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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 EASTERN DIVISION

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

22 Plaintiff,

23 vs.
24

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

27 Defendants.
28

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

**OBJECTIONS TO DEFENDANTS'
NOTICE (ECF 89)**

Date: January 5, 2021
Time: N/A
Dept.: Courtroom 2

Assigned to the Hon. John W. Holcomb

Action Filed: May 28, 2020

1 Defendants' Notice Regarding PLS's Prior Representations Concerning Its
2 Business (ECF 89) is both misleading and irrelevant. As PLS explained to
3 Defendants (ECF 89-1), PLS's representations to the Court, on the one hand, and the
4 recent hearsay statements attributed a PLS principal in a news article appended to the
5 Notice, on the other, are entirely consistent with one another and in fact affirmatively
6 show why Defendants' conduct was anticompetitive.

7 After Defendants implemented the Clear Cooperation Policy, PLS
8 "temporarily shut down active operations while the principals contemplate[d] what
9 business opportunities remain[ed] in light of clear cooperation." Hearing Transcript
10 14:19-22. The article (ECF 89-2) simply discusses one of the remaining "business
11 opportunities" PLS decided to pursue: a "relaunch" of the PLS in 2021 with "new
12 agent services" that may offer a valued service to real estate agents without running
13 afoul of the Clear Cooperation Policy. On its face, the statement of PLS's principal
14 that its services will not be competing with the MLS relates to this new business
15 venture, not the one that competed with MLSs and was then shut down after the Clear
16 Cooperation Policy was implemented. The allegations in the First Amended
17 Complaint, PLS's argument at the October 2020 hearing, and the recent news article,
18 all tell a consistent story of an effective exclusionary scheme: there was a possibility
19 of competition in this previously monopolized market, Defendants slammed the door
20 on that possibility of a more competitive future by promulgating the Clear
21 Cooperation Policy, and (unsurprisingly) PLS is now in 2021 looking for other
22 business opportunities while its legal claims are adjudicated.

23 In any case, Defendants know better than to submit extrinsic evidence in
24 connection with a motion to dismiss under Rule 12(b)(6). Except in limited
25 circumstances not present here, consideration of matters outside the pleadings is not
26 permitted. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir.
27 2018), *cert. denied, sub nom. Hagen v. Khoja*, 1395 S. Ct. 2615 (2019). And even in
28

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document on:

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Of Attorneys for Defendants

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be hand-delivered to said attorney's address as shown above on the date set forth below;

by personally handing a copy thereof to said attorney on the date set forth below;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's last-known address on the date set forth below;

by faxing a copy thereof to said attorney at his/her last-known facsimile number on the date set forth below; or

by using CM/ECF electronic service.

DATED: January 5, 2021

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By: /s/ Christopher G. Renner
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