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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REX – REAL ESTATE EXCHANGE, INC.,

Plaintiff,

v.

ZILLOW, INC., et al.

Defendants.

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

**DECLARATION OF URSULA UNGARO  
IN SUPPORT OF REX’S MOTION TO  
COMPEL COMPLIANCE WITH THE  
COURT’S ESI ORDER**

**DECLARATION OF URSULA UNGARO**

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I, Ursula Ungaro, declare as follows:

1. I am a partner with the law firm Boies Schiller Flexner LLP, counsel for Plaintiff in this matter. I am an attorney at law duly licensed to practice before all courts of the State of Florida, and admitted *pro hac vice* in this case. Dkt No. 130. I have personal knowledge of the matters set forth herein and am competent to testify.

2. Attached hereto as **Exhibit A** is a true and correct copy of REX’s August 8, 2022 Letter to NAR regarding NAR’s custodian designations.

3. Attached hereto as **Exhibit B** is a true and correct copy of NAR’s ESI Disclosures, which were served on all parties on February 18, 2022.

4. Attached hereto as **Exhibit C** is a true and correct copy of REX’s ESI Disclosures, which were served on all parties on February 22, 2022.

5. Attached hereto as **Exhibit D** is a true and correct copy of NAR’s August 19, 2022 Letter to REX regarding REX’s August 8, 2022 Letter.

6. Attached hereto as **Exhibit E** is a true and correct copy of NAR’s August 24, 2022 Email to REX regarding REX’s August 23, 2022 Letter.

7. Attached hereto as **Exhibit F** is a true and correct copy of an email thread between NAR’s counsel and plaintiffs’ counsel in *Moehrl* regarding NAR’s custodian designations.

8. Attached hereto as **Exhibit G** is a true and correct copy of NAR’s Organizational Chart as made publicly available on NAR’s website at:  
[https://www.nar.realtor/sites/default/files/documents/NAR\\_Organization\\_Chart.pdf](https://www.nar.realtor/sites/default/files/documents/NAR_Organization_Chart.pdf).

9. Attached hereto as **Exhibit H** is a true and correct copy of NAR’s May 5, 2022 Letter to REX.

10. Attached hereto as **Exhibit I** is a true and correct copy of REX’s First Set of Requests for Production to NAR.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 25, 2022 at Miami, Florida.

/s/ Ursula Ungaro  
Ursula Ungaro (admitted *pro hac vice*)

# **Exhibit A**



Carl E. Goldfarb  
Tel.: (954) 356-0011  
Email: cgoldfarb@bsfllp.com

August 8, 2022

**Via Email**

Mike Bonanno  
Quinn Emanuel  
1300 I Street NW, Suite 900  
Washington, D.C. 20005-3314  
mbonanno@quinnemanuel.com

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

Mike,

We write to request that you designate additional ESI custodians for NAR. NAR's ESI custodian designations are wholly inadequate. We seek these additional designations to ensure that REX obtains relevant ESI from individuals most likely to have it in their custody or control, as required by Fed. R. Civ. P. 34, and the Court's ESI Order.

You have made clear that NAR views this case as mainly concerning Model Rule 18.3.11.<sup>1</sup> But this case is *not* just about a single rule adopted by NAR. This case is about a conspiracy to exclude NAR's competition from the real estate services market. More specifically it is a challenge to the collective efforts by NAR, NAR-member MLSs, and Zillow, to prevent REX and other competing non-NAR-member internet-based companies from offering consumers the opportunity to buy and sell homes without paying artificially inflated real estate commissions. As is clear from the amended complaint in this action, REX alleges that the Mandatory Buyer Broker Commission

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<sup>1</sup> NAR's exceptionally narrow reading of the issues involved has already been rejected by the court. See Order on Motion to Dismiss, ECF No. 98.



Mike Bonanno, Esq.  
August 8, 2022  
Page 2

Rule, as well as the Segregation Rule, are anti-competitive. Similarly, REX's requests for production seek documents far beyond the Segregation Rule.

In your ESI disclosures, you described *both* Mr. Gansho and Mr. Galicia as likely to have documents regarding NAR's Handbook on Multiple Listing Policy, Section 18.3.11 of NAR's IDX Policy, NAR's interactions with MLSs "or" NAR's relationship with the Zillow Defendants. Therefore, by your own descriptions, they duplicate each other -- both individuals are designated as having the same "type of information under [their] control." Also, your use of the disjunctive "or" suggests that they might not possess ESI relevant even to the topics specified in NAR's disclosure. We further note that Mr. Galicia was only with NAR for 3 years, from October 2018 to June 2021. However, the rules at issue in this case were adopted in 2001 and relevant amendments to those rules occurred in 2014. Further, neither of the two are identified by NAR in its publicly available organizational chart of department leaders.<sup>2</sup>

Your designation of Mr. Galicia and Mr. Gansho also stands in stark contrast to NAR's designation of ESI custodians in parallel antitrust proceedings. In those cases, which challenge some of the same rules and conduct relevant here, NAR designated 19 custodians (for both cases), including the two already designated in this case. Among the 19, NAR designated 9 as having relevant ESI "regarding NAR rules, practices and/or policies."<sup>3</sup> Therefore, by NAR's own theory of custodian discovery, it has already conceded there are at least half a dozen individuals, in addition to Mr. Galicia and Mr. Gansho, who have relevant ESI regarding the conduct and rules implicated in this case.

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<sup>2</sup>See [https://www.nar.realtor/sites/default/files/documents/NAR\\_Organization\\_Chart.pdf](https://www.nar.realtor/sites/default/files/documents/NAR_Organization_Chart.pdf)

<sup>3</sup> See NAR's Rule 26 Disclosures in *Sitzer* (4:19-cv-00332-SRB) and Dkt No. 276-7



Mike Bonanno, Esq.  
August 8, 2022  
Page 3

We, therefore, request that NAR designate the following individuals as ESI custodians:

- Bob Goldberg (CEO),
- Katherine “Katie” Johnson (General Counsel & Chief Member Experience Officer),
- Kate Lawton (VP, Membership Experience),
- Kevin Milligan (former VP of Board Policy and Programs),
- Diane Mosley (Director, Training and Policy Resources),
- Lesley Muchow (Deputy General Counsel & Vice President of Legal Affairs and Antitrust Compliance),
- Cliff Niersbach (former Associate General Counsel, Board Policy and Programs),
- Lawrence Yun (Chief Economist),
- Karen Bebart (Director of Consumer Strategy and Brand Advertising), and
- Lisa Herceg (Director of Business Insights).

NAR has already conceded that Ms. Lawton, Mr. Milligan, and Ms. Mosley are “likely to have discoverable information” on the issues involved in this case because they were designated in the *Sitzer* and *Moehrl* cases as having knowledge of NAR rules, practices, and policies. That basis alone is sufficient to warrant their designation. Additionally, Mr. Goldberg, Ms. Johnson, Ms. Lawton, Mr. Milligan, Ms. Mosley, Mr. Niersbach, and Mr. Yun are already ESI custodians in other antitrust cases involving the same or similar issues involved in this case. Unlike Messrs. Galicia and Gansho, these seven individuals are or were high-level executives at NAR. Moreover, because their ESI was previously collected for at least the *Sitzer* and *Moehrl* cases, collecting their data for this case will impose a minimal burden on NAR.

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Mike Bonanno, Esq.  
August 8, 2022  
Page 4

**Bob Goldberg.** Mr. Goldberg has been NAR’s CEO since 2017. During his tenure, he has strongly emphasized NAR’s efforts to maintain its technological competitive advantage in the real estate industry, especially in response to the emergence and increasing popularity of technology companies like Zillow.<sup>4</sup> Soon after becoming CEO, Mr. Goldberg helped found NAR’s Strategic Business Innovation and Technology (“SBIT”) group which was tasked with “identify[ing] and evaluat[ing] emerging technologies and their potential impact on real estate” as well as “work on strategic projects involving NAR’s investment companies and large technology players.”<sup>5</sup> Additionally, Zillow in its most recent interrogatory responses admitted that Mr. Goldberg was involved with Zillow’s decision to join NAR. Therefore, Mr. Goldberg likely has ESI in his possession, custody or control relating to Zillow’s decision to join NAR and NAR’s assessments, strategies and activities directed at protecting its membership from competing technology-based platforms trying to offer discounted, direct, or more transparent real estate brokerage services. These are all matters relevant to this case.

**Katherine “Katie” Johnson.** Ms. Johnson is the General Counsel & Chief Member Experience Officer at NAR.<sup>6</sup> She has held those roles since July 2018 and has been with NAR since 2007.<sup>7</sup> During her time at NAR, Johnson has been deeply involved with NAR’s efforts to ensure compliance with its rules and policies (including the rules and policies at issue in this case). She also has been involved with government investigations into the potential anticompetitive effects of NAR’s rules and policies. She made multiple public statements and submitted formal

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<sup>4</sup> <https://www.rismedia.com/2021/02/23/industry-responds-zillow-acquisition-showingtime/>.

<sup>5</sup> <https://www.nar.realtor/newsroom/national-association-of-realtors-announces-new-technology-team-leader>.

<sup>6</sup> <https://www.linkedin.com/in/katie-johnson-7986a71b>.

<sup>7</sup> *Id.*





Mike Bonanno, Esq.  
August 8, 2022  
Page 5

comments to the FTC as a representative of NAR on the anticompetitive and anti-consumer effect of Zillow's market power as an aggregator and the increasing reliance by the industry on its products. In those public statements, Johnson directly raised concerns about Zillow's "market power" and its potential to increase transaction costs for realtors.<sup>8</sup> Johnson was also involved with the Multiple Listing Issues and Policy Committee meeting where modifications to NAR IDX Display Rules relating to the comingling of listings were discussed and evaluated by NAR leadership.<sup>9</sup>

Because Ms. Johnson has had an important role in responding to antitrust concerns raised by regulators, in the development and enforcement of NAR rules, and in voicing opinions regarding Zillow's influence over the market, Ms. Johnson likely has ESI relevant to the issues in this case.

**Kate Lawton.** Ms. Lawton has been working with NAR since 2008 and is currently the Vice President of Member Experience. From 2009 to 2018 she was the Director of Professional Standards and Financial Administration. In that role Lawton "[s]erve[d] as staff executive to NAR's Professional Standards Committee, Interpretations and Procedures Advisory Board, and numerous other governance groups."<sup>10</sup> She also "[i]dentified key emerging issues in real estate in order to propose policy or education-based solutions" as well as "[p]rovide[d] direction and procedural guidance on NAR policies related to Professional Standards, Multiple Listing Services,

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<sup>8</sup> <https://www.inman.com/2018/08/02/nar-blasts-zillow-tells-government-it-causes-consumer-confusion/>;  
<https://www.inman.com/2018/06/04/why-a-workshop-in-dc-is-so-important-to-americas-real-estate-industry/>.

<sup>9</sup> NAR0001033.

<sup>10</sup> <https://www.linkedin.com/in/kate-lawton-0306b510>.

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Mike Bonanno, Esq.  
August 8, 2022  
Page 6

and Membership Policy.”<sup>11</sup> Given NAR’s attention to technology-based competition, she would likely have been directly involved in formulating strategies to maintain NAR’s market dominance.

Additionally, according to NAR’s “Policy Violation Resolution Procedure,” Ms. Lawton (along with Ms. Johnson and Mr. Goldberg) would have been the person at NAR to address violations of NAR-mandated policies: “[C]omplaints or allegations that a state or local association has failed or refused to comply with or has otherwise violated any NAR-mandated policy [] shall be directed, in the first instance, to the NAR Vice President of Member Experience.”<sup>12</sup> The Procedure also requires that Ms. Lawton, as the “Vice President of Member Experience, review the complaint and consult with the NAR General Counsel and NAR Chief Executive Officer.” and “[i]f in the[ir] opinion . . . there appears reason to believe that a violation has occurred or is occurring” they “will exercise reasonable efforts to cause the association to stop or correct the violation.”<sup>13</sup> Because of Ms. Lawton’s important role in developing and enforcing NAR’s rules and policies, including those concerning technological innovation, she should have been designated as a NAR custodian.

**Kevin Milligan.** Mr. Milligan has been with NAR for over 40 years and is the Vice President of Board Policy & Programs. At NAR, Mr. Milligan has been “actively involved” with ensuring compliance with NAR’s “MLS and Professional Standards.”<sup>14</sup> Mr. Milligan has presented at NAR’s “Annual Attorney Seminar” as mandated by the 2008 Final Judgment in the DOJ case.

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<sup>11</sup> *Id.*

<sup>12</sup> <https://www.nar.realtor/about-nar/policies/association-policy-violation-resolution-procedure>.

<sup>13</sup> *Id.*

<sup>14</sup><https://www.nar.realtor/sites/default/files/documents/Legal-Seminar-Notebook-2017-11-02.pdf>;  
<https://www.nar.realtor/programs/legal-seminar-program/legal-seminar-presentations-and-the-notebook-2014>;  
<https://www.nar.realtor/sites/default/files/handouts-and-brochures/2014/legal-seminar-program/Legal-Seminar-2014-Notebook-v2.pdf>.



Mike Bonanno, Esq.  
August 8, 2022  
Page 7

Those presentations included topics such as “Amendments to NAR’s IDX Policy and IDX Rules allowing MLS Participants (and where permitted locally, MLS Subscribers) to comingle IDX data feeds from REALTOR® Association MLSs where the MLS Participants and MLS Subscribers hold participatory rights.”<sup>15</sup> Public documents published by real estate organizations have identified Milligan as the individual at NAR to reach out to if a member “ha[d] questions regarding the compliance status of [their] association.”<sup>16</sup> Milligan was also involved with the Multiple Listing Issues and Policy Committee meeting where modifications to NAR IDX Display Rules relating to the comingling of listings were discussed and evaluated by NAR leadership.<sup>17</sup>

This case alleges that NAR enforced its rules against its affiliates and Zillow to exclude technology-based brokerages from accessing vital IDX data. Milligan should have been designated as an ESI custodian because he was involved with advising NAR membership on the antitrust implications of NAR rules and was a primary point of contact regarding the development and promulgation of the rules being challenged in this case.

**Diane Mosley.** Ms. Mosley is NAR’s Director of Training and Policy Resources and has been with NAR since 1990.<sup>18</sup> At NAR, Ms. Mosley “is [] responsible for updating all professional standards and multiple listing policy manuals and materials on an annual basis to reflect current National policies and procedures.”<sup>19</sup> She is also involved in providing training to NAR membership on professional standards as well as giving “updates on pressing issues” and “what is

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<sup>15</sup> <https://www.nar.realtor/sites/default/files/documents/Legal-Seminar-Notebook-2017-11-02.pdf>.

<sup>16</sup> <http://www.sior.com/docs/default-source/Chapter-Resources/help-sued-2018.pdf?sfvrsn=0>.

<sup>17</sup> NAR0001033.

<sup>18</sup> [https://oregonrealtors.org/sites/default/files/Certified%20Professional%20Standards%20Administration%20Program%20Flyer\\_Small.pdf](https://oregonrealtors.org/sites/default/files/Certified%20Professional%20Standards%20Administration%20Program%20Flyer_Small.pdf).

<sup>19</sup> *Id.*



Mike Bonanno, Esq.  
August 8, 2022  
Page 8

percolating at NAR.”<sup>20</sup> Additionally, Ms. Mosley was a NAR representative involved with Multiple Listing Issues and Policy Committee meetings where modifications to NAR IDX Display Rules relating to the comingling of listings (which were ultimately adopted) were discussed by NAR leadership.<sup>21</sup> Mosley should be added as a custodian because she likely has documents relating to NAR’s efforts to implement its “National policies and procedures” including the changes to the IDX policy and the comingling rule.

**Lesley Muchow.** Ms. Muchow is Deputy General Counsel & Vice President of Legal Affairs and Antitrust Compliance at NAR. She is the designated Antitrust Compliance Officer pursuant to NAR’s 2008 settlement with DOJ. The DOJ action against NAR “challeng[ed] policies and related rules that obstructed real estate brokers who use innovative Internet-based tools to offer better services and lower costs to consumers.”<sup>22</sup> The settlement required that NAR track and report antitrust issues regarding its rules, policies, and conduct. Two years after that settlement expired, DOJ once again sued NAR challenging other anticompetitive rules and concurrently entered into a settlement on the condition that NAR agreed to revise its rules. DOJ subsequently withdrew from that settlement because it believed that NAR had additional anticompetitive policies and the settlement was impeding their ability to pursue those policies.<sup>23</sup> Accordingly, all communications, documents, and reports regarding potential antitrust concerns over NAR’s rules and conduct that Ms. Muchow may have received or was required to provide to DOJ and other regulatory bodies are relevant to the issues raised in this case.

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<sup>20</sup> <https://www.nar.realtor/about-nar/policies/professional-standards-monthly-sessions>.

<sup>21</sup> NAR0001033-0337.

<sup>22</sup> <https://www.justice.gov/archive/opa/pr/2008/May/08-at-467.html>.

<sup>23</sup> <https://www.justice.gov/opa/pr/justice-department-withdraws-settlement-national-association-realtors>.

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Mike Bonanno, Esq.  
August 8, 2022  
Page 9

**Cliff Niersbach.** Mr. Niersbach held the position of Associate General Counsel for Board Policy and Programs at NAR from 1975 to 2016. He was involved with the initial efforts by NAR’s Multiple Listing Issues and Policies Committee to make changes to NAR’s IDX policy including regarding the “co-mingling of MLS Data.”<sup>24</sup> Real estate groups reached out to him regarding their desire for NAR to implement changes to IDX rules, including the adoption of a comingling rule. He also noted that “[t]o ensure reasonableness and defensibility, proposed changes in MLS policy are almost always presented to the Committee accompanied by staff and legal counsel analysis and, where appropriate, implementing recommendations.”<sup>25</sup> Therefore, as the NAR representative assigned to the meetings involving the adoption of the comingling rule, Niersbach would have provided “analysis” and “implementing recommendations” to the Committee when considering to adopt it. Niersbach’s involvement with amendments to NAR’s IDX rules and policy goes back to 2001 when the comingling and segregations rules were first proposed.<sup>26</sup> From then on, Mr. Niersbach was involved in work groups and meetings where discussions regarding the amendment of IDX display rules based on participatory rights as well as “consequences of non-compliance with MLS policies” were discussed.<sup>27</sup> Consequently, Mr. Niersbach likely has documents relating to why and how NAR chose to institute and enforce its IDX policy and how those rules were changed to respond to the competitive threat to NAR membership posed by technology-based competitors entering the market.

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<sup>24</sup> NAR0001054-059, NAR0000956, NAR0000964, NAR0000966, NAR0000980-81, NAR0000983-90, NAR0000997-1015, NAR0001107-13.

<sup>25</sup> NAR0001060.

<sup>26</sup> NAR0000937-942; <https://www.nar.realtor/about-nar/policies/internet-data-exchange-idx/internet-data-exchange-idx-background-and-faq>.

<sup>27</sup> NAR0000980-982.



Mike Bonanno, Esq.  
August 8, 2022  
Page 10

**Lawrence Yun.** Mr. Yun is the Chief Economist at NAR and has been with the association since 2000.<sup>28</sup> In his role, Mr. Yun “oversees the Research group” at NAR and “supervises and is responsible for a wide range of research activity for the association including NAR’s Existing Home Sales statistics, Affordability Index, and Home Buyers and Sellers Profile Report.”<sup>29</sup> Mr. Yun, when commenting on the increasing reliance on real estate agents (as opposed to FSBO) noted that “[t]here are many business models . . . However, consumers have increasingly valued and sought out the high-quality service, trusted expertise and ultimately the financial reward they’ve received when working with a Realtor.”<sup>30</sup> He also made a presentation for the “Federal Trade Commission & Department of Justice Public Workshop: Competition Policy and the Real Estate Industry” titled “Real Estate Brokerage Industry: Structure-Conduct-Performance.”<sup>31</sup> In that presentation Yun covered “discount brokerage[s]” and “traditional brokerage[s]” in regard to a “perfectly competitive industry.”<sup>32</sup>

Mr. Yun has made public statements via national news outlets regarding the level of exposure a listing can achieve when published on an MLS and consumer choice with regard to real estate commissions.<sup>33</sup> He has also talked about how certain products offered by technology companies can become increasingly attractive to sellers in competitive real estate markets.<sup>34</sup> Mr.

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<sup>28</sup> [https://www.linkedin.com/in/lawrence-yun-592a76146\\_](https://www.linkedin.com/in/lawrence-yun-592a76146_)

<sup>29</sup> <https://www.nar.realtor/lawrence-yun>.

<sup>30</sup> <https://www.inman.com/2021/12/28/for-sale-by-owner-homes-hit-40-year-low-is-it-even-worth-the-effort/>.

<sup>31</sup> <https://www.justice.gov/sites/default/files/atr/legacy/2005/12/05/213238.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> CNBC, July 22, 2014 (video clip of interview with Lawrence Yun, observing that “putting [a home] on the [MLS] will get the widest exposure, most potential buyers.”);

<https://www.npr.org/templates/story/story.php?storyId=4993232> ;

[https://money.cnn.com/2005/10/26/real\\_estate/buying\\_selling/real\\_estate\\_waste/index.html](https://money.cnn.com/2005/10/26/real_estate/buying_selling/real_estate_waste/index.html).

<sup>34</sup> <https://www.rismedia.com/2021/08/04/market-competition-drives-sellers-alternate-tech-options/>.



Mike Bonanno, Esq.  
August 8, 2022  
Page 11

Yun even stated on behalf of NAR in regard to flat fee brokerages, “[w]e encourage all business models to come in” and that “[NAR] do[es]n’t favor one business over the other, and [NAR] let[s] the Realtors in a very competitive market do their best to get the consumers.”<sup>35</sup>

As NAR’s chief economist, Mr. Yun will have relevant documents regarding competition in the real estate market from technology-based companies like REX and Zillow. Based on his public statements, Mr. Yun also will have relevant documents relating to alternative commission models, Zillow’s business, and their impact on NAR.

**Karen Bebart.** Ms. Bebart is the Director of Consumer Strategy and Brand Advertising at NAR. She has worked in NAR’s marketing department since 1999.<sup>36</sup> In 2014, the same year the Multiple Listing Issues and Policy Committee made its recommendation to NAR to amend the comingling rule to incorporate the segregation rule, Ms. Bebart helped publish the Realtor Technology Survey Report, which discussed “Lead Generation” via the internet and showed that Zillow and Trulia were the two top listing websites used after Realtor.com.<sup>37</sup> The report also discussed the costs incurred by realtors in using “real estate websites.” For the last two decades NAR has viewed technology-based real estate brokerage services as threats to its members’ ability to control access to real estate listings and to charge artificially inflated commissions. Ms. Bebart has possession, custody and control of documents directly relevant to NAR’s efforts to track and assess the effect of such services on NAR’s membership.

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<sup>35</sup> <https://www.cnbc.com/2017/09/15/no-more-6-percent-commission--these-brokers-will-sell-your-house-for-a-flat-fee.html>.

<sup>36</sup> <https://www.linkedin.com/in/karen-bebart-b229155>.

<sup>37</sup> [https://www.nar.realtor/sites/default/files/migration\\_files/publications/2014/crt-technology-survey-2014-06-25.pdf](https://www.nar.realtor/sites/default/files/migration_files/publications/2014/crt-technology-survey-2014-06-25.pdf).



Mike Bonanno, Esq.  
August 8, 2022  
Page 12

**Lisa Herceg.** Ms. Herceg is the Director of Business Insights at NAR. She has worked in NAR’s marketing department since 2005.<sup>38</sup> From 2008 to the present, Ms. Herceg has been “responsible for all marketing” and “business insights research (corporate and marketing) for both internal and external clients, as well as general industry research as needed.”<sup>39</sup> In 2014, the same year the Multiple Listing Issues and Policy Committee made its recommendation to NAR to amend the comingling rule to incorporate the segregation rule, Ms. Herceg helped publish the Realtor Technology Survey Report which discussed Lead Generation via the internet and showed that Zillow and Trulia were the two top listing websites used after Realtor.com.<sup>40</sup> Her report from 2012 had similar findings.<sup>41</sup> The report also discusses the costs incurred by realtors in using “real estate websites” -- the same costs Ms. Johnson complained Zillow was imposing on realtors several years later.<sup>42</sup> Ms. Herceg’s documents will likely address how and why NAR repeatedly chose to study Zillow’s impact on the real estate business and why NAR was concerned with the increased costs that it perceived Zillow was imposing on realtors.

We request that you advise us by close of business on Friday August 12, whether you will amend your ESI disclosures to include the above individuals as ESI custodians. In the event you decline or we do not receive a response from you, we will assume we are at an impasse and proceed accordingly.

Sincerely,

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<sup>38</sup> <https://www.linkedin.com/in/lisaherceg>.

<sup>39</sup> *Id.*

<sup>40</sup> [https://www.nar.realtor/sites/default/files/migration\\_files/publications/2014/crt-technology-survey-2014-06-25.pdf](https://www.nar.realtor/sites/default/files/migration_files/publications/2014/crt-technology-survey-2014-06-25.pdf).

<sup>41</sup> <https://studylib.net/doc/9519545/rfcu-survey---national-association-of-realtors>.

<sup>42</sup> [https://www.nar.realtor/sites/default/files/migration\\_files/publications/2014/crt-technology-survey-2014-06-25.pdf](https://www.nar.realtor/sites/default/files/migration_files/publications/2014/crt-technology-survey-2014-06-25.pdf).

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**BSF**

Mike Bonanno, Esq.  
August 8, 2022  
Page 13

/s/ Carl E. Goldfarb

Carl E. Goldfarb

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# **Exhibit B**

THE HONORABLE THOMAS S. ZILLY

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

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

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

**THE NATIONAL ASSOCIATION OF  
REALTORS’® DISCLOSURES PURSUANT  
TO THE ORDER REGARDING DISCOVERY  
OF ELECTRONICALLY STORED  
INFORMATION (ECF 113)**

1 Pursuant to the Order Regarding Discovery of Electronically Stored Information (ECF 113),  
2 Defendant National Association of REALTORS® provides the following disclosures required by  
3 Section B of the Order. These disclosures are based on NAR's reasonable and good faith  
4 investigation to date. NAR's investigation is ongoing. Other potential data and document sources  
5 may be identified and become significant as discovery proceeds and as the case develops, and NAR  
6 reserves the right to supplement these disclosures.

7 By making these disclosures, NAR does not waive attorney-client privilege, the work  
8 product doctrine, the common interest doctrine, or any other applicable privilege, doctrine, or  
9 immunity. NAR expressly reserves all rights to object to the production and/or admissibility of any  
10 information from the sources identified below on any grounds.

11 **I. Individual Custodians**

- 12 • Rene Galicia, former Director of Multiple Listing Services Engagement for NAR.  
13 Mr. Galicia is likely to have documents concerning NAR's Handbook on Multiple  
14 Listing Policy; Section 18.3.11 of NAR's IDX Policy; NAR's interactions with  
15 multiple listing services; or NAR's relationship with the Zillow defendants.
- 16 • Rodney Gansho, Director of Engagement for NAR. Mr. Gansho is likely to have  
17 documents concerning NAR's Handbook on Multiple Listing Policy; Section 18.3.11  
18 of NAR's IDX Policy; NAR's interactions with multiple listing services; or NAR's  
19 relationship with the Zillow defendants.

20 **II. Non-Custodial Data Sources**

- 21 • Emails to and from NARPolicyQuestions@realtors.org.
- 22 • H Drive – legacy shared network drive used by each NAR group to save and share  
23 files.
- 24 • Microsoft Teams – current database used by each NAR group to save and share files.
- 25 • Lotus Notes Database – database in which any local MLS rules received by NAR  
26 would be stored.
- 27 • The Hub (<https://thehub.realtor/home>) – community platform that NAR committees,  
28 work groups, advisory boards, and advisory groups can use to share documents.

- Microsoft One Drive – additional data storage.
- Slack – communication platform.

III. Third Party Data Sources

- None.

IV. Inaccessible Data

- NAR is not currently aware of any repository subject to discovery under the ESI Order that is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B) and not identified in Paragraph D.3 of the Order.

DATED February 18, 2022

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Thomas C. Rubin

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1109 First Avenue, Suite 210  
Seattle, WA 98101  
Phone (206) 905-7000  
Fax (206) 905-7100  
tomrubin@quinnemanuel.com

Ethan Glass (*pro hac vice*)  
Michael D. Bonanno (*pro hac vice*)  
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Washington, D.C. 20005  
Tel: 202.538.8000  
Fax: 202.538.8100  
ethanglass@quinnemanuel.com  
mikebonanno@quinnemanuel.com

*Attorneys for Defendant National Association of REALTORS®*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, I caused a true and correct copy of the foregoing to be emailed to counsel of record at the following email addresses:

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AUSTIN, TX 78756  
Telephone: (512) 827-2902  
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[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)

FOSTER GARVEY PC

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

DATED: February 18, 2022.

/s/ Peter Benson

Peter Benson

# **Exhibit C**

THE HONORABLE THOMAS S. ZILLY

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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

PLAINTIFF’S  
ESI DISCLOSURES



1 Plaintiff REX – Real Estate Exchange, Inc. (“REX”) submits the following ESI  
2 disclosures pursuant to the Order Regarding Discovery of Electronically Stored Information  
3 (Dkt. 113). REX reserves the right to supplement these disclosures based upon information  
4 developed through further investigation and discovery and as a result of subsequent  
5 developments in the case or rulings by the Court.  
6

7 **A. Custodians:**

8 Documents and data for the custodians identified below are expected to come from email  
9 and other electronic data sources:

10 1. **Jack Ryan:** Mr. Ryan is the Chief Executive Officer and co-founder of REX. Mr.  
11 Ryan has personal knowledge of facts alleged in the Complaint and in his declaration, in support  
12 of Plaintiff’s Motion for Preliminary Injunction. He has knowledge regarding REX’s model for  
13 selling real estate, its business operations and revenue, and the damage to REX’s business from  
14 Defendants’ conduct.

15 2. **Lynley Sides:** Ms. Sides is the President, Chief Operating Officer and co-founder  
16 of REX. Ms. Sides has personal knowledge of REX’s business model and national operations.

17 3. **Craig Barrett:** Mr. Barrett is the former Vice President of Marketing at REX. Mr.  
18 Barrett has knowledge regarding REX’s marketing efforts, its relationships with internet channels  
19 where REX markets its properties, REX’s participation in Zillow’s Premier Agent Program, his  
20 communications with employees at Zillow regarding the change to its website display, and the  
21 impact of the website display on REX’s business.

22 4. **Steve Dawson:** Mr. Dawson is the Chief Compliance Officer at REX. He has  
23 knowledge of facts pertaining to REX’s business operations in different geographic areas, REX’s  
24 business model, REX’s procedures to comply with various national and local regulations  
25  
26

1 pertaining to REX's real estate brokerage services, and REX's relationships with other companies  
2 in the real estate industry.

3           5. **Panee Segal:** Ms. Segal is a Senior Vice President of Sales and Business Operations  
4 at REX. She has personal knowledge of REX's sales and business operations efforts. She may also  
5 testify regarding her experience working in operations for technology companies.

6 **B. Non-Custodial Data sources:**

- 7           1. Google
- 8           2. Salesforce
- 9           3. Slack
- 10          4. Amazon Web Services
- 11          5. Dotloop

12 **C. Third Party Data Sources:**

13           None.

14 **D. Inaccessible Data**

15           None.

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RESPECTFULLY SUBMITTED this 22nd day of February 2022.

FOSTER GARVEY PC

/s/ Michael Vaska

Michael Vaska, WSBA #15438

/s/ Ben Hodges

1111 Third Avenue, Suite 3000

Seattle, Washington 98101

Telephone: (206) 447-4400

Facsimile: (206) 447-9700

Email: [michael.vaska@foster.com](mailto:michael.vaska@foster.com)

[Ben.hodges@foster.com](mailto:Ben.hodges@foster.com)

McCARTY LAW PLLC

/s/ Darren L. McCarty

Darren L. McCarty, *Admitted Pro Hac Vice*

/s/ Cristina M. Moreno

Cristina M. Moreno, *Admitted Pro Hac Vice*

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[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)

*Attorneys for Plaintiff REX – Real Estate  
Exchange, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on February 22, 2022, I served foregoing document upon counsel of record listed below via e-mail:

**Counsel for Defendant Zillow:**

ORRICK HERRINGTON & SUTCLIFFE LLP  
John “Jay” Jurata, Jr.: jjurata@orrick.com  
Russel P. Cohen: rcohen@orrick.com  
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Nicole Tadano: ntadano@orrick.com  
Naomi J Scotten: nscotten@orrick.com

**Counsel for Defendant NAR:**

QUINN EMANUELL URQUHART & SULLIVAN LLP  
Ethan Glass: ethanglass@quinnemanuel.com  
Mike Bonanno: mikebonanno@quinnemanuel.com  
Tom Rubin: tomrubin@quinnemanuel.com  
Peter Benson: peterbenenson@quinnemanuel.com

DATED this 22nd day of February, 2022.

s/ Todd Ziegenbein

# **Exhibit D**

## Augusto Cividini

---

**From:** Michael Sebring <michaelsebring@quinnemanuel.com>  
**Sent:** Friday, August 19, 2022 11:48 AM  
**To:** Carl Goldfarb; Ursula Ungaro; Augusto Cividini; Stephen N. Zack; Simon Leen; James P. Denvir; Gabriela A. Romero; Mark Rosencrantz; Meredith Schultz  
**Cc:** Mike Bonanno; Ethan Glass; Kat Lanigan; Peter Benson; Samantha Strauss; Hanna, Gabrielle  
**Subject:** RE: REX v. Zillow 2:21-cv-00312-TSZ | Search Term Hits  
**Attachments:** NAR Compromise Proposal Search Terms.pdf

Carl,

This email addresses REX's outstanding requests for NAR to add additional custodians and run additional search terms.

**Additional Search Terms.** As you have seen by the hit reports we provided, REX's proposed expansion of the search terms proposed by NAR are far overbroad. Applied to only the files of NAR's two proposed custodians, those terms add **72,751 unique documents** to NAR's review set, yielding a total review set of **169,678 documents**. Moreover, we note that three of REX's proposed terms are presumptively overbroad under the ESI protocol because they each add more than 5,000 documents to NAR's review set.

**Additional Custodians.** The additional custodians REX has proposed are not linked to the allegations in REX's complaint or responsibilities held by the NAR employees that are most pertinent to REX's allegations.

First, under no circumstances will NAR agree to add any lawyer from NAR's legal department (including Katie Johnson, Lesley Muchow, and Cliff Niersbach) as a custodian. For obvious reasons, the privilege considerations attached to collecting and reviewing a lawyer's documents make such discovery inappropriate. See *Sprint Commc'ns Co. L.P. v. Charter Commc'ns, Inc.*, 2019 WL 3369659, at \*1 (D. Del. July 15, 2019) (denying motion to compel designation of in-house counsel as an ESI custodian based on privilege and disproportionate burden).

Second, contrary to what you suggest, REX is not entitled to discovery from the files of every custodian who has been designated by NAR as a custodian in other antitrust cases. For a NAR employee to be a proper custodian, he or she must have direct responsibilities relating to (1) what REX calls the segregation rule and/or commingling rule; or (2) NAR's relationship with Zillow. As REX has conceded in prior calls, REX has no independent claim relating to any NAR rules that are unrelated to the commingling or segregation rule. NAR's other rules and policies writ large are not relevant to the claims or defenses in this case.

Third, NAR's proposed custodians are more than sufficient. As we have previously explained, Mr. Gansho and Mr. Galicia are (or were) the pinch point for all communications involving NAR's interpretation of the so-called commingling and segregation rules, including communications with Zillow and multiple listing services.

That representation has been borne out by the high number of hits from their files when case-specific search terms are applied to their files. For purposes of comparison, REX's proposed search terms for NAR's RFPs yielded 74,361 hits (including families) when applied to the files of all **ten** REX custodians. NAR's proposed search terms, when applied to the files of just **two** custodians (Messrs. Gansho and Galicia), yielded a similar number of documents (64,769 documents including family members). And when the terms REX proposed for NAR's files were applied to the files of Messrs. Gansho and Galicia, they returned a review set that was twice as large as REX's proposed review set (169,678 documents including family members). In light of that responsiveness rate, the burdens of requiring NAR to review (not just collect) documents from a much larger set of custodians are not proportional to the needs of the case.

Moreover, as we have previously explained, NAR does not intend to call any current or former NAR employees other than Mr. Gansho and Mr. Galicia at trial. NAR served its ESI disclosures, which identified Messrs. Gansho and Galicia as its custodians, on February 18, 2022—six months ago. REX asked for additional custodians in April and NAR refused to expand its list then. This latest, renewed request comes far too late in discovery, with the deadline for the completion of fact discovery is just four months away. The fact that REX retained your firm to replace its prior counsel does not give REX a license to revisit discovery disputes that were ripe at the outset of discovery and REX declined to pursue.

**Proposed Compromise.** Notwithstanding the overbreadth of REX's requests, we are willing to agree to the following compromise, if it is accepted by REX:

- NAR will expand its custodian list to include Bob Goldberg.
- NAR will agree to run the attached search terms, which accept many of REX's proposed changes, against the files of Messrs. Goldberg, Gansho, and Galicia.
- In return, REX must drop its request for additional custodians (absent good cause based on other documents/testimony produced later in the case); and
- REX must agree to run the expanded search terms request by NAR that return a comparable number of documents as those returned from the files of NAR's three custodians, applying the attached terms.

We can discuss this proposal during our upcoming meet and confer, along with any other questions you may have.

**Michael Sebring**

Associate,  
Quinn Emanuel Urquhart & Sullivan, LLP

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202.538.8000 Main Office Number  
202.538.8100 FAX  
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[www.quinnemanuel.com](http://www.quinnemanuel.com)

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---

**From:** Carl Goldfarb <cgoldfarb@bsfllp.com>

**Sent:** Wednesday, August 17, 2022 5:23 PM

**To:** Michael Sebring <michaelsebring@quinnemanuel.com>; Ursula Ungaro <UUngaro@bsfllp.com>; Augusto Cividini <acividini@bsfllp.com>; Stephen N. Zack <szack@BSFLLP.com>; Simon Leen <sleen@BSFLLP.com>; James P. Denvir <JDenvir@bsfllp.com>; Gabriela A. Romero <gromero@BSFLLP.com>; Mark Rosencrantz <rosencrantz@carneylaw.com>; Meredith Schultz <mschultz@bsfllp.com>

**Cc:** Mike Bonanno <mikebonanno@quinnemanuel.com>; Ethan Glass <eglass@cooley.com>; Kat Lanigan <katlanigan@quinnemanuel.com>; Peter Benson <peterbenson@quinnemanuel.com>; Samantha Strauss <sastraus@cooley.com>; Hanna, Gabrielle <ghanna@cooley.com>

**Subject:** RE: REX v. Zillow 2:21-cv-00312-TSZ | Search Term Hits

[EXTERNAL EMAIL from [cgoldfarb@bsfllp.com](mailto:cgoldfarb@bsfllp.com)]

---

Michael,

Per your request, enclosed please find a hit report, with the number of hits and unique hits, for the search terms we proposed on July 13th, now run against a larger group of REX custodians. We have also attached a similar report, with your revisions, proposed on July 27th, to the search terms.

Regards,

Carl

**Carl Goldfarb**

Partner

---

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[cgoldfarb@bsfllp.com](mailto:cgoldfarb@bsfllp.com)

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---

**From:** Michael Sebring <[michaelsebring@quinnemanuel.com](mailto:michaelsebring@quinnemanuel.com)>

**Sent:** Monday, August 15, 2022 4:02 PM

**To:** Carl Goldfarb <[cgoldfarb@bsfllp.com](mailto:cgoldfarb@bsfllp.com)>; Ursula Ungaro <[UUngaro@bsfllp.com](mailto:UUngaro@bsfllp.com)>; Augusto Cividini <[acividini@bsfllp.com](mailto:acividini@bsfllp.com)>; Stephen N. Zack <[szack@BSFLLP.com](mailto:szack@BSFLLP.com)>; Simon Leen <[sleen@BSFLLP.com](mailto:sleen@BSFLLP.com)>; James P. Denvir <[JDenvir@bsfllp.com](mailto:JDenvir@bsfllp.com)>; Gabriela A. Romero <[gromero@BSFLLP.com](mailto:gromero@BSFLLP.com)>; Mark Rosencrantz <[rosencrantz@carneylaw.com](mailto:rosencrantz@carneylaw.com)>; Meredith Schultz <[mschultz@bsfllp.com](mailto:mschultz@bsfllp.com)>

**Cc:** Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Ethan Glass <[eglass@cooley.com](mailto:eglass@cooley.com)>; Kat Lanigan <[katlanigan@quinnemanuel.com](mailto:katlanigan@quinnemanuel.com)>; Peter Benson <[peterbenenson@quinnemanuel.com](mailto:peterbenenson@quinnemanuel.com)>; Samantha Strauss <[sastrauss@cooley.com](mailto:sastrauss@cooley.com)>; Hanna, Gabrielle <[ghanna@cooley.com](mailto:ghanna@cooley.com)>

**Subject:** REX v. Zillow 2:21-cv-00312-TSZ | Search Term Hits

Carl & Ursula,

As requested, we have attached the total hit counts for the search terms you proposed in Attachments 1 & 2 of your July 27, 2022 letter. Please provide the same information for NAR's proposed & revised terms. We are conferring with our client about which of those revisions to our proposed search terms may be acceptable, given the large increases in hit counts that your proposal generated. We intend to get a response to you on your search term proposals and your August 8, 2022 letter requesting additional custodians later this week.

In the meantime, we agree that a meet and confer would be helpful for both parties. Are you free this Friday (8/19) at 11:00 A.M. ET?

**Michael Sebring**

*Associate,*

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# **Exhibit E**

## Augusto Cividini

---

**From:** Peter Benson <peterbenson@quinnemanuel.com>  
**Sent:** Wednesday, August 24, 2022 3:21 PM  
**To:** Carl Goldfarb; Michael Sebring; Ursula Ungaro; Augusto Cividini; Stephen N. Zack; Simon Leen; James P. Denvir; Gabriela A. Romero; Mark Rosencrantz; Meredith Schultz  
**Cc:** Mike Bonanno; Ethan Glass; Kat Lanigan; Samantha Strauss; Hanna, Gabrielle  
**Subject:** RE: REX v. Zillow 2:21-cv-00312-TSZ | Search Term Hits

Ursula and Carl,

Thank you for the August 23 letter. NAR will stand by its offer to add Bob Goldberg as a custodian. But NAR does not agree to add any of the other individuals identified in the August 23 letter as custodians.

NAR also does not agree to use the LCR 37 expedited motion procedure for REX's anticipated motion. REX apparently plans to move to compel the addition of a large number of custodians based on independent claims of purported relevance for each custodian. The expedited process is not appropriate for that sort of motion.

Best,  
Peter

---

**From:** Carl Goldfarb <cgoldfarb@bsfllp.com>  
**Sent:** Wednesday, August 24, 2022 10:17 AM  
**To:** Peter Benson <peterbenson@quinnemanuel.com>; Michael Sebring <michaelsebring@quinnemanuel.com>; Ursula Ungaro <UUngaro@bsfllp.com>; Augusto Cividini <acividini@bsfllp.com>; Stephen N. Zack <szack@BSFLLP.com>; Simon Leen <sleen@BSFLLP.com>; James P. Denvir <JDenvir@bsfllp.com>; Gabriela A. Romero <gromero@BSFLLP.com>; Mark Rosencrantz <rosencrantz@carneylaw.com>; Meredith Schultz <mschultz@bsfllp.com>  
**Cc:** Mike Bonanno <mikebonanno@quinnemanuel.com>; Ethan Glass <eglass@cooley.com>; Kat Lanigan <katlanigan@quinnemanuel.com>; Samantha Strauss <sastrauss@cooley.com>; Hanna, Gabrielle <ghanna@cooley.com>  
**Subject:** RE: REX v. Zillow 2:21-cv-00312-TSZ | Search Term Hits

[EXTERNAL EMAIL from [cgoldfarb@bsfllp.com](mailto:cgoldfarb@bsfllp.com)]

---

Counsel,

Here is the letter Ursula emailed to Peter last night. Because the letter only went to Peter last night, I am copying the result of NAR's team.

Carl

**Carl Goldfarb**  
Partner

---

**BOIES SCHILLER FLEXNER LLP**

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# **Exhibit F**

# EXHIBIT E

**From:** [Wahl, Suzanne L.](mailto:Wahl.Suzanne.L)  
**To:** [Brandon@boulware-law.com](mailto:Brandon@boulware-law.com); [Robert A. Braun](mailto:Robert.A.Braun); [JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com); [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); [Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com); [cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)  
**Subject:** Sitzer ESI Proposal  
**Date:** Thursday, April 30, 2020 6:44:57 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[2020.04.30 NAR proposal.xlsx](#)

---

Brandon and Robby,

Subject to the comments below, NAR agrees to plaintiffs' proposed search terms as amended in the attached document. NAR also agrees to the custodian list in your most email – with the deletion of Mr. Lombardi.

As you will see, NAR's edits to plaintiffs' proposed search terms are intended only to correct errors. We do not believe that they should be controversial. If you disagree, please let us know as soon as possible. For the avoidance of doubt, we have set out the agreed custodian list below. This said, our comments are set forth below.

First, if you have any additional changes to propose, we request that you provide us with a document showing the changes between this version and your proposal. It appears that you reformatted several searches in this version, which required additional time-consuming review on our end, introduced syntax errors that we had to correct and rerun, incorporated at least one revision of an agreed-upon change, and appears to have (inadvertently, we assume) deleted eight search strings.

- When you recombined Search 28, you reverted the search string to its earlier form that you had agreed to modify. Specifically, in your April 6, 2020 email, you had agreed to remove the portion of the string that included "realtor w/10 schedule", but your latest version reincorporates what you had agreed to remove. We assume that this was an error and have, therefore, added "(agent\* or broker\*) w/10 schedule" as a separate string. If you intend to stand on this change, please let us know, and direct us to any other substantive changes you have made in the search terms.
- In order to properly use the "and not" connector in Search 12, we broke out the protect\* w/5 search string.
- You appear to have deleted all of the strings associated with Search 14 other than the one with the "cheat" root. We would be happy to delete these but assume this was an error and have added them back.
- You also appear to have deleted the deposition\* search term from Search 4. Again, we would be happy to delete this but assume it was an error and have added it back.
- We also noticed that Search 45 still has [\\*@ftc.gov](mailto:*@ftc.gov), when all the other FTC search strings were removed. We believe this was an oversight when we made the post-meet and confer changes after Robby indicated that we could remove all the FTC and "federal trade commission" terms. Accordingly, we have deleted the search term.
- We removed duplicative "or" connectors in Searches 3 and 42.
- We corrected parentheses issues in Searches 4 and 28.1.
- We added missing quotation marks in Searches 53, 64, 73 and 507.
- Search 21 was missing the "w" in "w/10."

Second, with respect to Search 15, we discussed removing this search on our April 16 meet and confer. Robby stated that he would think about agreeing to remove it. That is why we included it on our list of proposed changes. We understand that you have now decided to reject that change. Therefore, the attached search term list includes Search 15 with the limiter as provided in your April 27 search term proposal.

Third, we agree that we have previously discussed a “go get” approach to searches 2, 81, 83, 87, 88 and 95, rather than including them as search term documents. We note that there are still open issues to be discussed on these points, including with respect to burden, especially with respect to searching the HUB, and to scope (e.g., confirmation from you of which publications plaintiffs are requesting).

Fourth, as we have said before, NAR reserves the right to edit these search terms with respect to the custodians that NAR has not yet collected and tested, as these search terms may return irrelevant or burdensome results. Our understanding is that plaintiffs agree to negotiate in good faith with regard to any edits.

Fifth, other than our dispute regarding disclosure of the identity of recipients of DOJ CIDs, we are not aware of other disputed discovery issues -- assuming that we have reached agreement on search terms, custodians, and the time period for discovery. If you are aware of other currently existing disputes, please identify them for us.

Finally, on our meet and confer on April 23, Robby agreed to confirm in writing that, with respect to NAR, the *Moehrl* plaintiffs agree that the agreed upon *Sitzer* search terms and custodians will also be the agreed-upon search terms and custodians for the *Moehrl* case, understanding that the *Moehrl* plaintiffs may later seek additional discovery if subsequent discovery indicates that additional search terms or custodians are necessary. Robby, please confirm this understanding in writing.

At this time, we believe the only open item that NAR and the *Sitzer* plaintiffs will have for the May 6, 2020 status conference is the disclosure of the identity of recipients of third party DOJ CIDs. Please let us know if you disagree.

Thanks,

Suzanne

\*\*\*

NAR CUSTODIAN LIST

1. Andrew Scoulas
2. Chris Harrigan
3. Clifford Niersbach
4. Diane Mosley
5. Jeremy Green
6. Kate Lawton
7. Katherine Goldberg
8. Kevin Milligan
9. Rene Galicia
10. Rodney Gansho
11. Charles Dawson

12. Bob Goldberg
13. Dale Stinton
14. Katie Johnson
15. Lawrence Yun
16. Sarah Young
17. Marc Gould
18. Jessica Lautz
19. Victoria Gillespie

---

**From:** Brandon Boulware [mailto:Brandon@boulware-law.com]  
**Sent:** Monday, April 27, 2020 10:17 PM  
**To:** Wahl, Suzanne L. <SWahl@schiffhardin.com>; Robert A. Braun <RBraun@cohenmilstein.com>; Bierig, Jack R. <JBierig@schiffhardin.com>; chuck.hatfield@stinsonleonard.com  
**Cc:** matt@williamsdirks.com; Jeremy Suhr <Jeremy@boulware-law.com>; Courtney Stout <cstout@williamsdirks.com>  
**Subject:** [EXT] RE: Sitzer ESI Proposal

Jack and Suzanne -

Pursuant to the *Sitzer* Court's April 6, 2020 Order, attached is a search term counter-proposal to NAR, which is offered on behalf of both the *Sitzer* and *Moehrl* Plaintiffs. As discussed on last Thursday's call, we request that NAR closely review the attached search term proposal, so that if there are any discrepancies or errors (e.g., it appears that the term "senat\*" in Search 6 had previously been misspelled), the parties are able to quickly resolve them in advance of the upcoming status conference in the *Sitzer* case. We understand that Plaintiffs and NAR have agreed to each element of the attached search term proposal, with the following exceptions:

- Search 18
- Search 47
- Search 71
- Search 15 [NAR appears to have unilaterally omitted this search from its April 22 hit reports despite the absence of an agreement by the parties, or even a prior proposal by NAR, to do so]

With respect to Search 15, as reflected in the attached spreadsheet, we are willing to accept NAR's previously proposed limiter. Additionally, as previously discussed, Plaintiffs have agreed to the removal of certain strings (and/or terms from otherwise agreed strings) on the condition that NAR conduct a reasonable search for relevant documents in its central files—e.g., Searches 2, 81, 83, 87, 88, and 95.

Plaintiffs also propose the following NAR custodians for the *Sitzer* and *Moehrl* suits:

- Andrew Scoulas
- Chris Harrigan
- Clifford Niersbach



- Diane Mosley
- Jeremy Green
- Kate Lawton
- Katherine Goldberg
- Kevin Milligan
- Rene Galicia
- Rodney Gansho
- Charles Dawson
- Bob Goldberg
- Dale Stinton
- Katie Johnson
- Lawrence Yun
- Sarah Young
- Marc Gould
- Jessica Lautz
- Victoria Gillespie
- Matthew Lombardi

We understand that NAR has agreed to each of the above custodians, with the exception of Matthew Lombardi. We believe that Mr. Lombardi is likely to possess relevant and responsive documents (including due to his senior roles as staff executive for the Strategic Thinking Advisory Committee, manager of NAR's member and consumer communications and marketing, and supervisor over major NAR conferences, meetings, and events). Nevertheless, in an effort to compromise, if NAR will agree without further revision to Plaintiffs' attached search term counter-proposal, Plaintiffs will agree to remove Mr. Lombardi from our custodian list. Otherwise, Plaintiffs intend to move forward with seeking Mr. Lombardi's inclusion among NAR's custodians.

Finally, in negotiating search terms and custodians, Plaintiffs have relied on NAR's representations as to the custodians and search terms likely to retrieve relevant and responsive documents. Plaintiffs reserve all rights to seek additional custodians and search terms if appropriate, including based on new information that comes to light or should Plaintiffs learn that NAR failed to disclose relevant custodians and search terms. Additionally, and per our discussions, the *Sitzer* Plaintiffs understand that the parties' agreements on search terms, custodians, and post-complaint discovery, and the Court's recent ruling on pre-limitations discovery, have resolved or will resolve all objections with respect to discovery (excluding "go get" documents), except as to privilege and work product. Please advise us if NAR intends to maintain any non-privilege objections with respect to discovery.

Thank you.

**Brandon Boulware | Attorney**

**[Boulware Law](#)**

1600 Genessee, Suite 416

Kansas City, Missouri 64102

[brandon@boulware-law.com](mailto:brandon@boulware-law.com)

O: (816) 492-2826

C: (816) 590-1882



---

**From:** Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>  
**Sent:** Wednesday, April 22, 2020 12:07 PM  
**To:** Robert A. Braun <[RBraun@cohenmilstein.com](mailto:RBraun@cohenmilstein.com)>; Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>  
**Subject:** RE: Sitzer ESI Proposal

Hi Robby and Brandon,

Pursuant to the Court's April 6 2020 Order and our agreement to extend the time for our response until April 22, NAR proposes the attached search term list.

We also attach two hit reports. The first reflects the changes we discussed in our Thursday April 16 to Searches 3, 4, 7, 8, 12, 14, 15 (which was removed in its entirety), 25, 28, 31, 42 and 45. We have renumbered the "broken out" search terms as 3.001, 3.002, etc. for ease of reference and to avoid any errors in trying to recombine the broken out searches into one term. The edits are shown in red in the Excel file.

- In Search 3, we removed *expens\**, *outlook*, and *share*.
- In Search 4, we removed *prosecut\**, *subpoena\** and *probe\**.
- In Search 7, we changed *analys\** to *analysis* or *analyses*; *share\** to *share* or *shares*; *MLS w/10* to *data to MLS w/5 data*; and deleted *MLS w/10 report*.
- In Search 8, we removed *outlook*.
- In Search 12, we changed *deter\** to *deter*, *deters*, etc.; *market\** to *market* or *markets*; and added and "AND NOT" term to remove false hits for links.
- In Search 14, we added the *w/50* limiter and added *fee* or *fees*; and we changed *cheat\** to *cheat*, *cheats*, etc.
- We removed Search 15.
- In Search 25, we removed *share* and searches that overlapped with Search 3.
- In Search 28, we changed *w/10 income* to *w/4 income*.
- In Search 31, we replaced *compet\** with *compete*, *competes*, etc.
- In Search 42, we added a limiter to *manipulat\** that included *commission*, *price*, *fee*, *compensation*.
- In Search 45, we removed *FTC* or *federal trade commission*.

The second reflects proposed additional changes to the following search terms; the edits are shown in green in the Excel file.

- Add a w/10 market limiter to Search 7.002 (MLS w/10 (share or shares)). This search term is still returning a significant number of unique hits, even with the alteration. On our meet and confer, you all stated that you wanted to include this search term to find discussions about MLS market share. Our preliminary review of this search term is that it hits for discussions about sharing information or materials with MLSs. Adding the term "market" makes it more likely that this search term will return the results you are seeking, instead of extraneous documents.
- Change Search 7.007 (MLS w/5 data) to "MLS data". Our preference would be to remove this search term entirely, as our initial review is primarily returning documents that do not appear to be relevant. However, in the interest of compromise, we propose changing the search to "MLS data."
- Change Search 18 to remove the term "requir\*." On our meet and confer, you stated that any document that states a requirement of participation in NAR or an MLS or a local association is potentially evidence of market power and should be reviewed. We disagree with this assertion. Moreover, the search term is pulling in "requirements" that are clearly irrelevant to the case and to plaintiffs' theory of market power – about lockboxes standards, the timing to request a hearing under MLS rules, etc. We propose removing the term "requir\*" to avoid pulling in these types of results.
- Add a w/10 (commission\* or compensation\*) limiter to Search 47. We do not agree that any mention of antitrust compliance or analysis unrelated to the facts of this case are relevant. Further, these search terms are likely to generate a significant number of privileged documents, requiring additional burdensome review.
- Change Search 71 to remove the term "requir\*", for the same reasons as Search 18.

As we said on the call, NAR reserves the right to edit these search terms with respect to the custodians that NAR has not yet collected and tested, as these search terms may return irrelevant or burdensome results. Our understanding is that plaintiffs agree to negotiate in good faith with regard to any edits.

For custodians, NAR made its last proposal on April 8 and reattaches it here for convenience.

Please let us know when you would like to discuss. We are available for a call this week on Thursday between 2 and 3:30 pm central.

Thanks,

Suzanne

---

**From:** Wahl, Suzanne L.

**Sent:** Wednesday, April 15, 2020 10:31 AM

**To:** 'Robert A. Braun' <[RBraun@cohenmilstein.com](mailto:RBraun@cohenmilstein.com)>; Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)

**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>

**Subject:** RE: Sitzer ESI Proposal

Hi Robby and Brandon

Here are the hit reports for the proposed search terms as modified by Robby's April 6 email, as well as the requested "broken up" versions of certain search strings.

I am still reviewing the broken out search results, so I do not have proposals to share at this point.

Thanks,

Suzanne

---

**From:** Robert A. Braun [<mailto:RBraun@cohenmilstein.com>]  
**Sent:** Monday, April 13, 2020 11:12 AM  
**To:** Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>; Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>  
**Subject:** [EXT] RE: Sitzer ESI Proposal

Thanks Suzanne. We appreciate it.

---

**From:** Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>  
**Sent:** Monday, April 13, 2020 11:11 AM  
**To:** Robert A. Braun <[RBraun@cohenmilstein.com](mailto:RBraun@cohenmilstein.com)>; Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>  
**Subject:** RE: Sitzer ESI Proposal

Yes. I will have the hit reports for you by Wednesday morning.

I am also working on proposals for changes based on the search terms that were broken out, though I may not be able to have all of those to you by Wednesday morning.

---

**From:** Robert A. Braun [<mailto:RBraun@cohenmilstein.com>]  
**Sent:** Monday, April 13, 2020 11:08 AM  
**To:** Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>  
**Subject:** [EXT] RE: Sitzer ESI Proposal

Jack and Suzanne,

I'm also available during those times. To ensure that the call is productive, it would be helpful to receive any hit report(s) at least 24 hours in advance. Is NAR in a position to do that?

Regards,  
Robby

---

**From:** Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>  
**Sent:** Monday, April 13, 2020 10:59 AM  
**To:** Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>; Robert A. Braun <[RBraun@cohenmilstein.com](mailto:RBraun@cohenmilstein.com)>  
**Subject:** RE: Sitzer ESI Proposal

Those times work for me. Robby?

**Brandon Boulware | Attorney**

**[Boulware Law](#)**

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Kansas City, Missouri 64102  
[brandon@boulware-law.com](mailto:brandon@boulware-law.com)

O: (816) 492-2826

C: (816) 590-1882



---

**From:** Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>  
**Sent:** Monday, April 13, 2020 9:15 AM  
**To:** Brandon Boulware <[Brandon@boulware-law.com](mailto:Brandon@boulware-law.com)>; Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; [chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout <[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>; Braun, Robert (Cohen Milstein Sellers & Toll PLLC) <[rbraun@cohenmilstein.com](mailto:rbraun@cohenmilstein.com)>  
**Subject:** RE: Sitzer ESI Proposal

Hi Brandon,

We're available Thursday April 16 at 9-10 central or 2-4 central. Does that work for your team?

Thanks,

Suzanne

---

**From:** Brandon Boulware [<mailto:Brandon@boulware-law.com>]  
**Sent:** Friday, April 10, 2020 6:40 PM  
**To:** Bierig, Jack R. <[JBierig@schiffhardin.com](mailto:JBierig@schiffhardin.com)>; Wahl, Suzanne L. <[SWahl@schiffhardin.com](mailto:SWahl@schiffhardin.com)>;  
[chuck.hatfield@stinsonleonard.com](mailto:chuck.hatfield@stinsonleonard.com)  
**Cc:** [matt@williamsdirks.com](mailto:matt@williamsdirks.com); Jeremy Suhr <[Jeremy@boulware-law.com](mailto:Jeremy@boulware-law.com)>; Courtney Stout  
<[cstout@williamsdirks.com](mailto:cstout@williamsdirks.com)>; Braun, Robert (Cohen Milstein Sellers & Toll PLLC)  
<[rbraun@cohenmilstein.com](mailto:rbraun@cohenmilstein.com)>  
**Subject:** [EXT] Sitzer ESI Proposal

**CAUTION:** External email.

Jack and Suzanne –

Pursuant to the Court’s April 6, 2020 Order, the *Sitzer* Plaintiffs propose the attached search term list. The parties have met and conferred regarding search terms on multiple occasions, and our intention is to incorporate the agreed-upon modifications into the proposed search terms. Those modifications are not reflected in the attached list, but have been memorialized in multiple emails not attached here.

With respect to custodians, the parties have made good strides at agreeing on a custodian list. I believe the attached email reflects our most recent back-and-forth on the subject.

We look forward to continue working with NAR to finalize search terms and custodians. To that end, please let us know your availability next week for a meet/confer.

Thank you.

**Brandon Boulware | Attorney**

**[Boulware Law](#)**

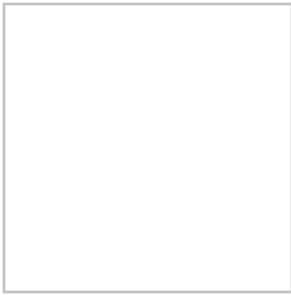
1600 Genessee, Suite 416

Kansas City, Missouri 64102

[brandon@boulware-law.com](mailto:brandon@boulware-law.com)

O: (816) 492-2826

C: (816) 590-1882

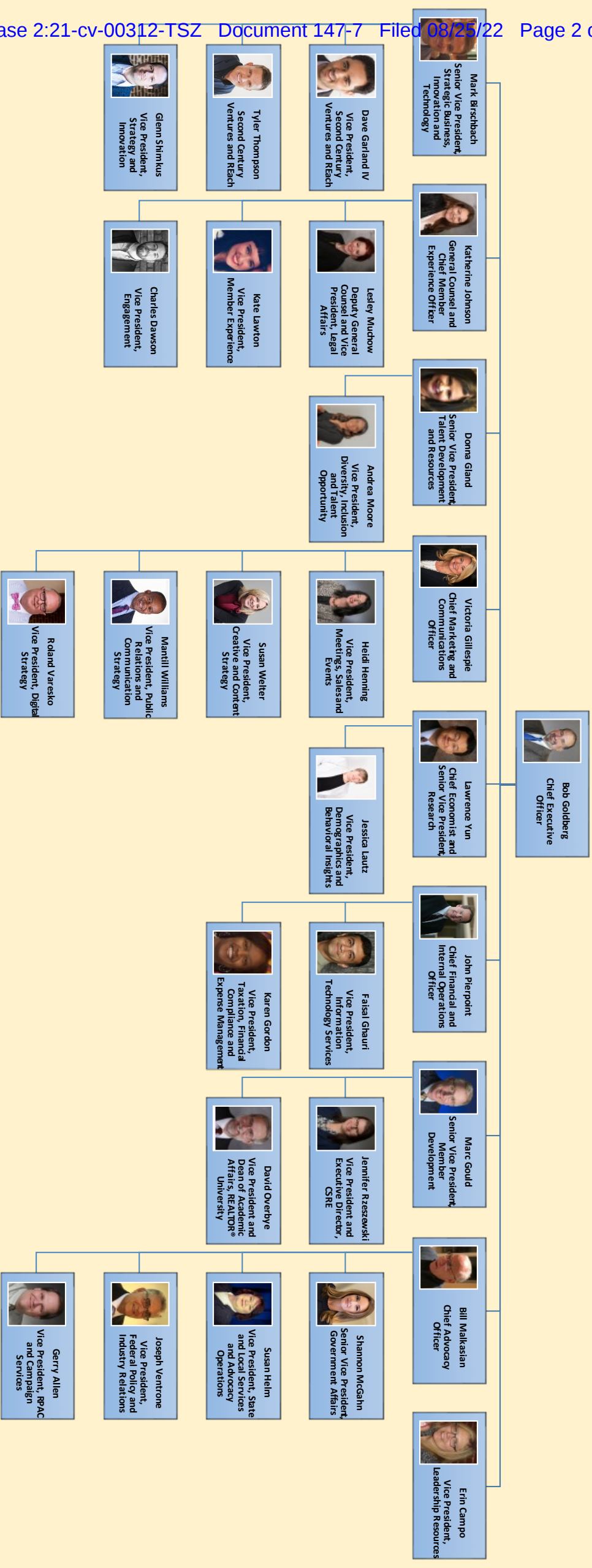


-----  
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If you believe that it has been sent to you in error,  
please reply to the sender that you received the message in  
error. Then delete it. Thank you.  
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# **Exhibit G**



# NAR Organization Chart



# **Exhibit H**

**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) 538-8225**

WRITER'S EMAIL ADDRESS  
**mikebonanno@quinnemanuel.com**

May 5, 2022

**VIA E-MAIL**

**URSULA UNGARO (UUNGARO@BSFLLP.COM)**

Ursula Ungaro  
Boies Schiller Flexner LLP  
100 SE Second Street  
Suite 2800  
Miami, FL 33131

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

Dear Ursula:

We write in response to REX's April 6, 2022 letter regarding NAR's Responses and Objections to REX's First Set of Requests for Production of Documents ("Responses"). Each of the claims set forth in REX's letter are addressed below.

***General Objections.*** NAR will not withhold documents from its production based on a general objection.

***Definition of "Segregation Rule".*** REX has specifically identified Section 18.2.10 and Section 18.3.11 of NAR's Handbook on Multiple Listing Policy and characterized them as NAR's "Segregation Rule." See REX's First Set of RFPs at 11. That is what NAR understands to be the "Segregation Rule" that REX is referring to in its requests.

***Time Period.*** REX could not have been injured, if at all, until January 2021, when Zillow changed the design of its website that is central to REX's complaint. NAR has agreed to collect, review, and produce non-privileged, responsive documents that were created more than one year prior to the complaint, which was filed in March 2021. Your demand for NAR to collect and produce custodial documents created or received during a broader time period by "default" does not satisfy Rule 26.

Nevertheless, as a compromise, NAR agrees to collect and produce non-privileged documents that can be found from a reasonable search of its central files relating to the adoption

of Section 18.2.10 and Section 18.3.11 of NAR's Handbook on Multiple Listing Policy. To be clear, this would not be based on a collection of custodial documents as, to date, we have not identified any NAR custodians with files that still exist from that time period when Section 18.2.10 and Section 18.3.11 of NAR's Handbook on Multiple Listing Policy were adopted.

**RFP Nos. 1, 4, 5, 18, 19 (Zillow-related Documents).** As a compromise, and to clarify its written responses, NAR will respond to these requests using the agreed e-discovery protocol (i.e., search terms and custodians), and using that process, NAR will collect and produce non-privileged documents that mention "Zillow" and relate to (1) Zillow's decision to join NAR or multiple listing services; (2) REX; or (3) Section 18.2.10 or Section 18.3.11 of NAR's Handbook on Multiple Listing Policy. NAR also will produce all agreements between Zillow and NAR and any documents concerning agreements between Zillow and NAR (or the negotiation of such agreements).

NAR will not, however, produce all documents that merely mention Zillow; REX's demand for all documents concerning Zillow does not meet the limitations in Rule 26.

**RFP No. 2 (REX Documents).** As a compromise, NAR will produce all non-privileged documents that relate to REX and are returned by the agreed (or court-ordered) search terms when they are applied to the files of agreed (or court-ordered) custodians.

**RFP Nos. 6, 7, 9, 10, 15, 16, 17 ("Segregation Rule" and MLS Documents).** To clarify, NAR's commitment to produce "documents concerning Section 18.2.10 and 18.3.11" would include (1) the documents referenced in the Time Period section of this letter; and (2) documents identified through the agreed search protocol (i.e., custodians and search terms) that relate to multiple listing services' decisions to allow or prohibit commingling of MLS and non-MLS listings data, as well as the related rules or policies.

**RFP No. 22.** Contrary to your suggestion, not *all* of the rules in NAR's Handbook on Multiple Listing Policy and NAR's Code of Ethics are relevant to REX's claims, nor has any decision of the Court suggested otherwise. As part of its non-custodial production, NAR will conduct a reasonable search and will produce any non-privileged minutes from its Board of Directors (or committees thereof, and any predecessor) mentioning Sections 18.2.10 or 18.3.11 of the Handbook on Multiple Listing Policy. Consistent with the agreed ESI protocol, NAR will produce any attachments to such materials.

**RFP No. 32.** As a compromise, NAR will produce the version of its document retention policy that existed at the time REX filed its complaint.

**RFP Nos. 8, 9, 10, 42 (Mandatory Compensation).** REX's claimed injury is related solely to the changes to Zillow's website that were purportedly made to comply with Sections 18.2.10 and 18.3.11 of the Handbook on Multiple Listing Policy. Am. Compl. ¶¶ 136, 139. REX alleges that Zillow and NAR conspired to implement those changes to protect the high commission structure purportedly created by NAR's Handbook on Multiple Listing Policy, Part 2, Section G.1 and NAR Policy Statement 7.23 and to harm REX. See Am. Compl. ¶ 113. That means, at best, Part 2 § G.1 of NAR's Handbook on Multiple Listing Policy and NAR Policy Statement 7.23 are

relevant to REX's case only to the extent that they provided a motive for NAR and Zillow to conspire. *See Am. Compl.* ¶¶ 7, 113.

As we explained during our April 4 meet and confer, NAR will produce documents concerning Part 2, Section G.1 of NAR's Handbook on Multiple Listing Policy that also mention (1) Sections 18.2.10 or 18.3.11 of the Handbook on Multiple Listing Policy; or (2) REX. Documents concerning Part 2, Section G.1 of NAR's Handbook on Multiple Listing Policy that do not mention Sections 18.2.10 and 18.3.11 of the Handbook on Multiple Listing Policy or REX have nothing to do with this case.

**RFP Nos. 14, 20-21, 23, 27-30, 33-37, 43, 49-52.** NAR stands on its Responses to these requests. Each of these requests is unduly burdensome and has little to no relevance to this case. It is REX's burden to explain why the documents sought by these requests are relevant to its case or why the burdens of collecting, reviewing, and producing those documents is proportional to the needs of the case. *Mendis v. Schneider Nat'l Carriers Inc.*, 2016 WL 11261497, at \*1 (W.D. Wash. May 11, 2016) ("The party seeking to compel discovery has the burden of establishing that its request satisfies the relevancy requirements of Rule 26(b)(1)." (citation omitted)). REX has not done so.

Best regards,

A handwritten signature in blue ink, appearing to read "Mike D. Bonanno", with a long horizontal flourish extending to the right.

Mike Bonanno

CC: Counsel of Record

# **Exhibit I**

The Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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

**PLAINTIFF’S FIRST REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT THE  
NATIONAL ASSOCIATION OF  
REALTORS (“NAR”)**

TO: THE NATIONAL ASSOCIATION OF REALTORS (“NAR”);

AND TO: MICHAEL BONANNO, ETHAN GLASS, KATHLEEN A. LANIGAN, and  
THOMAS C. RUBIN of QUINN EMANUELL URQUHART & SULLIVAN  
LLP, its attorneys of record.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff REX -  
Real Estate Exchange, Inc. (“REX”) propounds the following Requests for Production  
 (“Requests”) to Defendants The National Association of Realtors (“NAR”). Production of the

**PLAINTIFF’S FIRST REQUESTS FOR PRODUCTION TO  
DEFENDANTS NAR - 1**  
Case No. 2:21-cv-00312-TSZ

FOSTER GARVEY PC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3296  
PHONE (206) 447-4400 FAX (206) 447-9700

1 requested Documents must be made at the offices of Foster Garvey PC, 1111 Third Avenue,  
2 Suite 3000, Seattle WA, 98101, within thirty (30) days after service of this request, or at such  
3 other time and place as may be mutually agreed upon by the parties.

4 **GENERAL INSTRUCTIONS**

5 1. Singular/Plural. The use of the singular or plural form of a word should not be  
6 construed to exclude any information from any response. The plural should therefore include  
7 the singular, and the singular should therefore include the plural, when necessary to prevent  
8 such exclusion.

9 2. These Requests are continuing and at such time as information is received which  
10 makes any prior answers or responses incomplete or incorrect, supplementation is required  
11 under Fed. R. Civ. P. 26(e)(1)(A).

12 3. If any document is withheld under a claim of privilege, please:

- 13 a. Identify such document with sufficient particularity as to author(s), addressee(s),  
14 recipient(s), and subject matter and contents to allow the matter to be brought  
15 before the Court;  
16 b. State the nature of the privilege(s) asserted; and  
17 c. State in detail the factual basis for the claim of privilege.

18 4. In answering these Requests, you are required to furnish all information within  
19 your possession, custody, or control. By the use of the pronoun “you,” it is intended that the  
20 responses are to include all information known to you, to your employer, agents, attorneys, and  
21 investigators.

22 5. If you object to any Request, in whole or in part, state your objection, and state  
23 with particularity all of the factual and legal reasons supporting your objection. Any objection  
24 that is not so asserted or is not timely served may be deemed waived.

25 6. Pursuant to FRCP 34(b)(1)(C), REX requests that NAR produce electronically  
26 stored information as follows:



- 1 a. General Document Image Format. REX requests that NAR produce each  
2 electronic document (other than photographs and documents produced in native  
3 format) in single-page Tagged Image File Format (“TIFF”) images, and named  
4 with a unique production number followed by the appropriate file extension.  
5 For multi-page documents, REX requests that the unitization of the document  
6 and any attachments and/or affixed notes be maintained as they existed in the  
7 original document (e.g. all email shall be produced with any corresponding  
8 attachments). The Load Files, as outlined below, shall indicate the location and  
9 unitization of the TIFF files.
- 10 b. Text-Searchable Documents. REX requests that NAR produce each electronic  
11 document in text-searchable format, but shall also preserve the integrity of the  
12 underlying ESI (e.g. the original formatting, metadata (outlined below), and,  
13 where applicable, the revision history) for each document.
- 14 c. Footer. REX requests that NAR produce each document image to include, in a  
15 footer, a sequentially ascending production number (Bates number).
- 16 d. Native Files. REX requests that NAR produce in native format any document  
17 that is not easily converted to image format, such as photographs, Excel files,  
18 Access files, and drawing files. Static image placeholders containing a  
19 corresponding production number (Bates number) shall be provided for cross-  
20 referencing purposes within the Load Files.
- 21 e. Metadata. REX requests that NAR provide Metadata for each electronic  
22 document. For purposes of this General Instruction No. 5, “Metadata” means  
23 the following:
- 24 i. For email, “Metadata” means all information associated with the email  
25 as it is kept in the usual course of business and/or as ordinarily  
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maintained, including: to, from, cc, bcc, date and time created, date and time sent, date and time received, subject, folder, and custodian.

ii. For electronic documents, “Metadata” means all information associated with the document as it is kept in the usual course of business and/or as ordinarily maintained, including: document type, custodian(s), title, author, subject, file name and size, original file path, date and time created, and date and time modified.

f. Load Files. Load Files means information created for each document for purposes of managing production of the document in this litigation. REX requests that NAR provide Load Files associating the foregoing metadata of each document with the TIFF and text file or native format file and indicating the location and unitization of the document (e.g. .DAT and .OPT files and full Native File metadata fields, and extracted text). The Load Files shall also include the document’s beginning and ending Bates number, the beginning and ending Bates number of the entire range of documents that were grouped together (family group), any confidentiality designation, and any redaction associated with the document.

1 **III. DEFINITIONS**

2 As used throughout these Discovery Requests, the following terms have the following  
3 indicated meanings:

4 1) “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

5 2) “AND” and “OR.” The words “and” and “or” should not be interpreted to exclude  
6 any information from any response. Both words should therefore be interpreted to mean “and/or”  
7 when necessary to prevent such exclusion.  
8

9 3) “LAWSUIT” and “LITIGATION” each mean and refer to this action now  
10 pending in the United States District Court for the Western District of Washington, Case Number  
11 2:21-cv-00312-TSZ.

12 4) “COMPLAINT” refers to the operative Complaint filed by PLAINTIFF in this  
13 proceeding.  
14

15 5) “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages,  
16 emails, text messages, or other WRITTEN COMMUNICATIONS or memoranda, including  
17 electronic communications, or other records of conversations, meetings, conferences, or other  
18 oral communications.

19 6) “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the  
20 best approximation, including ANY known relationship to other events.  
21

22 7) “NAR”, “YOU”, and “YOUR” mean THE NATIONAL ASSOCIATION OF  
23 REALTORS, NAR’S attorneys, and, if applicable, NAR’S subsidiaries, predecessors or  
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1 assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting  
2 on behalf of NAR.

3 8) "DOCUMENT" or "WRITTEN COMMUNICATION" means all written or  
4 graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR  
5 actual or constructive possession, custody, care or control. This includes the complete original  
6 (or complete copy if the original is not available) and EACH non-identical copy regardless of  
7 origin or location. "DOCUMENT" is intended to have the same meaning as in Civil Rule 34,  
8 including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages  
9 and attachments, Internet messages, intranet messages, text messages, Twitter™ messages,  
10 messages or postings on social networking websites (including websites such as Facebook™ and  
11 MySpace™), blog postings, web pages, voicemails, data and files sent from, received by, or  
12 stored on smartphones, tablets, or other mobile computing devices (including Blackberry™,  
13 iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™, and HP TouchPad™),  
14 facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic  
15 discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders,  
16 contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts,  
17 working papers, memoranda, messages, notes, envelopes, business records, financial statements,  
18 agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost  
19 sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs,  
20 facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY  
21 other data, including without limitation, data stored electronically or by other technical means  
22 for use with computers or otherwise from which information can be obtained or translated  
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1 through detection devices into reasonably usable form, or ANY other tangible thing that  
2 constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT  
3 has been prepared in several copies which are for ANY reason not identical, or if the original  
4 identical copies are no longer identical by reason of subsequent notation or other modification of  
5 ANY kind whatsoever, including notations on the backs of pages thereto, EACH non-identical  
6 copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY  
7 STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical  
8 storage media as an “active” file or files (readily readable by one or more computer applications  
9 or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY  
10 electronic file fragments (files that have been deleted and partially overwritten with new data);  
11 and slack (data fragments stored randomly from random access memory on a hard drive during  
12 the normal operation of a computer [RAM slack] or residual data left on the hard drive after new  
13 data has overwritten some but not all of previously stored data).

16 9) “ELECTRONICALLY STORED INFORMATION” (“ESI”) as used herein has  
17 the same full meaning as construed by the Federal Rules of Civil Procedure, the Washington  
18 State Superior Court civil rules, and the relevant case law interpreting the federal and state court  
19 rules, and includes, without limitation, the following:

- 21 a. Activity listings of electronic mail receipts or transmittals;
- 22 b. Output resulting from the use of any software program, including without  
23 limitation word processing documents, spreadsheets, database files, charts, graphs and outlines,  
24 electronic mail, text messages, AOL Instant Messenger (or similar program) or bulletin board  
25 programs, operating systems, source code, PRF files, PRC files, batch files, ASCII files, and all  
26

1 miscellaneous media on which they reside and regardless of whether such electronic data exist  
2 in an active file, deleted file, or file fragment; and

3 c. Any and all items stored on computer memories, hard disks, network  
4 servers, individual computer workstations or clients, thumb drives, jump drives, CDs, DVDs,  
5 cloud servers, floppy disks, CD-ROM, magnetic tape, microfiche, or on any other vehicle for  
6 digital data storage or transmittal, including without limitation a personal digital assistant,  
7 smartphone or tablet, e.g., iPhone, Droid, Blackberry, Galaxy, HTC, iPad, iPod, Kindle, Nook or  
8 other device.  
9

10 Plaintiff requests that ESI be processed and produced in a manner that preserves all  
11 metadata and that the parties confer regarding the production of metadata and the form of any  
12 electronic production prior to the gathering or processing of ESI.  
13

14 10) "IDENTIFY" when referring to a DOCUMENT or WRITTEN  
15 COMMUNICATION means to state:

16 a. The description of such DOCUMENTS or writings in sufficient detail in  
17 order to enable them to be identified by subpoena duces tecum;

18 b. The title and EACH subtitle thereof;

19 c. The DATE and number of pages thereof;

20 d. A brief summary of the contents;

21 e. The author, EACH addressee, and the distribution list thereof;

22 f. The IDENTITY of EACH PERSON who witnessed, or was in a position  
23 to witness said communication;  
24

1 g. The DATE on which the document was prepared or signed;

2 h. The physical location of the document and the name and address of its  
3 custodian or custodians;

4 i. The IDENTITY of EACH document referenced by this document;

5 j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY  
6 information contained therein; and  
7

8 k. If ANY such document was, but is no longer in YOUR possession or  
9 subject to YOUR control, what disposition was made of it and the reason for its disposition.

10 11) "IDENTIFY" when referring to a meeting means, for EACH such MEETING, to  
11 state:

12 a. The date and hour when held;

13 b. The address where held;

14 c. The IDENTITY of EACH PERSON who represented YOU at EACH  
15 MEETING or conference;

16 d. The IDENTITY of ANY other PERSON present; and

17 e. EACH action taken, decision made, agreement reached or topic discussed  
18 at the MEETING or conference.  
19

20 12) "IDENTIFY" when referring to oral communications means to state, with respect  
21 thereto, ANY communication or portion thereof between ANY two or more PERSONS that is  
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1 not or was not recorded, including telephone conversations, face-to-face conversations, meetings,  
2 and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

3 13) "IDENTIFY" or "IDENTITY" when referring to a person means to state:

4 a. His/her full name;

5 b. His/her present residence address;

6 c. His/her present residence telephone number;

7 d. His/her present business address;

8 e. If his/her present residence or business address is unknown, state his/her  
9 last known residence address and residence telephone number, his/her last known business  
10 affiliation and business address, and ANY information YOU have that might reasonably lead to  
11 the discovery of his/her present whereabouts; and  
12

13 f. With respect to PERSONS who are not natural PERSONS, state the last  
14 known complete address, including zip code, the last known complete telephone number,  
15 including the area code, of its headquarters, and its nearest or local office or agent.  
16

17 14) "INDIVIDUAL," "PERSON," or "PERSONS" shall mean natural PERSONS,  
18 proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal  
19 corporations, local, state, federal or foreign governments or governmental agencies, political  
20 subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups,  
21 unincorporated associations, or other business or public organizations.  
22

23 15) "PLAINTIFF" means Plaintiff Rex – Real Estate Exchange, Inc.

24 16) "POLICY" or "POLICIES" means EACH rule, procedure, practice, or directive,  
25 formal or informal, and each common understanding of course of conduct which was recognized  
26



1 as such by YOUR present or former officers, agents, employees, or other PERSONS acting or  
2 purporting to act on YOUR behalf, which was in effect at ANY time during the relevant time  
3 period and which includes ANY change of policy.

4 17) “REFERRING TO” or “RELATING TO” (including other verb tenses of those  
5 terms) means describing, evidencing, constituting, reflecting, showing, comprising, containing,  
6 considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting  
7 upon, recommending, alluding to, or mentioning, in whole or in part.

8 18) “TRULIA” refers to Trulia, LLC as well as ANY employees, agents, partners,  
9 representatives, attorneys, or PERSONS acting on Trulia’s behalf.

10 19) “ZILLOW” refers to Zillow, Inc.; Zillow Group, Inc.; Zillow Homes, Inc.; Zillow  
11 Listing Services, Inc.; and includes all entities doing business as Zillow as well as ANY  
12 employees, agents, partners, representatives, attorneys, or PERSONS acting on Zillow’s behalf.

13 20) “SEGREGATION RULE” refers to Model Rule 18.3.11 in the NAR MLS  
14 Handbook and any version of that rule adopted by any Multiple Listing Service including Rule  
15 18.2.10, which is referenced in the Note to Rule 18.3.11.

16 21) “MANDATORY OFFER OF COMPENSATION RULE” refers to the  
17 requirement that a seller’s agent make a blanket unilateral offer of compensation to buyer’s  
18 agents, as described in the NAR Handbook on Multiple Listing Policy, Part 2, Section G.1 and  
19 NAR Policy Statement 7.23.

20 22) “MULTIPLE LISTING SERVICE” or “MLS” refers to any organization that  
21 operates or creates a database of data about real estate properties for sale established by  
22

1 cooperating real estate brokers.

2 23) “MOEHRL ANTITRUST LITIGATION” refers to *Moehrl v. National*  
3 *Association of Realtors, et al.*, Case No. 1:19-CV-01610 (N.D. Ill.), as well as any related matter  
4 that preceded or has been consolidated into Case No. 1:19-CV-01610 (N.D. Ill.).

5 24) “SITZER ANTITRUST LITIGATION” refers to *Sitzer, et al., v. National*  
6 *Association of Realtors, et al.*, Case No. 4:19-CV-00332 (W.D. Mo.), as well as any related  
7 matter that preceded or has been consolidated into Case No. 4:19-CV-00332 (W.D. Mo.).

8  
9 **IV. RELEVANT TIME PERIOD**

10 Unless otherwise stated, the relevant time period for these Requests is from 2017, to the  
11 present.

12  
13 **V. REQUESTS FOR PRODUCTION**

14 **REQUEST FOR PRODUCTION NO. 1:** Produce all Documents relating to Zillow  
15 from 2014 to the present.

16 **RESPONSE:**

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18 **REQUEST FOR PRODUCTION NO. 2:** Produce all Documents relating to REX from  
19 2015 to the present.

20 **RESPONSE:**

21  
22 **REQUEST FOR PRODUCTION NO. 3:** Produce all Documents relating to Zillow  
23 joining NAR and/or any of its affiliated MLSs from 2014 to the present.

24 **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 4:** Produce all Documents relating to any  
2 communications with or between any MLS about Zillow.

3           **RESPONSE:**

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5           **REQUEST FOR PRODUCTION NO. 5:** Produce all Documents relating to Zillow's  
6 compliance with the Segregation Rule.  
7

8           **RESPONSE:**

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10           **REQUEST FOR PRODUCTION NO. 6:** Produce all Documents referring or related  
11 to the Segregation Rule from 1995 to the present.  
12

13           **RESPONSE:**

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15           **REQUEST FOR PRODUCTION NO. 7:** With regard to the Segregation Rule, produce  
16 all Documents from 1995 to the present:

- 17           a. relating to its origin and/or creation;  
18           b. concerning the reasons and/or purpose for its creation;  
19           c. concerning the basis and/or reasons for its continued existence;  
20           d. concerning criticisms or critiques of the rule;  
21           e. concerning any possible amendment or repeal of the rule;  
22           f. evidencing any evaluation or assessment of the rule;  
23           g. evidencing any enforcement, sanction, or discipline related to the rule;  
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1 h. evidencing any communication or draft communication with any MLS concerning  
2 the rule; and

3 i. related to Zillow's compliance with the rule.  
4

5 **RESPONSE:**  
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8 **REQUEST FOR PRODUCTION NO. 8:** With regard to the Mandatory Offer of  
9 Compensation Rule, produce all Documents from 1995 to the present:

10 a. relating to its origin and/or creation;

11 b. concerning the reasons and/or purpose for its creation;

12 c. concerning the reasons and/or purpose for its continued existence;

13 d. concerning criticisms or critiques of the rule;

14 e. concerning any possible amendment or repeal of the rule;

15 f. evidencing any evaluation or assessment of the rule;

16 g. evidencing any enforcement, sanction, or discipline related to the rule;

17 h. evidencing any communication or draft communication with any MLS concerning  
18 the rule; and  
19

20 i. related to Zillow's compliance with the rule.  
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22 **RESPONSE:**  
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1           **REQUEST FOR PRODUCTION NO. 9:** Produce all Documents from 1995 to the  
2 present that refer or relate to NAR or its affiliates adoption, amendment, or modification of the  
3 Segregation or Mandatory Offer of Commission Rules.

4           **RESPONSE:**

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6           **REQUEST FOR PRODUCTION NO. 10:** Produce all training materials and/or  
7 manuals that refer to the Segregation or Mandatory Offer of Compensation Rule.

8           **RESPONSE:**

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11           **REQUEST FOR PRODUCTION NO. 11:** Produce Documents sufficient to identify  
12 all NAR-affiliated MLSs.

13           **RESPONSE:**

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15           **REQUEST FOR PRODUCTION NO. 12:** Identify all local associations of Realtors®  
16 currently affiliated with NAR.

17           **RESPONSE:**

18  
19  
20           **REQUEST FOR PRODUCTION NO. 13:** Produce all Documents evidencing any  
21 NAR-affiliated MLS's geographic coverage.

22           **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 14:** Produce all Documents evidencing any  
2 NAR-affiliated MLS's membership volume and/or revenue.

3           **RESPONSE:**  
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6           **REQUEST FOR PRODUCTION NO. 15:** Produce all Documents evidencing that any  
7 NAR-affiliated MLSs adopted the Segregation Rule from 1995 to the present.  
8

9           **RESPONSE:**  
10

11           **REQUEST FOR PRODUCTION NO. 16:** Produce all Documents evidencing that any  
12 NAR-affiliated MLSs did not adopt the Segregation Rule from 1995 to the present.  
13

14           **RESPONSE:**  
15

16           **REQUEST FOR PRODUCTION NO. 17:** Produce all Documents evidencing NAR-  
17 affiliated MLSs that adopted, but later repealed, the Segregation Rule from 1995 to the present.

18           **RESPONSE:**  
19

20           **REQUEST FOR PRODUCTION NO. 18:** Produce all Documents referring or relating  
21 to Zillow's impact on residential real estate transactions.  
22

23           **RESPONSE:**  
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1           **REQUEST FOR PRODUCTION NO. 19:** Produce all Documents referring or relating  
2 to any manner of offer by NAR to form an agreement with Zillow.

3           **RESPONSE:**  
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6           **REQUEST FOR PRODUCTION NO. 20:** Produce all Documents reviewing,  
7 studying, or analyzing the impact of internet listings of residential real estate offered for sale  
8 upon agent or broker efforts or productivity.  
9

10          **RESPONSE:**  
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12  
13          **REQUEST FOR PRODUCTION NO. 21:** Produce all Documents relating to strategies  
14 or initiatives concerning residential real estate aggregator sites.  
15

16          **RESPONSE:**  
17

18          **REQUEST FOR PRODUCTION NO. 22:** Produce all minutes (including attachments)  
19 of meetings of (a) NAR's Board of Directors or any committees thereof relating to MLS rules or  
20 NAR's code of ethics and (b) NAR's Multiple Listing Issues & Policies Committee and any  
21 predecessor thereof.  
22

23          **RESPONSE:**  
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1           **REQUEST FOR PRODUCTION NO. 23:** Produce all Documents relating to any  
2 policy, guideline, rule, or practice:

- 3           a) requiring listing brokers to make an offer of compensation to buyer brokers to  
4 list a home on an MLS;
- 5           b) conditioning MLS membership or participation on offering or accepting  
6 compensation to and from other MLS participants;
- 7           c) prohibiting, restricting, or inhibiting display or publication to consumers  
8 (including potential home buyers, clients, or customers) of the compensation  
9 offered by listing brokers to cooperating brokers;
- 10           d) prohibiting buyer brokers from making the submission of an executed offer to  
11 purchase contingent on the listing broker's agreement to modify the offer of  
12 compensation or using the terms of an offer to purchase to attempt to modify the  
13 listing broker's offer of compensation;
- 14           e) permitting Realtors® to represent their services as free or without cost;
- 15           f) encouraging or requiring MLS members, syndicators, purchasers, or users of  
16 MLS data or operators of IDX sites or VOWs, when displaying MLS listings, to  
17 separate MLS and non-MLS listings or to treat MLS and non-MLS listings  
18 differently any other way;
- 19           g) permitting listing brokers to make offers of compensation to other MLS  
20 participants that vary based on the identity of the cooperating broker; and
- 21           h) regulating, inhibiting, restricting, prohibiting, or impeding the negotiation of  
22 offers of cooperative compensation between brokers.

23           **RESPONSE:**

24           **REQUEST FOR PRODUCTION NO. 24:** Produce all Documents reporting  
25 commissions paid or offered (in aggregate or average) by brokers or agents within a NAR-  
26 affiliated MLS.

**RESPONSE:**



1           **REQUEST FOR PRODUCTION NO. 25:** Produce all Documents reporting  
2 commissions paid or offered (in aggregate or average) by brokers or agents across NAR-affiliated  
3 MLSs.

4           **RESPONSE:**

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7           **REQUEST FOR PRODUCTION NO. 26:** Produce all Documents analyzing, reporting,  
8 reviewing, or evidencing the number or percentage of residential real-estate transactions by  
9 brokers belonging to a NAR-affiliated MLS.

10          **RESPONSE:**

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12           **REQUEST FOR PRODUCTION NO. 27:** Produce all Documents relating to any  
13 policy, guideline, rule, practice, or software enabling or permitting brokers to search for, filter,  
14 or exclude MLS listings based on the level or type of cooperative compensation offered by a  
15 listing broker.  
16

17          **RESPONSE:**

18  
19           **REQUEST FOR PRODUCTION NO. 28:** Produce all Documents relating to the  
20 purpose or the expected or actual effect of any change in Northwest MLS's rules announced in  
21 July 2019 and implemented on October 1, 2019, including all communications relating to any  
22 change.  
23

24          **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 29:** Produce all Documents relating to brokers  
2 steering potential buyers toward or away from homes for sale based on the amount of cooperative  
3 compensation offered by a listing broker.

4           **RESPONSE:**

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8           **REQUEST FOR PRODUCTION NO. 30:** Produce all Documents relating to any  
9 possible or actual rebates of any broker commission or any offer of any gift card or other benefit  
10 to any home seller or buyer, including all communications relating to such rebates or offers  
11 between NAR and (a) any personnel of any state regulatory agency or legislature or (b) any  
12 personnel of any association of Realtors®.

13           **RESPONSE:**

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17           **REQUEST FOR PRODUCTION NO. 31:** Produce all Documents relating to or  
18 produced by NAR in the *Moehrl* Antitrust Litigation or the *Sitzer* Antitrust Litigation.

19           **RESPONSE:**

20  
21  
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23           **REQUEST FOR PRODUCTION NO. 32:** Produce Documents sufficient to show all  
24 of NAR's policies, guidelines, rules, and practices existing currently or at any time during 2017  
25 or thereafter, relating to:  
26

- 1 a) the retention and destruction of documents, including the retention, storage,  
2 deletion, and archiving of electronically stored information, including e-mail; or  
3 b) the use of personal electronic devices or personal email for NAR business.

4 **RESPONSE:**

5  
6 **REQUEST FOR PRODUCTION NO. 33:** Produce all Documents analyzing, reporting,  
7 reviewing, or evidencing residential real estate transactions within a NAR-affiliated MLS,  
8 accomplished without the involvement of a licensed real estate broker.

9  
10 **RESPONSE:**

11  
12 **REQUEST FOR PRODUCTION NO. 34:** Produce all Documents relating to any  
13 allegation that NAR is behaving or has behaved in an anticompetitive manner.

14 **RESPONSE:**

15  
16 **REQUEST FOR PRODUCTION NO. 35:** Produce all Documents relating to any  
17 former or potential withdrawal of any broker from an MLS.

18  
19 **RESPONSE:**

20  
21 **REQUEST FOR PRODUCTION NO. 36:** Produce all Documents that relate to any  
22 instances since 2005 in which any broker has withdrawn from an MLS, and identify each broker.

23  
24 **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 37:** Produce all Documents that relate to the  
2 rationale for any policy, guideline, rule, or practice requiring listing brokers to make an offer of  
3 compensation to buyer brokers to list a home on an MLS.

4           **RESPONSE:**

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6  
7           **REQUEST FOR PRODUCTION NO. 38:** Produce all studies either performed or  
8 commissioned by NAR relating to broker commissions and any underlying data.

9           **RESPONSE:**

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11           **REQUEST FOR PRODUCTION NO. 39:** Produce all Documents discussing, relating  
12 to, analyzing, or relying on any study produced in response to Request No. 38.

13           **RESPONSE:**

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16           **REQUEST FOR PRODUCTION NO. 40:** Produce Documents sufficient to show how  
17 NAR facilitates, governs, or influences NAR-affiliated MLSs.

18           **RESPONSE:**

19  
20  
21           **REQUEST FOR PRODUCTION NO. 41:** Produce all Documents evidencing how  
22 local members control or govern NAR-affiliated MLSs.

23           **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 42:** Produce all Documents evidencing  
2 disciplinary actions against NAR members for violating their MLS's Mandatory Offer of  
3 Compensation Rule.

4           **RESPONSE:**

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6  
7           **REQUEST FOR PRODUCTION NO. 43:** Produce all Documents evidencing NAR-  
8 member brokers profitability.

9           **RESPONSE:**

10  
11           **REQUEST FOR PRODUCTION NO. 44:** Produce all documents referring or relating  
12 to how internet display of residential real estate offered for sales impacts on residential real estate  
13 transactions.

14           **RESPONSE:**

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16  
17           **REQUEST FOR PRODUCTION NO. 45:** Produce all documents referring or relating  
18 to Zillow's impact on residential real estate transaction brokerage commissions.

19           **RESPONSE:**

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21  
22           **REQUEST FOR PRODUCTION NO. 46:** Produce all documents referring or relating  
23 to how internet display of residential real estate offered for sales impacts on residential real estate  
24 transaction brokerage commissions.

25           **RESPONSE:**

1           **REQUEST FOR PRODUCTION NO. 47:** Produce all documents evidencing the  
2 membership of any NAR governing board or body.

3           **RESPONSE:**  
4

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6           **REQUEST FOR PRODUCTION NO. 48:** Produce all documents relating to National  
7 Association of Realtors publication *2020 Profile of Home Buyers and Sellers*.

8           **RESPONSE:**  
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11           **REQUEST FOR PRODUCTION NO. 49:** Produce All Documents related to NAR's  
12 DANGER report, also known as the Definitive Analysis of Negative Game Changers Emerging  
13 In Real Estate.  
14

15           **RESPONSE:**  
16

17  
18           **REQUEST FOR PRODUCTION NO. 50:** Produce all Documents provided to the  
19 Antitrust Division of the Department of Justice from 2005 to the present related to residential  
20 real estate commissions or Multiple Listing Services practices or policies.  
21

22           **RESPONSE:**  
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1           **REQUEST FOR PRODUCTION NO. 51:** Produce all transcripts, videos, and exhibits  
2 of depositions or other testimony provided to the Antitrust Division of the Department of Justice  
3 from 2005 to the present related to residential real estate commissions or Multiple Listing  
4 Services practices or policies.

5           **RESPONSE:**  
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9           **REQUEST FOR PRODUCTION NO. 52:** Produce all monthly or quarterly forecasts  
10 for the residential real estate industry from January 2011 to the present.

11           **RESPONSE:**  
12  
13  
14

15           **REQUEST FOR PRODUCTION NO. 53:** Produce all organizational charts on either  
16 a structural or staff level for NAR including without limitation board and committee rosters  
17 from 1995 to the present.

18           **RESPONSE:**  
19  
20  
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22           **REQUEST FOR PRODUCTION NO. 54:** Produce all rosters or lists of members on  
23 any NAR-affiliated Multiple Listing Service or Realtor Board of directors.

24           **RESPONSE:**  
25  
26

1           **REQUEST FOR PRODUCTION NO. 55:** Produce all Documents related to any  
2 analysis of whether REX listings involve any licensed agent or whether REX agents are licensed  
3 real estate agents.

4           **RESPONSE:**

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8           **REQUEST FOR PRODUCTION NO. 56:** Produce all Documents related to NAR's  
9 knowledge of REX listings involving a licensed agent.

10          **RESPONSE:**

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14          **REQUEST FOR PRODUCTION NO. 57:** Produce all Documents related to any  
15 analysis of REX or REX listings.

16          **RESPONSE:**

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19          **REQUEST FOR PRODUCTION NO. 58:** Produce all Documents sufficient to show  
20 revenue received by any NAR-affiliated agent for each listing in REX markets from December  
21 2019 through today and documents sufficient to whether the listing was displayed in Zillow's  
22 "Agent" tab or "Other" tab.  
23

24          **RESPONSE:**



1           **REQUEST FOR PRODUCTION NO. 59:** Produce all Documents sufficient to show  
2 revenue received by NAR from any agent listing homes in REX markets from December 2019  
3 through today.

4           **RESPONSE:**

5  
6  
7           **REQUEST FOR PRODUCTION NO. 60:** Produce all Documents related to Zillow’s  
8 business plans for its business of buying and selling homes through its own listings or agents.

9           **RESPONSE:**

10  
11           **REQUEST FOR PRODUCTION NO. 61:** Produce all Documents related to NAR’s or  
12 its agents’ knowledge of Zillow’s decision to list REX listed homes in the “other listings” tab on  
13 Zillow.

14           **RESPONSE:**

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16  
17           **REQUEST FOR PRODUCTION NO. 62:** Produce all Documents related to NAR’s or  
18 its agents’ participating in, or approval, of Zillow’s decision to list REX listed homes in the “other  
19 listings” tab on Zillow.

20           **RESPONSE:**

1 DATED this 18th day of October, 2021.

2  
3 FOSTER GARVEY PC

4 /s/ Michael Vaska

Michael Vaska, WSBA #15438

5 /s/ Rylan Weythman

Rylan Weythman, WSBA #45352

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17 ***Attorneys for Plaintiff REX – Real Estate Exchange,***  
18 ***Inc.***

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**CERTIFICATION OF ATTORNEY**

I am the attorney for Defendant THE NATIONAL ASSOCIATION OF REALTORS (“NAR”) in this matter, and I hereby certify that I have read the foregoing Plaintiff’s First Set of Requests for Production of Documents to Defendant NAR and the Responses and Objections thereto, and the Responses, and Objections are in compliance with CR 26(g).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_

*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on October 18, 2021, I caused a true and correct copy of the foregoing

**PLAINTIFF’S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
DEFENDANTS NATIONAL ASSOCIATION OF REALTORS (“NAR”)** to be served

upon the following counsel of record, in the manner indicated below:.

Kyle A. Forsyth US ATTORNEY’S OFFICE (SEA) 700 STEWART ST STE 5220 SEATTLE, WA 98101-1271 <a href="mailto:kyle.forsyth@usdoj.gov">kyle.forsyth@usdoj.gov</a> <i>Counsel for United States of America</i>	<input type="checkbox"/> Via E-service via ECF (if opted in) <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-mail <input type="checkbox"/> Via US Mail, postage prepaid
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**PLAINTIFF’S FIRST REQUESTS FOR PRODUCTION TO  
DEFENDANTS NAR - 30**  
Case No. 2:21-cv-00312-TSZ

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23 EXECUTED this 18<sup>th</sup> day of October, 2021, at Kirkland, Washington.

24 Christine M. Harlan  
25 Christine M. Harlan, Legal Practice Assistant