

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED

AUG 19 2022

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY *LMA* DEP CLK

National Association of REALTORS®,

Petitioner,

v.

PIUS Limited, LLC

Respondent.

Misc. Case No. **5:22-MC-17-RN**

REX – Real Estate Exchange, Inc.,

Plaintiff,

v.

Zillow, Inc., et al.

Defendants.

Underlying Case:

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

United States District Court
for the Western District of Washington

**MEMORANDUM OF LAW IN SUPPORT OF
THE NATIONAL ASSOCIATION OF REALTORS®' MOTION TO COMPEL
COMPLIANCE WITH A SUBPOENA TO PIUS LIMITED, LLC**

INTRODUCTION

The National Association of REALTORS® (“NAR”) respectfully moves the Court for an order compelling PIUS Limited, LLC, to produce documents in response to a valid Rule 45 subpoena. PIUS recently arranged financing for REX – Real Estate Exchange, Inc., which then went out of business almost immediately thereafter. In the underlying suit, REX claims it was harmed by a purported conspiracy between NAR and Zillow, a large online real estate portal. But there is no such a conspiracy and REX failed because its product and services were poor and its marketing deceptive. Thus, since PIUS reviewed REX immediately before it failed, it likely has information about: (1) the quality of REX’s technology, services, and marketing; and (2) the health of REX’s business.

PIUS does not dispute the existence or relevance of the materials sought by NAR’s subpoena and it has not substantiated a claim of burden. But PIUS has refused to produce a single document in response to NAR’s 45 subpoena. NAR therefore respectfully asks the Court to order PIUS to produce the documents NAR has requested in its subpoena.

BACKGROUND

REX sued NAR and Zillow in March 2021 in United States District Court for the Western District of Washington. In its operative complaint, REX alleges, among other things, that NAR and Zillow violated the antitrust laws by conspiring to “boycott” REX and “segregate, conceal, and demote” REX’s listings on Zillow’s website. Amended Complaint ¶ 60, *REX - Real Estate Exchange, Inc v. Zillow, Inc.*, Case No. 2:21-cv-00312-TSZ, Dkt. 99 (W.D. Wa. Sept. 30, 2021) (“WDWA Complaint”). According to REX, “Zillow’s redesign [of its websites] now degrades non-MLS listings by placing them in the ‘other’ listing category under NAR/MLS rules.” *Id.* ¶ 70. REX claims the alleged boycott was intended to suppress “REX’s innovative model,” which purportedly “uses technology to enhance efficiency and drastically reduce

brokerage commissions, while delivering a full suite of personalized services to clients.” *Id.* ¶ 6. REX further alleges that its “business has been injured by” the alleged boycott, and that it “has lost customers[] and . . . continues to suffer injury to its reputation.” *Id.* ¶¶ 117, 141.

PIUS offers a “proprietary insurance product [that] provides a credit enhancement for growing companies to secure better financing options.” Ex. F (<https://piusre.com/>). In March 2022, PIUS announced that it had secured \$10 million in funding for REX. *See* Ex. G (<https://piusre.com/blog-post/pius-announces-10-million-secured-for-rex-homes/>). PIUS issued a press release stating that the funding secured for REX was a “private placement bond . . . underwritten by PIUS and based on its evaluation of REX Homes’ intellectual property.” Ex. G. Around the same time, PIUS’s CEO made comments to the media to address reports that REX’s operations “no longer appear[] to include brokerage” and “that REX, after letting go staffers in other departments[,] . . . had let all of its agents go through a companywide internal messaging system.” Ex. H (<https://www.inman.com/2022/05/19/insurance-agency-says-rex-is-still-operating-praises-tech/>).

On May 25, 2022, NAR served its subpoena to PIUS. *See* Ex. B. The subpoena attached nine document requests seeking internal documents related to PIUS’s evaluation of REX and the funding that PIUS secured for REX. Ex. A. In the cover letter enclosing the subpoena, NAR stated that it would “work[] with [PIUS] to minimize any burden in responding to this subpoena.” *Id.*

On June 3, 2022, PIUS asked for a two-week extension of the deadline to respond to the subpoena, which NAR granted. *See* Ex. E. On June 30, PIUS served its response, objecting to all of the requests and refusing to produce a single document. *See* Ex. C.

After a meet and confer on July 5, 2022, NAR confirmed in writing that it was “not asking PIUS to produce emails sent to or received from officers or employees of REX.” *Id.* NAR then gave PIUS another week to review documents and reconsider its position. On July 12, NAR again conferred with REX. At the conclusion of that meet and confer, PIUS still would not agree to produce a single document, stating instead that it was standing on its objections to the subpoena. *See id.*

ARGUMENT

“Subpoenas issued to nonparties are governed by Fed. R. Civ. P. 45.” *Revak v. Miller*, No. 7:18-206, 2020 WL 1164920, at *7 (E.D.N.C. Mar. 9, 2020). “As provided in Rule 45, a nonparty may be compelled to produce a document and tangible things or to permit an inspection.” Fed. R. Civ. P. 34(c). And “Rule 45 adopts the standard codified in Rule 26, which allows for the discovery of ‘any nonprivileged matter that is relevant to any party’s claim or defense’ when the discovery request ‘appears reasonably calculated to lead to the discovery of admissible evidence.’” *Boykin Anchor Co. v. Wong*, No. 5:10-591, 2012 WL 27328, at *2 (E.D.N.C. Jan. 4, 2012) (quoting Fed. R. Civ. P. 26(b)(1)).

According to its public statements, PIUS evaluated REX’s intellectual property when underwriting REX’s financing right before REX failed. Its press release about the REX funding says as much: “The private placement bond was underwritten by PIUS and based on its evaluation of REX Homes’ intellectual property (IP).” Ex. G. When the value of a technology is relevant to issues that must be decided, numerous courts have enforced subpoenas and compelled production of such third-party evaluations of intellectual property. *See, e.g., Intel Corp. v. Prot. Capital LLC*, 2013 WL 12313348, at *3 (S.D. Cal. Oct. 2, 2013) (granting motion to compel nonparty-investor’s compliance with subpoena seeking documents regarding investor’s decision to invest in the patents at issue, its analysis of the investment, and its ongoing role in the pending

patent litigation, finding that “the investment and litigation information sought . . . is relevant because it relates to the valuation of the patents” which “relate to the damages [plaintiff] seeks in the underlying patent case”); *In re Google Litig.*, 2011 WL 6113000 (N.D. Cal. Dec. 7, 2011) (allowing limited third party discovery as to a venture capital firm that invested in a party in patent litigation); *TransPerfect Global, Inc. v. MotionPoint Corp.*, 2013 WL 2552920 (N.D. Cal. June 10, 2013) (finding that defendant could “present evidence relating to [plaintiff’s] purchase of the patents—such as the price [plaintiff] paid—for other purposes, including proof of damages”).

Moreover, PIUS’s analysis and evaluation of REX is relevant to REX’s (not yet specified) damages claim, especially to the extent those claims depend on any valuation of REX as a going concern. *See Nallapati v. Justh Holdings, LLC*, No. 5:20-47, 2022 WL 274405, at *1-2 (E.D.N.C. Jan. 28, 2022) (denying protective order against subpoena “seeking documents concerning a loan agreement between Unity and Justh in which Justh granted a security interest in the trademarks at issue in this case” because “the subpoenaed information is relevant to the valuation of the alleged damages”); *Pac. All. Corp. v. McCoy Wiggins, PLLC*, No. 5:18-298, 2019 WL 722572, at *2 (E.D.N.C. Feb. 20, 2019) (denying motion to quash subpoena for documents related to a third-party valuation of a business at issue because “the information sought appears relevant to [the] valuation and, in turn, [plaintiff]’s damages”); *Symantec Corp. v. Zscaler, Inc.*, No. 17-4426, 2019 WL 2288278, at *2 (N.D. Cal. May 29, 2019) (compelling production of documents related to valuation of products and company because the information is relevant to damages).

PIUS objects to NAR’s requests as overbroad. *See* Ex. C at Objs. to Request Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9. But “[m]ere overbreadth, of course, usually warrants modifying a subpoena to

narrow its scope, not quashing it.” *Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 190 n.4 (4th Cir. 2019). In this case, NAR offered to work with PIUS to minimize the burden of responding to the subpoena, and in fact conferred with PIUS multiple times in an effort to reach an agreement about the scope of production. See Ex. A; Ex. D. But PIUS has not agreed to produce a single document. See Ex. D.

PIUS’s overbreadth objections also are improper because they do not specify how the requests are purportedly overbroad beyond saying that each request is overbroad because it seeks “all documents” or “all communications” regarding various discrete subjects. See Ex. C at Objs. to Request Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9. “Merely stating that an interrogatory is ‘overbroad’ does ‘not suffice to state a proper objection.’” *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 360 (D. Md. 2012) (quoting *Cappetta v. GC Servs. Ltd. P’ship*, 2008 WL 5377934, at *3 (E.D. Va. Dec. 24, 2008)). “Instead, the ‘objecting party must specify which part of a request is overbroad, and why.’” *Id.* (quoting *Cappetta*, 2008 WL 5377934, at *3). PIUS’s boilerplate objections do not give NAR any real sense of what PIUS finds objectionable, and they can be overruled on that basis alone.

CONCLUSION

For the foregoing reasons, NAR respectfully requests that the Court issue an order enforcing the subpoena and compelling PIUS to respond.

DATED: August 19, 2022

Respectfully submitted,

/s/ Joseph D. Hammond

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*Special Apperance Attorneys for Movant National
Association of REALTORS® (notices of special
appearance forthcoming)*

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2022, I caused a true and correct copy of the foregoing to be served by United States mail and electronic mail on the following party and counsel of record:

PIUS Limited, LLC
c/o Registered Agent
160 Mine Lake Ct., Ste. 200
Raleigh, NC 27615

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DATED: August 19, 2022.

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*Attorneys for Defendants, Zillow, Inc., Zillow
Group, Inc., Zillow Homes, Inc., Zillow Listing
Services, Inc., and Trulia, LLC*

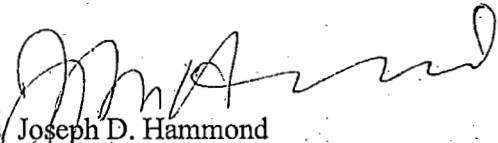

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EXHIBIT A

quinn emanuel trial lawyers | washington, dc

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8215

WRITER'S EMAIL ADDRESS
peterbenson@quinnemanuel.com

May 24, 2022

VIA HAND DELIVERY

PIUS Limited, LLC
Joe A. Agiato
President and CEO
c/o National Registered Agents, Inc.
160 Mine Lake Ct., Ste. 200
Raleigh, NC 27615

Re: *REX - Real Estate Exchange Inc. v. Zillow Inc., et al.*, Case No. 2:21-cv-00312-TSZ
(W.D. Wash.)

Dear Mr. Agiato:

Please find enclosed and served upon PIUS Limited, LLC, a document subpoena in the above-referenced matter. We have attached to the subpoena the Protective Order and an Order regarding the discovery of electronically stored information from the case.

We look forward to working with you to minimize any burden in responding to this subpoena. We are, for example, happy to set up an FTP link or other method of facilitating electronic transfer of responsive documents or data. Please feel free to contact me at (202) 538-8215 or peterbenson@quinnemanuel.com to discuss how we can help facilitate your response.

Best regards,

/s/ Peter Benson

Peter Benson

quinn emanuel urquhart & sullivan, llp

UNITED STATES DISTRICT COURT

for the

Western District of Washington

REX - REAL ESTATE EXCHANGE, INC.,

Plaintiff

v.

ZILLOW INC., et al.,

Defendant

Civil Action No. 2:21-cv-00312-TSZ

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: PIUS Limited, LLC,
c/o National Registered Agents, Inc., 160 Mine Lake Ct, Ste 200, Raleigh, North Carolina 27615

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Consilio
1 Copley Pkwy, Ste 650
Morrisville, North Carolina 27560

Date and Time:

06/16/2022 2:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/24/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michael D. Bonanno

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant
National Association of REALTORS®, who issues or requests this subpoena, are:

Michael Bonanno, 1300 I St. NW, Ste 900, Washington, DC 20005; mikebonanno@quinnemanuel.com; (202) 538-8000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:21-cv-00312-TSZ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

1 **ATTACHMENT A**

2 **DEFINITIONS**

3 The following definitions shall apply throughout this subpoena:

4 1. "You," "Your," shall each mean and refer to PIUS Limited, LLC, including,
5 without limitation, all of its locations, predecessors, predecessors-in-interest, subsidiaries, parents,
6 affiliates, past or present directors, officers, agents, representatives, employees, consultants,
7 attorneys, entities acting in joint venture, franchisees, licensees, owners, shareholders, and
8 partnership relationships.

9 2. "NAR" means the National Association of REALTORS®.

10 3. "REX," or "Plaintiff" means REX - Real Estate Exchange, Inc. and its employees,
11 agents, or other persons acting on its behalf.

12 4. "Complaint" means the First Amended Complaint filed in this action, *REX-Real*
13 *Estate Exchange, Inc. v. Zillow Inc., et al.*, Case No. 2:21-cv-00312-TSZ (W.D. Wash), attached
14 as Exhibit 1.

15 5. "Communication" or "communications" means any oral, written, or other contact
16 between two or more persons or entities by which any information is transmitted or conveyed,
17 including letters, memoranda, emails, and text messages.

18 6. "Document" or "documents" are synonymous in meaning and equal in scope to the
19 usage of the terms as defined by Federal Rule of Civil Procedure 34 and shall include all
20 "writings" and "recordings," including, without limitation, all writings, drawings, graphs, charts,
21 photographs, recordings, phone records, videos, computer files, electronic mail or information,
22 agreements, facsimiles, telexes, notes and other data compilations from which information can be
23 obtained, translated, if necessary, through detection devices into reasonably usable form.

24 **INSTRUCTIONS**

25 1. In complying with these Requests, You are to produce all responsive Documents
26 within Your possession, custody, or control.

2. If You claim privilege as grounds for not fully answering a Request, You should provide a privilege log in accordance with Rule 26 of the Federal Rules of Civil Procedure.

3. If any portion of a Document or Communication is responsive to any Request, the entire Document or Communication should be produced.

REQUESTS FOR PRODUCTION

1. All documents concerning any due diligence or underwriting You performed concerning REX or its business before You secured funding for REX, as referenced on Your website at <https://piusre.com/blog-post/pius-announces-10-million-secured-for-rex-homes/>.

2. All documents referencing REX that You provided to investors or potential investors concerning REX.

3. All documents referencing the performance of REX's business or future business prospects.

4. All documents concerning Your "evaluation of REX Homes' intellectual property (IP)," as referenced at <https://piusre.com/blog-post/pius-announces-10-million-secured-for-rex-homes/>.

5. All communications referencing REX sent between Your members, managers, or employees.

6. All documents referencing breach of loan covenants or other financing terms by REX.

7. All documents referencing REX's decision to cease operations.

8. All documents referencing the allegations in the Complaint.

9. All documents referencing any submissions made by REX to any government agency concerning NAR or Zillow.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

REX - Real Estate Exchange, Inc.

Plaintiff

Civil Action No.: 2:21-cv-00312-TSZ

vs.

Zillow Inc., et al.

Defendant(s)

AFFIDAVIT OF SERVICE

I, Marilyn Michelle Harts, a Private Process Server, being duly sworn, depose and say:

That I have been duly authorized to make service of the Letter dated May 24, 2022 and Subpoena Duces Tecum with Attachments in the above entitled case.

That I am over the age of eighteen years and not a party to or otherwise interested in this action.

That on 05/25/2022 at 2:12 PM, I served PIUS Limited, LLC c/o National Registered Agents, Inc., Registered Agent at 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615 with the Letter dated May 24, 2022 and Subpoena Duces Tecum with Attachments by serving Leeza Puckett, Agent, authorized to accept service on behalf of National Registered Agents, Inc..

Leeza Puckett is described herein as:

Gender: Female Race/Skin: White Age: 21 Weight: 275 Height: 5'5" Hair: Blonde Glasses: No

I declare under penalty of perjury that this information is true and correct.

05/27/22
Executed On



Marilyn Michelle Harts
Marilyn Michelle Harts

Client Ref Number: 09275-00005
Job #: 1603329

Capitol Process Services, Inc. | 1827 18th Street, NW, Washington, DC 20009 | (202) 667-0050

UNITED STATES DISTRICT COURT

for the

Western District of Washington

REX - REAL ESTATE EXCHANGE, INC.,

Plaintiff

v.

ZILLOW INC., et al.,

Defendant

Civil Action No. 2:21-cv-00312-TSZ

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: PIUS Limited, LLC,
c/o National Registered Agents, Inc., 160 Mine Lake Ct, Ste 200, Raleigh, North Carolina 27615

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Consilio
1 Copley Pkwy, Ste 650
Morrisville, North Carolina 27560

Date and Time:
06/16/2022 2:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/24/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michael D. Bonanno

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant

National Association of REALTORS®, who issues or requests this subpoena, are:

Michael Bonanno, 1300 I St. NW, Ste 900, Washington, DC 20005; mikebonanno@quinnemanuel.com; (202) 538-8000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT C

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

<p>REX – REAL ESTATE EXCHANGE, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ZILLOW, INC., et al.</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 2:21-cv-00312-TSZ</p>
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**PIUS LIMITED, LLC’S OBJECTIONS TO NATIONAL ASSOCIATION OF
REALTORS® SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Now comes non-party, PIUS Limited, LLC (“PIUS”), who hereby objects to Defendant, the National Association of Realtors® (“NAR”) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (the “Subpoena”) as follows:

GENERAL OBJECTIONS

1. PIUS objects generally to NAR’s Subpoena to the extent it seeks to impose burdens or obligations on PIUS beyond those required or permitted by the applicable provisions of Federal Rules of Civil Procedure 26 and 45, any Order of the Court, any agreement of the parties, and/or any applicable law. PIUS responds to NAR’s Subpoena in accordance with the applicable rules.

2. PIUS objects generally to NAR’s Subpoena to the extent it seeks the disclosure of documents or information that are subject to one or more privileges or protections from disclosure, including, but not limited to: the attorney-client privilege, the self-investigation privilege, the attorney work product doctrine, or any other privilege or protection available under applicable law.

3. PIUS objects generally to NAR's Subpoena to the extent that it seeks the disclosure of documents or information that are not relevant and not material and necessary to the prosecution or defense of any claim in this matter, and/or not reasonably likely to lead to the discovery of admissible evidence.

4. PIUS objects generally to NAR's subpoena to the extent that it is overbroad, unduly burdensome, and/or imposes upon PIUS a burden that is disproportionate to the needs of the case.

5. PIUS objects generally to NAR's Subpoena to the extent that it is vague, ambiguous, unclear, and/or imprecise.

6. PIUS objects generally to NAR's Subpoena to the extent it seeks the disclosure of documents that contain information that is confidential, proprietary, or competitively sensitive to PIUS and/or information that is subject to a confidentiality restriction imposed by any agreement with Rex or any other party.

7. PIUS objects generally to NAR's Subpoena to the extent it seeks to impose upon PIUS any obligation to provide responses with respect to documents or information that are not in PIUS's possession, custody, and/or control.

8. PIUS objects generally to NAR's Subpoena to the extent it seeks documents or information that are already in the possession, custody, and/or control of, or that are equally available to, NAR, or from a party to the litigation, as to PIUS.

9. PIUS objects generally to NAR's Subpoena to the extent it is served for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

10. PIUS objects generally to NAR's Subpoena to the extent that it is duplicative, cumulative, and/or redundant.

11. PIUS objects generally to NAR's Subpoena as overbroad, unduly burdensome, and disproportionate to the needs of the case to the extent that it seeks documents and/or electronically stored information from sources that are not reasonably accessible.

12. PIUS objects to NAR's Subpoena to the extent it assumes the truth of any factual or legal assertion stated or implied therein. No Response shall be construed as an admission of any factual or legal assertion contained in the Subpoena.

REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents concerning any due diligence or underwriting You performed concerning REX or its business before You secured funding for REX, as referenced on Your website at <https://piusre.com/blog-post/pius-announces-10-million-secured-for-rex-homes/>.

OBJECTION TO REQUEST NO. 1

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks "all documents"; seeks information that is neither relevant to any party's claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, to the extent the request seeks information relating to the financial health and/or business operations of plaintiff, REX – Real Estate Exchange, Inc. ("REX"), such information can readily and more conveniently be obtained directly from REX. PIUSs' due diligence and underwriting, including without limitation its assessment of REX's financial health and REX's business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the

burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST NO. 2

All documents referencing REX that You provided to investors or potential investors concerning REX.

OBJECTION TO REQUEST NO. 2

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks "all documents"; seeks information that is neither relevant to any party's claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, to the extent the request seeks information relating to the financial health and/or business operations of plaintiff, REX – Real Estate Exchange, Inc. ("REX"), such information can readily and more conveniently be obtained directly from REX. PIUSs' due diligence and underwriting, including without limitation its assessment of REX's financial health and REX's business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST NO. 3

All documents referencing the performance of REX's business or future business prospects.

OBJECTION TO REQUEST NO. 3

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks "all documents"; seeks information that is neither relevant to any party's claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, to the extent the request seeks information relating to the financial health and/or business operations of plaintiff, REX – Real Estate Exchange, Inc. ("REX"), such information can readily and more conveniently be obtained directly from REX. PIUSs' due diligence and underwriting, including without limitation its assessment of REX's financial health and REX's business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST FOR NO. 4

All documents concerning Your "evaluation of REX Homes' intellectual property (IP)," as referenced at <https://piusre.com/blog-post/pius-announces-10-million-secured-for-rex-homes/>.

OBJECTION TO REQUEST NO. 4

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks “all documents”; seeks information that is neither relevant to any party’s claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or proprietary and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, PIUS’s evaluation of REX’s IP is neither relevant to, nor reasonably likely to lead to the discovery of admissible evidence concerning the claims and defenses in the action, and, if not information that should be obtained from an expert, can readily and more conveniently be obtained directly from REX. PIUS’s due diligence and underwriting, including without limitation its assessment of REX’s financial health, Rex’s intellectual property, and REX’s business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR’s overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR’s own due diligence.

REQUEST NO. 5.

All communications referencing REX sent between Your members, managers, or employees.

OBJECTION TO REQUEST NO. 5.

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks “all communications”; seeks information that is neither relevant to any party’s claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to

the needs of the case; seeks the disclosure of privileged and/or proprietary and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Construed literally, the Request would require PIUS, among other things, to collect and search the emails of every one of its custodians. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST NO. 6.

All documents referencing breach of loan covenants or other financing terms by REX.

OBJECTION TO REQUEST NO. 6.

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks "all documents"; seeks information that is neither relevant to any party's claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or proprietary and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Specifically, to the extent the request can be construed to seek information relating to the financial health and/or business operations of REX, such information can be more conveniently obtained directly from REX. PIUS's assessment of REX's financial health and REX's business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is

relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST NO. 7.

All documents referencing REX's decision to cease operations.

OBJECTION TO REQUEST NO. 7.

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks "all documents"; seeks information that is neither relevant to any party's claim or defense nor reasonably likely to lead to the discovery of admissible evidence nor proportional to the needs of the case; seeks the disclosure of privileged and/or proprietary and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, to the extent the request seeks information relating to the financial health and/or business operations of REX, such information can readily and more conveniently be obtained directly from REX. PIUS's due diligence and underwriting, including without limitation its assessment of REX's financial health and REX's business prospects are not at issue in the litigation and contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR's overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR's own due diligence.

REQUEST NO. 8.

All documents referencing the allegations in the Complaint.

OBJECTION TO REQUEST NO. 8.

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks “all documents” referencing allegations in a 48-page, more than 164 paragraph complaint, a copy of which was not provided with the Subpoena; is neither relevant to any party’s claim or defense nor proportional to the needs of the case; seeks the disclosure of privileged and/or confidential information; seeks information that can be more conveniently obtained directly from REX; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR’s overbroad Subpoena (including this request), exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR’s own due diligence.

REQUEST NO. 9.

All documents referencing any submissions made by REX to any government agency concerning NAR or Zillow.

OBJECTION TO REQUEST NO. 9.

PIUS objects to the request on the grounds that it is overbroad on its face to the extent it seeks “all documents”; seeks information that is neither relevant to any party’s claim or defense nor proportional to the needs of the case; seeks the disclosure of privileged and/or confidential information; and imposes an undue burden and expense upon PIUS in violation of Fed.R.Civ.P. 45(d)(1). Among other things, to the extent the request seeks information relating to the financial health and/or business operations of REX, such information can readily and more conveniently be obtained directly from REX. PIUS’s due diligence and underwriting, including without limitation “documents referencing any submissions made by REX to any government

agency concerning NAR or Zillow,” are not at issue in the litigation and may contain privileged, confidential and/or proprietary information. Further, the cost to PIUS of collecting documents and communications potentially responsive to NAR’s overbroad Subpoena, exclusive of the costs PIUS will incur to review documents for responsiveness and/or privilege, is excessive and inappropriate to impose on a non-party, particularly absent a showing that it is relevant, the burden on PIUS is proportional to the needs of the case and the value of the information to NAR, and it is not otherwise available to NAR through party discovery and/or NAR’s own due diligence.

Respectfully submitted,

PIUS LIMITED LLC,

By its attorneys,

Date: June 30, 2022

/s/ Tyler S. Weaver
Tyler S. Weaver – Bar No. 29413
Charles L. Solomont
Wayne E. George
MORGAN, LEWIS & BOCKIUS LLP
One Federal Street
Boston, Massachusetts 02110-1726
(617) 341-7700
tyler.weaver@morganlewis.com
carl.solomont@morganlewis.com
wayne.george@morganlewis.com

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2022, I served the foregoing objections via electronic mail upon the following:

David Boies BOIES SCHILLER & FLEXNER 333 Main Street Armonk, NY 10601 Email: dboies@bsflp.com Attorneys for Plaintiff <i>REX-Real Estate Exchange, Inc.</i>	Carl Goldfarb BOIES SCHILLER & FLEXNER 401 E Las Olas Blvd. Ste 1200 Ft Lauderdale, FL 33301 Email: cgoldfarb@bsflp.com Attorneys for Plaintiff <i>REX-Real Estate Exchange, Inc.</i>
Ursula Ungaro Augusto Cividini Stephen N. Zack BOIES SCHILLER FLEXNER LLP 100 SE 2 nd St., Ste. 28800 Miami, FL 33131 Email: uungaro@bsflp.com acividini@bsflp.com szack@bsflp.com Attorneys for Plaintiff <i>REX-Real Estate Exchange, Inc.</i>	Darren McCarty Cristina Moreno MCCARTY LAW PLLC 1410B W 51 st Street Austin, TX 78756 Email: darren@mccartylawpllc.com cristina@mccartylawpllc.com Attorneys for Plaintiff <i>REX-Real Estate Exchange, Inc.</i>
Teva F. Sempel Mark Rosencrantz CARNEY BADLEY SPELLMAN PS 701 Fifth Avenue, Ste 3600 Seattle, WA 98104-7010 Email: sempel@carneylaw.com rose@carneylaw.com Attorneys for Plaintiff <i>REX-Real Estate Exchange, Inc.</i>	Laura Brooks Najemy ORRICK, HERRINGTON, & SUTCLIFFE LLP 222 Berkeley St. Ste 2000 Boston, MA 02116 Email: lnajemy@orrick.com Attorneys for Defendants <i>Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC</i>
Aravind Swaminathan Nicole Tadano ORRICK, HERRINGTON, & SUTCLIFFE LLP 701 Fifth Avenue, Suite 5600 Seattle, WA 98104-7097 Email: aswaminathan@orrick.com ntadano@orrick.com Attorneys for Defendants <i>Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC</i>	Naomi J. Scotten, Pro Hac Vice ORRICK, HERRINGTON, & SUTCLIFFE LLP 51 West 52nd Street New York, NY 10019 Email: nscotten@orrick.com Attorneys for Defendants <i>Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC</i>

<p>John “Jay” Jurata Jr., Pro Hac Vice ORRICK, HERRINGTON, & SUTCLIFFE LLP 1152 15th Street, N. W. Washington, DC 20005 Email: jjurata@orrick.com</p> <p>Attorneys for Defendants <i>Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC</i></p>	<p>Russell P. Cohen, <i>Pro Hac Vice</i> ORRICK, HERRINGTON, & SUTCLIFFE LLP The Orrick Building 405 Howard St., 7th Floor San Francisco, CA 94105 Email: rcohen@orrick.com</p> <p>Attorneys for Defendants <i>Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC</i></p>
<p>Peter Benson Kathleen Alice Lanigan QUINN EMANUEL URQUHART & SULLIVAN LLP 1300 I Street NW Ste 900 Washington, DC 20005 Email: peterbenson@quinnemanuel.com katlanigan@quinnemanuel.com</p> <p>Attorneys for Defendant <i>The National Association of Realtors</i></p>	<p>Michael D. Bonanno QUINN EMANUEL URQUHART & SULLIVAN LLP 777 Sixth St. NW Washington, DC 20001 Email: mikebonanno@quinnemanuel.com</p> <p>Attorney for Defendant <i>The National Association of Realtors</i></p>
<p>Thomas C. Rubin QUINN EMANUEL URQUHART & SULLIVAN LLP 1109 First Ave., Ste 210 Seattle, WA 98101 Email: tomrubin@quinnemanuel.com</p> <p>Attorney for Defendant <i>The National Association of Realtors</i></p>	<p>Gabrielle Jean Hanna COOLEY LLP 1700 Seventh Ave., Ste 1900 Seattle, WA 98101-1355 Email: ghanna@cooley.com</p> <p>Attorney for Defendant <i>The National Association of Realtors</i></p>
<p>Ethan Glass COOLEY LLP (DC) 1299 Pennsylvania Ave. NW, Ste. 700 Washington, DC 20004 Email: eglass@cooley.com</p> <p>Attorney for Defendant <i>The National Association of Realtors</i></p>	

EXHIBIT D

Peter Benson

From: Peter Benson
Sent: Friday, July 15, 2022 4:20 PM
To: Solomont, Charles L.
Cc: George, Wayne E.; dboies@bsflp.com; cgoldfarb@bsflp.com; uungaro@bsflp.com; acividini@bsflp.com; szack@bsflp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno; Tom Rubin; ghanna@cooley.com; eglass@cooley.com; Najemy, Laura
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

Hi Carl, thanks for the update about PIUS's response to NAR's subpoena earlier this week. As I said during our call, since PIUS is standing on its objections to NAR's document requests, we are at an impasse. NAR therefore plans to move to enforce the subpoena. Please let me know if PIUS's position changes.

Best,
Peter

From: Peter Benson
Sent: Wednesday, July 6, 2022 8:19 AM
To: Solomont, Charles L. <carl.solomont@morganlewis.com>
Cc: George, Wayne E. <wayne.george@morganlewis.com>; dboies@bsflp.com; cgoldfarb@bsflp.com; uungaro@bsflp.com; acividini@bsflp.com; szack@bsflp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno <mikebonanno@quinnemanuel.com>; Tom Rubin <tomrubin@quinnemanuel.com>; ghanna@cooley.com; eglass@cooley.com; Najemy, Laura <lnajemy@orrick.com>
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

Carl,

Thanks for the call about PIUS's document collection. We are not asking PIUS to produce emails sent to or received from officers or employees of REX. We agree that you may exclude such emails from your review and production. We do expect, however, that responsive internal PIUS communications and responsive communications exchanged with third parties will be included in PIUS's document production.

During our conversation, you said your team needs more time to review the data collected from your client before making a concrete proposal about what PIUS intends to produce in response to the subpoena. We agreed to reconvene for another call on July 12 at 1:30 pm eastern. Please be prepared to discuss the scope of PIUS's anticipated document production on July 12. Thanks.

Best,
Peter

From: Peter Benson
Sent: Tuesday, July 5, 2022 9:35 AM
To: Solomont, Charles L. <carl.solomont@morganlewis.com>
Cc: George, Wayne E. <wayne.george@morganlewis.com>; dboies@bsflp.com; cgoldfarb@bsflp.com;

uungaro@bsflfp.com; acividini@bsflfp.com; szack@bsflfp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno <mikebonanno@quinnemanuel.com>; Tom Rubin <tomrubin@quinnemanuel.com>; ghanna@cooley.com; eglass@cooley.com; Najemy, Laura <lnajemy@orrick.com>
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

Thanks. I'll send an invite.

From: Solomont, Charles L. <carl.solomont@morganlewis.com>
Sent: Tuesday, July 5, 2022 9:28 AM
To: Peter Benson <peterbenson@quinnemanuel.com>
Cc: George, Wayne E. <wayne.george@morganlewis.com>; dboies@bsflfp.com; cgoldfarb@bsflfp.com; uungaro@bsflfp.com; acividini@bsflfp.com; szack@bsflfp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; inajemy@orrick.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno <mikebonanno@quinnemanuel.com>; Tom Rubin <tomrubin@quinnemanuel.com>; ghanna@cooley.com; eglass@cooley.com
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

[EXTERNAL EMAIL from carl.solomont@morganlewis.com]

I can be available, yes.

Charles L. Solomont

Morgan, Lewis & Bockius LLP

One Federal Street | Boston, MA 02110-1726

Direct: +1.617.951.8996 | Main: +1.617.341.7700 | Fax: +1.617.341.7701 | Mobile: +1.617.688.8996

carl.solomont@morganlewis.com | www.morganlewis.com

Assistant: Nancy H. Mailloux | +1.617.951.8453 | nancy.mailloux@morganlewis.com



From: Peter Benson <peterbenson@quinnemanuel.com>
Sent: Friday, July 1, 2022 11:20 AM
To: George, Wayne E. <wayne.george@morganlewis.com>; Solomont, Charles L. <carl.solomont@morganlewis.com>; dboies@bsflfp.com; cgoldfarb@bsflfp.com; uungaro@bsflfp.com; acividini@bsflfp.com; szack@bsflfp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; inajemy@orrick.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno <mikebonanno@quinnemanuel.com>; Tom Rubin <tomrubin@quinnemanuel.com>; ghanna@cooley.com; eglass@cooley.com
Cc: Brennan, Laurie M. <laurie.brennan@morganlewis.com>; Mailloux, Nancy H. <nancy.mailloux@morganlewis.com>
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

[EXTERNAL EMAIL]

Thank you, Carl and Wayne. Are you available on Tuesday (July 5) at 1:00 pm eastern to discuss PIUS's document production?

From: George, Wayne E. <wayne.george@morganlewis.com>
Sent: Thursday, June 30, 2022 7:48 PM
To: Solomont, Charles L. <carl.solomont@morganlewis.com>; Peter Benson <peterbenson@quinnemanuel.com>; dboies@bsfllp.com; cgoldfarb@bsfllp.com; uungaro@bsfllp.com; acividini@bsfllp.com; szack@bsfllp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; inajemy@orrick.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; Mike Bonanno <mikebonanno@quinnemanuel.com>; Tom Rubin <tomrubin@quinnemanuel.com>; ghanna@cooley.com; eglass@cooley.com
Cc: Brennan, Laurie M. <laurie.brennan@morganlewis.com>; Mailloux, Nancy H. <nancy.mailloux@morganlewis.com>
Subject: RE: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

[EXTERNAL EMAIL from wayne.george@morganlewis.com]

Apologies, we neglected to attach the responses which are now attached.

Wayne E. George

Morgan, Lewis & Bockius LLP

One Federal Street | Boston, MA 02110-1726

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From: Mailloux, Nancy H. <nancy.mailloux@morganlewis.com> **On Behalf Of** Solomont, Charles L.
Sent: Thursday, June 30, 2022 12:33 PM
To: peterbenson@quinnemanuel.com; dboies@bsfllp.com; cgoldfarb@bsfllp.com; uungaro@bsfllp.com; acividini@bsfllp.com; szack@bsfllp.com; darren@mccartylawpllc.com; cristina@mccartylawpllc.com; sempel@carneylaw.com; rose@carneylaw.com; inajemy@orrick.com; aswaminathan@orrick.com; ntadano@orrick.com; nscotten@orrick.com; jjurata@orrick.com; rcohen@orrick.com; mikebonanno@quinnemanuel.com; tomrubin@quinnemanuel.com; ghanna@cooley.com; eglass@cooley.com
Cc: Solomont, Charles L. <carl.solomont@morganlewis.com>; George, Wayne E. <wayne.george@morganlewis.com>; Brennan, Laurie M. <laurie.brennan@morganlewis.com>; Mailloux, Nancy H. <nancy.mailloux@morganlewis.com>
Subject: REX - Real Estate Exchange, Inc. v. Zillow, Inc., et al.

On behalf of Carl Solomont, please see attached.

Nancy H. Mailloux

Legal Secretary

Morgan, Lewis & Bockius LLP

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Assistant to: Charles L. Solomont / Jeff Goldman / Andrew M. Buttaro / Michael C. Polovich / Daniel J. Ball / L. Felipe Escobedo



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EXHIBIT E

Peter Benson

From: Peter Benson
Sent: Friday, June 3, 2022 2:59 PM
To: Solomont, Charles L.
Cc: George, Wayne E.; Mike Bonanno
Subject: RE: REX - Real Estate Exchange v. Zillow -- subpoena on PIUS Limited, LLC

Hi Carl,

Thanks for your message. We agree to a two-week extension—until June 30—to PIUS's deadline to respond to NAR's subpoena. Have a great weekend, and please let me know if you'd like to further discuss.

Best,
Peter

Peter Benson
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Solomont, Charles L. <carl.solomont@morganlewis.com>
Sent: Friday, June 3, 2022 12:04 PM
To: Peter Benson <peterbenson@quinnemanuel.com>
Cc: George, Wayne E. <wayne.george@morganlewis.com>
Subject: REX - Real Estate Exchange v. Zillow -- subpoena on PIUS Limited, LLC

[EXTERNAL EMAIL from carl.solomont@morganlewis.com]

Peter,

I just left you a voice mail message. Morgan Lewis will be representing PIUS with respect to the referenced subpoena. We would like your agreement to provide PIUS more time to respond to the subpoena. We would like an additional two weeks if possible. Could you please either confirm that is alright by email, or call me back to discuss. Thank you.

Carl Solomont

Charles L. Solomont

Morgan, Lewis & Bockius LLP

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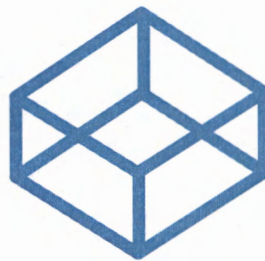
EXHIBIT F



INSURED TECHNOLOGY FINANCING

**With PIUS, technology companies can now borrow
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(IP).**

PIUS offers a proprietary insurance product that allows growing companies to
secure better financing options at lower rates with less risk to lenders.



For Technology Companies

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For Lenders

[LEARN MORE](#)

ABOUT PIUS

PIUS (Patent Insurance Underwriting Services) enables larger loan amounts at better rates by utilizing a company's intellectual property as collateral.

PIUS' proprietary insurance product provides a credit enhancement for growing companies to secure better financing options. By insuring the loan based on its evaluation of the IP, PIUS helps facilitate greater loan amounts. Its program transfers the risk from the lender to the insurer and provides more complete coverage than other policies.

PIUS team members have successfully facilitated more than \$40 billion in technology and intellectual property transactions.

HOW DOES IT WORK?

PIUS is a managing general agent (MGA) offering a high margin, low loss residual

value insurance program, based on its evaluation of intellectual property for emerging technology companies.

PIUS' intellectual property, credit, finance, and insurance experts provide complete underwriting services, and its proprietary insurance policy is accepted by commercial lenders.

PIUS provides continual risk mitigation through expert monitoring and claims handling services.

Interested in learning more? Contact us.

CONTACT US

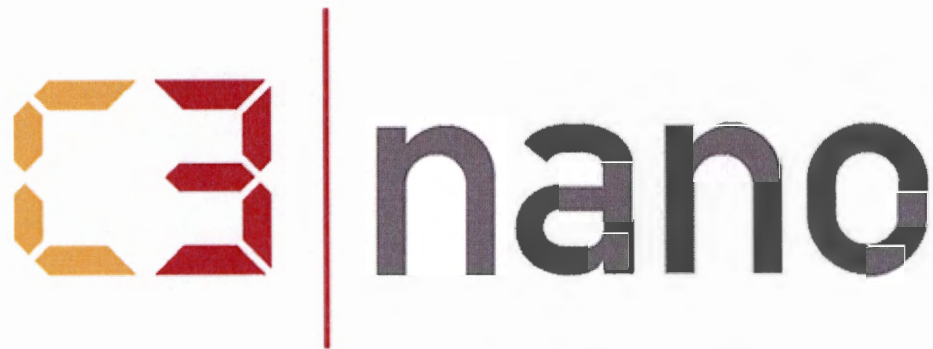


PIUS has worked with the following technology companies:



Ayla Networks





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THE FUTURE OF FOOD IS REGENERATIVE

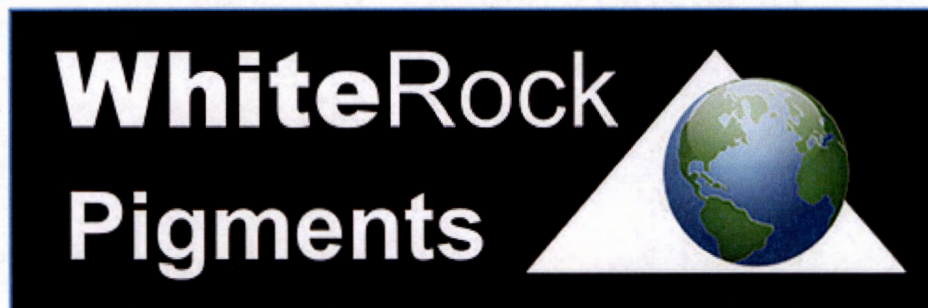


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Phone: 650-409-7120

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EXHIBIT G



PIUS ANNOUNCES \$10 MILLION SECURED FOR REX HOMES

\$45 million accordion feature will enable direct-to-consumer real estate platform to expand technology and services

SAN FRANCISCO, March 7, 2022 – Insured technology financing pioneer, **PIUS** announced today the securing of \$10 million in funding for **REX Homes**, the only real estate technology company resetting traditional real estate on behalf of consumers. REX's fully-integrated platform enables consumers to find brokerage, mortgage, insurance, title, and escrow, all of which are owned by REX in-house to provide for a seamless customer experience. The private placement bond was underwritten by PIUS and based on its evaluation of REX Homes' intellectual property (IP). The deal also includes an accordion feature, providing REX the option to increase the amount to \$45 million.

"Working with PIUS has been unique to any other financing facility, as we were able to expand our company's working capital, without equity dilution and at a lower cost, all on the strength of our own intellectual property," said Jack Ryan, CEO and co-founder of REX Homes. "The financing will support REX's continued business growth and market expansion, including both our technology platform and

home buyer services, as we uphold our mission to deliver a direct-to-consumer real estate solution for individuals across the country.”

REX has emerged as the national leader in real estate reform, with the goal of eliminating fees, growing the U.S. real estate market, and saving Americans billions of dollars each year. REX is the only residential real estate firm that is direct-to-consumer, not direct-to-agent, and maintains a five-star rating on Zillow due to its tech platform and full-time workforce that is motivated by customer satisfaction, not commissions. REX recently launched Homes Plus, which provides customers cost savings and peace of mind after their purchase, by providing home maintenance, repairs, lawn care, moving and storage, all in one place.

“REX Homes has built out an incredible suite of tech products and services, with its consumer-first model poised to disrupt the real estate market, using AI to learn quickly how to best serve its customers. With its addition of its Homes Plus program, REX is now providing exceptional service throughout the entire home ownership lifecycle,” said Joe Agiato, CEO of PIUS. “Through its tech tools and a fully-integrated platform, REX is bringing a completely new real estate experience to today’s consumers, and PIUS is excited to support REX in furthering that mission.”

PIUS provides a proprietary insurance product for growth-stage technology companies to secure better, more flexible financing options without dilution by insuring the debt’s value, based on PIUS’ evaluation of the company’s intellectual property. The cost of capital is typically less than 10% overall, including the cost of insurance, with no warrants, extra fees, or prepayment penalties. Through PIUS’ CLip Notes program, PIUS provides the insurance, brings the capital source via institutional investors, and monitors the transaction, providing a complete solution.

About PIUS

PIUS Limited, LLC, offers a proprietary insurance product for growing technology companies, which utilizes a company’s intellectual property (IP) as collateral. By insuring the loan based on its evaluation of a company’s IP, PIUS helps facilitate greater loan amounts at better rates, while transferring the risk from the lender to the insurer. PIUS is a managing general agent (MGA) and provides more complete coverage than other policies through its residual value insurance program. For more information, visit <https://piusre.com>.

About REX Homes

Founded in 2016 and headquartered in Austin, Texas, REX Homes is the only real estate technology company resetting the traditional real estate on behalf of consumers. Uniquely, every home in the US costs less when buying through REX, except in a couple states, such as Oregon, that do not allow the sharing of cost savings with consumers. And when selling, REX achieves the highest price for the home, lowest commission and best service. REX has a five-star rating on Zillow and customer

satisfaction scores far in excess of its competitors due to its tech platform and full-time W-2 workforce that is motivated by customer satisfaction, not commissions. For more information, visit <https://www.rexhomes.com>.

###

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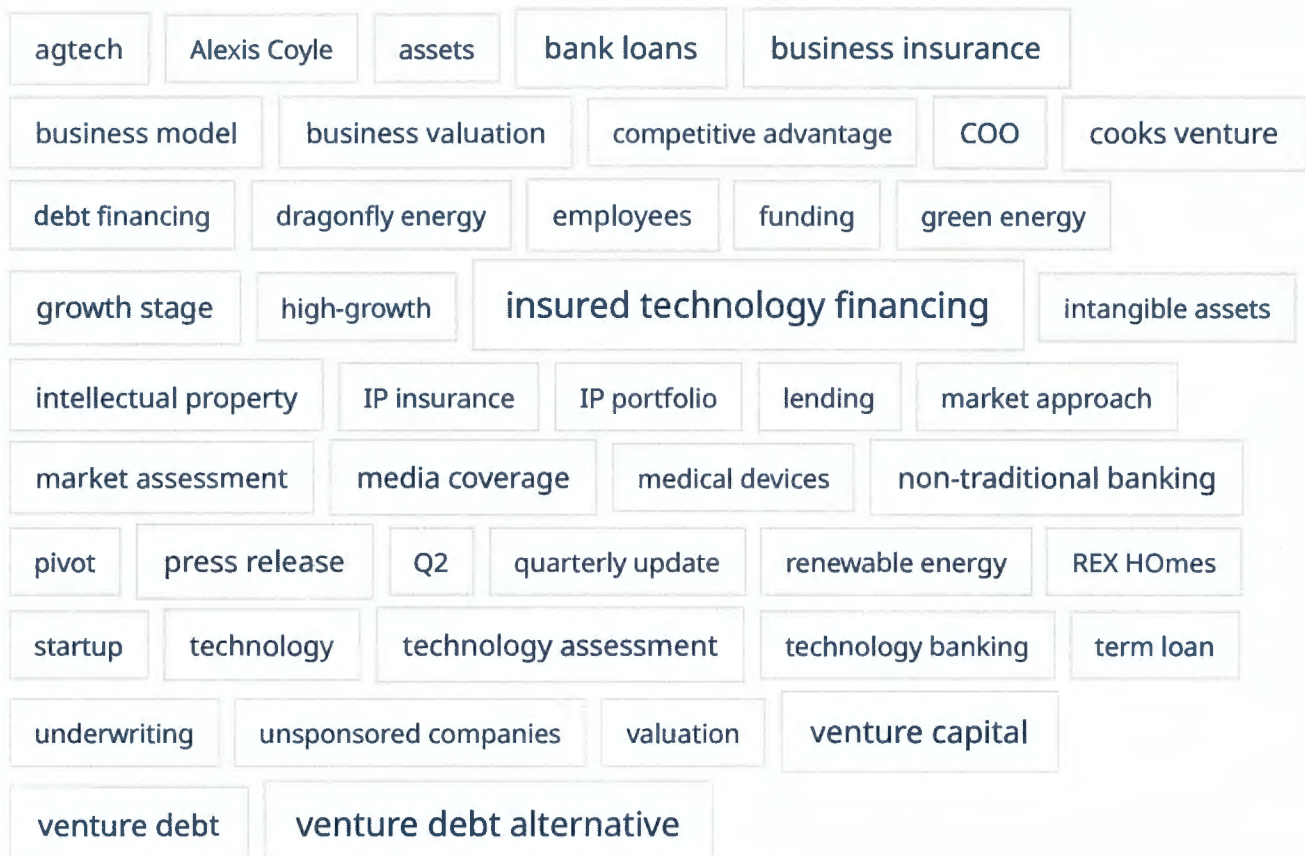
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EXHIBIT H

BROKERAGE

Insurance agency says REX is still operating, adding new wrinkle

PIUS CEO tells Inman the company is operating 'on a smaller scale,' but a former REX agent insists those operations no longer include handling real estate transactions



BY ANDREA V. BRAMBILA

An insurance agency for [REX Real Estate](#) says that despite [reports that the company is shutting down](#), REX is still operating and the agency “remains confident in REX’s technology.”

In March, [PIUS announced](#) it had secured \$10 million in funding for REX, bringing REX’s total funding to \$141 million, according to PitchBook data. PIUS is an insurance agency that insures loans from institutional investors to high-growth tech companies based on the tech firm’s intellectual property and other assets, according to the agency. The \$10 million is a private placement bond underwritten by PIUS, the agency added.

In emails to Inman, PIUS declined to say who had loaned REX the money, but stressed that PIUS is neither a lender nor an investor.



Joe Agiato

“Rather, PIUS provides growing technology companies with non-dilutive debt by utilizing their intellectual property as collateral,” Joe Agiato, PIUS’s CEO, told Inman via email.

“PIUS performs an in-depth assessment of a company’s technology and IP portfolio, and based on this, PIUS insures the value of the loan to provide greater amounts of capital at lower rates.”

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WATCH: Redfin's Glenn Kelman attempts a dance on the ICLV stage



Side's Guy Gal: We're organizing the boutique broker rebellion



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Agiato said REX “is still operating, albeit on a smaller scale. PIUS remains confident in REX’s technology, which is the basis of our financial relationship.”

Agiato declined to comment further and would not say whether the \$10 million transaction had closed or whether REX had chosen to exercise the deal’s accordion feature, which would have allowed REX to increase its line of credit with its lender to \$45 million.

At the time PIUS announced the funding, the company praised REX as “the national leader in real estate reform, with the goal of eliminating fees, growing the U.S. real estate market, and saving Americans billions of dollars” annually.

“REX Homes has built out an incredible suite of tech products and services, with its consumer-first model poised to disrupt the real estate market, using AI to learn quickly how to best serve its customers,” Agiato said in a statement in March.

excited to support REX in furthering that mission.”

At the same time, REX CEO Jack Ryan stated that the funding would “support REX’s continued business growth and market expansion, including both our technology platform and home buyer services, as we uphold our mission to deliver a direct-to-consumer real estate solution for individuals across the country.”



Jack Ryan | Credit: REX

Trending



In earnings twist, most real estate companies avoided the worst in Q2



Walkthrough woes: 7 things that cause pre-closing stress



More people than ever ask Google: ‘Will the housing market crash?’



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That solution no longer appears to include brokerage. REX reportedly cut loose all of its agents a week ago. A former REX agent in Southern California — who asked not to be named to avoid professional repercussions — told Inman that REX, after letting go staffers in other departments earlier in the week, had let all of its agents go through a companywide internal messaging system on Thursday.

“We didn’t see it coming,” he added, of the brokerage’s downfall. “It all fell apart in one week.”

He had two pending listing contracts, and although agents were told they could take their contracts with them, he ended up canceling them because he didn’t know where he would end up. He thinks he’ll be able to get them back now that he landed at eXp Realty over the weekend.

He said he had worked at REX for about two years, had enjoyed his time there, and the company had treated him well. He also felt the company’s business model, which offers lower listing fees to sellers and rebates to buyers, was a good fit for him.

“I like the concept,” he said. “I thought they were more worried about giving the customer more control over the transaction and putting them first over the commission.”

Read Next



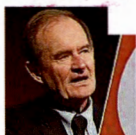
Demise of discount brokerage REX may be imminent, reports indicate



Brokerages push back on NAR ad campaign targeting 'competitors'



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REX hires lawyer-to-the-stars David Boies to carry on battle with Zillow



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He also liked that he could offer buyers and sellers “one-stop shopping” because REX had in-house ancillary services such as mortgages and moving services.

“Being able to help them from A to Z is what made REX different,” he said.

He said that he sometimes got pushback from a handful of agents about REX’s business model, complaining that he wasn’t charging enough. But he had no issues with most agents, he said, especially those “worried about helping the customer.”

Thus far, the only endeavor REX has stated definitely it would continue is its [lawsuit](#) against the National Association of Realtors and Zillow. Last week, REX hired famed lawyer [David Boies](#) to represent the company in court.

REX General Counsel Michael Toth did not respond to requests for comment.

Email Andrea V. Brambila.

TOPICS: [eXp Realty](#) | [NAR](#) | [realtors](#) | [technology](#) | [Zillow](#)

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COMMENTS

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Denis Murphy

If you gave my 7 year old 141' million I guarantee his company would be more succesful then these fools.

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Chuck Simons

and for the regular followers of INMAN's stories re: REX (I believe a Brad Inman favorite because of technology) would know that REX had secured this funding and would be going the technology path...their goal is to get a human out of the system and do this through an all automated platform.

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ATTACHMENT B

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE,
INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington
corporation; ZILLOW GROUP, INC., a
Washington corporation; ZILLOW
HOMES, INC., a Delaware corporation;
ZILLOW LISTING SERVICES, INC., a
Washington corporation; TRULIA, LLC,
a Delaware limited liability company; and
THE NATIONAL ASSOCIATION OF
REALTORS, an Illinois trade association,

Defendants.

CASE NO. 2:21-cv-00312-TSZ

**STIPULATED
PROTECTIVE ORDER**

Plaintiff REX- Real Estate Exchange, Inc. (“REX”) and Defendants Zillow, Inc.,
Zillow Group Inc, Zillow Homes, Inc., Zillow Listing Services, Trulia, LLC (collectively,
“Zillow”) and Defendant National Association of Realtors (“NAR”) jointly stipulate and
agree to the entry of a protective order as described below.

STIPULATED PROTECTIVE
ORDER - 1

Case No. 2:21-cv-00312
FG:54288724.1

1
2 1. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential, proprietary,
4 or private information for which special protection may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this agreement is consistent with LCR
7 26(c). It does not confer blanket protection on all disclosures or responses to discovery,
8 the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable legal
10 principles, and it does not presumptively entitle parties to file confidential information
11 under seal.

12 2. "CONFIDENTIAL" MATERIAL

13 "Confidential" material shall include the following documents and tangible things
14 produced or otherwise exchanged:

- 15 a) Computer programming codes, software, or hardware;
- 16 b) Customer lists and customer information;
- 17 c) Internal financial data;
- 18 d) Proprietary business processes;
- 19 e) Marketing plans and non-public market research performed by a party, or
20 by a third-party on its behalf;
- 21 f) Confidential business communications, including contracts and contract
22 negotiations;
- 23 g) Tax records;
- 24 h) Documents containing personal identifying information;
- 25 i) Documents containing non-public, confidential information of third parties;
- 26 j) Non-public business or strategy plans or forecasts;

STIPULATED PROTECTIVE
ORDER - 2

Case No. 2:21-cv-00312
FG:54288724.1

1 k) Non-public product or service plans, including documents reflecting non-
2 public research or development of future products or services; and

3 l) Intellectual property or trade secrets.

4 3. SCOPE

5 The protections conferred by this agreement cover not only confidential material
6 (as defined above), but also (1) any information copied or extracted from confidential
7 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
8 and (3) any testimony, conversations, or presentations by parties or their counsel that
9 might reveal confidential material.

10 However, the protections conferred by this agreement do not cover information
11 that is in the public domain or becomes part of the public domain through trial or
12 otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is
15 disclosed or produced by another party or by a non-party in connection with this case
16 only for prosecuting, defending, or attempting to settle this litigation. Confidential
17 material may be disclosed only to the categories of persons and under the conditions
18 described in this agreement. Confidential material must be stored and maintained by a
19 receiving party at a location and in a secure manner that ensures that access is limited to
20 the persons authorized under this agreement.

21 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the designating party, a receiving party
23 may disclose any confidential material only to:

24 (a) the receiving party's counsel of record in this action, as well as
25 employees of counsel to whom it is reasonably necessary to disclose the information for
26 this litigation;

1 (b) the officers, directors, and employees (including in house counsel) of
2 the receiving party to whom disclosure is reasonably necessary for this litigation, unless
3 the parties agree that a particular document or material produced is for Attorney's Eyes
4 Only and is so designated;

5 (c) experts and consultants to whom disclosure is reasonably necessary
6 for this litigation and who have signed the "Acknowledgment and Agreement to Be
7 Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the
10 duplication of confidential material, provided that counsel for the party retaining the copy
11 or imaging service instructs the service not to disclose any confidential material to third
12 parties and to immediately return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure
14 is reasonably necessary and who have signed the "Acknowledgment and Agreement to
15 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
16 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
17 confidential material must be separately bound by the court reporter and may not be
18 disclosed to anyone except as permitted under this agreement;

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 4.3 Filing Confidential Material. Before filing confidential material or
22 discussing or referencing such material in court filings, the filing party shall confer with
23 the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine
24 whether the designating party will remove the confidential designation, whether the
25 document can be redacted, or whether a motion to seal or stipulation and proposed order
26 is warranted. During the meet and confer process, the designating party must identify the

STIPULATED PROTECTIVE
ORDER - 4
Case No. 2:21-cv-00312
FG:54288724.1

1 basis for sealing the specific confidential information at issue, and the filing party shall
2 include this basis in its motion to seal, along with any objection to sealing the information
3 at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
4 standards that will be applied when a party seeks permission from the court to file
5 material under seal. A party who seeks to maintain the confidentiality of its information
6 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party
7 filing the motion to seal. Failure to satisfy this requirement will result in the motion to
8 seal being denied, in accordance with the strong presumption of public access to the
9 Court's files.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this
13 agreement must take care to limit any such designation to specific material that qualifies
14 under the appropriate standards. The designating party must designate for protection only
15 those parts of material, documents, items, or oral or written communications that qualify,
16 so that other portions of the material, documents, items, or communications for which
17 protection is not warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
20 to unnecessarily encumber or delay the case development process or to impose
21 unnecessary expenses and burdens on other parties) expose the designating party to
22 sanctions.

23 If it comes to a designating party's attention that information or items that it
24 designated for protection do not qualify for protection, the designating party must
25 promptly notify all other parties that it is withdrawing the mistaken designation.
26

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
3 or ordered, disclosure or discovery material that qualifies for protection under this
4 agreement must be clearly so designated before or when the material is disclosed or
5 produced.

6 (a) Information in documentary form: (*e.g.*, paper or electronic
7 documents and deposition exhibits, but excluding transcripts of depositions or other
8 pretrial or trial proceedings), the designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a portion or
10 portions of the material on a page qualifies for protection, the producing party also must
11 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
12 margins).

13 (b) Testimony given in deposition or in other pretrial proceedings: the
14 parties and any participating non-parties must identify on the record, during the
15 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
16 right to so designate other testimony after reviewing the transcript. Any party or non-
17 party may, within fifteen days after receiving the transcript of the deposition or other
18 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
19 confidential. If a party or non-party desires to protect confidential information at trial,
20 the issue should be addressed during the pre-trial conference.

21 (c) Other tangible items: the producing party must affix in a prominent
22 place on the exterior of the container or containers in which the information or item is
23 stored the word “CONFIDENTIAL.” If only a portion or portions of the information or
24 item warrant protection, the producing party, to the extent practicable, shall identify the
25 protected portion(s).
26

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 designating party's right to secure protection under this agreement for such material.
4 Upon timely correction of a designation, the receiving party must make reasonable efforts
5 to ensure that the material is treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation
8 of confidentiality at any time. Unless a prompt challenge to a designating party's
9 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
10 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
11 party does not waive its right to challenge a confidentiality designation by electing not to
12 mount a challenge promptly after the original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a certification,
16 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
17 meet and confer conference with other affected parties in an effort to resolve the dispute
18 without court action. The certification must list the date, manner, and participants to the
19 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
20 conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
22 intervention, the designating party may file and serve a motion to retain confidentiality
23 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
24 The burden of persuasion in any such motion shall be on the designating party. Frivolous
25 challenges, and those made for an improper purpose (*e.g.*, to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the challenging party to

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Case No. 2:21-cv-00312
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1 sanctions. All parties shall continue to maintain the material in question as confidential
2 until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as
7 "CONFIDENTIAL," that party must:

8 (a) promptly notify the designating party in writing and include a copy
9 of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by the
12 subpoena or order is subject to this agreement. Such notification shall include a copy of
13 this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under this
19 agreement, the receiving party must immediately (a) notify in writing the designating
20 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
21 copies of the protected material, (c) inform the person or persons to whom unauthorized
22 disclosures were made of all the terms of this agreement, and (d) request that such person
23 or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached
24 hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
6 This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order or agreement that provides for production without prior privilege review.
8 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set
9 forth herein.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each
12 receiving party must return all confidential material to the producing party, including all
13 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
14 appropriate methods of destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of
16 all documents filed with the court, trial, deposition, and hearing transcripts,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this agreement shall remain in effect
20 until a designating party agrees otherwise in writing or a court orders otherwise.

21 Respectfully submitted this 22nd day of April, 2021.

22
23 FOSTER GARVEY PC

ORRICK, HERRINGTON &
SUTCLIFFE LLP

24 By: /s/ Michael Vaska
Michael Vaska, WSBA #15438

By: /s/ Aravind Swaminathan
Aravind Swaminathan, WSBA #33883

25 By: /s/ Rylan Weythman
26 Rylan Weythman, WSBA #45352

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Zillow Listing Services, Inc. Zillow Group
Marketplace, Inc., and Trulia, LLC***

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Facsimile: 202-538-8100

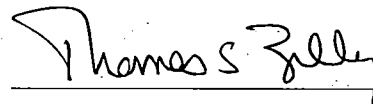
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***Attorneys for The National Association
of Realtors®***

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 22nd day of April, 2021.



Thomas S. Zilly
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of
Washington on [date] in the case of REX-Real Estate Exchange, Inc. v. Zillow, Inc, et al.,
Case No. 2:21-cv-00312-TSZ. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Western District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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ATTACHMENT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE,
INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington
corporation; ZILLOW GROUP, INC., a
Washington corporation; ZILLOW
HOMES, INC., a Delaware corporation;
ZILLOW LISTING SERVICES, INC., a
Washington corporation; TRULIA, LLC,
a Delaware limited liability company; and
THE NATIONAL ASSOCIATION OF
REALTORS, an Illinois trade
association,

Defendants.

CASE NO. 2:21-cv-00312

**ORDER REGARDING
DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

The following provisions will govern the discovery of electronically stored information
("ESI") in this matter:

A. General Principles

1. An attorney's zealous representation of a client is not compromised by conducting
discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate

ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION
(Case No. 2:21-CV-00312)

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1 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
2 contributes to the risk of sanctions.

3 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.
4 26(b)(1) must be applied in each case when formulating a discovery plan. To further the
5 application of the proportionality standard in discovery, requests for production of ESI and related
6 responses should be reasonably targeted, clear, and as specific as possible.

7 **B. ESI Disclosures**

8 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
9 party shall disclose:

10 1. Custodians.

11 The parties shall identify up to 5 custodians most likely to have discoverable ESI in
12 their possession, custody, or control.

13 The custodians shall be identified by name, title, connection to the instant litigation, and the type
14 of the information under the custodian's control. The parties agree to meet and confer regarding
15 any requests for additional custodians.

16 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared
17 drives, servers), if any, likely to contain discoverable ESI.

18 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
19 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud
20 storage) and, for each such source, the extent to which a party is (or is not) able to preserve
21 information stored in the third-party data source.

1 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
2 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the
3 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

4 **C. ESI Discovery Procedures**

5 1. On-site inspection of electronic media. Such an inspection shall not be required
6 absent a demonstration by the requesting party of specific need and good cause or by agreement
7 of the parties.

8 2. Search methodology. The parties shall timely meet and confer and cooperate in
9 good faith to attempt to reach agreement on appropriate search terms and queries, file type and
10 date restrictions, data sources (including custodians), and other appropriate computer- or
11 technology-aided methodologies, before any such effort is undertaken. The parties shall continue
12 to cooperate in good faith to revise the appropriateness of the search methodology. The parties
13 shall not delay implementing the agreed upon searches and related production while seeking
14 resolution on others.

15 a. Prior to running searches:

16 i. The producing party shall disclose the data sources (including
17 custodians), search terms and queries, any file type and date restrictions, and any other
18 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
19 information. The producing party may provide unique hit counts for each search query.

20 ii. The requesting party is entitled to, within 14 days of the producing
21 party's disclosure, add no more than 10 search terms or queries to those disclosed by the
22 producing party absent a showing of good cause or agreement of the parties.

1 iii. The following provisions apply to search terms / queries of the
2 requesting party. Focused terms and queries should be employed; broad terms or queries, such
3 as product and company names, generally should be avoided. A conjunctive combination of
4 multiple words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as
5 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer”
6 or “system”) broadens the search, and thus each word or phrase shall count as a separate search
7 term unless they are variants of the same word. The producing party may identify each search
8 term or query returning overbroad results demonstrating the overbroad results and a counter
9 proposal correcting the overbroad search or query. A search that returns more than 5,000 unique
10 documents, excluding families, is presumed to be overbroad.

11 b. After production: Within 21 days of the producing party notifying the
12 receiving party that it has substantially completed the production of documents responsive to a
13 request, the responding party may request no more than 10 additional search terms or queries.
14 The immediately preceding section (Section C(2)(a)(iii)) applies.

15 3. Format.

16 a. The parties shall produce their information in the following format: single-
17 page TIFF and/or JPG images and associated multi-page text files containing extracted text or
18 with appropriate software load files containing all information required by the litigation support
19 system used by the receiving party.

20 b. Unless otherwise agreed to by the parties, files that are not easily converted
21 to image format, such as spreadsheet, database, and drawing files, will be produced in native
22 format. A requesting party may request that a producing party reproduce particular documents in
23 native format if the documents are not reasonably legible after being converted to image format.

1 c. Each document image file shall be named with a unique number (Bates
2 Number). File names should not be more than twenty characters long or contain spaces. When a
3 text-searchable image file is produced, the producing party must preserve the integrity of the
4 underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable,
5 the revision history.

6 d. If a document is more than one page, the unitization of the document and
7 any attachments and/or affixed notes shall be maintained as they existed in the original document.

8 e. The full text of each electronic document shall be extracted ("Extracted
9 Text") and produced in a text file. The Extracted Text shall be provided in searchable ASCII text
10 format (or Unicode text format if the text is in a foreign language) and shall be named with a
11 unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding
12 production version of the document followed by its file extension).

13 4. De-duplication. The parties may de-duplicate their ESI production across custodial
14 and non-custodial data sources, provided the duplicate custodian information removed during the
15 de-duplication process tracked in a duplicate/other custodian field in the database load file.

16 5. Email Threading & TAR. The parties may use analytics technology to identify
17 email threads and need only produce the unique most inclusive copy and related family members
18 and may exclude lesser inclusive copies. Upon reasonable request, the producing party will
19 produce a less inclusive copy. If necessary to obtain information that is not otherwise available
20 in a threaded e-mail production (*e.g.*, an e-mail attachment), the producing party will produce a
21 less inclusive copy. A producing party may also employ additional TAR tools and approaches as
22 it deems appropriate, provided the TAR search parameters are disclosed to all parties.

1 6. Metadata fields. The parties agree that only the following metadata fields need be
2 produced, and only to the extent it is reasonably accessible and non-privileged: document type;
3 custodian and duplicate custodians (or storage location if no custodian); author/from; recipient/to,
4 cc and bcc; title/subject; email subject; file name; file size; file extension; original file path; date
5 and time created, sent, modified and/or received; and hash value. The list of metadata type is
6 intended to be flexible and may be changed by agreement of the parties, particularly in light of
7 advances and changes in technology, vendor, and business practices.

8 7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an
9 electronic format, the production of hard-copy documents will include a cross-reference file that
10 indicates document breaks and sets forth the custodian or custodian/location associated with each
11 produced document. Hard-copy documents will be scanned using Optical Character Recognition
12 technology and searchable ASCII text files will be produced (or Unicode text format if the text is
13 in a foreign language), unless the producing party can show that the cost would outweigh the
14 usefulness of scanning (for example, when the condition of the paper is not conducive to scanning
15 and will not result in accurate or reasonably useable/searchable ESI). Each file will be named
16 with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding
17 production version of the document followed by its file extension).

18 **D. Preservation of ESI**

19 The parties acknowledge that they have a common law obligation, as expressed in Fed. R.
20 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in
21 the party's possession, custody, or control. With respect to preservation of ESI, the parties agree
22 as follows:

1 1. Absent a showing of good cause by the requesting party, the parties shall not be
2 required to modify the procedures used by them in the ordinary course of business to back-up and
3 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
4 possession, custody, or control.

5 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.
6 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure
7 where that data is created after a disclosure or response is made (unless excluded under Sections
8 (D)(3) or (E)(1)-(2)).

9 3. Absent a showing of good cause by the requesting party, the following categories
10 of ESI need not be preserved:

- 11 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 12 b. Random access memory (RAM), temporary files, or other ephemeral data
13 that are difficult to preserve without disabling the operating system.
- 14 c. On-line access data such as temporary internet files, history, cache,
15 cookies, and the like.
- 16 d. Data in metadata fields that are frequently updated automatically, such as
17 last-opened dates (see also Section (E)(5)).
- 18 e. Back-up data that are duplicative of data that are more accessible
19 elsewhere.
- 20 f. Server, system or network logs.
- 21 g. Data remaining from systems no longer in use that is unintelligible on the
22 systems in use.
- 23 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or
24 from mobile devices (e.g., iPhone, iPad, Android devices), provided that
25 a copy of all such electronic data is automatically saved in real time
26 elsewhere (such as on a server, laptop, desktop computer, or "cloud"
 storage).
- i. Text messages.
- j. Personal social media postings or accounts of employees of any party and

1 social media postings for accounts owned or maintained by a party that
2 are publicly available.

3 **E. Privilege**

4 1. A producing party shall create a categorical privilege log of all documents fully
5 withheld from production on the basis of a privilege or protection, unless otherwise agreed or
6 excepted by this Agreement and Order. Privilege logs shall include (i) a description of the nature
7 or general subject matter of the documents or communications for each category included on the
8 privilege log sufficient to support the claim that the documents within the category are privileged
9 and/or protected; (ii) the date of the earliest document and the date of the most recent document
10 in each category; (iii) a list of the unique author(s)/sender(s) and recipient(s) for the documents
11 in each category that identifies the persons who are attorneys; and (iv) the total number of
12 documents withheld that fall into each category. Privilege logs will be produced to all other
13 parties no later than 30 days before the deadline for filing motions related to discovery unless an
14 earlier deadline is agreed to by the parties.

15 2. Redactions need not be logged so long as the basis for the redaction is clear on the
16 redacted document.

17 3. With respect to privileged or work-product information generated after the filing
18 of the complaint, parties are not required to include any such information in privilege logs.

19 4. Activities undertaken in compliance with the duty to preserve information are
20 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B) and need not
21 be included in privilege logs.

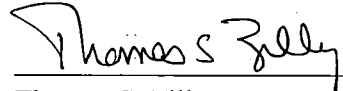
22 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents or information
23 in this proceeding shall not, for the purposes of this proceeding or any other federal or state
24 proceeding, constitute a waiver by the producing party of any privilege applicable to those

1 documents, including the attorney-client privilege, attorney work-product protection, or any other
2 privilege or protection recognized by law. Information produced in discovery that is protected as
3 privileged or work product shall be immediately returned to the producing party, and its
4 production shall not constitute a waiver of such protection.

5
6 **ORDER**

7 Based on the foregoing, IT IS SO ORDERED.

8 DATED: January 19, 2022

9 

10 Thomas S. Zilly
11 United States District Judge
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE, INC., a
Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington corporation;
ZILLOW GROUP, INC., a Washington
corporation; ZILLOW HOMES, INC., a
Delaware corporation; ZILLOW LISTING
SERVICES, INC., a Washington corporation;;
TRULIA, LLC, a Delaware limited liability
company; and THE NATIONAL
ASSOCIATION OF REALTORS, an Illinois
trade association,

Defendants.

No. 2:21-cv-00312-TSZ

AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND FOR
DAMAGES

DEMAND FOR JURY TRIAL

1. REX – Real Estate Exchange, Inc. (“REX”) brings this action against Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., Trulia, LLC (collectively “Zillow”), and the National Association of Realtors (“NAR”) under federal and state antitrust laws, the Lanham Act, and deceptive trade laws and alleges as follows:

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND FOR DAMAGES - 1
Case No.: 2:21-cv-00312-TSZ

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400

I. NATURE OF THE ACTION

2. REX brings this lawsuit to keep the digital hubs of the real estate economy open so that consumers have the benefit of innovation and cost savings that come from competition. The internet has radically altered how Americans shop for homes. For most consumers, home buying begins on a mobile device or laptop. Consumers can search for homes by location, price, square footage, numbers of bedrooms and bathrooms, and other categories. In an instant, consumers can view images of homes that fit their preferences—and much more. The internet continues to evolve to satisfy the needs of home buyers. In addition to finding properties, home shoppers can tour properties virtually. Offers are now made online and closing documents are notarized on Zoom.

3. Websites that aggregate homes for sale are the digital hubs of the new real estate economy. They attract billions of views every year by gathering a vast inventory of homes and allowing consumers to customize their searches. Search capabilities allow consumers to find individual residences within predefined parameters and then track properties that interest them. Consumers can now perform a substantial amount of their home searches online, at their leisure, instead of spending weekend after weekend at open houses and showing appointments.

4. Aggregator sites facilitate transactions that allow millions of Americans every year to relocate for new personal and professional opportunities. Home sellers know that interested buyers flock to aggregator sites and highly value having their homes listed on those sites.

5. This democratization of access to real estate inventory changes the old dynamic. The NAR and Multiple Listing Services (“MLS”) largely controlled access to real estate markets, and related brokerage services, because they controlled home inventory information. Direct consumer access to available homes—and the ability for non-NAR, non-MLS licensed brokers and agents to make homes directly visible to consumers—opens the pathway for new, innovative

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND FOR DAMAGES - 2
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1 real estate service providers. And, critically, it introduces competition that benefits consumers
2 through greater choice and downward pressure on traditionally high commission structures.

3 6. REX co-founders Jack Ryan and Lynley Sides launched REX in 2015 to disrupt
4 the traditional real estate model by putting consumers first. REX's innovative model uses
5 technology to enhance efficiency and drastically reduce brokerage commissions, while
6 delivering a full suite of personalized services to clients.

7 7. The legacy real estate industry transfers billions of dollars in commissions every
8 year from home sellers to brokers. In the typical real estate transaction under the traditional
9 model, the seller is represented by an agent who collects a commission in the range of 2.5 to 3%
10 of the sale price. The thousands of dollars in commissions paid to the seller agent are only *part* of
11 the commission fees. Under rules written by NAR and enforced by its member MLSs, sellers
12 must also make what is essentially a non-negotiable offer of compensation to any agent
13 representing the ultimate purchaser, generally *another* 2.5 to 3% of the sale price—with total
14 commissions averaging about 5.5%. Total commissions in a REX transaction average 3.3%,
15 representing a 40% discount. REX has already returned more than \$29 million in commission
16 savings to consumers and is on pace to save consumers more than \$100 million annually. On
17 a \$720,000 home sale—the median price in King County, where REX recently opened
18 operations—consumers would save \$16,000 in commissions using REX's data-driven, direct-to-
19 consumer model.

20 8. REX's innovative and competitive model is now threatened by the concerted
21 action of the NAR and Zillow, along with their MLS affiliates. Zillow recently joined NAR-
22 affiliated MLSs and adopted their associational rules to conceal all non-MLS listings on Zillow's
23 heavily trafficked websites. These listing portals, as explained below, are critical channels to
24 reaching consumers. Zillow's recently implemented website changes make non-MLS listings
25 accessible only via a recessed, obscured, and deceptive tab that consumers do not see, and even

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AND FOR DAMAGES - 3
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1 professional real estate agents find deceiving. The result is that REX's listings are losing
2 significant traffic, severely impacting REX's reputation, its ability to execute its innovative and
3 disruptive business model, and driving consumers away from REX and back into the MLS
4 regime, ensuring higher commissions that benefit NAR's members.

5 9. If the NAR and its MLS partners, which now include Zillow, are allowed to once
6 again close off transparent access to home inventory by entering into agreements among
7 themselves that disadvantage all but their own membership, consumers and competition will
8 suffer.

9 10 II. THE PARTIES

11 10. Plaintiff REX is a Delaware corporation in good standing, incorporated as REX -
12 Real Estate Exchange, Inc., with its principal place of business at 3300 N Interstate Hwy 35,
13 Suite 149, in the City of Austin and State of Texas.

14 11. Defendant National Association of Realtors is a trade association organized and
15 existing as a non-profit corporation under the laws of the State of Illinois with its principal place
16 of business at 430 N Michigan Avenue in the City of Chicago and State of Illinois. NAR has
17 members residing in the State of Washington and within this District. NAR may be served
18 through its registered agent.

19 12. Defendant Zillow, Inc. is an online real estate marketplace company. Zillow, Inc.
20 is a general corporation organized and existing under the laws of the State of Washington with
21 its principal place of business at 1301 Second Avenue, FL 31, in the City of Seattle and State of
22 Washington. Zillow, Inc. maintains real estate brokerage licenses in a number of states. It may
23 be served through its registered agent.

24 13. Zillow Group, Inc. offers online real estate services and is a general corporation
25 organized and existing under the laws of the State of Washington with its principal place of

1 business at 1301 Second Avenue, FL 31, in the City of Seattle and State of Washington. It may
2 be served through its registered agent.

3 14. Zillow Homes, Inc., is organized and existing under the laws of the State of
4 Delaware, with its principal place of business at 1301 Second Avenue, FL 31, in the City of
5 Seattle and State of Washington. It maintains real estate brokerage licenses in a number of states.
6 It may be served through its registered agent.

7 15. Zillow Listing Services, Inc. offers miscellaneous real estate services. It
8 maintains real estate brokerage licenses in a number of states. It is a general corporation
9 organized and existing under the laws of the State of Washington with its principal place of
10 business at 1301 Second Avenue, FL 31, in the City of Seattle and State of Washington. It may
11 be served through its registered agent.

12 16. Trulia, LLC is a limited liability company organized and existing under the laws
13 of the State of Delaware with its principal place of business at 1301 Second Avenue, FL 31, in
14 the City of Seattle and State of Washington and its sole governor is Zillow, Inc. It is a real estate
15 website. It may be served through its registered agent.

17 III. JURISDICTION AND VENUE

18 17. Plaintiff REX brings this action seeking injunctive relief, damages, treble
19 damages, cost of suit, and reasonable attorneys' fees, arising from Defendants' violations of
20 Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 and Section 1125 of the Lanham Act, 15
21 U.S.C. § 1125. This Court has subject matter jurisdiction of Plaintiff's federal law claims
22 pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (commerce and antitrust
23 regulation). Plaintiff has standing to bring this action under Sections 4 and 16 of the Clayton
24 Act, 15 U.S.C. §§ 15, 26.

25
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1 18. Plaintiff's state law claims, including under the Washington Consumer Protection
2 Act, RCW Ch. 19.86, arise out of the same factual nucleus as Plaintiff's federal law claims. This
3 Court has subject matter jurisdiction of Plaintiff's pendent state law claims pursuant to 28 U.S.C.
4 § 1367, which should be exercised in the interests of judicial economy, convenience, and
5 fairness.
6

7 19. This Court has personal jurisdiction over Zillow and NAR and venue is proper
8 here pursuant to 28 U.S.C. § 1391(b)(2). Zillow Defendants are headquartered and/or organized
9 in Washington and have engaged in acts in furtherance of an unlawful restraint of trade within
10 the state and this District. Zillow's own Terms of Service specify exclusive venue in state or
11 federal court in King County, Washington.
12

13 20. NAR regularly transacts business within Washington and this District. In 1908,
14 the predecessor to Seattle King County Realtors became one of "19 charter members" of the
15 NAR, with which they are still affiliated, noting that local members enjoy the "added security of
16 a team of advocates standing with them and for them, to protect their interests, from Seattle to
17 Olympia to D.C." This Seattle/King County affiliate of NAR is headquartered in Bellevue,
18 Washington. NAR has also committed substantial acts in furtherance of its illegal restraint of
19 trade within the state and this District.
20

21 21. REX employs licensed real estate agents and has real estate listings in this District
22 and in other locations across the country, all of which have been affected by Zillow's change in
23 web display. Zillow operates its website, including the new web display, within this District.
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25

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IV. FACTS

A. Traditional NAR/MLS Residential Real Estate Brokerage Services

22. Brokers, agents, and REALTORS® participate in the marketplace for residential real estate brokerage services in local markets throughout the United States. Brokers and agents are licensed by the state through education programs and successful completion of a real estate exam. Brokers can work independently or employ other agents through their own brokerage. Agents work for a supervising broker to facilitate real estate transactions, bring buyers and sellers together, and are paid a commission. Some agents are also REALTORS®. REALTORS® are members of the NAR.

23. NAR is the nation's largest trade association, boasting 1.45 million members, 54 state and territory associations, and approximately 1,130 local associations. The mission of the NAR, as stated by the organization's CEO Bob Goldberg, is to advance the interests of its members. In a recent speech, Goldberg explained the NAR's top priorities: "First and foremost, it's imperative that we are not just the National Association OF REALTORS®, we are also the National Association FOR REALTORS®." (emphasis in original).¹

24. The NAR controls a large portion of MLSs through local associations of realtors, which are members of and governed by the NAR. The reach of NAR is extensive, as demonstrated by NAR's map of affiliated MLSs.²

¹ CEO Update – 2017 Board of Directors, <https://www.nar.realtor/ceo-update-2017-board-of-directors> (last visited Mar. 6, 2021).

² MLS Map of the National Association of Realtors®, NAR, <https://www.nar.realtor/mls-map-of-the-national-association-of-realtors> (last visited Mar. 6, 2021).



25. Based on statistics cited by the NAR, there are approximately two million active real estate licensees in the United States. At least seventy percent of active licensees are NAR members.³

26. Despite the size and scope of the NAR and its affiliates, obtaining a state license to represent consumers as a broker or agent is not conditioned on membership in the NAR, MLS, or any other private association.

27. In other words, licensed real estate professionals can compete outside the NAR and MLS strictures, or could effectively compete, absent anticompetitive interference from the NAR and MLSs.

28. The NAR is the rare trade association that sets the rules of competition among its members. The rules of the NAR and its member MLSs stray far beyond ethical guidelines. NAR and MLS rules specify in detail how listings must be presented. They have mandates governing

³ National Association Realtors, *Quick Real Estate Statistics*, nar.com, <https://www.nar.realtor/research-and-statistics/quick-real-estate-statistics> (last visited Feb. 26, 2021).

1 mutual data exchanges and the structure of compensation offers. MLSs even discipline members
2 with financial penalties. Because of the size and scope of the NAR and MLSs, these rules have
3 become ubiquitous within the marketplace—essentially making consumers subject to them.

4 29. Real estate brokers and agents are compensated through the commissions they
5 earn on transactions. Seller agents represent the homeowner. These agents are often referred to
6 as “listing agents” because they place their clients’ properties on one or more lists of available
7 homes for sale. Buyer agents represent clients interested in purchasing a home for sale.

8 30. Unlike the standard arrangement in other agency businesses, home sellers and
9 buyers generally do not pay their brokers separately. Instead, under a decades-old NAR rule,
10 sellers agree upfront to pay commissions owed to the brokers on both sides of the deal. Under
11 the Buyer Agent Commission Rule, which is standard across many MLSs, sellers must make a
12 predetermined offer of compensation to the agent representing the *buyer*. REX is the exception
13 to this expensive business practice rife with conflicts of interests.

14 31. While sellers can offer any amount of compensation to buyer agents under the
15 NAR rule, seller agents instruct their clients that they need to induce buyer agents to bring clients
16 who may be interested in their homes. The takeaway is that sellers should offer the highest
17 marginal price. A script for seller agents from the brokerage firm Keller Williams illustrates this
18 dynamic:
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Explaining How Commission Is Used: Script #4

SELLER: *Can you reduce your commission?*

AGENT: Of course. As you know, commissions are negotiable. But let me ask you—what are you trying to accomplish by getting me to reduce the commission?

SELLER: *I'm trying to save money.*

AGENT: I understand. Do you know how a commission structure works?

SELLER: *Not really. I just know that I have to pay you a certain amount of what I receive for my house, and that means I get to keep less.*

AGENT: Let me explain what happens when you reduce a commission. First of all, half of the commission usually goes to a cooperating agent. When you reduce the commission, you reduce the incentive for that agent to bring a buyer to your house. If an agent has ten different houses, nine of which come with a 3 percent commission, one of which comes with 2.5 percent commission, which houses do you think they're going to show?

SELLER: *The ones with the larger commission.*

AGENT: Absolutely. You're putting yourself at a disadvantage competitively when you reduce your commission, wouldn't you agree?

SELLER: *I guess that's true.*

32. As the above script and extensive economic studies demonstrate, buyer agent commissions are not pegged to the amount of work performed or skill displayed by the agent representing the home buyer. And it is virtually impossible for buyers to negotiate down buyer agent commissions during the transaction. Buyer agents are prohibited from urging the buyer to negotiate with the seller directly. And once a seller agent has received an offer on a property, the seller agent and the buyer agent are prohibited from attempting to modify the buyer broker agent commission unilaterally.

33. These industry practices, including mandated NAR-endorsed MLS member rules, preserve sky-high real estate fees across the United States. “Essentially, the MLS listing,” one commentator explains, “acts as a tool which competing brokers can use to help enforce a near uniform commission rate and drive out discounters.”⁴ Industry insiders agree with this assessment. For example, the brokerage firm and MLS-member Keller Williams candidly admits in its instructional materials that offering less than 3% in buyer agent commissions on an MLS “will reduce the number of willing and qualified buyers that will see your home.” The interbroker compensation steers consumers to high-commission properties and stifles price competition in the \$100 billion market for real estate brokerage services.⁵ An attorney who has represented many MLSs suggests that ending mandatory payments from sellers to buyer brokers would allow buyer-side agents to price their services in line with their skill, experience, and the client’s needs. There would no longer a “standard” or going rate for buyer agent fees.⁶

34. The largest brokerage firms, including Redfin, Coldwell Banker, RE/MAX, Keller Williams, Compass, and Century 21 are distinguished by their faithful support of NAR and willing participation in the MLS. In stark contrast to traditional brokerage firms, REX has always maintained its independence from the NAR/MLS chokehold.

⁴ Bradford W. Muller, *Encouraging Price Competition Among New Jersey’s Residential Real Estate Brokers*, 39 Seton Hall L. Rev. 665, 683 n.100 (2009).

⁵ A Government Accountability Office report describes how steering works: “When choosing among comparable homes for sale, brokers have a greater incentive — all else being equal — to first show prospective buyers homes that offer other brokers the prevailing commission rate than homes that offer a lower rate.” U.S. Gov’t Accountability Office, GAO-05-947, *REAL ESTATE BROKERAGE: Factors That May Affect Price Competition*, 13 (2005); see also Panle Barwick, Parag Pathak, and Maisy Wong, *Conflicts of Interest and Steering in Residential Brokerage*, *American Economic Journal: Applied Economics* 9(3), 191–222 (empirically substantiating the concerns that steering explains the general uniformity of commission rates).

⁶ Brian N. Larson, *The End of the MLS as We Know It*, Inman (Aug. 15, 2006).

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1 35. Under the NAR/MLS regime, real estate commissions in the United States are
2 two to three times higher than in comparable international markets.⁷ Americans spend an
3 estimated \$100 billion annually just on the commissions for buying and selling homes.

4 36. To put these costs in perspective, on a \$720,000 sale—currently, the approximate
5 median price for home sales in King County, Washington—consumers surrender upwards of
6 \$40,000 in real estate brokerage commission fees. Despite the widespread adoption of online
7 home searching, which dramatically reduces the labor requirements for agents, brokerage service
8 fees remain largely unchanged and untethered to the effort expended.

9 37. NAR rules are currently the target of numerous federal cases alleging illegal
10 restraints on trade. Last year, the United States Department of Justice announced a simultaneous
11 lawsuit and settlement with NAR concerning four anticompetitive rules widely enforced across
12 NAR-affiliated MLSs: (1) NAR's Global Commission-Concealment Rules through which MLSs
13 prohibit the disclosure of offers of compensation to buyer brokers; (2) NAR's Free-Service Rule
14 through which buyer brokers misrepresent to buyers that their services are free; (3) NAR's
15 Commission-Filter Rules and Practices, which enable buyer brokers to filter listings based on
16 the level of buyer broker commissions offered and thereby exclude homes with lower
17 commissions from consideration by potential home buyers; and (4) NAR's Lockbox Policy,
18 which limits access to the lockboxes—and therefore access to the homes themselves—to only
19 brokers who are members of a NAR-affiliated MLS. According to DOJ's complaint, these rules
20 "reduce price competition among brokers and lead to higher prices and lower quality service for
21 American home buyers and sellers."

22
23
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25 ⁷ Panle Jia Barwick & Maisy Wong, Competition in the real estate brokerage industry: A critical review, Brookings
Institute (Dec. 2019) at 8; *Moehrl v. Nat'l Ass'n of Realtors*, 2020 U.S. Dist. LEXIS 182532, at *28 (N.D. Ill. Oct.
2. 2020) (stating that U.S. real estate commission rates are "sufficiently higher than in comparable international
markets.").

38. Four other pending cases filed by consumers in district courts in Illinois, Missouri, and Massachusetts challenge agent commissions. Plaintiffs in these cases transacted through the MLS and allege that they paid inflated prices due to the Buyer Broker Compensation Rule. Two of these four cases were filed subsequent to the DOJ action, *Bauman v. MLS* and *Leeder v. NAR*. The other two, *Moehrl v. NAR* and *Sitzer v. NAR*, were filed in 2019, and have survived motions to dismiss. As the district court judge presiding over *Moehrl* noted, “it is easy to understand how” the Buyer Broker Commission Rules “could plausibly result in inflated commission rates.” *Moehrl v. Nat’l Ass’n of Realtors*, No. 19-CV-01610, 2020 WL 5878016, at *9 (N.D. Ill. Oct. 2, 2020). The arrangement allows for only the “hypothetical possibility” of negotiating anything lower than the standard 2.5% to 3% of the total home sale typically paid out to buyer brokers.⁸

B. The REX Model

39. REX is a licensed broker in a number of states nationwide and employs salaried, licensed real estate agents, including in Washington State. REX competes with traditional brokers and agents—generally members of the NAR and/or MLSs—to provide residential real estate brokerage services to consumers wishing to buy or sell homes. REX routinely represents consumers on one side of the transaction while a traditional NAR or MLS member agent represents the counterparty.

40. But unlike NAR/MLS brokers who market homes through high-dollar commission offers to other brokers, REX uses digital technology to market the home directly to

⁸ In *Sitzer*, the district court similarly ruled that plaintiffs pled a cognizable antitrust claim. The court’s opinion denying the motion to dismiss referenced the incentive for buyer agents to steer clients towards homes whose sale necessarily results in artificially high commissions: “buyer-brokers can use their access to MLS information (unavailable to potential home buyers) to view details about the offered levels of buyer-broker compensation and dissuade clients from viewing or purchasing homes with lower buyer-broker commission offers, thus ‘steering’ them to properties with higher-paying commissions.” *Sitzer v. Nat’l Ass’n of Realtors*, 420 F. Supp. 3d 903, 915 n.4 (W.D. Mo. 2019).

1 consumers looking to buy, sell, and manage their home. According to industry data, ninety
2 percent of consumers search online for a home. Seventy-three percent of consumers reported
3 using a mobile/tablet device or app for their home search. And sixty-eight percent of online
4 buyers find their home without an agent. REX's platform allows direct-to-consumer reach and
5 reduces customer acquisition costs. Through REX's proprietary technology, consumers can list
6 their homes from their smartphones and see their listing go live within two days with ads
7 specifically targeting interested buyers. REX's ad generation algorithms generate personalized
8 ads targeting online home shoppers. Through REX's end-to-end customer service experience,
9 consumers can easily search, shop, transact, manage, and move into the home of their dreams.

10 41. REX's model is working. Rather than the average national brokerage
11 commission rate of roughly 5.5%, which includes listing and buyer agents' commissions, REX's
12 clients spend, on average, only 3.3% in total commissions with the anticipation of driving the
13 costs still lower.

14 42. Using its model over the past five years, REX already has saved consumers more
15 than \$29 million in commissions. Not surprisingly, REX's revenues have grown every year.

16 43. REX is now active in markets spanning twenty states and jurisdictions including
17 Arizona, California, Colorado, D.C., Florida, Georgia, Illinois, Massachusetts, Maryland,
18 Minnesota, Nevada, New York, New Jersey, North Carolina, Oregon, Pennsylvania, Texas,
19 Utah, Virginia, and Washington.

20 44. REX is driving real estate commissions down for the same reason that transaction
21 costs have plummeted across the service economy. Over the past several decades, advancements
22 in information technology have slashed the fees once captured by middlemen, agents, and
23 brokers. Online travel sites have made business and leisure travel costs more transparent and
24 competitive. Charles Schwab, Ameritrade, and Robinhood have made no-commission or low-
25 commission stock trades the new normal. Uber and Lyft have lowered the cost of transportation.

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1 DoorDash, Grubhub, and Instacart have reduced food delivery costs. Airbnb has made lodging
2 more affordable. Even life insurance policies are cheaper due to internet-driven price
3 competition. REX's mission is the same.

4 45. By combining digital technology with an honest approach to every consumer
5 relationship, REX aims to usher in an era of zero-commission home sales where consumers
6 would be free to move about the country without the enormous personal expense in brokering a
7 home. Americans would enjoy enhanced job mobility and educational advancement and a greater
8 chance at wealth creation for middle-class families when the transaction costs of buying a home
9 are reduced. The volume of home transactions has been flat over the past two decades, despite a
10 more-than-twenty-percent increase in the number of households. The increase in the volume of
11 home sales driven by lower transaction costs would spur the creation of new jobs at higher wages
12 for electricians, plumbers, carpenters, and other trades whose demand for services clusters
13 around the purchase and sale of homes. Moreover, states and municipalities that fund their
14 police, fire, and teachers through real estate transfer taxes would benefit from the uptick in sales
15 volume.

16 **C. The Importance Of Internet Aggregator Sites Like Zillow**

17 46. Since REX launched in 2015, the company has utilized aggregator sites to market
18 clients' homes. Because many interested buyers start their home search on aggregator sites,
19 these digital hubs are a critical channel for REX. Because REX markets directly to consumers
20 interested in buying a home at a lower transaction cost, aggregator sites facilitate REX's ability
21 to reach a large audience of potentially interested buyers. Thus, these aggregator sites help REX,
22 and its clients, to maneuver around the NAR/MLS cartel's high-commission strictures.

23 47. Before aggregator sites like Zillow, information about homes for sale was
24 controlled entirely by Defendant NAR's broker cartel. Not long ago, consumers went to agents
25 who furnished their clients with books or computer print offs of MLS listings. Crucially, the

1 agent was the gateway for listing data. That slowly began to change when the NAR and MLSs
2 began allowing certain—but not all MLS—listing data to appear on public facing websites such
3 as the NAR-licensed Realtor.com. Notably, the NAR rules provide that listings from MLSs must
4 be segregated from any non-MLS listings.

5 48. Independent real estate aggregator sites made the market far more accessible to
6 consumers—giving them direct access to see available homes. They largely removed
7 information asymmetry between consumers and real estate agents. Consumers could shop for a
8 home without an agent. Aggregator sites upended NAR/MLS control over listing data.

9 49. Zillow stated in its 2018 10-K filing with the Securities and Exchange
10 Commission that one of its “competitive advantages” was its:

11 *Independent Market Positions and Consumer Focus.* Zillow Group has been built
12 independent of any real estate industry group. We maintain an unwavering
13 commitment to giving consumers free access to as much useful information as
14 possible. We provide information, products and services, designed to empower
15 consumers to make informed decisions about homes and the residential real estate
16 market. We believe our independence enables us to create compelling products
17 and services with broad consumer appeal.

18 50. According to data reported in Zillow’s 2018 10-K, “Zillow Group brands
19 represent nearly three quarters of market share of all mobile exclusive visitors to the real estate
20 category.”

21 51. The NAR and MLSs well understand the competitive threat that internet
22 transparency presents. The NAR has conducted studies showing that consumers use the internet
23 as a resource when transacting homes more frequently than any other avenue—even more than
24 professional agents and brokers. NAR’s same study indicated that *more potential home buyers*
25 *began their search for a home on the internet than in any other place.*

52. Maybe most telling, the NAR’s own research shows that fifty-two percent—*more*
than half—of home buyers found the home they bought on the internet.

1 53. Zillow and Trulia are the first- and fourth-most-visited aggregator sites in the
2 United States. In 2015, the Federal Trade Commission approved the merger between Zillow and
3 Trulia, paving the way for the rise of a behemoth hub site. Zillow's sites, Zillow, Trulia, and
4 StreetEasy, received more than 9.5 billion visits in 2020, and over 200 million unique users (as
5 defined by Zillow) each month, with information on approximately 135 million homes. Zillow
6 is undoubtedly a dominant doorway into the residential real estate market—as Zillow itself notes
7 that “more people search for ‘Zillow’ than ‘real estate.’”

8 54. The second-most-visited aggregator site, realtor.com, is licensed by NAR and, as
9 such, has never been open to non-NAR, non-MLS brokers like REX.

10 55. As Zillow attracted visitors, it also provided home sellers with leverage. Zillow
11 offered sellers access to consumers unimpeded by the traditional broker gatekeepers. Brokers
12 such as REX, which help consumers sell homes outside of the MLS system, could list homes on
13 Zillow alongside homes listed by competing brokers who were members of the NAR/MLS cartel.
14 When an interested buyer searched Zillow according to selected criteria, homes within those
15 parameters were displayed—regardless of whether they were listed by an NAR/MLS-affiliated
16 broker. Zillow functioned as a genuine digital hub. It displayed the listings in accordance with
17 the preferences expressed by the consumer conducting the home search. Within Zillow, homes
18 listed by brokers inside and outside the MLS stood on equal footing.

19 **D. Zillow Agrees To Degrade Non-MLS Listings Upon Joining NAR And**
20 **MLSs**

21 56. But that all changed when Zillow joined the NAR and MLSs.

22 57. In 2018, Zillow became an ibuyer. An ibuyer gives a cash offer to a homeowner
23 at a larger discount to the home's market value in return for offering the convenience of a speedy
24 transaction to those who wish to sell quickly. If the homeowner accepts the offer and the
25 transaction closes, ownership transfers to the ibuyer. Zillow's ibuying arm is called Zillow

1 Offers. Zillow is now transacting thousands of homes annually through its Zillow Offers brand.
2 On information and belief, the growth and substantial inventory of Zillow-owned homes placed
3 Zillow in a new position: Instead of focusing on being an open access point for consumers to
4 display and access residential real estate listings, Zillow's interests turned to its own substantial
5 home inventory.

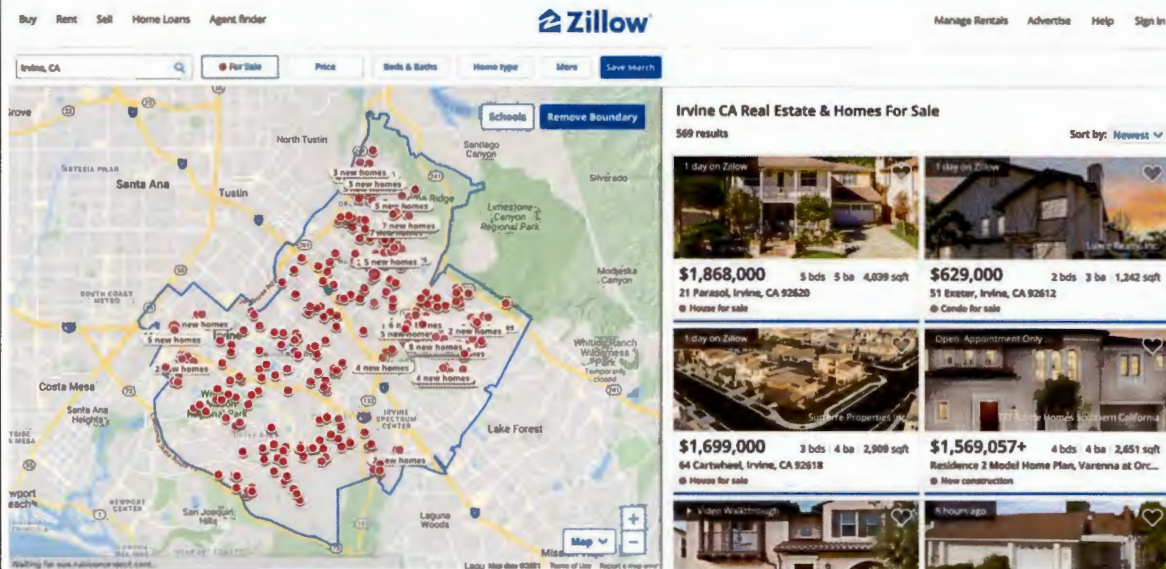
6 58. With some fanfare, Zillow announced in the fall of 2020 that it would "no longer
7 [be] a third party," but an MLS participant joining "local and state associations, and the National
8 Association of Realtors," standing "shoulder-to-shoulder" and "locking arms with like-minded
9 partners like you." Leaving nothing to doubt, Zillow signaled its dedication to the legacy MLS
10 model—and inflated commissions—by committing that "all Zillow-owned homes will be listed
11 in MLSs with commissions paid to agents representing buyers." The NAR rule mandating offers
12 of commissions to buyer agents, now adopted by Zillow, is the paramount reason that real estate
13 commissions are two to three times higher in the United States than in comparable international
14 markets.

15 59. Zillow also publicly promised to use its considerable reach to enforce the NAR's
16 and its affiliated MLSs' grip on the market, stating that it would use MLS data feeds to populate
17 its website. Zillow did not, however, specify either how or when it would implement the change.

18 60. In coopting Zillow, the NAR/MLS cartel blunted a threat to its expansive
19 membership, again erecting hurdles to prevent consumers from escaping the pricey clutches of
20 the traditional realtor regime. When Zillow entered the cartel, it agreed to segregate, conceal,
21 and demote non-MLS listings. Zillow—the one-time source of listing information about all
22 homes for sale—is now boycotting brokers that operate outside the NAR/MLS regime.
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61. The screenshot above shows what Zillow's website looked like before it implemented the MLS segregation policy. As the search bar indicates, the web display shows the results of a search for homes in "Irvine, CA." In this version of the site, the user who searched for homes in Irvine saw every home listed on Zillow in that region. Homes are depicted by the red dots on the map. Users could also drill down into a list of available homes using the filter buttons on the top of the screen. On the right side of the screenshot, the user sees images of homes within the search criteria. Here, the images are of homes for sale in Irvine sorted by the newest listings.

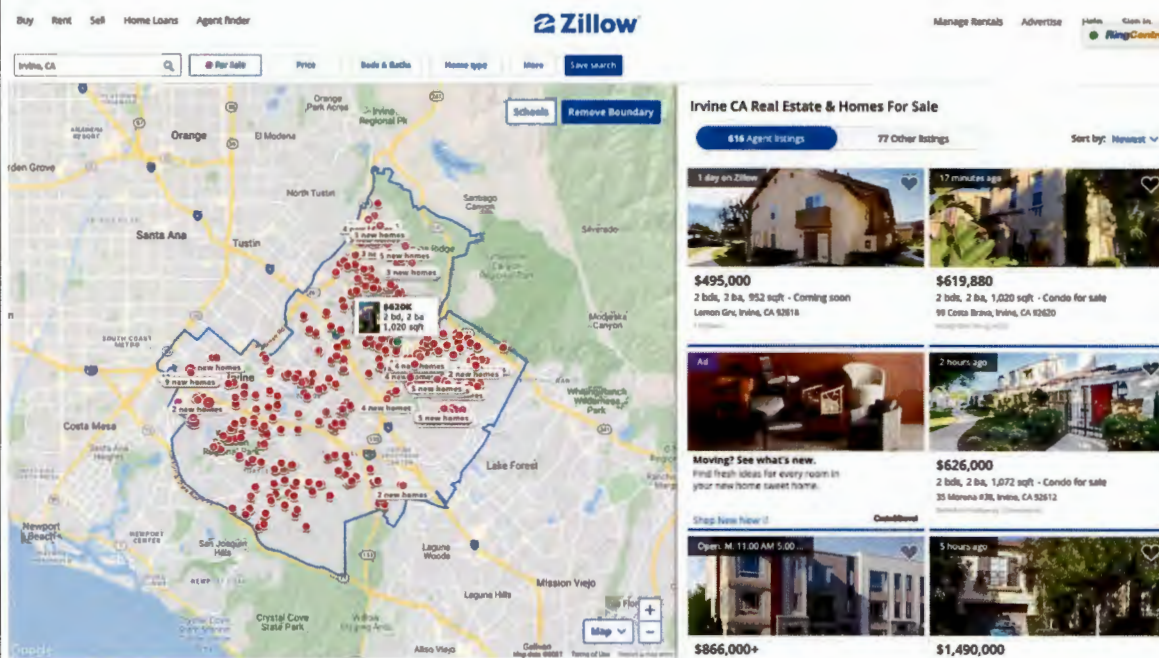
62. The earlier version of Zillow's website jointly displayed REX homes with homes listed by other brokers on the same screen. If a REX home was within the user's search parameters, the home appeared on the map. The earlier site similarly displayed images of REX homes alongside images of homes listed by other brokers. There was no concealment of listings by non-cartel members, and no extra steps needed to view a REX home that was within the consumer's price range and taste. Zillow's prior display allowed home seekers to filter homes by price, square footage, bedrooms, size of lot, distance to school, and other criteria associated

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with observable consumer preferences for various home features. To REX's knowledge, no consumer has ever searched for a home by the broker representing the *other* party in the transaction or by whether a home is listed by a broker who is a dues-paying member of the NAR/MLS regime. No consumer has ever asked REX to show only homes represented by a particular agent or broker, nor has any seller asked to limit showings of their home to only those potential buyers represented by a particular broker or agency.

63. Without any significant warning, Zillow unveiled its newly designed web display in mid-January 2021. The new web display creates a separate page, concealed behind the primary results, where REX homes are now funneled. Below is a screenshot showing the new display:



64. At first glance, the difference is hardly apparent. But the new web display now segregates all homes listed on Zillow into two categories: "Agent Listings" and "Other Listings". On the right side of the screenshot above—just above the home pictures—two tabs are now

1 visible. The first tab, titled "Agent listings," displays homes listed by MLS agents. The label is
2 incorrect: the tab is not all agent listings, but exclusively *MLS* agent listings. Non-MLS agents
3 are excluded. The second tab, labeled "Other listings," presents all non-MLS homes, including
4 homes listed by licensed agents that are not part of the MLS. Homes listed by REX's licensed
5 agents have been relegated to this second tab. Neither of these tabs was present on the earlier
6 version of Zillow. This new web display includes several features that degrade Zillow's quality
7 from a user's perspective and insulate MLS brokers from competition. There is no consumer
8 benefit from putting REX homes in a separate category. Moreover, from Zillow's point of view,
9 the company incurred upfront costs—and continues to incur ongoing costs—by segregating non-
10 MLS listings under a hidden tab.

11 65. Importantly, the new default when users search on Zillow is the "Agent" tab.
12 Thus, a homebuyer visiting Zillow sees only the MLS offerings, unless they notice the "Other"
13 tab and do extra work to figure out what is being concealed behind this misleading and
14 unflattering label. Zillow no longer allows consumers to see every home for sale in a single
15 screen. When consumers on the new site search for a home listed on Zillow within a certain
16 price, their search results no longer surface all listed homes within the consumer's price range
17 on one screen. With the current web display, consumers only see a portion of homes based on
18 whether they are viewing or searching homes within the Agent tab or the Other tab. To see every
19 home listed for sale, they must move back and forth between these tabs. The redesigned site
20 unreasonably suppresses vital information about homes for sale that meet consumers' search
21 criteria.

22 66. In Zillow's new web display, REX's homes are grouped with the "Other listings"
23 category. The classification is not only inaccurate and nonsensical, it is misleading and
24 deceptive.
25

1 67. Every REX home is listed by a licensed real estate agent. Membership in the
2 NAR and MLS trade groups are not conditions precedent to becoming an agent. Agents are
3 licensed by states. Every REX agent is duly licensed by the appropriate state authority
4 responsible for regulating the practice of real estate.

5 68. Zillow knows, of course, that REX is a licensed broker with licensed agents. REX
6 currently pays Zillow to be a part of Zillow's Premier *Agent* program. Under this program,
7 Zillow, for a fee, allows REX agents to be displayed, and hopefully contacted, by consumers
8 searching for homes in a given area (regardless of whether the home(s) that surface in the display
9 are REX or other broker listings). REX *agents* can be, and are, classified as premier agents by
10 Zillow, yet REX homes are all categorized under the Other tab, not the Agent tab. Zillow
11 describes REX as an "agent" when REX pays Zillow to be highlighted as such, but now
12 deceptively categorizes REX's home listings in the "other" non-agent category. Zillow's
13 concealment of REX listings to the other category conveys to consumers that REX agents are
14 not licensed agents.

15 69. Zillow has implemented this change nationwide on its websites Zillow.com and
16 Trulia.com.

17 70. As a result of Zillow's new deceptive and anticompetitive display, few consumers
18 will see all homes for sale. Top sites, Zillow, Realtor.com, and Trulia now all have restrictions
19 based on NAR and MLS guidelines. Realtor.com only accepts homes listed by NAR members.
20 Zillow's redesign on Zillow.com and Trulia.com now degrades non-MLS listings by placing
21 them in the "other" listing category under NAR/MLS rules. In its current state, the NAR/MLS
22 regime has once again wrested control and is excluding non-members through the
23 anticompetitive application of their rules to enforce high commissions.
24
25

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E. Zillow's Compliance with NAR's Rules Was Reviewed and Enforced by NAR's Multiple Listing Services

71. NAR, as a trade association, operates through its members and its members' actions. Its members have the right to hold themselves out to the public as Realtors®, NAR's trademarked brand.

72. NAR requires its members—including Zillow—to comply with a Code of Ethics though sanctions including the risk of expulsion and penalties. Many NAR-affiliated MLSs require NAR membership, so the loss of NAR membership may result in a loss of access to MLS services.

73. NAR requires its affiliated Multiple Listing Services to comply with NAR Rules, including the mandatory offer of compensation rule and the mandatory co-mingling rules.

74. NAR authorizes its members to enforce its rules by and through the Multiple Listing Services affiliated with NAR.

75. NAR implements its rules by and through its members and the Multiple Listing Services acting to enforce and implement the rules.

76. NAR creates its rules through the participation of its members.

77. NAR wants, and instructs, its members to comply with its rules.

78. NAR tells its affiliated Multiple Listing Services that if they do not follow NAR-approved rules then they are not entitled to insurance coverage and NAR may revoke their charters.

79. It is NAR's intent that all member Multiple Listing Services comply with NAR's policies.

80. Upon information and belief, NAR reviews member compliance to ensure members follow and implement NAR's rules.

1 81. NAR had knowledge of, and approved of, Zillow's decision to become a member
2 of NAR.

3 82. When Zillow joined NAR and its affiliated MLSs, it agreed and was required to
4 follow their rules, including the mandatory compensation rule and the co-mingling and
5 segregation rules.⁹

6 83. Some NAR MLSs required Zillow to make changes to its display products,
7 including moving of REX listings to "Other Listings".

8 84. Some NAR MLSs reviewed Zillow's proposed new display to ensure compliance
9 with NAR rules before Zillow implemented the change.

10 85. Some NAR MLSs approved of Zillow's new display.

11 86. NAR rules required its members, including its affiliated MLSs, to enforce
12 Zillow's compliance with NAR rules.

13 87. Upon information and belief, NAR was aware that its members, by and through
14 its affiliated MLSs, were reviewing and enforcing Zillow's compliance with NAR rules.

15 88. Zillow's moving of REX listings to "Other Listings" was done to comply with
16 NAR's co-mingling rules, including the segregation rule. Zillow has stated that it would not
17 have relegated REX listings to the "Other Listings" tab if not required to do so by NAR-affiliated
18 MLSs.

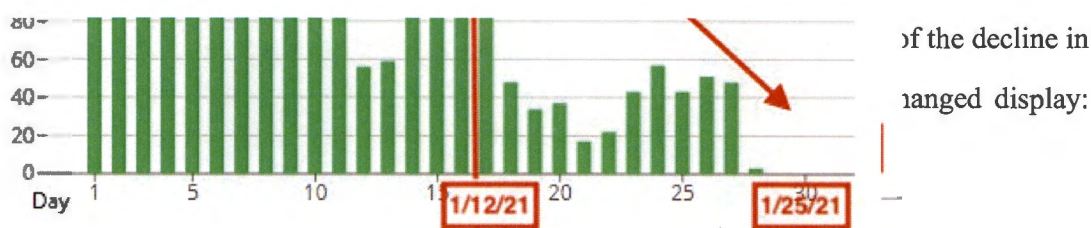
19 **F. The Resulting Harm To Competition**

20 89. The "Other listing" category significantly conceals REX's listings behind the
21 primary results. Because the default option is the "Agent listing" tab, many consumers will never
22 click on the tab that includes REX homes. It is likely that many consumers will never even
23

24 ⁹ NAR's mandatory rule 18.2.10 permits "co-mingl[ing of] listings of other brokers received in an IDX feed with
25 listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules"
allowing "consumers ... to execute a single property search of multiple IDX data feeds ... on a single search
results page ..."

1 notice the “Other listings” tab. Further, the “Other listing” tab is placed to the right of the “Agent
2 listing” tab. Web display data demonstrates that users presented with side-by-side tabs are far
3 more likely to click on the tab to the left.

4 90. Zillow’s new web design has cost REX both customers and revenue. Views of
5 REX homes have plummeted on Zillow. The sharp decline in visibility has driven down the rest
6 of REX’s business. Fewer online viewers mean fewer interested buyers visiting REX homes.
7 And fewer showings resulted in a corresponding drop in sales and thus lost brokerage service
8 revenues to REX. By cutting off demand for the hidden homes on the “other” tab, Zillow and
9 NAR are also harming the sellers of these homes—causing them to maintain the home for more
10 days on market and accept lower sales prices.



16 92. In addition, REX has lost *seller* clients as a result of Zillow’s website display
17 change. Home sellers have terminated their exclusive contracts with REX out of the legitimate
18 concern their homes will not attract buyers now that Zillow and the MLS are treating REX
19 listings as second-class. Sellers who entrusted REX with the responsibility of selling their home
20 have had the unwelcome surprise of no longer being able to find their homes on Zillow.

21 93. Underscoring the confusion and harm, some REX clients have been contacted by
22 other real estate agents who have seen the REX client’s property listed in the “Other listings”
23 category and believed the REX client to be unrepresented by a licensed broker. The clear
24 implication is that the “Agent” tab includes *all* of the homes listed by agents and therefore any
25

1 home in the “Other” tab must have an unrepresented seller. Even experienced real estate
2 participants are confused by the deceptive labelling of Zillow’s cartel-friendly redesign.

3 94. The “other” category groups REX homes with For Sale by Owner (FSBO) and
4 foreclosure properties. This is harmful for several reasons. FSBOs and foreclosures are a small
5 percentage of the total homes for sale in any market. As a result, the “Other listings” tab will
6 include far fewer listings than the default “Agent listings” tab. In the screenshot above, for
7 example, there are 616 Agent Listings versus only 77 Other Listings. Consumers are much more
8 likely to search only within the larger pool of “Agent listings,” where they can more easily
9 perform price comparisons of nearby properties for sale. Interested buyers are likely to continue
10 avoiding or missing “Other listings” altogether.

11 95. To the extent that consumers view homes in the “other” category, they will see
12 REX homes alongside FSBOs and foreclosures. But those properties present a buyer experience
13 easily distinguished from purchasing a REX home. Consumers who purchase FSBOs must
14 negotiate directly with the homeowner. Buyers of REX homes negotiate with a licensed REX
15 agent. And, in the event the buyer of a REX home does not already have an agent, REX will
16 assign a separate, experienced agent to represent the buyer at no cost to buyer or seller.
17 Foreclosures signal to many consumers that there will be legal complications around the
18 condition of the home and questions as to the status of the title. Moreover, homes in foreclosure
19 also connote the risk that the home may be distressed due to lack of upkeep due to lack of funds.
20 Zillow’s new display leads consumers to view REX homes as riskier and more complicated
21 properties to purchase. Interest in REX homes has already fallen and will continue to fall because
22 of Zillow’s unfair and deceptive business practice.

23 96. Consumers—buyers and sellers—now experience reduced choice in transacting
24 real estate. Sellers, as noted above, may feel forced to do business with the NAR/MLS cartel to
25 have superior placement on Zillow’s dominant website, while buyers may never see their best

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options because REX's listings (and all others in the "Other listings" category) are demoted. Defendants' coordinated conduct drives consumers to homes listed on the high-commission MLS network. Competition from REX, which allows buyers and sellers to lower commissions to get more home for their money, is suppressed, and REX loses customers. The result stifles competition from independent brokers such as REX, which save consumers thousands of dollars in reduced commissions on every home transaction.

97. The effect of these anticompetitive practices harm REX in each of the twenty states and jurisdictions where it currently operates, and it harms consumers REX wishes to serve within those markets as well as consumers moving into those markets from outside the state. Because Zillow's universal display change concealing non-MLS listings is implemented nationally, consumers' and competitors' participation in interstate commerce is broadly impacted.

G. The Root Of The Harm Lies Within NAR/MLS Anticompetitive Rules

98. MLSs serve to effectuate and enlarge the power of the NAR. Courtney Poulus, a member of the board of directors for the Greater Los Angeles Realtors Association, describes the manner in which participants are forced into a set of the NAR's model rules. She states, "[w]hat I see the role currently of the MLS is as a kind of a police force," promoting the "very restrictive enforcement of [National Association of Realtors] new policies."¹⁰

99. Zillow, in announcing its move to join the NAR and MLSs, stated unequivocally that it was standing shoulder-to-shoulder and locking arms with NAR and MLS members, including agreeing to move to a preferencing of MLS-only (IDX) data feeds.

¹⁰ Andrea Brambila, *Broker warns MLSs: Help us compete against Zillow or lose us*, Inman (Jan. 26, 2021), <https://www.inman.com/2021/01/26/broker-warns-mlss-help-us-compete-against-zillow-or-lose-us/>.

1 100. The NAR issues guidelines for the MLSs to follow, including rules regarding the
2 clear segregation of MLS listings—sourced from MLS internet data exchange (IDX)—from non-
3 MLS listings.

4 101. The IDX data feed originated in the early 2000s, when real estate agents and
5 brokers realized they could promote their listings online. The IDX feed allows agents who are
6 members of the MLS to have online access to MLS listings and to make these listings publicly
7 visible on their websites.

8 102. The NAR and MLSs have established policies and rules on how the IDX can be
9 used. The NAR's Handbook on Multiple Listing Policy includes policies applicable to MLS
10 participants' IDX websites and displays. The NAR's policies control the web displays of MLS
11 members—referred to as “participants”—receiving the IDX feed. The segregation rule appears
12 in NAR's IDX optional model rules, providing:

13 Listings obtained through IDX feeds from Realtor® Association MLSs where the
14 MLS participant holds participatory rights must be displayed separately from
15 listings obtained from other sources. Listings obtained from other sources (e.g.,
from other MLSs, from non-participating brokers, etc.) must display the source
from which each such listing was obtained.¹¹

16 This rule also appears in other NAR model rules—it is not limited to an “MLS Operated as a
17 Committee of an Association of Realtors.” Under this rule, MLS member brokers must display
18 listings received from fellow MLS brokers through the IDX feeds separately from listings
19 received from non-MLS brokers.

20 103. These rules are promulgated through co-conspirator MLSs. For instance, the
21 Bright MLS is one of the largest in the nation, covering portions of six states plus the District of
22 Columbia, twenty million consumers, and has over 95,000 subscribers. Bright's Rule 16.3(h)(iii)
23 enforces the segregation policy:
24

25 ¹¹ National Association of Realtors, *Handbook on Multiple Listing Policy, Model Rules and Regulations for an
MLS Operated as a Committee of an Association of REALTORS*, Rule 18.3.11.

1 Non-MLS Listings. IDX Participants and Subscribers are not permitted to display
2 or frame non-MLS listed properties [Non-MLS Listings] on any page or window
3 of their web site that displays the listings of other Participants obtained
from Bright MLS's IDX Database. Such Non-MLS Listings may be displayed on
a separate page or window of the IDX Participant's web site.

4 REX does business in several markets where the Bright MLS operates and implements this rule.
5 Similar rules are advanced by other MLSs across the country.

6 104. Zillow's website redesign, which demotes non-MLS listings, is driven by its
7 voluntary membership in the NAR and MLSs and the agreed adherence to their rules.

8 105. Zillow acknowledged in communications with REX that the segregation between
9 MLS and non-MLS properties was not an improvement in Zillow's web display. As one Zillow
10 sales representative explained, "[T]his isn't a fix, but more a result of us joining the MLS and
11 changing over to IDX feeds." In another correspondence, a Zillow vice president commented:
12 "In general these changes are for us to comply with MLS rules."

13 106. Beginning in January 2021, Zillow applied the clear-segregation rule to separate
14 MLS and non-MLS listings.

15 107. The changes to Zillow and Trulia's sites perfect the NAR/MLS cartel's control
16 over the digital hubs of the real estate economy to the detriment of consumers. With Zillow's
17 decision to conceal non-MLS listings under the misleading and inferior "other" category, listings
18 from non-MLS brokers such as REX will be far less competitive. Through horizontal
19 agreements, three of the most highly visited hubs—Zillow, NAR-licensed Realtor.com, and
20 Trulia—now provide virtually no visibility to homes listed by brokers outside the market
21 dominant cartel. The recent changes will only prolong the commission-driven, anticompetitive
22 practices of the incumbent MLS brokers and stifle investment in innovative, pro-consumer
23 alternatives such as REX. Moreover, if these changes stand and non-MLS listings remain hidden
24 on the dominant portal site, no competitive broker will emerge offering an alternative to the MLS
25 regime for the foreseeable future.

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1 **H. The Change In Zillow's Display Is Deceptive And An Illegal Restraint Of**
2 **Trade**

3 108. The NAR and MLSs are trade associations made up of competitors in the market
4 for residential real estate brokerage services. They constitute a sizeable majority of active real
5 estate licensees.

6 109. According to NAR CEO Goldberg, the "core purpose" of the organization is "to
7 help our members become more profitable and successful." NAR functions as a "collective
8 force, influencing and shaping the real estate industry." As NAR's CEO acknowledged, direct-
9 to-consumer technology platforms challenge the ability of NAR members to increase their
10 profitability. The way "to move the industry forward in our best interest," the NAR CEO
11 explained, was to "identify potential alliances with external sources seeking to infiltrate" the real
12 estate market. By "embracing" the competition, Goldberg noted, NAR could bring disruptors
13 under the organization's tent and leverage them in defense of the NAR's core mission of
14 maintaining the profitability of its members.¹²

15 110. The rules promulgated, followed, and enforced by NAR and MLS members,
16 including the IDX segregation rules requiring member listings to be displayed separately from
17 non-member listings, constitute horizontal agreements between NAR members that serve their
18 material interests. Courts have repeatedly recognized that NAR and MLS rules are horizontal
19 agreements between competitors.

20 111. Zillow now has begun providing residential real estate brokerage services.

21 112. As discussed above, Zillow also owns and controls two of the most trafficked
22 consumer-facing residential real estate aggregator websites. As shown by numerous studies and
23
24

25 ¹² NAR CEO Keynote from the NAR Leadership Summit (Aug. 15, 2017), *available at*
 <https://www.youtube.com/watch?v=NfShMRQlx3o>.

1 NAR's own research, visibility for listings on residential real estate aggregator websites is now
2 necessary to effectively compete in the market for residential real estate brokerage services.

3 113. Zillow represented an "external source" that has been "embraced" by the
4 dominant broker cartel and brought within the NAR's tent. The aggregator site is now a tool to
5 limit innovative disruption and thereby maintain the high broker commissions that NAR/MLS
6 rules require. Once "independent of any real estate industry group," Zillow is now structured to
7 protect the profitability of MLS brokers—the "core purpose" of the NAR.

8 114. When Zillow joined the NAR and MLSs, it agreed to abide by their rules,
9 including the IDX segregation rules. As a result, Zillow now segregates all non-MLS member
10 listings from MLS listings, disadvantaging all non-MLS listings, including REX's.

11 115. To do so, Zillow now categorizes MLS listings as "Agent Listings" and all non-
12 MLS listings as "Other Listings." Categorizing REX's listings in the "Other listings" category
13 is misleading, deceptive, and anticompetitive because homes sold by REX on Zillow are listed
14 by licensed agents. Further, by defaulting the website to display "Agent Listings" first, Zillow
15 conceals REX-listed homes by requiring consumers to take extra steps to view them. This new
16 Zillow-implemented categorization and display misleads and deceives consumers in
17 contravention of state and federal law.

18 116. Because Zillow's display change has been made nationwide, it affects REX in
19 every market in which it operates and every market within the United States where REX may
20 want to operate. Consumers and any current or would-be non-NAR, non-MLS competitors are
21 also affected nationwide.

22 117. REX has suffered significant declines in its listing views and showings because
23 of the change in display implemented by Zillow, which has in turn injured REX. REX has spent
24 money to mitigate the damage, REX has lost customers, and REX continues to suffer injury to
25 its reputation, because of the change in Zillow's display.

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118. The new web display degrades Zillow's site without any material pro-consumer, competitive benefit. The concealment of non-MLS listings from Zillow and Trulia's sites are a group boycott perpetuated by NAR and MLS members against non-member competitors. Zillow's agreement to comply with rules that segregate MLS listings on their websites, and in turn demote competitive non-MLS listings, violates federal and state antitrust law. The recent changes are an illegal, exclusionary act. Defendants must be enjoined from enforcing the clear-segregation rule to protect the digital real estate economy from this unreasonable restraint on trade.

V. THE RELEVANT MARKETS AND DEFENDANTS' MARKET POWER

119. NAR, through its members, and MLS members compete with REX in the market for the provision of real estate brokerage services to sellers and buyers of residential real estate in local markets throughout the country where REX operates. Market participants compete to attract buyers and/or sellers to facilitate residential real estate transactions in return for fees, often in the form of percentage-based commissions. Market participants must maintain licenses to provide residential real estate brokerage services.

120. NAR members constitute a predominate share, more than 70 percent, of market participants (active licensees) per NAR.

121. "By virtue of near industry-wide participation and control over important data, brokers offering MLSs possess and exercise market power [over] real estate brokerage services to home buyers and sellers in local markets throughout the country."¹³

122. Online display through aggregator sites has become a crucial channel for market participants to attract buyers and/or sellers and to consummate residential real estate transactions.

¹³ Complaint at 11, *United States v. National Association of REALTORS®*, Case No. 1:20-cv-3356 (D.D.C. Nov. 19, 2020); see also *Memorandum Opinion and Order, Moehrl v. NAR*, Case No. 1:19-cv-01610, 2020 U.S. Dist. LEXIS 182532, at *5 (N.D. 111. Oct. 2, 2020) (discussing the current market dominance of MLSs); *Sitzer*, 420 F. Supp. 3d at 914 (same).

1 Zillow and Trulia have become synonymous with internet residential real estate search. The
2 first- and fourth-most-trafficked aggregator sites, respectively, Zillow and Trulia attract billions
3 of views per year and hundreds of millions of unique monthly site visitors. More than half of
4 homebuyers locate their home on the internet.

5 123. The NAR, MLSs, and Zillow have implemented their rules and agreement to
6 exclude and impair non-MLS, non-NAR member competitors' access to online display in local
7 markets nationwide. REX is impacted in all markets where it operates within the nineteen states
8 in which it holds brokerage licenses. REX will be further impacted by Defendants' conduct
9 because it restricts growth opportunities in all other markets nationwide where REX may want
10 to expand and serve.

11 VI. ANTICOMPETITIVE CONDUCT

12 124. The NAR and its licensee members, MLSs and their licensee members, and
13 Zillow, which has memberships in both, have voluntarily joined together in these membership
14 organizations made up of competitors in the residential real estate services market, agreed to
15 abide by their rules, including the IDX segregation rule, and have thereby agreed and conspired
16 to restrain competition by non-members.

17 125. In particular, they are using their commonly agreed IDX segregation rule to
18 implement a change in Zillow.com's and Trulia.com's display of home inventory to demote and
19 obscure listings by non-member competitors.

20 126. It is a group boycott of non-members, denying them effective access to internet
21 residential real estate aggregator sites, which are a critically important input to effectively
22 compete in the provision of residential real estate brokerage services.

23 VII. ANTICOMPETITIVE EFFECTS

24 127. The group boycott affecting Zillow's display is implemented nationwide and
25 affects REX in each local market in which it is active.

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128. REX is experiencing dramatic declines in consumer views of its listings on Zillow sites, which has also led to decreased showing activity. Because of decreased activity on its listings, REX clients have questioned REX's effectiveness, have questioned why they cannot find their property on Zillow, have requested that REX co-list properties with MLS members to increase its online profile, and have cancelled their listing agreements with REX. REX is also losing additional customers due to the related reputational impact of dissatisfied clients and the inability of potential new clients to see REX listings and inquire about representation.

129. REX's innovative model is suffering, and its customer growth and expansion into new markets is threatened.

130. The change in Zillow's site display provides no tangible competitive or pro-consumer benefit. Yet consumers will be deceived by Zillow's new, misleading labels and will be harmed by the lessened competition in the marketplace.

VIII. CLAIMS

COUNT I - UNREASONABLE RESTRAINT ON TRADE IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

131. Paragraphs 1-130 are fully incorporated herein.

132. Section 1 of the Sherman Act states "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal," 15 U.S.C. § 1, with standing for private actions granted by Section 4 of the Clayton Act, 15 U.S.C. § 15.

133. Plaintiff REX competes with Defendant Zillow, member of Defendant NAR, members of NAR, and non-party MLS members in the market for the provision of real estate brokerage services to sellers and buyers of residential real estate in local markets throughout the country where REX operates. Defendant Zillow also maintains prominent residential real estate aggregator websites that are critical to effective competition in the market.

1 134. Alternatively, Plaintiff REX competes with Defendant NAR, members of NAR,
2 and members of non-party MLSs in the market for the provision of real estate brokerage services
3 to sellers and buyers of residential real estate in local markets throughout the country where REX
4 operates, while Defendant Zillow maintains frequently visited, or dominant, residential real
5 estate aggregator websites that are critical to effective competition in the local markets where
6 REX competes.

7 135. Defendants NAR and Zillow, with non-party MLSs, entered into a horizontal
8 combination, agreement, and/or conspiracy to boycott and deprive non-MLS, non-NAR
9 members, including REX, effective access to prominent Zillow residential real estate aggregator
10 websites, which restrains trade among competitors.

11 136. The change to Zillow's site display, made pursuant to the NAR clear-segregation
12 rule, is not justified by any procompetitive benefit. As such, this conduct constitutes a per se
13 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, without necessity of further proof, or
14 alternately, under a Rule of Reason analysis.

15 137. Defendant NAR and non-party MLSs have combined to exercise significant
16 market power in each local market where REX competes.

17 138. The combination, agreement, and/or conspiracy to restrain trade between
18 Defendants and MLSs has been implemented nationwide, affecting consumers and competitors
19 in every residential real estate services market and thereby interstate commerce.

20 139. REX's ability to effectively compete and offer innovative and lower-priced
21 residential real estate brokerage services to consumers, along with every other similarly situated
22 competitor, has been constrained by the anticompetitive combination, agreement, or conspiracy
23 to boycott and foreclose equal access to Zillow's prominent residential real estate aggregator
24 sites.

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1 140. Because of Defendants' anticompetitive group boycott, REX's ability to attract
2 and retain clients is directly impacted because REX listings are hidden and obscured on the first-
3 and fourth-most-trafficked aggregator websites, Zillow.com and Trulia.com. The
4 anticompetitive actions are degrading REX's reputation, decreasing the amount of buyer activity
5 on REX's listings, and therefore decreasing REX's ability to consummate transactions.
6 Accordingly, REX has lost clients, has been forced to co-list clients with MLS members, and has
7 been repeatedly questioned about the lack of visibility of REX listings on Zillow's websites.

8 141. REX's business has been injured by Defendants' anticompetitive actions in
9 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and REX is currently suffering and
10 will continue to suffer irreparable harm if Defendants are not enjoined from their continuing
11 violations.

12 **COUNT II – FALSE ADVERTISING IN VIOLATION OF SECTION 1125 OF**
13 **THE LANHAM ACT, 15 U.S.C. § 1125 (AGAINST ZILLOW)**

14 142. Paragraphs 1-141 are fully incorporated herein.

15 143. Defendant Zillow operates commercial websites that aggregate residential real
16 estate listings in all fifty states. Defendant Zillow's websites operate as a platform for
17 commercial advertising of residential real estate listings. Zillow allows consumers throughout
18 the United States to view homes for sale that meet the criteria specified by the consumer.

19 144. Plaintiff REX is a licensed real estate broker in every state where it operates and
20 employs licensed agents to sell homes. REX is not a member of any MLS or the NAR.

21 145. Defendant Zillow's websites contain false and misleading statements that
22 misrepresent the nature, characteristics, qualities and origin of its real estate listings, in violation
23 of 15 U.S.C. § 1125(a). Namely, Zillow labels as "Agent listings" only homes that are listed by
24 members of the NAR or MLS. Zillow labels homes listed by REX agents as "Other listings."
25

1 146. Defendant Zillow adjusted the default display for the Zillow websites to show
2 only homes labeled “Agent Listings” when consumers search for homes. Consumers who wish
3 to view homes listed by REX agents must select the “Other Listings” tab.

4 147. Labeling the real estate listings on Zillow’s websites in the manner described
5 above actually deceives and/or has the tendency to deceive a substantial segment of consumers
6 using Zillow into believing that homes listed by REX agents are not agent listings.

7 148. Defaulting the display on Zillow’s website to only show the real estate listings
8 labeled “Agent listings” in the manner described above actually deceives and/or has the tendency
9 to deceive a substantial segment of consumers using Zillow into believing that they have viewed
10 all homes listed by licensed real estate agents when the consumer conducts a search.

11 149. Defendants Zillow and NAR knowingly adopted this labeling system for all
12 nation-wide listings on Zillow as part of a common plan or scheme to confuse, mislead, and
13 deceive consumers regarding the affiliation, connection, or association of the homes listed on
14 Zillow’s websites.

15 150. Defendants were aware of and knew that REX was a licensed real estate broker
16 and employs licensed agents. To wit, REX pays Zillow under Zillow’s Premier Agent program,
17 and Zillow classifies numerous REX agents as “premier agents” as part of this program.
18 Nonetheless, Zillow does not label homes listed by any REX agent as an “Agent Listing.”

19 151. The acts of Defendants described above were and are deliberately calculated to
20 confuse and/or deceive the public, and said acts constitute willful and deliberate violations of 15
21 U.S.C. § 1125(a).

22 152. Plaintiff REX has suffered injury as a result of Defendants’ false, misleading, and
23 deceptive labeling system either by direct diversion of sales from REX to MLS- and NAR-
24 affiliated realtors or by a lessening of the goodwill associated with REX, in violation of 15 U.S.C.
25 § 1125(a).

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COUNT III – FALSE ADVERTISING IN VIOLATION OF SECTION 1125 OF THE LANHAM ACT, 15 U.S.C. § 1125 (AGAINST NAR)

153. Paragraphs 1-152 are fully incorporated herein.

154. On information and belief, NAR, through its MLS members and agents, approved of Zillow's decision to display REX listings as "Other Listings" rather than "Agent Listings."

155. NAR, through some of its MLS members and agents, reviewed Zillow's display for compliance with NAR rules before Zillow actually changed its display to show REX listings as "Other Listings".

156. Zillow acted as NAR's agent in moving REX listings to "Other Listings" to enforce NAR's rules, including its co-mingling and segregation rules.

157. The description of REX-listed homes as "Other Listings" is false.

158. REX-listed homes are listed by licensed agents.

159. Zillow's description of REX listings as "Other Listings" has the purpose and effect of increasing traffic to and helping bolster listings of Zillow agents and other NAR agents.

160. The benefits of Zillow's deceptive conduct to NAR members are also benefits to NAR as an organization of and for these members.

161. NAR is responsible for the wrongful conduct of its agents exercising authority granted by NAR and for the benefit of the trade association and its members.

162. Plaintiff REX suffered injury as a result of Defendants' false, misleading, and deceptive labeling system either by direct diversion of sales from REX to MLS- and NAR-affiliated realtors or by a lessening of the goodwill associated with REX, in violation of 15 U.S.C. § 1125(a).

**COUNT IV – UNFAIR OR DECEPTIVE ACT OR PRACTICE VIOLATING
RCW 19.86.020 OF THE WASHINGTON CONSUMER PROTECTION ACT
(AGAINST ZILLOW)**

163. Paragraphs 1-162 are fully incorporated herein.

164. The Washington Consumer Protection Act makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” RCW 19.86.020.

165. A private action to remedy an unfair or deceptive act or practice may establish injury to the public when it (1) injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons. RCW 19.86.093.

166. After Zillow became a member of MLS organizations in 2020, it agreed to comply with the requirements of these organizations requiring segregation in search results presented to consumers between listings from brokers who are not members of an MLS, including REX.

167. Prior to 2021, Zillow search results included homes in the geographic area specified by a consumer, including those provided to Zillow by an MLS-aligned broker or by a REX broker.

168. But in January 2021, Zillow changed its display so that the first page of results is presented under a deceptive and misleading heading “Agent listings,” while hiding REX listings behind a tab labeled “other listings.” Unless the consumer clicks on the tab, he or she will be unaware of the REX listings entirely.

169. REX agents are licensed real estate brokers by the states in which they operate, including Washington State.

170. Zillow’s new search listings practice has the capacity to deceive consumers because it does not include all “agent listings” under that heading in the first page of the search results. By including listings by REX agents on an obscured page under the heading “other

1 listings,” Zillow has the capacity to deceive consumers into the false belief that REX listings are
2 not by licensed real estate agents.

3 171. Consumers and even real estate professionals have been deceived by Zillow’s
4 new search listings practice. For example, some homeowners who listed their property with a
5 REX agent have received phone calls from other real estate agents offering to list their homes
6 under the assumption the homeowner was not represented.

7 172. Zillow’s deceptive search listing practice has injured REX, whose agent-
8 employees have lost real estate listings from homeowners who complained that they could no
9 longer find their home on Zillow.

10 173. Zillow’s deceptive search listing practice had and has the capacity to injure other
11 persons as its website is by far the most visited by consumers looking to buy or sell a home.

12 a. According to Zillow’s 2020 10-K report to the Securities and Exchange
13 Commission, its “data and content has helped the Zillow brand become synonymous with real
14 estate. Today, more people now search for ‘Zillow’ than ‘real estate,’ . . . and Zillow is the most
15 visited brand in the industry.”

16 b. According to Zillow’s 2020 10-K report, the Zillow Group attracted an
17 “annual high of 245 million unique users in July 2020 and more than 9.6 billion visits in 2020”.

18 174. By falsely indicating that “agent listings” do not include those by REX licensed
19 real estate agents, Zillow’s new search listing practice has the capacity to deceive its more than
20 240 million annual unique users—in Washington and other states—into believing that they have
21 seen all agent listed homes on a search results page that does not include all such results.

22 175. Zillow’s new search listing practice also has the capacity to deceive its more than
23 240 million annual unique users by concealing from them the opportunity to list or buy a home
24 from a licensed real estate agent who may charge significantly lower commissions than a
25 traditional broker.

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1 176. Zillow's deceptive practices impact consumers searching for homes to buy as well
2 as businesses that compete with Zillow.

3 177. REX and its licensed real estate agents have been injured by Zillow's deceptive
4 search listing practice and have suffered damages in an amount to be proven at trial.

5 178. REX and members of the public are currently suffering and will continue to suffer
6 irreparable harm if Defendants are not enjoined from their continuing violations.

7 **COUNT V – UNFAIR OR DECEPTIVE ACT OR PRACTICE VIOLATING RCW**
8 **19.86.020 OF THE WASHINGTON CONSUMER PROTECTION ACT**
9 **(AGAINST NAR)**

10 179. Paragraphs 1-178 are fully incorporated herein.

11 180. REX homes are listed by licensed agents.

12 181. Zillow's change to describe REX-listed homes as "Other Listings" was done to
13 comply with NAR's co-mingling and segregation rules.

14 182. NAR, through its MLS members and agents, was aware of the change to Zillow's
15 description of REX-listed homes before and after Zillow made the change.

16 183. NAR, through its MLS members and agents, approved of the change to Zillow's
17 description of REX-listed homes.

18 184. Zillow acted as a NAR member and NAR agent to implement NAR's co-mingling
19 and segregation rules in changing the description of REX-listed homes.

20 185. The new description of REX listings has the capacity to deceive the public to
21 believe that REX listings are not listed by licensed agents.

22 186. The new description of REX listings has the capacity to decrease the number of
23 views to REX listings put in the "Other Listings" tab.

24 187. The new description of REX listings has the capacity to decrease the number of
25 sellers willing to use REX's services and agents.

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1 188. The potential decrease will hurt consumers and the public as a whole by
2 decreasing competition and having more sellers use higher-commissioned NAR agents
3 increasing the transaction cost for all home sales subject to those higher commissions.

4 **COUNT VI – CONSPIRACY TO RESTRAIN TRADE VIOLATING RCW**
5 **19.86.030 OF THE WASHINGTON CONSUMER PROTECTION ACT**

6 189. Paragraphs 1-188 are fully incorporated herein.

7 190. The Washington Consumer Protection Act makes unlawful “[e]very contract,
8 combination, or conspiracy in restraint of trade or commerce.” RCW 19.86.030.

9 191. Zillow has agreed to restrain competition in the market for residential real estate
10 brokerage in the United States by abandoning its long-standing independence and openness and
11 adopting the anticompetitive rules and practices of residential real estate brokerage
12 organizations.

13 192. Until 2020, Zillow operated its business, including its residential real estate search
14 portal, by serving consumers, brokers, and other elements of the residential real estate market
15 without agreeing to rules imposed by real estate broker associations, including MLSs.

16 193. In 2020, Zillow renounced its independence from real estate broker associations
17 rules and announced that it would begin complying with model rules promulgated by NAR and
18 adopted by many MLSs.

19 194. MLSs pool residential real estate listings obtained by competing brokers and
20 make this information available to all brokers. The NAR has issued “model” rules for local
21 multiple listing services, including rules for “internet distribution” of the pooled listings, so-
22 called “IDX” rules.

23 195. Many, but not all multiple listing service organizations, have adopted NAR’s
24 “optional” IDX rule, which prohibits the co-mingling in residential real estate search results of
25 listings from MLS-affiliated agents and other listings.

1 196. According to Zillow's annual 2020 10-K report, some of its subsidiaries have
2 joined MLS organizations, and each MLS has "adopted its own rules" about "how listings data
3 must be displayed on our websites and mobile applications."

4 197. Zillow executives have said the company's decision to hide REX agent listings
5 on Zillow's search portal was a result of its agreement to comply with these multiple listing
6 service organization rules. REX has employee-agents in twenty states and jurisdictions, and
7 their listings in Washington and other states have been harmed by Zillow's decision to hide them
8 on a second page of search results.

9 198. Zillow's decision to agree to follow the anticompetitive clear-segregation rules
10 promoted by the NAR and adopted by some MLSs limits the exposure of listings by REX's
11 brokers, whose low commissions create competition on traditional brokers to in turn lower their
12 commissions.

13 199. Zillow's agreement to follow the anticompetitive MLS co-mingling rules harms
14 competition and consumers. It limits the ability of new entrants with lower commission business
15 models to attract and retain listings. Consumers are denied information about lower cost
16 alternatives to traditional listing brokers.

17 200. REX has been injured by Zillow's participation in the anticompetitive co-
18 mingling rules. After Zillow's agreement to follow the anticompetitive MLS co-mingling rules,
19 several REX clients pulled their listings from the company's agents, expressing a concern that
20 potential buyers could no longer find their homes on Zillow's search portal.

21 201. REX and members of the public are currently suffering and will continue to suffer
22 irreparable harm if Defendants are not enjoined from their continuing violations.

23 **COUNT VII – DEFAMATION**

24 202. Paragraphs 1-201 are fully incorporated herein.

25 203. Zillow's statement that REX homes are not listed by an agent is false.

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1 204. Zillow's statement that REX homes are "Other Listings" is false.

2 205. NAR, through its MLS members and agents, had knowledge of, and approved of,
3 Zillow's statement that REX homes are not listed by an agent.

4 206. NAR, through its MLS members and agents, had knowledge of, and approved of,
5 Zillow's statement that REX homes are "Other Listings."

6 207. Zillow acted as NAR's agent when it stated that REX homes are not listed by an
7 agent and that REX homes are "Other Listings."

8 208. REX-listed homes are listed by its licensed agent/employees.

9 209. Zillow knows that REX-listed homes are listed by licensed agents.

10 210. NAR knows that REX listed homes are listed by licensed agents.

11 211. REX agents are Premier Agents on Zillow's websites.

12 212. Zillow's statements are made in commerce.

13 213. Zillow's statements are not privileged

14 214. The description of REX-listed homes as "Other Listings" instead of "Agent
15 Listings" harms REX's reputation.

16 215. The description of REX-listed homes as "Other Listings" harms REX by lowering
17 the number of views of REX-listed homes and dissuades consumers from listing with REX.

18 216. The description of REX-listed homes as "Other Listings" harms REX by
19 decreasing its revenues.

20 **IX. PRAYER FOR RELIEF**

21 Accordingly, Plaintiff REX requests that the Court:

22 A. Adjudge and decree that Defendants have committed violations of Section 1 of the
23 Sherman Act, 15 U.S.C. § 1.

24 B. Adjudge and decree that Defendants have committed violations of Section 1125 of
25 the Lanham Act, 15 U.S.C. § 1125.

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1 C. Adjudge and decree that Defendants have committed violations of each of the state
2 laws enumerated in Counts IV, V, VI, and VII and entitled relief provided for
3 thereunder including damages, treble damages, preliminary and permanent injunctive
4 relief, attorneys' fees, and costs pursuant to RCW 19.86.090 and Washington law.

5 D. Award REX statutory damages pursuant to Section 4 of the Clayton Act, 15 U.S.C.
6 § 15.

7 E. Award REX statutory damages and costs of this action pursuant to 15 U.S.C. § 1117.

8 F. Award REX damages and statutory damages to be proven at trial.

9 G. Award REX treble damages.

10 H. Award REX attorneys' fees and costs.

11 I. Award REX prejudgment interest.

12 J. Issue a preliminary and permanent injunction, pursuant to federal and state law
13 including Section 16 of the Clayton Act, 15 U.S.C. § 26, and RCW 19.86.090, that
14 enjoins and restrains:

15 a. Zillow, NAR, and their officers, directors, partners, agents, affiliates,
16 members, and employees, and all persons acting or claiming to act on their
17 behalf or in concert with them, from continuing to engage in any
18 anticompetitive conduct and from adopting in the future any practice, plan,
19 program or device having a similar purpose or effect to the anticompetitive
20 actions set forth above.

21 b. Zillow, NAR, and their officers, directors, partners, agents, affiliates,
22 members, and employees, and all persons acting or claiming to act on their
23 behalf or in concert with them, from enforcing, implementing, or operating
24 under any agreement, conspiracy, combination, or membership rule requiring
25

1 segregation of REX's residential real estate listings from listings of NAR
2 members and/or MLS members on any website controlled by Zillow.

3 c. Zillow, NAR, and their officers, directors, partners, agents, affiliates,
4 members, and employees, and all persons acting or claiming to act on their
5 behalf or in concert with them, from enforcing, implementing, or operating
6 under any agreement, conspiracy, combination, or membership rule requiring
7 Zillow to in any way indicate that REX's residential real estate listings are not
8 represented by a licensed agent or broker on any website controlled by Zillow.

9 d. Zillow and its officers, directors, partners, agents, affiliates, members, and
10 employees, and all persons acting or claiming to act on their behalf or in
11 concert with them, from excluding REX's residential real estate listings from
12 the category of "Agent listings" on all websites controlled by Zillow.

13 e. Zillow and its officers, directors, partners, agents, affiliates, members, and
14 employees, and all persons acting or claiming to act on their behalf or in
15 concert with them, from categorizing REX's residential real estate listings as
16 "Other listings" on all websites controlled by Zillow.

17 f. Order and award all other relief to REX as the Court deems just and proper.

18 **X. DEMAND FOR JURY TRIAL**

19 Pursuant to Federal Rule of Civil Procedure 38(b), the Plaintiff demands a trial by jury
20 of all issues properly triable to a jury in this case.

21 *(Signatures on following page)*

22
23
24
25
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RESPECTFULLY SUBMITTED this 30th day of September, 2021.

/s/ Michael Vaska

Michael Vaska, WSBA #15438

/s/ Rylan Weythman

Rylan Weythman, WSBA #45352

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CERTIFICATE OF SERVICE

I certify that on September 30, 2021, I electronically filed the foregoing document with the Clerk of the Court via CM/ECF which will notify all parties in this matter who are registered with the Court's CM/ECF filing system of such filing. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 30th day of September, 2021.

s/ *Matteus Vaga*
Matteus Vaga, Legal Practice Assistant

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