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United States District Court
Southern District of New York

7:19-cv-11521-NSR

Max Brizer, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Zillow, Inc.,

Defendant

First Amended Class Action
Complaint

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Zillow, Inc. (“defendant”) operates the nation’s dominant home buying platform at Zillow.com, which purports to make the process of buying and selling a home less complex and

lower priced.

2. In today's economy, large swaths of commercial and social activity are dominated by "winner-take-all" online platforms in specific sectors.

3. Whether it is Google for search, Amazon for commerce, Facebook for social networking, Yelp for reviews, Uber for on-demand transportation or Zillow for home buying, "users often look to platforms to serve as filters" for the torrent of information the internet makes available.¹

4. However, buying a home is several orders of magnitude more significant than spending \$2.99 on toothpaste that arrives within two days or using an "app" to arrange a ride to the airport.

5. Buying a house or apartment is the most expensive purchase most Americans will ever make and is often their main retirement asset.

6. 80% of prospective homebuyers use Zillow in beginning their home search, which gives defendant "the power to tilt the real-world playing field in favor of its own favored counterparties" – "Premier Agents" – who, unbeknownst to users, pay monthly fees to be associated with properties they have no connection to.²

7. Defendant relies on Premier Agents to collect revenue and is incentivized to re-direct inquiries made to listing agents and skew its design and interface cues to benefit Premier Agents.

8. These tactics enable defendant to deliver on the 15-20 leads it promises Premier Agents each month so that they continue paying, and defendant's stock price keeps rising.

9. Defendant's practices are unfair and deceptive towards traditional real estate brokers and listing agents and cause consumer confusion, economic harm and deception.

¹ John M. Newman, "[Complex Antitrust Harm in Platform Markets](#)," CPI Antitrust Chronicle, May 2017 at p.6.

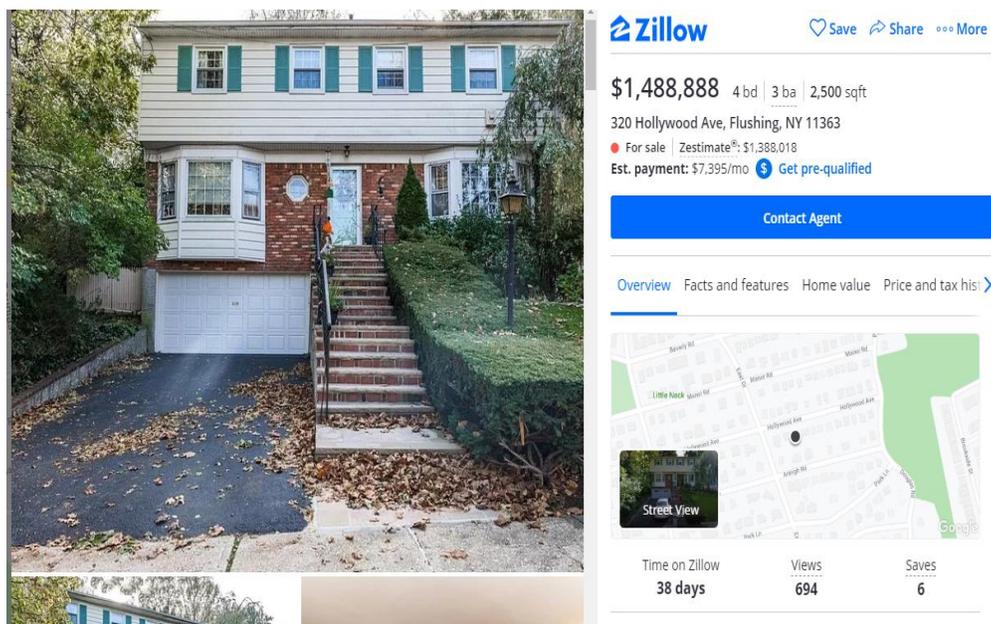
² *Id.*

10. Prospective homebuyers are stymied in attempting to contact a property’s exclusive listing agents, who are sought out for their connection to the property and their local knowledge.

11. The listing agent has the original connection with the seller and contracts to sell the house on the owner’s behalf, which is why they describe such exclusive listings as “my” or “mine.”

12. Defendant’s term, “Premier Agent,” connotes a special relationship to the property and superior knowledge of the property over other real estate agents, specifically, the listing agents.

13. When a prospective homebuyer searches the internet and arrives at a Zillow page listing a property, they are presented with a prominent, bright blue bar stating “Contact Agent.”

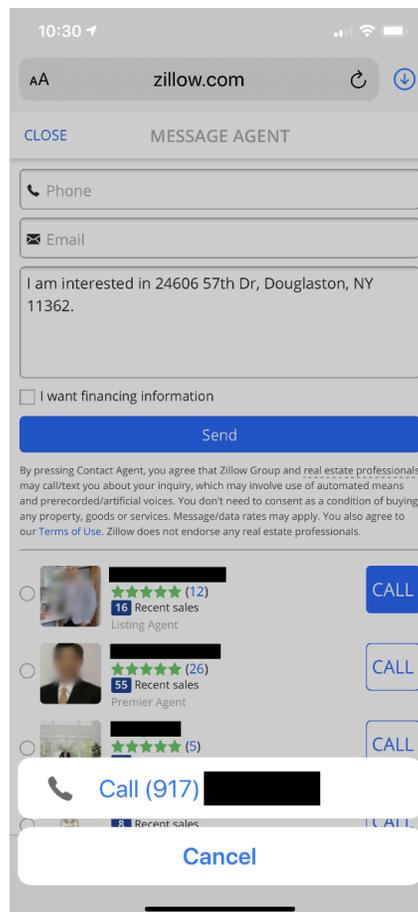
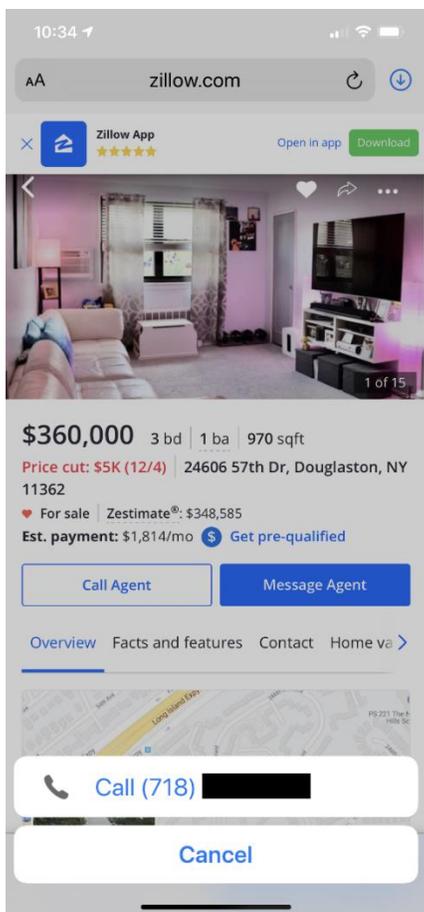


14. After clicking, the user is prompted to provide their contact information which gets transmitted to one listing agent and three “Premier Agents.”

15. On a mobile device, the options include “Call Agent” and “Message Agent.”

Search Results Landing Page

“Message Agent” Display



16. However, tapping “Call Agent” dials the number for the “Premier Agent,” shown through the 718 number in the left column corresponding to one of the Premier Agents because pressing the “Call” icon next to “Listing Agent” brings up a 917 number.³

17. Moreover, when a prospective homebuyer lands on the page for a property, it requires several scrolls to identify the listing agent among the multiple premier agents.

18. Where a prospective homebuyer chooses to contact a listing agent, their information is instead sent to defendant’s employees who screen them by phone, text or email, prior to connecting them with a Premier Agent, shown through defendant’s own materials.

³ The full numbers along with images and names of the agents has been blacked out for privacy purposes.

Getting ahead with live connections



A shopper reaches out
A home shopper makes an inquiry through Zillow or Trulia while viewing a listing.



We verify the lead
We contact the home shopper to confirm they are ready to speak with an agent.



You connect live
We call you and introduce you to your new connection — answer when it works for you.



Convert & close more deals
Strengthen your new client relationship, and track the homes they view and more with our tools.

19. Defendant's control over Premier Agents is further indicated by their selection from real estate brokers based on number of homes sold and the right of termination based on performance.

20. Defendant enables and promotes the Premier Agents to do indirectly what it cannot do directly – advertise to and solicit prospective homebuyers based on the listings supplied by other real estate brokers, without permission.

21. These factors are the hallmarks of an employer-employee relationship with the Premier Agents acting as real estate brokers or agents under defendant.

22. This is contrary to standard advertising practices where businesses have an arms-length relationship with the platform where they buy advertising.

23. The effects of defendant's concerted efforts with Premier Agents is to prevent and/or hinder prospective buyers from having access to the listing agents.

24. However, the Premier Agents are unable to provide the information requested because they have no connection to the property being advertised, other than having paid defendant to be presented prominently next it.

25. This "bait and switch" tactic draws the prospective buyer in with a property they desire only to show them a completely different property they had no desire to see.

26. Premier Agents are prone to steering prospective homebuyers towards properties that are better financial arrangements for them as opposed to the homebuyers.

27. Premier Agents induce unwary homebuyers into signing Buyer's Agent Agreements or dual agency agreement to maximize their commission.

28. In a standard home purchase/sale, the buyer and seller are represented by individual real estate agents who equally split a commission, i.e., 6%.

29. However, a Buyer Broker Agreement allows an agent to collect a commission from the buyer and the seller.

30. A Dual Agency transaction with the agent "representing" the buyer and seller lets an agent keep the entire commission, but careful disclosures and consent are required.

31. This opportunity to engage in "buyer broker and dual agency" is one of the main selling points to participating agents and brokers.

32. Studies have shown that participating Premier Agents have more, and a higher percent of, buyer broker and dual agency transactions compared to non-participating agents.

33. Specifically, a report from Morgan Stanley "found that 60 % of those real-estate agents who advertised as a "premier agent" on Zillow received a 30 % increase in these dual-side deals."⁴

34. This represents an 18 % increase in dual agency among Premier Agents.

35. From the first time a prospective homebuyer engages with defendant's site, neither the participating agents nor defendant explain to prospective homebuyers that participating agents are representing interests adverse to them.

36. The Premier Agent advertising practices violate real estate industry regulations

⁴ Amy Hoak, "Something You Should Know About Real Estate Agents On Zillow," Market Watch, September 2015.

which prohibit advertisement of another broker's exclusive listing without their authorization. *See* 19 NYCRR § 175.25(b).

37. The Premier Agent advertisements give prospective homebuyers the impression that the Premier Agents have "a listing in this property or properties or that any property is currently available." *See* 19 NYCRR § 175.25(d)(6) ("Any advertisement that references or includes information about a property that is not listed with the advertising broker or was not sold by the advertising broker shall prominently display" a disclaimer informing the public that no such property is actually available).

38. The purpose of this is to prevent prospective buyers from falling into the clutches of real estate agents who (1) have no interest in showing or selling the property they viewed, (2) no relation to or knowledge about the listing for which they submitted the initial inquiry, (3) are dishonest and may perpetrate or aid in the perpetration of frauds in the brokerage and sale of real estate and (4) are inexperienced and inept.

Jurisdiction and Venue

39. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or "CAFA").

40. Under CAFA, district courts have "original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]" *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

41. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

42. Plaintiff Max Brizer is a citizen of New York.

43. Defendant Zillow, Inc. is a Washington corporation with a principal place of business

in Seattle, King County, Washington and is a citizen of Washington.

44. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to provide and/or supply and provides and/or supplies services and/or goods within New York.

45. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

46. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

47. Plaintiff Max Brizer is a citizen of Westchester County, New York and is a New York licensed real estate salesperson and/or real estate broker.

48. Plaintiff has been a listing agent for various properties on defendant's website and lost money due to Premier Agents who paid defendant to be on his listings.

49. Defendant is a Washington corporation with a principal place of business in Seattle, Washington, King County and is a citizen of Washington.

Class Allegations

50. The class will consist of all real estate brokers, real estate sales agents and other similarly designated real estate personnel in New York.

51. Common questions of law or fact predominate and include whether defendant's representations and practices were likely to harm plaintiff, the general public and if plaintiffs and class members are entitled to damages.

52. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive actions.

53. Plaintiff is an adequate representative because his interests do not conflict with other members.

54. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

55. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

56. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

57. Plaintiff seeks class-wide injunctive relief because the practices continue.

New York GBL § 340
("Donnelly Act")

58. Plaintiff incorporates by reference all preceding paragraphs.

59. The relevant market for real estate broker services is the state of New York.

60. This causes consumer confusion and frustration, and immediately harms the listing agents who are not adequately disclosed in connection with the potential sale of a property.

61. Prospective homebuyers are induced by defendant's employees to enter into Buyer's Agent agreements or dual agency transactions which typically include higher fees for the agent, compromised representation for the prospective buyer and result in less money spent on purchasing a home.

62. Prospective homebuyers are hindered from viewing the properties they initially intended to, due to the skewed incentives of the relationship between defendant and Premier Agents.

63. The Premier Agents, in turn, supply defendant with the monthly advertising revenues needed to consolidate control in the real estate industry, to the detriment of licensed real estate

brokers, agents and those operating for them and the market for home buying.

64. As a result of defendant's conduct, plaintiff has lost and continues to lose valuable leads which would have turned into earned commissions, a monetary loss which will continue until defendant's challenged conduct ceases.

New York GBL §§ 349 & 350
(Consumer Protection from Deceptive Acts)

65. Plaintiffs incorporate by reference all preceding paragraphs.

66. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

67. Defendant's actions are harmful to prospective homebuyers by referring them to agents whose only connection to a desired property is that they paid the most money in a particular geographic area to defendant and lack knowledge of the listing and surrounding area.

68. Defendant's actions cause consumer confusion and financial harm, by inducing or attempting to induce them to sign Buyer's Agent Agreements or Dual Agency Agreements.

69. Defendant's actions have a detrimental effect on licensed real estate brokers and those working for them since defendant's business model is based on Premier Agents paying to be listed on properties which they are not the listing agents and obscuring the identities and contact information for the listing agents.

Unfair Competition

70. Plaintiffs incorporate by reference all preceding paragraphs.

71. Defendant misappropriated the labors and expenditures of plaintiffs by failing to adequately disclose they were the listing agents.

72. This caused harm to the listing agents by diverting leads and lost sales.

73. Defendant's bad faith is evident by its efforts at promoting the "Premier Agent"

program at the expense of listing agents and to the detriment of prospective homebuyers, in knowing violation of law and in opposition to the interest of prospective homebuyers.

Unjust Enrichment

74. Plaintiff incorporates by reference all preceding paragraphs.

75. Defendant obtained benefits and monies because they profited off the labor and expenses of listing agents, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, restitution and disgorgement for members of the class pursuant to the applicable laws of their States;
4. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: February 19, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: February 19, 2020

/s/ Spencer Sheehan
Spencer Sheehan