:andrea.rodriguez@streamkim.com)>; Abeles, Jerry <[jerry.abeles@arentfox.com](mailto:jerry.abeles@arentfox.com)>; Schneider, Brian <[Brian.Schneider@arentfox.com](mailto:Brian.Schneider@arentfox.com)>; Qiu, Wendy

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Subject: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL]

---

Counsel,

Please find attached NAR's Responses and Objections to PLS's First Set of Requests for Production.

Best,

Peter

**Peter Benson**

*Associate,*

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**We are pleased to announce the relocation of the Washington, D.C. office to 1301 K Street, Suite 500 East, Washington D.C. 20005 effective August 7, 2020.**

# **Exhibit B**

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Attorneys for Plaintiff  
 The PLS.com, LLC

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

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

Plaintiff,

vs.

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

Defendant.

Case No. 2:20-cv-04790-PA-RAO

**REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY PLAINTIFF TO DEFENDANT THE NATIONAL ASSOCIATION OF REALTORS**

Assigned to the Hon. Percy Anderson  
 Courtroom 9A, 9th Floor

Action Filed: May 28, 2020

**PLAINTIFF'S FIRST REQUEST TO THE NATIONAL ASSOCIATION OF  
REALTORS FOR PRODUCTION OF DOCUMENTS**

Plaintiff The PLS.com, LLC ("PLS"), by and through its counsel of record and pursuant to Federal Rules of Civil Procedure 26 and 34, hereby propounds the following requests for production of documents and requests that Defendant The National Association of Realtors respond within 30 days of service of these requests.

**I. DEFINITIONS**

1. "Any" means one or more.

2. "Clear Cooperation Policy" shall mean the policy embodied in MLS Policy Statement 8.0, as well as any and all actual or potential drafts or amendments of the same.

3. "Communication" means any disclosure, transfer or exchange of information or opinion, however made.

4. "Document" means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, which is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer printouts.

The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable

1 form. The term “document” includes all drafts of a document and all copies that differ  
 2 in any respect from the original, including any notation, underlining, marking, or  
 3 information not on the original. The term also includes information stored in or  
 4 accessible through computer or other information retrieval systems (including any  
 5 computer archives or backup systems), together with instructions and all other  
 6 materials necessary to use or interpret such data compilations.

7 Without limitation on the term “control” as used in the preceding paragraph, a  
 8 document is deemed to be in your control if you have the right to secure the document  
 9 or a copy thereof from another person.

10 5. “Including” means including but not limited to.

11 6. “MLS” means a multiple listing service as defined in Section 1 of  
 12 NAR’s 2020 Handbook on Multiple Listing Policy, each of its predecessors,  
 13 successors, divisions, subsidiaries, and affiliates, each other person directly or  
 14 indirectly, wholly or in part, owned or controlled by it, and each joint venture to which  
 15 any of them is a party, and all present and former directors, officers, employees,  
 16 agents, consultants, or other persons acting for or on behalf of any of them.

17 7. “NAR” means The National Association of Realtors, each of its  
 18 predecessors, successors, divisions, subsidiaries, and affiliates, each other person  
 19 directly or indirectly, wholly or in part, owned or controlled by it, and each joint  
 20 venture to which any of them is a party, and all present and former directors, officers,  
 21 employees, agents, consultants, or other persons acting for or on behalf of any of  
 22 them.

23 8. “NAR-affiliated MLS” means an MLS required to adopt the mandatory  
 24 provisions of NAR’s Handbook on Multiple Listing Policy, as set forth in the Preface  
 25 to NAR’s 2020 Handbook on Multiple Listing Policy.

26 9. “Open Listing” has the meaning ascribed to that term in Section 3 of  
 27 NAR’s 2020 Handbook on Multiple Listing Policy.  
 28

10. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

11. “Pocket Listing” means the provision of real estate brokerage services in connection with real property marketed by licensed real estate professionals other than through an MLS.

12. “Private Listing Network” means any database or other facility for the marketing of real property among and between licensed real estate professionals other than through an MLS.

13. “Relating to” means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

14. “Real Estate Brokerage Services” means the bundle of services provided to buyers and sellers of real property by licensed real estate professionals in connection with the purchase or sale of real property.

15. “You” or “Your” means NAR.

16. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term “or” shall mean “and” and vice-versa, as necessary to bring within the scope of the following document requests all information or documents that would be excluded absent this definition.

## II. INSTRUCTIONS

1. Unless otherwise specified, the documents called for by these document requests are documents in your possession, custody or control that were applicable, effective, prepared, written, generated, sent, dated, or received at any time since January 1, 2013.



2. All documents that respond, in whole or in part, to any part or clause of any paragraph of these document requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if you indicate the persons or group of persons to whom such documents were distributed.

3. For any document withheld under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the document by author, addressee, date, number of pages, and subject matter; specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive; and identify each person to whom the document or its contents, or any part thereof, has been disclosed.

4. For any document responsive to these document requests which is known to have been destroyed or lost or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss or the reason for the unavailability of such document, including the location of such document when last in your possession, custody, or control, and the date and manner of its disposition.

5. These Document Requests are continuing in nature. To the extent you locate or become aware of additional responsive documents at any time up to and including the time of trial, please produce them promptly.

### III. DOCUMENTS REQUESTED

1. Your certification of incorporation, bylaws, rules, regulations, procedures, and any proposed amendments thereto.

2. One copy of each of your most current employee lists and organizational charts.

3. One copy of each version of NAR's Handbook on Multiple Listing Policy.

- 1           4.     All documents relating to Pocket Listings.
- 2           5.     All documents relating to competition between MLSs and Private
- 3 Listing Networks.
- 4           6.     All documents relating to Plaintiff.
- 5           7.     All documents relating to any communications with, between or among
- 6 MLSs regarding Plaintiff, Private Listing Networks, Pocket Listings, or the Clear
- 7 Cooperation Policy.
- 8           8.     All documents relating to the competitive position of any MLS,
- 9 including but not limited to (i) the market share of any MLS, however measured;
- 10 (ii) barriers to entry into any area served by a MLS; (iii) actual or potential
- 11 competition between MLSs; (iv) the future viability of any MLS; (v) any competitive
- 12 threats confronting any MLS; and (vi) any alternatives to any MLS.
- 13           9.     All documents relating to any benefit for licensed real estate
- 14 professionals from membership in a MLS.
- 15           10.    All documents relating to the ability of licensed real estate professionals
- 16 to provide Real Estate Brokerage Services without membership in a MLS.
- 17           11.    All documents relating to the formulation, negotiation, adoption,
- 18 implementation or enforcement of the Clear Cooperation Policy, including but not
- 19 limited to (i) any actual or potential alternatives to the Clear Cooperation Policy;
- 20 (ii) any criticisms of the Clear Cooperation Policy or any variant thereof; (iii) the
- 21 actual and intended purpose and effect of the Clear Cooperation Policy; (iv) the
- 22 exclusion of so-called office exclusive listings from the Clear Cooperation Policy;
- 23 and (v) all minutes of any meeting of any NAR Committee, Board or Advisory Board
- 24 relating to pocket listings, private listing networks, or the Clear Cooperation Policy.
- 25           12.    All documents relating to Policy Statement 7.62 in NAR's 2020
- 26 Handbook on Multiple Listing Policy, including the rationale for this policy.
- 27           13.    All documents relating to any costs, problems, difficulties, or
- 28 inefficiencies associated with accepting Open Listings in an MLS, including all

1 documents relating to any changes to MLS rules, policies or procedures that could  
2 minimize or eliminate any such costs, problems, difficulties, or inefficiencies.

3 14. Documents sufficient to show the number of NAR-affiliated MLSs.

4 15. Documents sufficient to show the number of members in NAR-affiliated  
5 MLSs.

6 16. Documents sufficient to show the number of non-NAR members that are  
7 members of NAR-affiliated MLSs and the number of listings submitted by those non-  
8 NAR members.

9 17. Documents sufficient to show the service areas of each NAR-affiliated  
10 MLS.

11 18. All documents relating to any complaint or concern about the price or  
12 quality of services provided by MLSs.

13 19. All documents relating to consolidation of MLSs on a regional or  
14 national scale.

15 20. All documents related to the actual or potential formation of a  
16 nationwide database of real estate listings.

17 21. All documents relating to Sections D7, E1, E2, E3, E4, E7, E8, and E9  
18 of the D.A.N.G.E.R. Report commissioned by NAR.

19 22. All documents related to Project Upstream or UpstreamRE, LLC.

20 23. All documents relating to your compliance with United States federal or  
21 state antitrust law in connection with any policies or procedures relating to any MLS,  
22 including all documents relating to any complaint or concern that your MLS policies  
23 are or may be in violation of any such antitrust law.

24 24. All documents submitted to the Federal Trade Commission, Department  
25 of Justice, or a state attorney general in response to an antitrust inquiry, including any  
26 white papers, presentations, or other advocacy materials.

27 25. All documents relating to your policy concerning retention, storage, or  
28 destruction of any document.

1 Respectfully submitted,

2  
3 DATED July 28, 2020

DAVIS WRIGHT TREMAINE LLP

4  
5 By: /s/ Christopher G. Renner  
6 Christopher G. Renner  
7 (Pro Hac Vice)

8 Attorneys for Plaintiffs  
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CERTIFICATE OF SERVICE

I hereby certify that on this day, July 28, 2020, I caused to be served via email and with consent a copy of **The PLS.Com, LLC's Requests for Production of Documents to Defendant The National Association of Realtors** upon the following:

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Mike Bonanno  
Peter Benson  
Quinn Emanuel Urquhart and  
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Attorneys for Defendant California  
Regional Multiple Listing Service, Inc.

DATED: July 28, 2020

DAVIS WRIGHT TREMAINE LLP

By: s/ Ashlee Aguiar  
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Attorneys for Plaintiff  
The PLS.com, LLC