

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Ethan Glass (Bar No. 216159)

2 ethanglass@quinnemanuel.com

William A. Burck (*pro hac vice*)

3 williamburck@quinnemanuel.com

Michael D. Bonanno (*pro hac vice*)

4 mikebonanno@quinnemanuel.com

1300 I Street NW, Suite 900

5 Washington, District of Columbia 20005

Telephone: (202) 538-8000

6 Facsimile: (202) 538-8100

7 Robert P. Vance, Jr. (Bar No. 310879)

bobbyvance@quinnemanuel.com

8 865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

9 Telephone: (213) 443-3000

Facsimile: (213) 443-3100

10 Attorneys for Defendant National

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

**NOTICE REGARDING PLS'S
PRIOR REPRESENTATIONS
CONCERNING ITS BUSINESS**

Judge: Hon. John W. Holcomb

1 During the October 15, 2020 hearing concerning Defendants' motions to
2 dismiss PLS's First Amended Complaint, the Court made several inquiries
3 concerning the nature of PLS's business. Among other things, the Court asked PLS
4 to describe the alleged competition between PLS and MLSs and whether PLS ever
5 assessed fees for its services. In response to the Court's inquiries, PLS represented,
6 as it had in its First Amended Complaint and briefing, that it competes with MLSs.

7 On December 29, 2020, Inman, a real estate news publication, published an
8 article about PLS's business. In that article, one of PLS's owners provided the
9 following on-the-record quote:

10 ***It's not the MLS we're competing against.*** It's the big public
11 platforms that get the information from the MLS and it's what they do
12 with the information. ***It's not the MLS that we have issue with or that***
13 ***we're trying to give our agents any advantage against.***

14 On December 30, Defendants asked PLS to promptly correct its prior
15 representations to the Court or voluntarily dismiss its complaint (because PLS
16 admittedly does not compete with MLSs, its antitrust injury arguments are
17 objectively frivolous). Ex. A. PLS refused. *Id.*

18 Because PLS's statements in the Inman article are directly relevant to the
19 questions posed by the Court and contradict representations PLS previously made to
20 the Court, Defendants now feel compelled to bring them to the Court's attention. A
21 true and correct copy of the entire Inman article is attached hereto as Exhibit B.
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1 DATED: January 4, 2021

Respectfully submitted,

2 QUINN EMANUEL URQUHART &
3 SULLIVAN, LLP

4
5 By /s/ Ethan Glass

6 Ethan Glass (Bar No. 216159)

7 Attorneys for Defendant NATIONAL
8 ASSOCIATION OF REALTORS®

9 DATED: January 4, 2021

AREN'T FOX LLP

10
11 By /s/ Jerrold Abeles

12 Jerrold Abeles (SBN 138464)

13 jerry.abeles@arentfox.com

14 Brian Schneider (*pro hac vice*)

brian.schneider@arentfox.com

15 Wendy Qiu (SBN 324291)

wendy.qiu@arentfox.com

16 555 West Fifth Street, 48th Floor

17 Los Angeles, California 90013-1065

18 Telephone: 213.629.7400

19 Facsimile: 213.629.7401

20 Attorneys for Defendants

BRIGHT MLS, INC. and MIDWEST

21 REAL ESTATE DATA, LLC

1 DATED: January 4, 2021

STREAM KIM HICKS WRAGE & ALFARO PC

2
3 By /s/ Robert J. Hicks

4 Robert J. Hicks, State Bar #204992

Robert.Hicks@streamkim.com

5 Theodore K. Stream, State Bar #138160

6 Ted.Stream@streamkim.com

7 Andrea Rodriguez, State Bar #290169

Andrea.Rodriguez@streamkim.com

8 3403 Tenth Street, Suite 700

Riverside, CA 92501

9 Telephone: (951) 783-9470

10 Facsimile: (951) 783-9475

11 Attorneys for Defendant

12 CALIFORNIA REGIONAL MULTIPLE

13 LISTING SERVICE, INC.
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15
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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

Exhibit A

From: Renner, Chris <ChrisRenner@dwt.com>
Sent: Friday, January 1, 2021 8:08 AM
To: Mike Bonanno; Aguiar, Ashlee; Litvack, Doug; Jack, Everett; McGrory, John; Arellano, Elizabeth; Sieff, Adam
Cc: William Burck; Ethan Glass; Bobby Vance; Kat Lanigan; Peter Benson; Robert Hicks; Abeles, Jerry; Andrea Rodriguez; Qiu, Wendy; Schneider, Brian
Subject: RE: PLS v. NAR et al - Inman Article
Attachments: Re: PLS v. NAR et al - NAR's Responses and Objections to PLS's First Set of RFPs

[EXTERNAL EMAIL]

Hi Mike,

Thank you for your email.

We were surprised to receive a demand for informal discovery on New Year's Eve with a return date of New Year's Day. As you recall, since October the Defendants have refused to participate in the discovery contemplated by the federal rules, most recently citing the holiday season as an excuse. See attached. We ask once again that Defendants either cooperate in discovery (as promised in September) or file a motion to stay discovery (as promised in November). Please let us know which option Defendants elect to pursue, and when we can expect to see that.

In any event, there is no conflict between the quote attributed to Mr. Dyson, a principal of PLS, in the Inman article and PLS's position in this litigation. As I explained at the October 2020 hearing, after the Clear Cooperation Policy went into effect PLS "temporarily shut down active operations while the principals contemplate what business opportunities remain in light of clear cooperation." Tr. 14:19-22. The Inman article on its face refers to an imminent "relaunch" of PLS's business in January 2021 with a different service offering than the one PLS operated before the Clear Cooperation Policy went into effect. The quote attributed to Mr. Dyson and recited in your email refers on its face to this new initiative of PLS. Defendants may ask Mr. Dyson at his deposition whether the Inman article's hearsay statement is accurate or complete, and what he meant by it. We cannot control what Defendants file with the Court, but we doubt that filings on this issue are a good use of the resources of the Court or of the parties.

If you would like to discuss this issue further, I can be available for a call on Monday before 4 pm or on Tuesday 9-12 am or 3-6 pm, all ET. If those times don't work, please propose an alternative.

Happy New Year!

Chris

Christopher Renner | Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006
Tel: (202) 973-4274 | Fax: (202) 973-4474
Email: chrisrenner@dwt.com | Website: www.dwt.com

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From: Mike Bonanno <mikebonanno@quinnemanuel.com>
Sent: Thursday, December 31, 2020 1:02 PM
To: Renner, Chris <ChrisRenner@dwt.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>; 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>; Peter Benson <peterbenson@quinnemanuel.com>; Robert Hicks <robert.hicks@streamkim.com>; Abeles, Jerry <jerry.abeles@arentfox.com>; Andrea Rodriguez <andrea.rodriguez@streamkim.com>; Qiu, Wendy <wendy.qiu@arentfox.com>; Schneider, Brian <Brian.Schneider@arentfox.com>

Subject: PLS v. NAR et al - Inman Article

[EXTERNAL]

Chris,

I write on behalf of Defendants regarding a recent news article about PLS, which first came to our attention yesterday. The article, which is available at <https://www.inman.com/2020/12/29/former-pocket-listing-site-to-relaunch-as-public-facing/>, includes the following on-the-record quote from your client:

It's not the MLS we're competing against. It's the big public platforms that get the information from the MLS and it's what they do with the information. It's not the MLS that we have issue with or that we're trying to give our agents any advantage against.

This statement is at odds with numerous representations PLS has made to the Court, and PLS's entire theory of antitrust injury.

During the motion to dismiss hearing, you repeatedly stated that PLS competes with MLSs, claiming:

- PLS and MLSs "compete" to sell listing network services. Hr'g Tr. 13:3-7.
- PLS would be a "formidable competitor to the MLS" when it achieved sufficient scale. *Id.* at 17:22-18:16.
- "Absent [the] clear cooperation [policy], PLS enters; it expands; it becomes a strong competitor to the MLSs." *Id.* at 26:8-10.
- PLS was "competing nationwide and w[as] [an] actual and potential competitor[] to the MLS defendants and all the other MLSs as well." *Id.* at 27:9-11.
- The Court "could take notice of a competitive set that included all the MLSs, PLS, and Top Agent Network." *Id.* at 27:15-17.

PLS made similar representations to the Court in its First Amended Complaint and motion to dismiss briefing, including the following claims:

- "PLS and the NAR-affiliated MLSs, including Bright MLS and CRMLS, and MRED, compete to offer listing networks that facilitate the sale of residential real estate listings among licensed residential real estate professionals in the United States." Am. Compl. ¶ 97.
- "NAR has no legitimate business justification for using NAR rules to restrain the ability of non-NAR members to deal with PLS and other listing networks that compete with the NAR-affiliated MLSs." *Id.* ¶ 120.
- "PLS's entry and expansion were the competitive threat that the MLS system had feared." ECF 62, at 11.
- "PLS was a unique competitive threat to the viability of the MLS system." *Id.*
- "Clear Cooperation requires listings to be submitted to the MLS within one business day of being marketed through an alternative listing network such as the PLS." *Id.* at 13.
- "All Defendants benefit financially from the exclusion of listing networks, including PLS, that compete with the MLS." *Id.* at 14.
- "Another relevant geographic market is national in scope, due to the national operation of PLS, its competition with NAR-affiliated MLSs nationwide" *Id.* at 33.
- "The elimination of pocket listings from the market harmed PLS by eliminating its ability to serve as a differentiated competitor to the MLS by offering listing network services in connection with listings not on the MLS." *Id.* at 35.

- “To enter the market and compete with the MLS Defendants, PLS adopted a familiar and intuitive business strategy, offering temporarily free services to attract nearly 20,000 users and develop a critical mass of listings to compete effectively in the listing network services market.” ECF 84, at 2.
- “PLS never conceded that it was not a competitor to the MLS” *Id.* at 2 n.1.

You have a duty to bring your client’s recent statements to the Court’s attention and correct the prior misstatements you made to the Court claiming that PLS competes with MLSs.

If you do not do so by 5 pm PT tomorrow, or voluntarily dismiss PLS’s entire case (as it is clear PLS has not suffered antitrust injury and its claims are frivolous), we will report PLS’s recent statements to the Court.

Best,

Mike

Mike Bonanno | **Quinn Emanuel Urquhart & Sullivan, LLP** | Direct: (202) 538-8225

Exhibit B

MLS & ASSOCIATIONS

Former pocket listing site to relaunch as public-facing

The PLS says its new site will comply with NAR's Clear Cooperation Policy and show exclusive listings to the public for the first time



Founders of The PLS: David Parnes, Mauricio Umansky, Chris Dyson and James Harris

BY [ANDREA V. BRAMBILA](#)

December 29, 2020



The PLS, formerly a private listing network for real estate agents, is set to relaunch on January 19 as a public-facing site with new agent services that complies with a [pocket listing policy](#) from the National Association of Realtors, the company told Inman in an exclusive interview.

The California-based company's name, formerly The Pocket Listing Service, is changing to The Property Listing Service and its slogan will be "Where Real Estate Happens First."

The PLS's founders are [Mauricio Umansky](#), CEO and founder of luxury brokerage The Agency and Chris Dyson, James Harris and David Parnes, top-producing agents at The Agency. ThePLS.com has [several owners](#): FASP Realty, Midnight Capital, Harris Family Trust, David Parnes Living Trust, Green Collective and Sidehill Ventures.

Agents who join ThePLS.com before it relaunches on January 19 will be offered "founding member" status and be eligible for "lowest ever pricing," which they will receive for life, according to the company. Dyson declined to say what the pricing would be, but said the standard price would be about

half of what an MLS would charge and founding members would pay about half of that.

Inman Connect



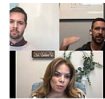
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First look: Inman's 2021 events calendar



2 innovative team leaders share their secrets to success

In May, ThePLS.com filed a [federal antitrust lawsuit](#) against NAR and three of the largest multiple listing services in the country, the California Regional MLS (CRMLS), Bright MLS and Midwest Real Estate Data (MRED).

The suit alleged the defendants had violated the federal Sherman Antitrust Act and California's Cartwright Act for adopting the Clear Cooperation Policy, also known as MLS Policy Statement 8.0, which requires listing brokers to submit a listing to their MLS within one business day of marketing a property to the public.

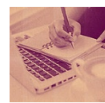
The [controversial](#) rule is meant to effectively end the growing practice of publicizing listings for days or weeks without making them universally available to other agents, in part to address fair housing concerns. The Clear Cooperation Policy went into effect on January 1 and its implementation deadline was May 1. [Some MLSs](#) have instituted hefty fines to enforce it.

ThePLS.com shut down its service in March due to the new policy, after seeing declining use of its site, Dyson told Inman in a phone interview. At the time, ThePLS.com had more than 20,000 agent members in virtually every state, he said.

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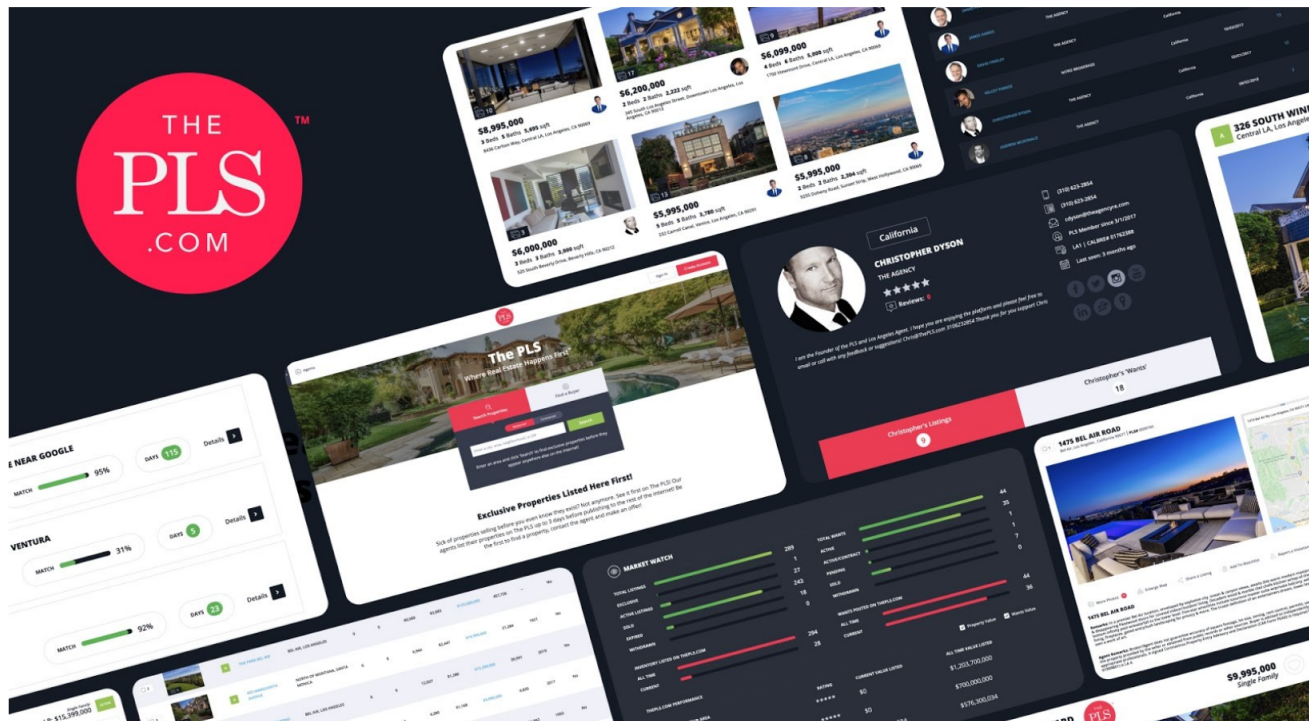
"We didn't want to have any danger of us, I suppose, endangering or compromising our members by exposing them to potential fines from using the platform," Dyson said. "So we wanted to redevelop the platform in a new way to give them a different value proposition."

The new ThePLS.com takes advantage of a term in the Clear Cooperation Policy: The rule allows agents to advertise a property for one business day — up to 72 hours if the property is advertised on a Friday — before it must be submitted to the MLS.

"In the current market where inventory is extremely tight across the board, ThePLS.com will give agents the opportunity to exclusively share ALL listings on the platform first," the company told

Inman via email.

“The PLS then sends savvy buyers, who want to see properties immediately before they appear anywhere else, to the platform. Agents will have unfettered access to these valuable leads. No other agent will be able to advertise against another agents’ inventory on ThePLS.com.”

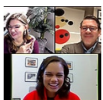


Screenshots of what ThePLS.com will look like upon relaunch

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Dyson framed the new site as an alternative to third-party listing sites such as Zillow and realtor.com, which display ads for competing agents next to other agents’ listings.

“The mission of ThePLS.com remains the same: Providing added value to its agent members and giving them the tools to fight back against the threat of the large public platforms,” the company said.

“Many agents are frustrated with what happens to their inventory after they post it. The agent loses control and many believe the public platforms are using their own inventory against them. The PLS wants to help its member agents take back control of their inventory and lead generation by allowing them to publish all new listings exclusively to the site first before listings are shared to public sites and the rest of the internet.”

Previously, members of the public could not search for listings on ThePLS.com. Upon relaunch, both the public and agents will be able to search exclusive “PLS only” listings that automatically convert to just active PLS listings after one business day has elapsed, according to Dyson.

“In this current market, minutes are important,” Dyson said. “It’s so competitive out there that hours can be the difference, minutes can be the difference. And so, I would also argue that those first calls that you get as a listing agent are your most important. They are the buying agents or the buyers who have been waiting for that property to hit. They have alerts. I would argue that they are your most valuable leads.”

“If you are a buyer’s agent and your buyer is letting you do the whole search, you will get access to that first. It will give you a competitive advantage that’s completely compliant,” he added.

Asked why listing agents would not just enter a listing into the MLS immediately so that all buyer’s agents would be able to see it, Dyson said, “The idea is that there is a competitive advantage with having a day or three days lead time with those buyers.”

“It’s not the MLS we’re competing against,” he added. “It’s the big public platforms that get the information from the MLS and it’s what they do with the information. It’s not the MLS that we have issue with or that we’re trying to give our agents any advantage against.”

While buyers will be able to save searches for what they’re looking for, those saved searches will not be accessible to listing agents or sellers, he said. Rather, only buyers’ agents will be able to post buyer “wants” that both sellers and listing agents will have access to — a feature Dyson said is intended to protect agents.

“It will be the first platform to aggregate supply AND demand in one place,” the company said. “This new ‘wants’ functionality means that buyer’s agents can share what they are looking for while sellers and seller’s agents can search buyer needs — seamlessly matching the two.”

Buyers, sellers and agents “receive an email or text the minute a property or buyer is a match,” according to the company.

“Because you can’t advertise pocket listings anymore the key now is that if you have a pocket listing, you have to be able to search who has a buyer,” Dyson said.

Listing agents who do not have a signed listing agreement will be able to privately share off-market listings by communicating with other agents in a live chat or through private direct messages on ThePLS.com.

Asked whether this particular feature would comply with the Clear Cooperation Policy, NAR declined to comment due to the pending litigation, but a spokesperson noted that, in general, “State law governs whether and how a property can be advertised by a real estate licensee. Most states require a listing agreement as a prerequisite to advertising.”

Dyson told Inman that ThePLS.com’s terms and conditions require all members to abide by national and state rules when using the site.

“Furthermore, before a member can post any listing or want on The PLS they must agree to a waiver that allows The PLS to fine them up to \$5,000 if they are found to be posting any non-compliant or

incorrect information,” he said.

Agents will also not be able to advertise a specific property that they do not have a signed listing agreement for, according to Dyson.

“[A]gents will not be advertising specific ‘non-listed’ properties on the site,” he later told Inman via email. “Rather [they] will be able to use our ‘live chat feed’ to post about potential opportunities they may have access to. The feed is designed to connect the entire membership and allow them to share ideas and opportunities in a nondescript manner if that is what the user wishes or needs. It is then up to the users to qualify any situation that may arise from that connection.”

Therefore, an agent will be able to say something like “There will be a three-bedroom, two-bathroom home on the market soon in the Heights neighborhood” or “If you have a client looking in Beverly Hills up to \$X, give me [a] call,” but not specifically say that “123 Main St will be for sale,” according to Dyson.

Dyson emphasized that ThePLS.com is open to all agents, not just 10 percent — an oblique reference to rival service Top Agent Network, which is also [suing NAR](#) over the Clear Cooperation Policy but has struck out so far [in court](#).

The PLS has always been available to all agents and will now display listings to all members of the public, which Dyson believes addresses concerns regarding fair housing raised by some proponents of the Clear Cooperation Policy.

“We didn’t discriminate at all and still don’t,” Dyson said.

When asked why a seller would want to list a property on ThePLS.com for one business day first rather than the MLS, where all buyer’s agents in a market would have immediate, automatic access to the listing, Dyson said, “Part of our job is to make sure that everybody knows to go there [to ThePLS.com] first. We’re going to advertise extensively.

“We have a whole campaign that will be launched once the site is up and running. It will be a national campaign explaining what the platform does and why it’s important, sending all buyers and sellers there. We’re not discriminating against anybody.”

Dyson said the campaign would be similar in size to campaigns the company has run in the past and will be focused on where The PLS membership is concentrated, mainly Southern California and Southern Florida. He declined to provide further details.

Agents will be encouraged to set up their profile pages as virtual business cards that show off their transaction history, according to Dyson.

“The ethos of The PLS was always to try and protect the agent community and to future-proof the agent community against platforms seeking to undermine it and to bring value to the agents,” he said.


Email [Andrea V. Brambila](#).


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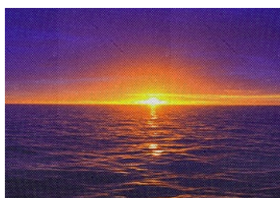
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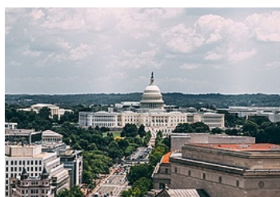


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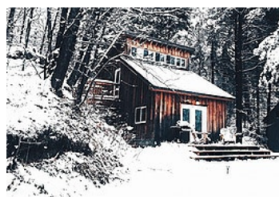


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