1 The Honorable Thomas S. Zilly 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 WESTERN DISTRICT OF WASHINGTON 10 AT SEATTLE 11 REX - REAL ESTATE EXCHANGE, INC., Case No. 2:21-CV-00312-TSZ Plaintiff, 12 ZILLOW DEFENDANTS' **OPPOSITION TO PLAINTIFF'S** 13 MOTION TO COMPEL ZILLOW TO v. PRODUCE DOCUMENTS 14 ZILLOW, INC., et al., **NOTE ON MOTION CALENDAR:** 15 Defendants. October 14, 2022 16 17 18 19 20 21 22 23 24 25 26 27 28 ZILLOW DEFENDANTS' OPPOSITION TO



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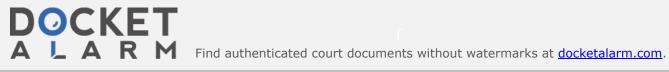


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REX's numerous discovery requests for listings-related data are massively overbroad and immensely burdensome. Nonetheless, after extensive meeting and conferring regarding those requests, Zillow agreed that it would produce data regarding MLS and REX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

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

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

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

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