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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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JEREMY JAEGER,[1] on behalf of himself and all others similarly situated,

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Plaintiff,

C21-1551 TSZ

10

v.

ORDER

11

ZILLOW GROUP, INC., et al.,

12

Defendants.

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THIS MATTER comes before the Court on Defendants' motion to dismiss, docket

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no. 85, the Corrected Consolidated Class Action Complaint ("CAC"), docket no. 71, for

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failure to state a claim. Plaintiff Jeremy Jaeger brings this action on behalf of a putative

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class of persons who purchased or otherwise acquired shares of Class A or Class C

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common stock in Zillow Group, Inc. ("Zillow") between August 5, 2021, and November

18

2, 2021 (the "Class Period"). CAC ¶ 258. Plaintiff sues all Defendants under Section

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10(b) of the Securities Exchange Act of 1934, 5 U.S.C. § 78j(b), and Rule 10b-5

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[1] By Order entered February 16, 2022, docket no. 61, the Court appointed Jeremy Jaeger as lead plaintiff. All future filings shall bear the same caption as this Order.

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1 promulgated by the Securities and Exchange Commission ("SEC"), 17 C.F.R. § 240.10b-

2 5. Plaintiff also sues Defendants Richard Barton, Jeremy Wacksman, and Allen Parker

3 (the "Executive Defendants") as control persons of Zillow under Section 20(a) of the

4 Exchange Act, 15 U.S.C. § 78t(a). Having reviewed all papers filed in support of, and in

5 opposition to, the motion, the Court enters the following Order.

6 **Background**

7   Defendant Zillow is a Washington corporation.[2] CAC ¶ 1. Zillow is alleged to

8 operate the most visited real estate website in the United States, "zillow.com," and other

9 real estate websites, such as "trulia.com" and "streeteasy.com." CAC ¶ 2. Until 2018,

10 Zillow generated most of its revenue from advertising and from referral fees received

11 when it matched prospective buyers and sellers with real estate agents and brokers. *Id.*

12 **A.   Zillow Offers**

13   According to the operative pleading, in April 2018, in response to slow growth in

14 Zillow's core business and stagnating stock price, Zillow entered the "iBuyer" or "Instant

15 Buyer" market. CAC ¶ 2. In the iBuyer market, companies "use algorithms and

16 technology to buy and resell homes quickly." CAC ¶ 3. Zillow's new iBuyer business

17 was called Zillow Offers.[3] CAC ¶ 4.

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19

20 [2] Zillow's Class A common stock trades on the Nasdaq exchange under the ticker symbol "ZG," and its Class C capital stock trades on the Nasdaq exchange under the ticker symbol "Z." CAC ¶ 43.

21 [3] Through Zillow Offers, Zillow would make offers to buy homes directly from homeowners. If a homeowner accepted an offer from Zillow Offers, then Zillow would purchase the home, make certain repairs and updates, and then list it for sale on the open market. For each home it resold, Zillow would

22 recognize a profit, in the form of transaction fees, at the time of closing. CAC ¶ 59.

1   In February 2019, Defendant Richard Barton returned to his former role as

2   Zillow's Chief Executive Officer ("CEO"). CAC ¶ 44. Coinciding with his resumption of

3   CEO duties, Barton announced a goal for Zillow Offers of $20 billion in revenue over

4   five years, with a target of purchasing and selling 5,000 homes per month. CAC ¶ 66.

5   Barton acknowledged that Zillow Offers was behind some of its competitors, like

6   Opendoor and Offerpad, which had entered the iBuyer market a few years earlier. CAC

7   ¶ 67. To catch up, Zillow Offers needed to scale up quickly. CAC ¶ 83. Doing so would

8   also allow Zillow Offers to improve its cost structure. CAC ¶ 11. As a result, in the years

9   leading up to the Class Period, Zillow's executives were, according to the CAC, "laser-

10   focused on increasing Zillow's home purchasing volumes to achieve Barton's targets of

11   5,000 homes per month by 2024." *Id.*

12   Defendants are alleged to have touted the accuracy of the algorithms used to price

13   homes. CAC ¶ 75. On May 7, 2020, Barton stated, "it's just the machines getting smarter

14   . . . . [W]e have just gotten a whole lot better at how to figure out what to buy, where to

15   buy it, how to rehab it, how to appraise it, how to price drop it, and all of this is informed

16   by data." CAC ¶ 76 (alteration in original).

17   **B.   Zestimate Offer and Project Ketchup**

18   On February 25, 2021, Zillow announced that it had launched in certain markets a

19   new program, Zestimate[4] offer, which would provide an initial purchase offer from

20   _____

21   [4] "Zestimate" is Zillow's proprietary pricing model that estimated the current value of over 100 million
     homes in the United States. CAC ¶ 71. Consumers could visit Zillow's website and look up the Zestimate
     for their home. *Id.* If a consumer liked the Zestimate, then he or she could contact Zillow and request that

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1   Zillow Offers to homeowners. CAC ¶ 77. This process eliminated the involvement of a

2   pricing expert and made Zillow even more reliant on its Zestimate and other algorithms.

3   In a press release, Zillow stated, "This exciting advancement demonstrates the confidence

4   we have in the Zestimate . . . . This is a proud moment for Zillow's tech team and speaks

5   to the advancements they've made in machine learning and AI technology." *Id.*

6   On June 15, 2021, after having missed its inventory-acquisition targets and

7   concluded that it was "under-modeling" the level of home appreciation,[5] Zillow issued a

8   press release stating that it had improved its algorithms. The press release said, in

9   relevant part, that "Zillow today launches significant upgrades to its Zestimate® home

10 valuation model. *The changes allow the algorithm to react more quickly to current*

11 *market trends . . . .*" CAC ¶ 99 (emphasis in original). As a result of this update, Zillow

12 said that "*the Zestimate can now react more quickly to dynamic market conditions,*

13 *providing homeowners with a more accurate estimate [prediction] of a home's current*

14 *value.*" *Id.* (emphasis and alteration in original).

15

16 _____

17 the Company make an initial offer for the consumer's home. *Id.* After the consumer contacted Zillow,
    Zillow would send out a pricing expert, who would adjust the Zestimate and report his or her
    recommendation to Zillow. Zillow then applied computer models to estimate the length of time required
18 to sell the home and how the value of the home would change during that timeframe. CAC ¶ 72. Zillow
    would eventually arrive at the home's estimated value and make an initial offer to purchase the
19 consumer's home. *Id.*

    [5] In alleging that Zillow did not meet its home-buying goals and that it was underestimating the increase
20 in house values over time, Plaintiff relies on statements by former Zillow employees. *See* CAC ¶¶ 92–96.
    Defendants attempt to discredit the former employees' statements, particularly as they relate to scienter.
21 Defs.' Mot. at 24 (docket no. 85). The CAC, however, details each former employee's job title and group
    at Zillow, responsibilities, period of employment, and experience, and the statements of these confidential
    witnesses may therefore be considered. *See In re Daou Sys., Inc. Sec. Litig.*, 411 F.3d 1006, 1015–16 (9th
22 Cir. 2005).

1   Behind the scenes, however, Zillow was not meeting its home-purchasing goals.

2 CAC at ¶ 100. As a result, Zillow initiated Project Ketchup. *Id.* Under Project Ketchup,

3 Zillow "applied systematic 'overlays' to drive up offers well above the pricing indicated

4 by its algorithm and pricing analysts." *Id.* These overlays are alleged to have caused

5 Zillow to "significantly overpay for thousands of homes." *Id.*

6   Between late May or early June and August 2021, Zillow increased its home offer

7 prices by, on average, between 400 and 800 base points across all markets. CAC ¶¶ 111,

8 112.

9   Project Ketchup had other consequences. Because Zillow purchased homes at

10 prices that often exceeded their market value, it attempted to save money by decreasing

11 the scope and costs of renovations to be completed before reselling them. *See* CAC ¶ 127.

12 "These changes were unsustainable" because Zillow's strategy "squeezed" longtime

13 contractors, as Zillow asked them to renovate more homes for less money than previously

14 charged for the same work. CAC ¶ 128. As a result, Zillow's contractors began refusing

15 jobs. *Id.* Without sufficient contractors to complete renovations, a substantial backlog of

16 homes developed on Zillow's balance sheet. *Id.* This backlog increased Zillow's holding

17 and interest rate costs, exposing it to additional risks from broader market movements. *Id.*

18 **C.   Allegedly False or Misleading Statements**

19   Plaintiff alleges that Defendants made several false and/or misleading statements

20 to the market on two dates: (i) on August 5, 2021, in a shareholder letter and earnings

21 call, and (ii) on September 13, 2021, at a Piper Sandler investment conference. These

22 allegedly false or misleading statements fall into three categories: (i) statements about

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