

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REX - REAL ESTATE EXCHANGE, INC.,  
Plaintiff,  
v.  
ZILLOW, INC., et al.,  
Defendants.

Case No. 2:21-CV-00312-TSZ

**DEFENDANT ZILLOW'S MOTION  
TO DISMISS**

**NOTE ON MOTION CALENDAR:**  
July 23, 2021

**ORAL ARGUMENT REQUESTED**

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1 **I. INTRODUCTION**

2 All of REX’s legal claims amount to the same basic objection that formed the basis of  
3 REX’s motion for a preliminary injunction: simply put, REX does not like how its properties  
4 appear on Zillow’s online platforms. Such discontent does not equate to any cognizable legal  
5 claims. In an attempt to force a change, REX has hurled sensational allegations against  
6 Zillow, all couched as sprawling antitrust, false advertising, and consumer protection claims.  
7 But this is simply an aggressive and disingenuous business and public relations strategy—not  
8 the makings of a viable lawsuit. Each of REX’s bald, conclusory, and empty claims fail at the  
9 outset. Accordingly, this Court should dismiss REX’s complaint (the “Complaint”) with  
10 prejudice.

11 First, based on this Court’s Order denying the preliminary injunction, REX’s principal  
12 legal theory cannot succeed. In its Complaint, REX claims that Zillow’s redesign of its online  
13 platforms is part of an elaborate antitrust conspiracy to boycott REX’s fledgling business. In  
14 particular, REX alleges that Zillow joined a “cartel”—comprising the vast majority of the real  
15 estate industry—and participated in a *per se* illegal group boycott. Yet this Court has already  
16 ruled that the *per se* standard is inapplicable here, and instructed REX that its use of the term  
17 “cartel” is “neither persuasive” nor even “remotely accurate.” *See* Dkt. No. 80 at 11 n.7 (June  
18 9, 2021 Preliminary Injunction Order (“PI Order”)).

19 Second, REX does not satisfy even the most basic threshold requirement of a Sherman  
20 Act Section 1 claim: it cannot plausibly allege that Zillow was part of an illegal agreement. To  
21 the contrary, REX’s own allegations demonstrate that Zillow simply acquired data for its data  
22 aggregation business and agreed to the required terms of use to obtain that data. As the Ninth  
23 Circuit already ruled decades ago in *Toscano*, there is no illegal agreement under such  
24 circumstances.

25 Third, even if REX could pivot and demonstrate that its antitrust claims should proceed  
26 under the rule of reason, REX would be left with virtually nothing to work with. Its entire rule  
27 of reason claim is one conclusory clause in just one sentence of its Complaint, structured as a  
28 legal theory in the alternative. And none of REX’s factual allegations support this neglected

1 theory of liability. The only harm that REX alleges is harm to *REX*—not harm to competition.  
2 Accordingly, REX’s rule of reason claim is utterly devoid of content and should be dismissed.

3 REX’s remaining efforts to recast its grievances as false advertising and consumer  
4 protection violations are equally ill-conceived. REX asserts that Zillow should have chosen  
5 different labels for the tabs on Zillow’s online platforms. However, key elements of REX’s  
6 claims are either missing or simply not viable. For example, for its Lanham Act claim, REX  
7 was required to allege, with specificity, that Zillow acted for the purpose of influencing  
8 consumers to buy Zillow’s products. But REX does not allege this at all, nor could it:  
9 according to REX, Zillow’s new tabs *damaged Zillow’s business*; Zillow was not using the  
10 tabs to promote its competing goods or services.

11 Finally, REX’s Consumer Protection Act (“CPA”) claim is similarly misguided. This  
12 Court has already recognized that a CPA claim cannot survive when a defendant’s acts were  
13 “reasonable in relation to the development and preservation of business.” PI Order at 21; *see*  
14 RCW 19.86.920. Yet REX’s claim pleads exactly that: Zillow simply acquired a new data  
15 source and complied with the data’s terms of use when it implemented the two-tab system on  
16 its website. In other words, REX’s own Complaint establishes an eminently reasonable act.

17 At the end of the day, Zillow has a “right to protect the infrastructure it has developed,  
18 and the manner in which its website will be viewed.” *Sambreel Holdings LLC v. Facebook,*  
19 *Inc.*, 906 F. Supp. 2d 1070, 1076 (S.D. Cal. 2012). Because REX has not stated a plausible  
20 claim for relief, and because even amending its Complaint would not fix these deficiencies,  
21 this Court should dismiss REX’s Complaint, in its entirety, and with prejudice.

## 22 **II. STATEMENT OF FACTS**<sup>1</sup>

### 23 **A. Zillow’s Business**

24 Defendant Zillow, Inc. is a Washington corporation headquartered in Seattle.<sup>2</sup> Compl.  
25 ¶ 12. It runs “two of the most trafficked consumer-facing residential real estate aggregator

26 <sup>1</sup> Zillow treats all facts alleged in REX’s Complaint as true for the purpose of this motion to  
27 dismiss (“Motion”). This is not a concession that the underlying allegations are accurate.

28 <sup>2</sup> All references to “Zillow” encompass defendants Zillow, Inc., Zillow Group, Inc., Zillow  
Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC, collectively.

1 websites”—Zillow.com and Trulia.com. *Id.* ¶¶ 17, 54, 95. These websites “attract billions of  
2 views every year by gathering a vast inventory of homes and allowing consumers to customize  
3 their searches.” *Id.* ¶ 3. Once consumers identify their search parameters, they can find homes  
4 they are interested in purchasing, and track the properties that interest them. *Ibid.* Aggregator  
5 sites like Zillow “facilitate transactions that allow millions of Americans every year to relocate  
6 for new personal and professional opportunities.” *Id.* ¶ 4.

7 In 2018, Zillow also launched a “Zillow Offers” program, whereby it directly buys and  
8 sells homes from and to consumers. *Id.* ¶ 58. Such direct sales transactions are known as  
9 iBuying. *Ibid.*

10 **B. REX Enters The Real Estate Brokerage Services Business, Relying On**  
11 **Zillow As Part Of Its Strategy**

12 Plaintiff REX launched its real estate brokerage business in 2015. *Id.* ¶ 6. It asserts  
13 that it “aims to disrupt the traditional real estate model.” *Id.*

14 Under the traditional model, real estate brokers and agents belong to local  
15 organizations called Multiple Listing Services (“MLSs”). *Id.* ¶¶ 5, 25-28. When those MLS-  
16 affiliated agents work with consumers to sell their homes, the agents usually require sellers to  
17 offer a commission to both the seller’s and buyer’s real estate agent. *Id.* ¶¶ 7, 31. Sellers have  
18 the discretion to choose the amount of the commissions. *Id.* ¶ 32.

19 REX asserts that it is “the exception” to this model. *Id.* ¶ 31. REX uses “proprietary  
20 technology” that allows consumers to “list their homes from their smartphones.” *Id.* ¶ 41.  
21 Since its inception, REX has used “aggregator sites like Zillow” to promote these listings,  
22 “reach[ing] a large audience of potentially interested buyers.” *Id.* ¶¶ 47-48. Once the homes  
23 are listed, REX uses algorithms to “generate personalized ads targeting online home  
24 shoppers.” *Id.* ¶ 41.

25 REX claims this model allows it to avoid relying on MLSs to reach consumers. *Id.*  
26 ¶¶ 47-49. Before aggregator sites like Zillow, MLSs would consolidate listings from MLS-  
27 affiliated agents, making MLSs the “gateway for listing data” for consumers. *Id.* ¶ 48.  
28 Aggregator sites “removed [this] information asymmetry,” allowing consumers to shop for a



1 home without a buyer’s agent, and without having to access listings through the MLS. *Id.*  
2 ¶ 49.

3 REX asserts that its model—which bypasses the MLS—has achieved lower  
4 commission rates for its clients: an average of 3.3% for REX clients, rather than the national  
5 brokerage commission rate of roughly 5.5%. *Id.* ¶¶ 7, 42. Critically, REX does not say  
6 whether its average client is able to sell her home for the same (or a better) price than she  
7 would achieve with an MLS agent. Nor does REX say whether its average client’s net  
8 proceeds from a home sale beat the market. In other words, while REX alleges that its clients  
9 pay lower commissions, it does not say whether its clients make more money from selling  
10 their homes through REX.

11 In addition to advertising its listings on Zillow, REX advertises its agents on Zillow’s  
12 online platforms. REX does so by participating in Zillow’s Premier Agent program. *Id.* ¶ 69.  
13 The program is simple. REX pays Zillow a fee, and in exchange, Zillow advertises REX  
14 agents to consumers interested in their local areas. *Id.*

### 15 **C. MLSs License Their Data, According To Their Terms**

16 By the early 2000s, “real estate agents and brokers realized they could promote their  
17 listings online.” *Id.* ¶ 84. MLSs therefore developed “IDX feed[s]”—collections of online  
18 home listings that only MLS members can access (the “MLS data feeds” or “IDX Feeds”) and  
19 display publicly on their own websites. *Id.*

20 A large portion of MLSs belong to a trade association called the National Association  
21 of Realtors (“NAR”). *Id.* ¶¶ 11, 25. NAR has developed model rules regarding how MLS  
22 participants should display their IDX data. *Id.* ¶ 85. When an MLS has chosen to affiliate  
23 with NAR, the MLS selects its IDX rules from NAR’s model rules. *Id.* ¶¶ 85-86, 157-59. The  
24 MLS rules vary; each MLS “has adopted its own rules about how listings data must be  
25 displayed on [Zillow’s] websites and mobile applications.” *Id.* ¶ 159 (internal quotation marks  
26 omitted); *see also id.* ¶ 86. The MLSs then “police” compliance with the rules, “enforc[ing]”  
27 NAR’s policies. *Id.* ¶ 81 (internal quotation marks omitted).

28 NAR’s model rules include an “optional” rule that MLSs can choose to adopt or

1 ignore. *Id.* ¶¶ 85, 158. REX calls it a “segregation rule,” and it prohibits data commingling by  
 2 requiring anyone using the MLS’s IDX Feed to display MLS listings “separately from listings  
 3 obtained from other sources.” *Id.* ¶ 85. Thus, when an MLS adopts this rule (hereinafter the  
 4 “No-Commingling Rule”), anyone using the MLS’s IDX data, including Zillow, cannot  
 5 display MLS listings and non-MLS listings together in a combined list of search results. *See*  
 6 *id.* ¶¶ 85-87.

#### 7 **D. Zillow Acquires The IDX Data And Abides By The Terms Of Use**

8 In the fall of 2020, Zillow announced that it would “use MLS data feeds”—the IDX  
 9 Feeds—“to populate its website.” *Id.* ¶ 60. Zillow stated that it had become a participant of  
 10 local MLSs and NAR, and that it had “agreed to abide by their rules, including the IDX  
 11 segregation rules.” *Id.* ¶¶ 59, 97. Zillow also said that it would list the homes it owned  
 12 through its iBuying business with MLSs. *Id.* ¶¶ 58-59.

13 Zillow subsequently began to “comply[]” with the MLS rules, *id.* ¶¶ 156, 88, and  
 14 redesigned its online platforms, *id.* ¶ 87. Zillow’s initial design—before it began to receive the  
 15 IDX Feeds—displayed all of a consumer’s search results together, in a single page. *Id.* ¶¶ 62-  
 16 63. To abide by the No-Commingling Rule, however, Zillow implemented a new feature on  
 17 its display. When consumers search for homes, their search results are now separated out into  
 18 two tabs, which appear side-by-side. *Id.* ¶¶ 64-66. Homes listed by MLS agents appear in a  
 19 default “Agent listings” tab. *Id.* ¶ 65. Other listings, including REX’s listings, appear in an  
 20 “Other listings” tab.<sup>3</sup> *Id.* As acknowledged by REX, consumers can “see every home listed  
 21 for sale” by “mov[ing] back and forth between these tabs.” *Id.* ¶ 66.

22 As Zillow explained to REX, Zillow implemented the two-tab system ““to comply with  
 23 MLS rules.”” *Id.* ¶ 88; *see id.* ¶ 87 (alleging that this redesign was “driven by” Zillow’s  
 24 “voluntary membership in the NAR and MLSs and the agreed adherence to their rules”).  
 25  
 26

27 <sup>3</sup> The alleged capitalization of the tabs varies across the Complaint. Zillow has adopted the  
 28 form reflected in REX’s graphic at ¶ 64, for the sake of uniformity. The capitalization is not  
 material to this analysis.

1           **E.       REX Does Not Like The Changes To Zillow’s Website**

2           REX alleges that, since Zillow implemented this change, consumers click less  
 3 frequently on REX properties. *See id.* ¶¶ 72, 74, 141. REX also asserts that consumers will  
 4 think its homes are less desirable when they do see them, because REX’s properties will be  
 5 grouped with other types of homes—such as those for sale directly by owners and  
 6 foreclosures—which also appear in the “Other listings” tab. *See id.* ¶ 78. In addition, REX  
 7 claims that the names of the tabs confuse consumers about the nature of REX’s properties,  
 8 incorrectly suggesting that REX’s properties are not represented by real estate agents. *Id.* ¶ 76.  
 9 According to REX, the new web display “degrade[s] Zillow’s quality from a user’s  
 10 perspective” and caused Zillow to “incur[] upfront” and “continu[ing]” costs. *Id.* ¶ 65.

11           REX thus insists that it has lost, and will continue to lose, money and customers, and  
 12 that consumers will lose out on the benefits of doing business with REX. *Id.* ¶¶ 73, 79, 100.

13           **III.       PROCEDURAL BACKGROUND**

14           On March 9, 2021, Plaintiff REX filed its Complaint, asserting antitrust and consumer  
 15 protection claims under Section 1 of the Sherman Antitrust Act, the CPA, and the Lanham  
 16 Act. Dkt. No. 1. REX also moved for a preliminary injunction, based on its antitrust and CPA  
 17 claims. Dkt. No. 5. On June 9, 2021, this Court denied that motion, reasoning that REX “has  
 18 not shown that it is likely to prevail on its antitrust or CPA claims, or that it will suffer  
 19 irreparable harm in the absence of an injunction.” PI Order at 23. Zillow now moves to  
 20 dismiss REX’s Complaint.

21           **IV.       STANDARD OF REVIEW**

22           “A plaintiff’s complaint must allege facts to state a claim for relief that is plausible on  
 23 its face.” *Cole v. Keystone RV Co., LLC*, No. C18-5182, 2018 WL 4051805, at \*1 (W.D.  
 24 Wash. Aug. 24, 2018) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim has  
 25 facial plausibility when the party seeking relief pleads factual content that allows the court to  
 26 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*  
 27 (internal quotation marks omitted). “Although the court must accept as true the Complaint’s  
 28 well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an

1 otherwise proper 12(b)(6) motion to dismiss.” *Id.* (citing *Vazquez v. Los Angeles Cty.*, 487  
2 F.3d 1246, 1249 (9th Cir. 2007)); *see also Oregonians for Accountability v. Bradbury*, No. 04-  
3 1170-KI, 2004 WL 1969405, at \*5 (D. Or. Sep. 2, 2004) (denying plaintiff’s motion for  
4 preliminary injunction and granting defendant’s motion to dismiss when plaintiffs “failed to  
5 demonstrate that they are likely to prevail on the merits of their claims and ... failed to state a  
6 claim upon which relief can be granted”).

7 Plaintiff’s “factual allegations must be enough to raise a right to relief above the  
8 speculative level.” *Cole*, 2018 WL 4051805, at \*1 (quoting *Bell Atl. Corp. v. Twombly*, 550  
9 U.S. 544, 555 (2007)). “This is because discovery in antitrust cases frequently causes  
10 substantial expenditures and gives the plaintiff the opportunity to extort large settlements even  
11 where he does not have much of a case.” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1047  
12 (9th Cir. 2008) (citing *Twombly*, 550 U.S. at 556). In all, “[d]etermining whether a complaint  
13 states a plausible claim for relief” is “a context-specific task that requires the reviewing court  
14 to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

## 15 **V. LEGAL ARGUMENT**

### 16 **A. REX Has Failed To Plausibly Allege An Antitrust Claim.**

17 REX’s Section 1 claim is based upon nothing more than REX’s displeasure at Zillow’s  
18 decision to acquire IDX Feeds from each individual MLS, and the corresponding changes to  
19 its online platforms to comply with those Feeds’ terms of use.

20 Though the Sherman Act refers to agreements “in restraint of trade,” the Supreme  
21 Court “has long recognized that Congress intended to outlaw only *unreasonable* restraints.”  
22 *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997) (emphasis added). To demonstrate that a restraint  
23 violates Section 1 of the Sherman Act, “plaintiffs must plead facts which, if true, will prove:  
24 (1) a contract, combination or conspiracy among two or more persons or distinct business  
25 entities; (2) by which the persons or entities intended to harm or restrain trade or commerce  
26 among the several States, or with foreign nations; (3) which actually injures competition”; and  
27 “(4) that they were harmed by the defendant’s anticompetitive contract, combination, or  
28 conspiracy, and that this harm flowed from an anti-competitive aspect of the practice under

1 scrutiny.” *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1197 (9th Cir. 2012) (internal  
2 quotation marks and citations omitted).

3 REX’s antitrust claim falls far short of the mark. Its entire Complaint is structured  
4 around the false premise that Zillow was part of a *per se* illegal horizontal group boycott. But  
5 this Court has already rejected that analysis entirely. This is not a *per se* case. REX cannot  
6 even overcome the threshold requirement of alleging that an illegal agreement exists, because  
7 the Ninth Circuit has already ruled that there is nothing illegal about conduct that mirrors  
8 Zillow’s actions. Further, REX has completely failed to sufficiently allege any harm to  
9 competition in its Complaint—an essential element of a rule of reason claim. Accordingly,  
10 REX’s Complaint should be dismissed with prejudice.

11 **1. No illegal agreement.**

12 A mere contract between two parties is not an agreement to conspire. Rather, to  
13 survive a motion to dismiss its Section 1 claim, REX was required “to raise a reasonable  
14 expectation that discovery will reveal evidence of illegal agreement.” *Twombly*, 550 U.S. at  
15 556. For an agreement to be unlawful under Section 1, there must be a “conscious  
16 commitment to a common scheme designed to achieve an unlawful objective.” *Monsanto Co.*  
17 *v. Spray-Rite Serv. Corp.*, 465 U.S. 753, 764 (1984) (internal quotation marks omitted). REX  
18 has not satisfied this standard.

19 First, REX does not, and cannot, allege in more than a conclusory fashion (*e.g.*, Compl.  
20 ¶¶ 106, 118) that Zillow entered into any agreement *with NAR* concerning the display of  
21 REX’s listings on Zillow’s online platforms. Instead, as REX acknowledges, the display rules  
22 result from an optional model rule developed by NAR—before Zillow joined NAR—that  
23 some MLSs chose to adopt, and others did not. Compl. ¶¶ 84-86, 119, 156, 158.

24 Second, Zillow’s decision to acquire these IDX Feeds from *individual MLSs*, and to  
25 abide by the rules governing the data, is not an agreement to conspire. REX asserts that NAR  
26 and the MLSs (not Zillow) regulate access to IDX Feeds. *See id.* ¶¶ 83-86. Each MLS has  
27 adopted its “own rules about how listings data must be displayed,” and NAR-affiliated MLSs  
28 “police” compliance with NAR’s rules. *Id.* ¶¶ 81, 159 (internal quotation marks omitted); *see*

1 *id.* ¶ 93 (describing the “IDX segregation rules” that are “promulgated, followed, and enforced  
 2 by NAR and MLS members”). Thus, as REX acknowledges, Zillow simply chose to “use  
 3 MLS data feeds to populate its website,” *id.* ¶ 60, and “agreed to abide by” and “comply[]”  
 4 with the rules of NAR and the MLSs, “including the IDX segregation rules.” *Id.* ¶¶ 60, 88, 97,  
 5 156. REX makes no plausible allegation that Zillow created, established, enforced, advocated  
 6 for, or even influenced the adoption of the No-Commingle Rule, which was adopted *before*  
 7 Zillow joined NAR or any MLS.<sup>4</sup> *See id.* ¶¶ 84-85, 87-88, 155.

8 “[M]erely agree[ing] to purchase products or provide a service under conditions set by  
 9 the other party,” as Zillow did here, is not a “conscious commitment to a common scheme  
 10 designed to achieve an unlawful objective.” *Toscano v. Pro. Golfers Ass’n*, 258 F.3d 978,  
 11 984 (9th Cir. 2001) (quoting *Monsanto*, 465 U.S. at 764). REX’s toothless conspiracy claim is  
 12 strikingly similar to conduct the Ninth Circuit deemed insufficient to establish a conspiratorial  
 13 agreement in *Toscano*. There, local sponsors contracted with the PGA Tour to organize and  
 14 run golf tournaments. *Id.* at 981-82. They agreed to the PGA’s tournament rules, some of  
 15 which restrained the extent to which the sponsors could do business with certain golfers. *See*  
 16 *id.* at 984. But, just like Zillow here, the sponsors “had no involvement in the establishment or  
 17 enforcement” of the relevant contract provisions. *Id.* The Ninth Circuit rejected a dissatisfied  
 18 golfer’s antitrust suit, explaining that where the local sponsors merely agreed to provide a  
 19 service under the PGA’s set conditions, there was no “conscious commitment to a common  
 20 scheme designed to achieve an unlawful objective.” *Id.* (quoting *Monsanto*, 465 U.S. at 764).<sup>5</sup>

21 While REX alleges that Zillow joined the MLSs, that does not meaningfully  
 22

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23 <sup>4</sup> Conclusory references to an “agreement to exclude and impair non-MLS, non-NAR member  
 24 competitors’ access” do nothing to change the analysis. *See* Compl. ¶ 106. Nor do assertions  
 25 that Zillow said that it was “locking arms” with groups like NAR. *See id.* ¶ 59. The only  
 26 relevant question is whether underlying factual allegations form the basis of an illegal  
 27 agreement. And here, they come nowhere close to doing so.

28 <sup>5</sup> Unlike *Toscano*, in *Paladin Assocs. v. Mont. Power Co.*, 328 F.3d 1145 (9th Cir. 2003), the  
 defendants collaborated to create, *through their agreement*, the resulting restraint. *Id.* at 1152.  
 In contrast, in *Toscano* (as here), the defendant sponsors merely signed on to an existing set of  
 rules; the sponsors, like Zillow, did not create any alleged restraint. *Toscano*, 258 F.3d at 984-  
 85.

1 differentiate this case from *Toscano*. REX acknowledges that joining an MLS was a  
 2 prerequisite to using the IDX Feeds. Compl. ¶ 84. Because “membership alone is not proof of  
 3 an agreement,” *Nova Designs, Inc. v. Scuba Retailers Ass’n*, 202 F.3d 1088, 1092 (9th Cir.  
 4 2000), this allegation does not save REX’s Complaint.

5 REX also appears to improperly, and without any support or substance to its argument,  
 6 construe Zillow’s mere *compliance* with the rules as enforcement. *Compare id.* ¶ 88 (noting  
 7 Zillow’s statement it implemented the two-tabbed display to ““comply with MLS rules”) and  
 8 ¶ 97 (stating Zillow “agreed to abide by their rules, including the IDX segregation rules”), *with*  
 9 *id.* ¶ 101 (stating that defendants, including Zillow, “must be enjoined from enforcing” the No-  
 10 Commingling Rule). But simply abiding by the MLS rules is not “enforcing” them.<sup>6</sup> In any  
 11 event, REX fails to differentiate this case from *Toscano*, where the Ninth Circuit has already  
 12 determined that mere compliance with the PGA’s rules did not create an illegal agreement.  
 13 Since REX has failed to allege this threshold requirement, REX’s antitrust claims should be  
 14 dismissed with prejudice.

15 **2. REX has failed to plausibly allege any rule of reason violation.**

16 **a. This is not a *per se* case.**

17 Compounding the deficiencies in REX’s antitrust claims, REX chose to plead its  
 18 Sherman Act claim as a *per se* violation of the law. Compl. ¶ 119. REX concocted a  
 19 “horizontal ... boycott” that it alleges deprives REX of “effective access to prominent Zillow  
 20 residential real estate aggregator websites.” *Id.* ¶¶ 61, 118. REX simply iterates these  
 21 allegations over and over again. *Id.* ¶¶ 61, 90, 93, 101, 109-10, 118-19, 122-23. REX also  
 22 repeats these claims notwithstanding its repeated acknowledgement that it continues to appear  
 23 on Zillow’s website, and that consumers can view REX listings by clicking the “Other  
 24 listings” tab. *Id.* ¶¶ 64-66.

25 As this Court recently ruled in this action, however, “the *per se* rules [are] inapplicable

26 \_\_\_\_\_  
 27 <sup>6</sup> The Complaint also alleges, generally that the IDX segregation rules are “promulgated,  
 28 followed, and enforced by NAR and MLS members.” Compl. ¶ 93. This allegation is not  
 specific to Zillow, however, and, read in context, it appears to be about the industry’s actions  
 predating Zillow’s decision to join MLSs. *See id.* ¶ 94.



1 in this case.” PI Order at 13. As a result, REX’s antitrust claims survive a motion to dismiss  
2 only if REX plausibly alleged that Zillow entered into an illegal agreement that violates the  
3 rule of reason. *Fed. Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 990 (9th Cir. 2020).  
4 Courts use a three-step burden-shifting inquiry when applying the rule of reason: (1) the  
5 plaintiff must “prove that the challenged restraint has a substantial anticompetitive effect that  
6 harms consumers in the relevant market”; (2) if the plaintiff meets its burden, defendant must  
7 provide a “procompetitive rationale for the restraint”; and (3) if defendant carries its burden,  
8 plaintiff must then show that defendant’s “procompetitive efficiencies could be reasonably  
9 achieved through less anticompetitive means.” *Id.* at 991 (internal quotation marks and  
10 citations omitted); *see also* PI Order at 14.

11 REX’s Complaint makes virtually no effort to satisfy those requirements. It makes its  
12 case that the rule of reason should apply only in passing, as an alternative legal theory.  
13 Compl. ¶ 119. That legal conclusion, bereft of any detail, could never survive a motion to  
14 dismiss. *See Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 736 (9th Cir. 1987)  
15 (explaining that a “pleader may not evade [the Sherman Act’s] requirements by merely  
16 alleging a bare legal conclusion” (internal quotation marks omitted)).

17 **b. REX does not allege harm to competition, only harm to**  
18 **itself.**

19 REX cannot now reconfigure its allegations into a rule of reason claim. REX needed  
20 to plausibly allege that the “challenged restraint has a substantial anticompetitive effect that  
21 harms consumers in the relevant market.” *Qualcomm*, 969 F.3d at 991 (internal quotation  
22 marks omitted). This is “no slight burden.” *Nat’l Collegiate Athletic Ass’n v. Alston et al.*,  
23 141 S. Ct. 2141 (2021). “[A] claimant must, at a minimum, sketch the outline of the injury to  
24 competition with allegations of *supporting factual detail*,” and those “allegations must raise a  
25 reasonable expectation that discovery will reveal evidence *of an injury to competition*.”  
26 *Brantley*, 675 F.3d at 1198 (emphasis added, internal quotation marks, alterations, and  
27 citations omitted). Critically here, “economic injury to a competitor does not equal injury to  
28 competition.” *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 812 (9th Cir. 1988) (internal



1 quotation marks omitted).

2 Despite the requirement that REX plead that Zillow’s decision to change its display  
3 harms competition, REX’s allegations of harm are all about its *own business*. In the antitrust  
4 portions of its Complaint, REX alleges only that:

- 5 • Zillow’s “anticompetitive actions are degrading **REX’s reputation**, decreasing the  
6 amount of buyer activity on **REX’s listings**, and therefore decreasing **REX’s ability  
7 to consummate transactions.**” Compl. ¶ 123 (emphasis added); *see id.* ¶ 111.
- 8 • “**REX has lost clients**, has been forced to co-list clients with MLS members, and  
9 has been repeatedly questioned about the **lack of visibility of REX listings** on  
10 Zillow’s websites.” *Id.* ¶ 123 (emphasis added); *see id.* ¶ 111.
- 11 • “**REX’s ability to attract and retain clients** is directly impacted because REX  
12 listings are hidden and obscured.” *Id.* ¶ 123 (emphasis added); *see id.* ¶ 111.
- 13 • **REX’s “customer growth** and expansion into new markets is threatened.” *Id.* ¶ 112  
14 (emphasis added).
- 15 • In sum, **REX’s “listings ... have been harmed.”** *Id.* ¶ 160 (emphasis added).

16 These allegations, focused entirely on *REX*, come nowhere close to alleging harm to  
17 competition more broadly, let alone a “substantial” anticompetitive effect.<sup>7</sup>

18 To be sure, REX repeatedly and summarily asserts that competition itself is harmed.  
19 *See id.* ¶¶ 108-09 (Zillow’s change denies “non-member competitors” the “effective access” to  
20 aggregator sites necessary to “compete”); *id.* ¶ 113 (summarily referencing “lessened  
21 competition in the marketplace”); *id.* ¶ 118 (the challenged actions “restrain[] trade among  
22 competitors”); *id.* ¶ 121 (the challenged actions “affect[] consumers and competitors”  
23 nationwide). But it never says *how*. There are no “allegations of supporting factual detail”  
24 that “raise a reasonable expectation that discovery will reveal evidence of an injury to  
25 competition.” *Brantley*, 675 F.3d at 1198 (internal quotation marks omitted). Such bare-bones

26 \_\_\_\_\_  
27 <sup>7</sup> Such claims echo throughout the Complaint. REX repeatedly enumerates grievances that  
28 consumers will not see REX’s homes, Compl. ¶¶ 72, 74, 98, that consumers will perceive the  
homes listed by REX to be less desirable, *see id.* ¶ 78, and that REX has lost out on customers,  
revenue, and greater expansion, *id.* ¶¶ 73, 75, 100.

1 and conclusory allegations cannot survive a motion to dismiss. *See Kendall*, 518 F.3d at 1048  
 2 (dismissing complaint that relied on “ultimate facts ... and legal conclusions”).

3 Nor is REX’s Complaint saved by the suggestion that REX’s own business is  
 4 procompetitive. *See* Compl. ¶¶ 122, 161 (alleging that Zillow’s actions “limit[] the exposure  
 5 of listings by REX’s brokers, whose low commissions create competition on traditional  
 6 brokers to in turn lower their commissions.”). This is just a claim that harm to REX *is* harm to  
 7 competition.<sup>8</sup> Yet this Court already rejected that position. PI Order at 15. To survive a  
 8 motion to dismiss, the alleged restraint of trade must go “beyond the ... market’s loss of a  
 9 []competitor.” *Rutman*, 829 F.2d at 735 (internal quotation marks omitted). It has already  
 10 been established by the courts that the elimination of a single competitor, without more, does  
 11 not prove anticompetitive effect. *McGlinchy*, 845 F.2d at 812.

12 REX’s attempt to loop other unnamed competitors into the allegations about REX is  
 13 equally unavailing. *See* Compl. ¶ 79 (alleging that consumers experience “reduced choice in  
 14 transacting real estate” when “competition from independent brokers such as REX” is  
 15 suppressed); *id.* ¶ 90 (asserting that “listings from non-MLS brokers such as REX will be far  
 16 less competitive”); *id.* ¶ 99 (alleging that REX and “would-be non-NAR, non-MLS  
 17 competitors” will be “affected nationwide”); *id.* ¶ 122 (alleging that “REX’s ability to  
 18 effectively compete and offer innovative and lower-priced residential real estate brokerage  
 19 services to consumers, along with *every other similarly situated competitor*, has been  
 20 constrained”) (emphasis added); *id.* ¶ 162 (alleging that Zillow’s “agreement to follow the  
 21 anticompetitive MLS co-mingling rules ... limits the ability of *new entrants with lower*  
 22 *commission business models* to attract and retain listings,” denying consumers “information  
 23 about lower cost alternatives”) (emphasis added). REX does not even say who these  
 24 competitors are—let alone provide any detail about their businesses and how they are affected.

25 <sup>8</sup> It is not even a plausible claim. REX’s own allegations—pointing to a de minimus drop in  
 26 commissions given the alleged size of the market, *see* Compl. ¶¶ 36, 43; *supra* 4—suggest that  
 27 REX’s effect on competition has been negligible. *See Les Shockley Racing, Inc. v. Nat’l Hot*  
 28 *Rod Ass’n*, 884 F.2d 504, 508 (9th Cir. 1989) (“Although proof of plaintiffs’ allegations would  
 establish harm to their business interests, such proof would not, standing alone, show injury to  
 competition in the market as a whole.”).

1 It is just a naked effort to generalize its allegations about its own business to competition more  
2 broadly.

3 Finally, none of REX’s conclusory allegations about harm to competition are even  
4 plausible. To start, the suggestion that lower-commission businesses are blocked from the  
5 market does not make sense, when REX concedes that an MLS-affiliated seller can “offer any  
6 amount of compensation to buyer agents under the NAR rule” it deems appropriate. *Id.* ¶ 32.  
7 In other words, listings offering a \$1 commission can appear in Zillow’s default “Agent  
8 listings” tab. Further, the fact that REX’s own properties continue to appear on Zillow, *id.*  
9 ¶ 65, and that REX uses personalized ads to target consumers, *id.* ¶¶ 41, undermines REX’s  
10 claim that competitors are shut out. *Supra* 5-6, 10; *see* PI Order at 14-15. Notably, REX  
11 admits that consumers can “see every home listed for sale” on Zillow by “mov[ing] back and  
12 forth between ... tabs.” *Id.* ¶ 66. In other words, far from demonstrating harm to competition,  
13 REX’s own allegations demonstrate that businesses offering low commissions to real estate  
14 agents continue to appear on Zillow and elsewhere.

15 In all, REX does not plausibly allege any facts that would support a reasonable  
16 inference that *competition*—and not just REX’s business—has been harmed. Accordingly, its  
17 Complaint should be dismissed with prejudice.

18 **3. REX’s allegations of harm also fail because they do not occur in the**  
19 **same market as the alleged restraint.**

20 REX’s claim fails for an additional reason: REX is improperly alleging that Zillow  
21 restrained trade *outside* of the market where harm allegedly occurred. This is a separate and  
22 independent basis to dismiss REX’s Complaint.

23 To establish its antitrust claim, REX was required to allege “that the challenged  
24 restraint has a substantial anticompetitive effect that harms consumers *in the relevant*  
25 *market.*” *Qualcomm*, 969 F.3d at 991 (quoting *Ohio v. Am. Express*, 138 S. Ct. 2274, 2284  
26 (2018)) (emphasis added). In “assessing alleged antitrust injuries, courts must focus on  
27 anticompetitive effects ‘in the market where competition is [allegedly] being restrained.’” *Id.*  
28 (citing *Am. Ad. Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1057 (9th Cir. 1999)).

1 The analysis of the defendant’s “business practices and their anticompetitive impact” should  
 2 not “look[] beyond these markets” to other areas in which the defendant operates. *Id.* at 992.

3 The “relevant market” is “the area of effective competition.” *Id.* at 992 (quoting *Am.*  
 4 *Express*, 138 S. Ct. at 2285). Here, REX defines the relevant market as “the market for the  
 5 provision of real estate brokerage services to sellers and buyers of residential real estate in  
 6 local markets throughout the country where REX operates”—in short, the market for real  
 7 estate brokerage services. Compl. ¶ 102. And that is where REX claims that its business is  
 8 harmed—it alleges that it is less successful in transacting in real estate in each local market  
 9 where it operates because consumers need to click on a second tab to see REX’s listings.  
 10 *Supra* 5-6.

11 The problem with this claim, however, is that the restraint is not alleged to have  
 12 occurred within the market for real estate brokerage services. According to REX, the restraint  
 13 is Zillow’s implementation of its two-tab display. Compl. ¶¶ 111, 123. But Zillow made the  
 14 change to its display in its capacity as a data aggregator—not in connection with providing real  
 15 estate brokerage services, as described by REX. *See id.* ¶¶ 54, 60, 64-67, 70. In this area of  
 16 Zillow’s business where the alleged restraint occurred (*i.e.*, “populat[ing] its website,” *id.*  
 17 ¶ 60), Zillow is acting as a data aggregator, meaning REX is its data provider or customer—  
 18 not its competitor in providing real estate brokerage services. *See id.* ¶¶ 47, 69. While REX  
 19 claims that this conduct nevertheless affected it in local real estate markets, such allegations of  
 20 indirect harm—“outside the relevant markets”—were deemed “beyond the scope of antitrust  
 21 law” in *Qualcomm*. 969 F.3d at 993. This is yet another reason why REX’s claim should be  
 22 dismissed with prejudice.

23 **4. REX’s state antitrust claims should be dismissed for the same**  
 24 **reasons.**

25 As this Court recognized, the “state and federal standards” governing REX’s antitrust  
 26 claims are “nearly identical.” PI Order at 9 n.5 (citing *State v. LG Elecs., Inc.*, 186 Wn.2d 169,  
 27 186 n.3 (2016) (concurring, McCloud, J.)). In addition, REX concedes that its “state law  
 28 claims” under RCW 19.86.030 “arise out of the same factual nucleus as [its] federal law

1 claims.” Compl. ¶ 19. These claims should therefore be dismissed with prejudice for the same  
2 reasons as REX’s federal claims.

3 **B. REX Has Failed To Plausibly Allege A Lanham Act Violation.**

4 REX alleges that Zillow violated the Lanham Act by “knowingly,” “willful[ly],” and  
5 “deliberately” making false and misleading statements that deceive the public. *Id.* ¶¶ 132-34.  
6 This claim falls into a familiar pattern as the rest of REX’s claims: REX alleges an expansive  
7 course of misconduct—here, deliberately disseminating false advertising—while failing to  
8 plead a foundational element of its legal claim. Accordingly, this claim should be dismissed  
9 with prejudice.

10 To establish its claim for false advertising under the Lanham Act, REX was required to  
11 allege a “false or misleading” factual representation “in commercial advertising or promotion”  
12 that “misrepresents the nature, characteristics, qualities, or geographic origin of his or her or  
13 another person’s goods, services, or commercial activities.” 15 U.S.C. 1125(a)(1)(B); *see*  
14 *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 & n.2 (9th Cir. 1997).  
15 Critically, a representation is not “commercial advertising or promotion” unless it is made “for  
16 the purpose of influencing consumers to buy defendant’s goods or services.” *Coastal Abstract*  
17 *Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 1999) (internal quotation  
18 marks omitted).

19 Because REX’s false advertising claim alleges knowing conduct designed to deceive  
20 the public, Compl. ¶¶ 132-34, “the heightened pleading standards of Rule 9(b)” apply. *See*  
21 *A.H. Lundberg Assocs., Inc. v. TSI, Inc.*, No. C14-1160, 2014 WL 5365514, at \*7 (W.D.  
22 Wash. Oct. 21, 2014). Under Rule 9(b), “a party must state with particularity the  
23 circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The allegations must “give  
24 defendants notice of the particular misconduct ... so that they can defend against the charge  
25 and not just deny that they have done anything wrong.” *A.H. Lundberg Assocs.*, 2014 WL  
26 5365514, at \*2 (alteration in original; internal quotation marks omitted). To satisfy this  
27 standard, “an allegation of fraud must be accompanied by the who, what, when, where, and  
28 how of the misconduct charged.” *Id.* (internal quotation marks omitted).

1 REX comes nowhere close to satisfying these requirements. REX alleges that Zillow  
2 separated its search results out into two tabs: “Agent listings” and “Other listings.” Compl.  
3 ¶ 129. REX complains that its listings appear in the “Other listings” tab, despite the fact that  
4 REX properties are represented by real estate agents. *Id.* ¶ 130. According to REX, Zillow  
5 and NAR “knowingly adopted this labeling system ... to confuse, mislead, and deceive  
6 consumers” about the homes on Zillow’s websites. *Id.* ¶¶ 132-34.

7 REX’s Complaint ignores a foundational requirement of REX’s false advertising claim.  
8 REX was required to allege that Zillow chose its tab labels or groupings “for the purpose of  
9 influencing consumers to buy defendant’s goods or services.” *Coastal Abstract Serv.*, 173  
10 F.3d at 735 (internal quotation marks omitted). The Complaint says nothing like that. It  
11 alleges that Zillow conspired to “deceive consumers regarding the affiliation, connection, or  
12 association of the homes listed on Zillow’s websites.” Compl. ¶ 132; *see id.* ¶ 134 (alleging  
13 that these acts were “deliberately calculated to confuse and/or deceive the public”). But  
14 summarily alleging a scheme to mislead consumers is not an allegation that Zillow did so for  
15 the purpose of influencing consumers to purchase *Zillow’s* products. And REX certainly has  
16 not made any such allegation with the specificity required by Rule 9(b).

17 Courts have repeatedly dismissed complaints for similar failures to plead that a  
18 defendant operating a database made misleading statements in order to convince consumers to  
19 purchase the defendant’s goods or services. In *Alfasigma*, for example, the court dismissed a  
20 pharmaceutical company’s false advertising claim against the operator of a pharmaceutical  
21 database. *Alfasigma USA, Inc. v. First Databank, Inc.*, 398 F. Supp. 3d 578, 591 (N.D. Cal.  
22 2019). The plaintiff alleged that defendant’s false statements in the database influenced  
23 consumers’ decisions about whether to purchase plaintiff’s goods. *Id.* Fatal to that claim,  
24 however, the plaintiff failed to allege that the defendant sought to influence consumers to buy  
25 *defendant’s* goods or services—or to subscribe to *defendant’s* database. *Id.* That trend carries  
26 in this and other circuits. *See Genus Lifesciences Inc. v. Lannett Co., Inc., et al.*, 378  
27 F.Supp.3d 823, 844-47 (N.D. Cal. 2019) (dismissing Lanham Act false advertising claim  
28 against defendant operator of reference database because plaintiff failed to “allege that the

1 information contained in [defendant’s] pricing list [wa]s for the purpose of inducing  
2 [plaintiff’s] customers to enter into a commercial transaction with [defendant]”); *see also*  
3 *Strauss v. Angie’s List, Inc.*, 951 F.3d 1263, 1267-68 (10th Cir. 2020) (noting district court’s  
4 dismissal of Lanham Claim where complaint failed to plausibly allege that the statements in  
5 defendant’s database “were made for the purpose of influencing consumers to buy  
6 [defendant’s] goods or services”).

7 Here, as in those cases, REX has simply failed to allege that Zillow chose the labels for  
8 its tabs for the purpose of influencing consumers to buy *Zillow’s* goods or services. REX’s  
9 allegation that Zillow recently began an iBuying business—and thus owns homes that appear  
10 in MLS listings—does not change the analysis. *See* Compl. ¶¶ 58-59. The closest REX comes  
11 to drawing a connection is an allegation (in a different section of its Complaint) that the  
12 “growth and substantial inventory of Zillow-owned homes” caused Zillow’s interests to turn to  
13 “its own substantial home inventory,” instead of “focusing on being an open access point for  
14 consumers to display and access residential real estate listings.” *Id.* ¶ 58. But alleging that  
15 Zillow’s interests generally turned to its own listings is not an allegation that Zillow  
16 manipulated the labels of its tabs *for the purpose of* influencing consumers to purchase Zillow-  
17 owned homes. This allegation says nothing about the labeling of the tabs at all. And certainly  
18 not at the level of specificity that Rule 9(b) requires.

19 Nor could REX ever plausibly allege that Zillow misleadingly labeled its tabs in order  
20 to benefit its business. To the contrary, REX alleges that Zillow “incurred upfront costs—and  
21 continues to incur ongoing costs—by segregating non-MLS listings under a hidden tab.” *Id.*  
22 ¶ 65. In addition, the tabs “degrade Zillow’s quality from a user’s perspective.” *Id.* In other  
23 words, it is REX’s own position that the “Agent listings” and “Other listings” tabs *hurt*  
24 Zillow’s business. Moreover, REX acknowledges that Zillow’s data aggregation business is a  
25 “behemoth.” *See id.* ¶ 54. It would make absolutely no sense for Zillow to implement tabs  
26 confusing consumers and damaging its core business in an effort to somehow increase its  
27 profits. Which is perhaps why REX has not claimed otherwise in its Complaint.

28 In sum, REX has not alleged that Zillow designed its tabs for the purpose of



1 influencing consumers to buy Zillow’s products. Because any such allegation would be  
2 implausible, amendment would be futile, therefore warranting a dismissal of REX’s Lanham  
3 Act claim with prejudice.

4 **C. REX Has Failed To Plausibly Allege A CPA Violation.**

5 REX’s CPA claim is equally flawed. REX complains that Zillow created a tab labeled  
6 “Agent listings,” without “includ[ing] all ‘agent listings’ under that heading.” *Id.* ¶ 143.  
7 According to REX, this “has the capacity to deceive consumers into the false belief that REX  
8 listings are not by licensed real estate agents.” *Id.* However, REX’s own Complaint  
9 demonstrates that Zillow adopted these tabs for legitimate business purposes, which precludes  
10 relief on this claim.

11 To prevail on its CPA claim, REX must prove, among other things, an “unfair or  
12 deceptive act or practice,” and an impact on the “public interest.” *Hangman Ridge Training*  
13 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986). “Failure to satisfy even one  
14 ... element[] is fatal.” *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 298 (2002). The  
15 CPA’s purpose is to “protect consumers from harmful practices, which is why plaintiff[s] must  
16 allege an actual or potential impact on the general public, not merely a private wrong.”  
17 *McDonald v. OneWest Bank, FSB*, 929 F. Supp. 2d 1079, 1097 (W.D. Wash. 2013) (citation  
18 omitted).

19 As this Court recognized in its PI Order, the legislature has made clear that the CPA  
20 should not “be construed to prohibit acts or practices which are reasonable in relation to the  
21 development and preservation of business.” RCW 19.86.020; *see* PI Order at 21. That is  
22 exactly what Zillow did here. “Where conduct is motivated by legitimate business concerns,  
23 there can be no [CPA] violation.” *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 54 (1987);  
24 *see also Travis v. Wash. Horse Breeders Ass’n, Inc.*, 111 Wn.2d 396, 408-09 (1988) (applying  
25 this defense outside the antitrust context). In *Boeing*, for example, the Washington Supreme  
26 Court reversed a jury verdict against Boeing after the plaintiff failed to “offer evidence to rebut  
27 Boeing’s claim that it made the contacts to promote its legitimate business purposes in  
28 protecting its trade secrets.” 108 Wn.2d 38 at 56.



1 REX's CPA claim fails for similar reasons. REX's own Complaint establishes that  
2 Zillow implemented the new display to "comply[]" with the rules of NAR and MLSs,  
3 "including the IDX segregation rules," after choosing to "use MLS data feeds to populate its  
4 website." *Id.* ¶¶ 59-60, 88, 97, 156. As discussed at length above, there is no allegation  
5 whatsoever that Zillow created, established, enforced, advocated for, or even influenced the  
6 adoption of the No-Commingle Rule. *Supra* 8-9. Although REX's Lanham Act claim  
7 asserts that Zillow adopted the two-tab display for the purpose of deceiving consumers,  
8 Compl. ¶ 134, that conclusory allegation lacks the specificity necessary to plead a fraud claim  
9 (or any claim), *supra* 16-17. It is therefore irrelevant here, where REX's own allegations  
10 clearly demonstrate that Zillow is simply following set rules that govern the IDX Feeds that  
11 Zillow uses for its data aggregation business.

12 Because REX's own Complaint establishes that Zillow adopted the two-tab display for  
13 legitimate business purposes, its CPA claim should be dismissed with prejudice.

#### 14 **VI. CONCLUSION**

15 For all of the foregoing reasons, Zillow respectfully requests this Court dismiss REX's  
16 Complaint, in its entirety, and with prejudice.

1 Dated: June 30, 2021

By: /s/ Aravind Swaminathan  
/s/ Nicole Tadano  
/s/ John "Jay" Jurata, Jr.  
/s/ Russell P. Cohen  
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THE HONORABLE THOMAS S. ZILLY

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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 REX - REAL ESTATE EXCHANGE, INC.,

12 Plaintiff,

13 v.

14 ZILLOW, INC., et al.,

15 Defendants.  
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Case No. 2:21-CV-00312-TSZ

**[PROPOSED] ORDER GRANTING  
DEFENDANT ZILLOW'S MOTION  
TO DISMISS**

**NOTE ON MOTION CALENDAR:**  
July 23, 2021

**ORAL ARGUMENT REQUESTED**

1 THIS MATTER comes before the Court on Defendants Zillow, Inc., Zillow Group,  
2 Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC’s (collectively  
3 “Zillow”) Motion to Dismiss.

4 The Court has considered Defendant Zillow’s motion, Plaintiff’s response, and  
5 Defendant Zillow’s reply and any argument, along with the pleadings filed in this action.  
6 Based on the foregoing, the Court hereby ORDERS that Defendant Zillow’s Motion to  
7 Dismiss is GRANTED.

8 **IT IS SO ORDERED.**

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10 Dated this \_\_\_ day of \_\_\_\_\_ 2021

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11 HONORABLE THOMAS S. ZILLY  
12 UNITED STATES DISTRICT JUDGE  
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1 Dated: June 30, 2021

2 PRESENTED BY

3 ORRICK, HERRINGTON & SUTCLIFFE LLP

4 By: /s/ Aravind Swaminathan

5 /s/ Nicole Tadano

6 /s/ John "Jay" Jurata, Jr.

7 /s/ Russell P. Cohen

8 /s/ Naomi J. Scotten

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***Services, Inc., and Trulia, LLC***