

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

**ZILLOW DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL ZILLOW TO
PRODUCE DOCUMENTS**

NOTE ON MOTION CALENDAR:
October 14, 2022

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5 **Statutes**

6 15 U.S.C. § 158

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1 REX's numerous discovery requests for listings-related data are massively overbroad
2 and immensely burdensome. Nonetheless, after extensive meeting and conferring regarding
3 those requests, Zillow agreed that it would produce data regarding MLS and REX property
4 listings in hundreds of Metropolitan Statistical Areas ("MSAs"), from 2017 to present, as well
5 as data regarding visitor views related to those listings. That comprises millions of records. And
6 from those records, REX can assess consumer viewings of its listings, as well as multiple
7 millions of MLS listings, both before Zillow's change to the two-tab display, and after. REX
8 does not object to Zillow's production of those records. Instead, it wants more; this time, REX
9 seeks data relating to for-sale-by-owner ("FSBO") listings on Zillow's websites.

10 REX claims that it is entitled to all of the listings and engagement data for FSBO homes
11 in all the same geographies for which Zillow has produced REX and MLS data. Yet, FSBO data
12 is clearly irrelevant to REX's affirmative claims because the antitrust market REX defined in its
13 Complaint is limited to "brokered" transactions which, by definition, exclude FSBO sales. And
14 REX does not need FSBO data to show harm to REX, a point that REX admits in its Motion.
15 Instead, REX wants these additional data records because they *may* show "an analogous" decline
16 in the number of views of FSBO listings. *See* Mot. to Compel at 4, ECF No. 162. That, however,
17 is far from the relevancy showing required for production, particularly given the significant
18 burden it would impose on Zillow. Accordingly, REX's Motion should be denied.

19 **First**, FSBOs are outside the relevant market REX defined for purposes of its antitrust
20 claim, and thus any impact on FSBOs is irrelevant to assessing harm to competition in this
21 litigation. In its Complaint, REX defined a market for "brokerage services" that on its face
22 *excludes* FSBOs. There are no allegations in the Complaint that FSBOs compete with REX or
23 other participants in REX's alleged market for brokerage services. Because harm to competition
24 must occur in the same relevant market as the alleged anticompetitive conduct, and because
25 REX has alleged a market that excludes FSBOs, FSBO data is irrelevant.

26 **Second**, data regarding FSBO listings is not needed to show alleged harm to REX. REX
27 alleges that Zillow's two-tab display has impacted **REX's** listings. Zillow has agreed to
28

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