No. 22-____

IN THE

Supreme Court of the United States

THE NATIONAL ASSOCIATION OF REALTORS, BRIGHT MLS, INC., MIDWEST REAL ESTATE DATA, LLC, AND CALIFORNIA REGIONAL MULTIPLE LISTING SERVICES, INC.,
Petitioners,

v.

THE PLS.COM, LLC,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This antitrust case presents two important federal questions concerning whether courts will apply—or contravene—this Court's landmark decisions in *Ohio v. American Express Co.*, 585 U.S. __, 138 S. Ct. 2274 (2018) ("*Amex*"), and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) ("*Illinois Brick*"). Here, the Ninth Circuit failed to follow either decision, sowing confusion and inviting future courts to ignore or misapply fundamental principles of antitrust law. The Ninth Circuit's ruling presents the following two pressing questions for this Court's consideration.

First, in defining the relevant antitrust market for a two-sided platform with indirect network effects, can courts simply elect *not* to analyze both sides of the market, notwithstanding this Court's command that they "must" do so? *See Amex*, 138 S. Ct. at 2286.

Second, where *Illinois Brick* established the "indirect purchaser" rule such that the first party *outside* the conspiracy has standing to sue, can a competitor establish standing based on harm to alleged members of the conspiracy?

This case concerns Petitioners' well-established multiple listing services ("MLS") platforms that facilitate home real estate sales nationwide—a multi-trillion-dollar industry responsible for 17 percent of the nation's Gross Domestic Product. For this substantial market—and manifold other two-sided platforms—this Court's review will provide much-needed guidance to ensure that courts follow *Amex* and *Illinois Brick*, and not the Ninth Circuit's contrary and erroneous approach.

PARTIES TO THE PROCEEDING

Petitioners in this Court are the National Association of Realtors ("NAR"), Bright MLS, Inc. ("Bright"), Midwest Real Estate Data, LLC ("MRED"), and California Regional Multiple Listing Service, Inc. ("CRMLS"). Respondent is The PLS.com ("PLS").

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, NAR hereby states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Pursuant to Supreme Court Rule 29.6, Bright hereby states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Pursuant to Supreme Court Rule 29.6, MRED hereby states that its parent corporation, Multiple Listing Service of Northern Illinois, Inc., is a private corporate owner.

Pursuant to Supreme Court Rule 29.6, CRMLS hereby states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED CASES

Pursuant to Supreme Court Rule 14, Petitioners hereby state that there are no related cases.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully file this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. This petition is permitted by Supreme Court Rule 12.

OPINIONS BELOW

The district court's opinion granting the motion to dismiss, *PLS.com, LLC v. National Association of Realtors*, 516 F. Supp. 3d 1047 (C.D. Cal. 2021), is reproduced at Pet. App. 37a–69a. The Ninth Circuit's opinion reversing the district court, *PLS.com, LLC v. National Association of Realtors*, 32 F.4th 824 (9th Cir. 2022), is reproduced at Pet. App. 2a–34a.

JURISDICTION

The order of the Ninth Circuit was entered on May 18, 2022. Justice Kagan granted Petitioners an extension of time to file a petition for writ of certiorari up to and including September 23, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

Clarity is particularly important in antitrust law. *See Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438, 452 (2009) (emphasizing "the importance of clear rules in antitrust law"); *see also Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 22 (1st Cir. 1990) (Breyer, J.) ("antitrust rules . . . must be clear enough for lawyers to explain them to clients"). The clarity that this Court sought to provide regarding market definition in *Amex* and antitrust standing in *Illinois Brick* has been subverted by the Ninth Circuit's decision in this case. If left unreviewed, this erroneous ruling concerning a vast swath of the American economy—in the circuit addressing the largest number of antitrust

cases—would inject untenable uncertainty for both businesses and the courts. Rather than countenance that outcome, this Court should address two issues of national importance.

First, in *Amex*, this Court held that, in antitrust cases involving "two-sided" platforms with strong "indirect network effects," courts "***must*** include both sides of the platform" when defining the relevant antitrust market. 138 S. Ct. at 2286 (emphasis added). Indirect network effects occur on platforms that depend on two or more user groups such as buyers and sellers, and as more people from one group join the platform, the other group receives increased value. Those effects are strong when each side receives benefits from growth on the other side. This case concerns a home-listing platform for buyers and sellers—a paradigmatic two-sided platform with indirect network effects (*i.e.*, having more buyers on the platform benefits sellers, and vice versa). Because the Amended Complaint insufficiently alleged the purported harm to both sides of the market, the district court properly dismissed the action for failure to satisfy *Amex*. The Ninth Circuit reversed on this issue, however, and in doing so misapplied *Amex* and sowed confusion regarding this Court's directive that courts "must" apply that landmark decision.

The Ninth Circuit contravened *Amex* both in deeming the market adequately pled and in raising the prospect that *Amex* may not apply at all at the pleading stage, when plaintiffs first define the relevant antitrust market. The Ninth Circuit's approach flouts this Court's ruling—contrary to other courts' application of *Amex*—and destabilizes the law in an area of exceptional national importance, particularly given the real estate market's significant role in the

U.S. economy. And because so many antitrust cases are filed within the Ninth Circuit, if left unreviewed, the Ninth Circuit's opinion will be a leading yet erroneous authority on two-sided markets—a critical and growing area in antitrust jurisprudence.

Second, the Ninth Circuit departed wholesale from *Illinois Brick* and its progeny. *Illinois Brick* established that only the first purchaser *outside* a conspiracy has standing to sue under federal law. Yet the Ninth Circuit here predicated standing on a purported injury to *members* of a conspiracy standing to sue—contrary to *Illinois Brick*. If left to stand, the Ninth Circuit's ruling will subvert antitrust law and benefit alleged conspirators to the detriment of consumers and lawful competition.

At their foundation, antitrust laws were enacted for "the protection of competition, not competitors." *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962). Notwithstanding this principle, Respondent PLS sued Petitioners because PLS wants to pursue a business model that would harm buyers and sellers by injecting *more* exclusivity and secrecy into the home buying process through "pocket listings" showed only to a privileged few. In contrast, Petitioners' policies seek to ensure consumers' widespread access to market information regarding available properties. PLS's core complaint is that Petitioner NAR's Clear Cooperation Policy—which requires MLS members to share their publicly advertised properties on the MLS *in addition to* other ways the property is marketed—hurts PLS's business model. This complaint is premised on keeping information from most buyers and sellers while providing exclusive information to a select slice of the housing market. As the district court properly held, injury to *PLS* as a competitor is no substitute for

injury to *competition* and is insufficient to plead an antitrust claim. The Ninth Circuit's contrary ruling contravenes this Court's precedent, sows untenable confusion, and requires this Court's review.

STATEMENT OF THE CASE

A. NAR And Multiple Listing Services

Petitioner NAR is a trade association for real estate professionals that establishes policies and professional standards for its individual members (which include licensed real estate professionals), and for associations of REALTORS®[1] (which include 54 state and territorial associations and more than 1,200 local associations).[2] Pet. App. 76a, 79a ¶¶ 17, 30. NAR's policies include a code of ethics for REALTORS® and rules for multiple listing services operated by associations of REALTORS®. *Id.* at 76a, 96a–97a ¶¶ 17, 103.

An MLS provides buyers and sellers with a searchable database of the properties listed for sale in a particular geographic region. *Id.* at 80a ¶ 32. It "combines its members' home listings information" into a single, centralized platform, *id.*, which facilitates residential real estate transactions, *see, e.g.*, *id.* at 76a–77a ¶ 19 ("In a typical year, Bright MLS will facilitate approximately $70 billion in residential real estate transactions."); *id.* at 78a ¶ 26 ("Billions of dollars flow across state lines in the mortgage market to finance the sales of residential real estate facilitated

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[1] The term REALTOR® is a federally registered collective membership mark that identifies a real estate professional who is a member of the National Association of REALTORS®.

[2] Because this appeal followed a dismissal under Rule 12(b)(6), the allegations in the Amended Complaint must be accepted as true for present purposes.

by the MLS Defendants."); *id.* at 79a ¶ 31 ("Until recently, with the surge in consumer demand for pocket listings, NAR-affiliated MLSs facilitated the vast majority of residential real estate transactions."). In real estate transactions facilitated by an MLS, the seller and buyer are each represented by a licensed real estate broker, who is a member of the MLS. *Id.* at 79a–80a ¶¶ 27–28, 32.

MLSs reduce search and transaction costs. "By listing in the MLS, a licensed real estate professional can market properties to a large set of potential buyers." *Id.* at 80a ¶ 32. Similarly, by "searching the MLS, a licensed real estate professional representing a buyer can provide that buyer with information about all the listed homes in the area that match the buyer's housing needs." *Id.* Properties listed on an MLS therefore enjoy "wide exposure," *id.* at 72a ¶ 6, in a single location. In addition to suing NAR, Respondent PLS sued several MLSs. *Id.* at 76a–77a ¶¶ 18–20. The Petitioners here do not have overlapping services: NAR does not operate an MLS; CRMLS operates only in California; Bright MLS operates only in "the Mid-Atlantic region of the United States"; and MRED only operates in "northern Illinois, southern Wisconsin, and northwest Indiana." *Id.*

B. Pocket Listings And PLS

"Pocket listings" are residential real estate listings that are not advertised in the local MLS. When a seller "pockets" a listing, her agent "privately share[s] [it] with other licensed real estate professionals while avoiding . . . exposure of th[e] listing[] through the NAR-affiliated MLSs." *Id.* at 73a ¶ 8.

PLS operates a private platform for pocket listings. *Id.* at 73a, 86a–87a ¶¶ 8, 60–61. A pocket listing on

PLS is hidden from the public at large. *Id.* at 73a ¶ 8 ("By joining PLS, licensed real estate professionals could privately share pocket listings . . . .").

C. The Clear Cooperation Policy

Effective January 1, 2020, NAR adopted the Clear Cooperation Policy ("Policy") for MLSs operated by associations of REALTORS®, which provided:

> Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

Pet. App. 92a–93a ¶ 89.

D. The District Court's Dismissal

PLS filed its initial Complaint on May 28, 2020, *id.* at 114a, followed by an Amended Complaint on July 20, 2020, *id.* at 128a. The Amended Complaint alleged that Petitioners' conduct—ensuring that listings were not secret but instead also provided to the broader public via MLS—constitutes an unreasonable restraint of trade in violation of the Sherman Act and its California corollary, the Cartwright Act. *Id.* at 103a–104a.

On August 13, 2020, Petitioners moved to dismiss the Amended Complaint. *Id.* at 129a–131a, Dkt. Nos. 50, 53, & 55. The district court granted dismissal with prejudice. *Id.* at 35a–36a. As relevant here, it held

that PLS's allegations described MLSs as two-sided markets, but PLS did not satisfy *Amex*, because it failed to allege a plausible injury to both sides of the market. *Id.* at 58a–59a. The district court additionally held that PLS failed to allege facts to plausibly show that it suffered an antitrust injury from conduct by the defendant that also injures competition and consumers; it therefore did not have antitrust standing. *Id.* at 53a. In so holding, the district court correctly identified that PLS failed to plead harm to home buyers and sellers, as opposed to brokers who were—according to PLS's own Amended Complaint—part of the alleged conspiracy. *Id.* at 57a–58a.

E. The Ninth Circuit Reversed

PLS appealed, and the Ninth Circuit reversed. PLS argued that *Amex* "applies only to two-sided platforms that facilitate simultaneous transactions, like credit-card networks," and the Ninth Circuit largely adopted that cramped misinterpretation, holding that "*Amex* does not require a plaintiff to allege harm to participants on both sides of the market[.]" *Id.* at 22a, 27a. Additionally, the Ninth Circuit held that PLS had alleged an antitrust injury not by alleging harm to home buyers or sellers, but rather harm to *brokers,* who were the alleged participants in the conspiracy. *Id.* at 14a–15a. The Court remanded for further proceedings consistent with its opinion.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit Flouted *Amex*, Creating Confusion

Amex—a landmark 2018 opinion issued by this Court in a case of national importance—established the approach for analyzing antitrust cases involving two-sided markets. *Amex* instructs that, in cases involving two-sided platforms with strong "indirect network effects . . . courts ***must*** include both sides of the platform" when defining the relevant antitrust market. 138 S. Ct. at 2285–86 (emphasis added). Indirect network effects occur in markets where "the value of the services that a two-sided platform provides increases as the number of participants on both sides of the platform increases." *Id.* at 2281. Strong indirect network effects occur when both sides benefit from the growth of the other. *Id.* As demonstrated below, the economic literature that this Court cited in *Amex* recognizes that an MLS is a quintessential example of a two-sided platform exhibiting these indirect network effects—and thus a context in which courts must apply the *Amex* analysis. The Ninth Circuit—the nation's busiest appellate docket for antitrust cases—departed from this Court's holding, setting a problematic precedent that, absent this Court's review, will sow confusion and cause further unacceptable deviation from *Amex*.

A. *Amex* Established The Rule For Analyzing Two-Sided Markets

Amex arose in the context of a "two-sided market" for credit-card transactions, including both merchants and consumers, and explained that in such a situation, the market must be analyzed "as a whole." 138 S. Ct. at 2287. The Court explained that a two-sided

platform "offers different products or services to two different groups who both depend on the platform to intermediate between them." *Id.* at 2280. Such platforms are distinct because "the value of the services that a two-sided platform provides increases as the number of participants on both sides of the platform increases." *Id.* at 2281.

Amex was grounded in this Court's recognition of what economists call "indirect network effects." The Court observed that "[t]o ensure sufficient participation, two-sided platforms must be sensitive to the prices that they charge each side" of the platform to avoid the phenomenon of "[r]aising the price on side A . . . [and] losing participation on that side, which decreases the value of the platform to side B," which in turn risks losing participation on side B—and so on. *Id*. Two-sided platforms therefore often "cannot raise prices on one side without risking a feedback loop of declining demand." *Id.* at 2285. As a result of these indirect network effects, "[p]rice increases on one side of the platform . . . do not suggest anticompetitive effects without some evidence that they have increased the overall cost of the platform's services." *Id.* at 2285-86. Therefore, in cases involving two-sided platforms, "courts must include both sides of the platform" in their definition of the relevant market. *Id.* at 2286. In the context of the credit card market for example, the Court explained that "[f]ocusing on merchant fees alone misse[d] the mark because the product that credit-card companies sell is transactions, not services to merchants, and the competitive effects of a restraint on transactions cannot be judged by looking at merchants alone." *Id.* at 2287.

While the facts before the Court in *Amex* involved the credit-card market, the Court nowhere stated or

suggested that its principles would or should be limited to that context. Nor did *Amex* indicate anywhere that the required analysis applied only in the context of two-sided platforms with "simultaneous" transactions. To the contrary, the scope of this Court's ruling was clear: in two-sided markets with strong indirect network effects, courts must perform the two-sided *Amex* analysis. *Cf. id.* at 2285–86 (unnecessary to consider both sides of a platform only when the indirect network effects are "minor"). An MLS is such a market. Underscoring this point, *Amex* helpfully distinguished newspapers as an example of where the two-sided analysis does *not* apply, because there are only weak and indirect network effects (*i.e.*, advertisers care about readership numbers, but readers do not care about advertiser numbers). *Id.* at 2286. In short, there is no basis to conclude—as the Ninth Circuit essentially held—that *Amex* is applicable only to the four credit card networks.

B. *Amex* Requires Dismissal Here

Amex should have been dispositive in this case, as the district court recognized. That is because MLSs are a paradigmatic two-sided market with strong network effects—the volume of buyers on the MLS profoundly impacts sellers, and vice versa. Accordingly, as the district court held, PLS needed to allege harm to home buyers *and* sellers to satisfy *Amex*. *See* Pet. App. 57a–59a. It is undisputed that no such allegations exist in the Amended Complaint, and thus the district court applied *Amex*, held that PLS "fail[ed] to allege a plausible antitrust injury," and granted dismissal with prejudice. *Id.* at 53a, 60a–61a.

The district court's ruling faithfully applied this Court's instruction. Indeed, the economic literature that this Court cited in *Amex* repeatedly refers to

MLSs as prime examples of a two-sided platform. *See* David S. Evans & Michael Noel, *Defining Antitrust Markets When Firms Operate Two-Sided Platforms*, 2005 Colum. Bus. L. Rev. 667, 675, 683, 692 (2005) (cited at *Amex*, 138 S. Ct. at 2280) (referring to "a multiple listing service" within the entry for "Residential Property Brokerage" in a table of "Multi-Sided Platform[s]" for selected two-sided markets); Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. Eur. Econ. Ass'n 990, 991–93 & n.1 (2003) (cited at *Amex*, 138 S. Ct. at 2281) (identifying real estate as a quintessential two-sided market).

Other leading antitrust scholars similarly recognize MLSs as two-sided platforms with network effects. For example, the Hon. Joshua Wright, a former member of the Federal Trade Commission, has explained that "[a]n MLS is an example of what economists call two-sided markets with network effects. . . . [T]he MLS product is a 'platform' for two types of users: home buyers and home sellers." Joshua D. Wright, *Evidence-Based Antitrust Enforcement in the Technology Sector*, 2013 WL 772811, at *8 n.40 (Feb. 23, 2013). Similarly, in 2009, Professor Marc Rysman identified "the Multiple Listing Service, which must attract housing buyers and sellers," as a "platform firm" in a review of two-sided markets. Marc Rysman, *The Economics of Two-Sided Markets*, 23 J. Econ. Perspectives 125, 135–37 (2009). Professor Rysman also acknowledged the significance of network effects to such two-sided platforms. And despite their attempts to backtrack in this litigation, the Antitrust Division of the Department of Justice and the FTC previously agreed with this common-sense, economically sound understanding of the MLS market. *See, e.g.*, *In re Realcomp II Ltd.,* No. 9320, 2007 WL 6936319, at *10 (F.T.C. Oct. 30, 2009); FTC Competition Comm.,

Roundtable on Two-Sided Markets ¶ 23 (June 4, 2009), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2000-2009/roundtabletwosided.pdf; FTC & U.S. Dep't of Just., *Competition in the Real Estate Brokerage Industry* 13 n.57 (Apr. 2007), https://www.ftc.gov/sites/default/files/documents/reports/competition-real-estate-brokerage-industry-report-federal-trade-commission-and-u.s.department-justice/v050015.pdf.

In line with these authorities, the district court recognized that "[t]he real estate market is a typical two-sided market where different products or services are offered to two distinct groups of customers—home sellers and home buyers." Pet. App. 59a. Indeed, PLS's allegations themselves describe MLSs as two-sided platforms. *Id.* at 76a, 78a–80a, 96a ¶¶ 19, 26, 31–32, 101. That is so because, as more home buyers use MLSs with their brokers' assistance, sellers gain more value from the MLS. And the converse is also true: as more sellers use an MLS, through their brokers, more properties are made available to buyers, and buyers obtain more value from the service. That is exactly the type of indirect network effect this Court addressed in *Amex*.

As the district court held, PLS did not satisfy *Amex* because it failed to allege a plausible injury to both sides of the market—its allegations "focus[ed] almost entirely on home sellers." *Id.* at 60a. And under the analysis *Amex* requires, the challenged Policy ***enhances*** competition by increasing "available information about the market (which increases price competition)" for home buyers and sellers. *Id.* at 61a.

C. The Ninth Circuit Gutted *Amex*

The Ninth Circuit's ruling eviscerated *Amex*, relying on a misreading of that precedent that effectively nullifies this Court's holding. In so holding, the Ninth Circuit created a roadmap for avoiding this Court's controlling framework by (1) muddying the waters about whether and how *Amex* applies at the pleading stage—the stage at which plaintiffs initially define the relevant market to shape antitrust litigation, and (2) as a practical matter limiting *Amex*'s holding to credit card networks.

To begin with, the Ninth Circuit's ruling creates needless confusion as to whether and when *Amex* even applies at the motion to dismiss stage: "Although we hold that *Amex can* apply to rule of reason claims based on indirect evidence at the pleading stage, we do not hold that it always does. . . . [W]hether *Amex* applies depends on the facts. In some cases, a plaintiff will include facts in the complaint that disclose these characteristics and thus trigger *Amex*. In others, the complaint will not contain the necessary facts, and the court may need to wait to examine the evidence to determine whether *Amex* applies." Pet. App. 26a. In other words, the Ninth Circuit *encourages* plaintiffs to engage in artful pleading to dodge the *Amex* analysis, avoid dismissal, and proceed to costly discovery even on infirm antitrust claims. This is contrary to black-letter law that a plaintiff's claims "should be exposed at the point of minimum expenditure of time and money by the parties and the court." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (cleaned up); *see also Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 755 (2017) ("What matters is the crux—or, in legal-speak, the gravamen—of the plaintiff's complaint, setting aside any attempts at artful pleading.").

The Ninth Circuit further limited *Amex*, without justification, to a narrow range of markets. Joined by various *amici* known for their avowed disagreement with *Amex*, PLS argued that *Amex* "applies only to two-sided platforms that facilitate simultaneous transactions, like credit-card networks." Pet. App. 22a. The Ninth Circuit largely adopted that narrow approach, holding—in direct contravention of *Amex*—that "*Amex* does not require a plaintiff to allege harm to participants on both sides of the market." *Id.* at 27a. While the Ninth Circuit also claimed, in conclusory fashion, that even if *Amex* were to apply, the allegations met the standard, it engaged in no analysis showing that to be the case. In addition, such a statement provides cold comfort for parties in future cases who will not know whether *Amex* does or does not apply but will know that plaintiffs now have the recipe to avoid its application through artful pleading.

As a result, the Ninth Circuit's holding engenders uncertainty not only about *when* in a case *Amex* applies, but also as to *which* markets. Adopting PLS's position that *Amex* "applies only to transaction networks," *id.* at 26a, renders *Amex* nearly irrelevant—the rule would in practice apply to four credit card companies and almost no one else. Plainly, this Court did not intend its landmark ruling in *Amex* to govern but a small handful of actors.

Reading *Amex* so narrowly, the Ninth Circuit created confusion and disagreement with numerous courts across the country that have correctly interpreted *Amex* to apply to a wide array of two-sided markets—from travel booking sites to broadband Internet to certain medication prescription markets, without the unfounded limitations on *Amex* imposed by the Ninth Circuit here. For example, in *U.S.*

Airways, Inc. v. Sabre Holdings Corp., 938 F.3d 43, 49–50 (2d Cir. 2019) ("*Sabre*"), the Second Circuit held that a travel technology platform known as a global distribution system ("GDS"), which travel agents use to search for flights, is a two-sided market subject to the *Amex* analysis. *See also id.* at 58 (holding that "the relevant market for such a platform must as a matter of law include both sides").[3] Similarly, *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429 (7th Cir. 2020), involved a product called an Interconnect, which "enables providers of retail cable television services to sell advertising targeted efficiently at regional audiences." *Id.* at 434. The court described it as a "clearinghouse, offering 'different products or services to two different groups who both depend on the platform to intermediate between them,'" and held that the Interconnect is a "two-sided platform." *Id.* at 439 (citing *Amex*, 138 S. Ct. at 2280). And the D.C. Circuit, citing *Amex*, explained that "broadband Internet providers operate within a 'two-sided market,' with consumers at one end and edge providers at the other," such that "edge providers value interconnection with [broadband]

[3] *Sabre* referenced Justice Breyer's dissent in *Amex*, explaining that "a business is a transaction platform if it '(1) offer[s] different products or services, (2) to different groups of customers, (3) whom the 'platform' connects, (4) in simultaneous transactions.' GDSs, including Sabre, meet all four requirements: They offer different services to different groups of customers—to airlines, access to travel agents; to travel agents, flight and pricing information—and they connect travel agents to airlines in simultaneous transactions." *Id.* at 58 (quoting *Amex*, 138 S. Ct. at 2298 (Breyer, J., dissenting)). To the extent the Court holds that simultaneity is dispositive in the two-sided market analysis, MLSs are as simultaneous as credit card transactions, which involve multiple payments between many counterparties at different points in time, with some payments made months after a consumer purchases a good or service.

providers more as the providers service more subscribers." *Competitive Enter. Inst. v. FCC*, 970 F.3d 372, 384 (D.C. Cir. 2020) (citation omitted).

District courts, too, have deemed a variety of markets to be two-sided, applying *Amex* faithfully and contrary to the Ninth Circuit's approach. *See, e.g.*, *In re Surescripts Antitrust Litig.*, No. 19-cv-06627, 2022 WL 2208914, at *2 (N.D. Ill. June 21, 2022) ("Broadly speaking, a two-sided market is one in which two sets of agents interact through an intermediary and the decisions of one affect the other. Here, an e-prescribing network serves the intermediary between doctors and pharmacies, and each side's decision to use a particular network is affected in part by how many on the other side have chosen to do the same."); *see also Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1046 (N.D. Cal. 2021) ("By definition, the [App Store] has two sides: the developer on one side providing gaming apps and the consumer on the other, purchasing the apps. This is a single platform which cannot be broken into pieces to create artificially two products.").

The Ninth Circuit's deviant approach contravenes *Amex* and these decisions, and will create needless confusion.

D. This Case Presents A Powerful Opportunity To Clarify *Amex*'s Application And Reach

Granting certiorari will provide essential guidance to courts on how to apply *Amex* in at least four ways.

First, if left unreviewed, the Ninth Circuit's murky standard would lead to arbitrary, unpredictable results. This Court has rightly emphasized what the Ninth Circuit's holding imperils—"the importance of clear rules in antitrust law." *Pac. Bell Tel. Co.*, 555

U.S. at 452; *see also Town of Concord*, 915 F.2d at 22 (Breyer, J.) ("antitrust rules . . . must be clear enough for lawyers to explain them to clients").

Given this importance, the Court need not wait for further percolation; indeed, the Court in *Amex* explicitly rejected the Government's argument that because no split existed, "[f]urther percolation in the lower courts may be especially useful." *Compare* Brief for the United States in Opposition at 19–21, *Amex*, 138 S. Ct. 2274 (No. 16-1454), *with* Order, *Amex*, 138 S. Ct. 2274 (No. 16-1454) (granting certiorari). Granting certiorari to answer the important antitrust questions presented here, without waiting for further fracturing of the law, would align with the Court's prior practice, and here is both proper and necessary. *See, e.g.*, *FTC v. Super. Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990); *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447 (1986).

Second, this petition presents a question of national significance because the impacted real estate market constitutes a large share of the U.S. economy and impacts millions of Americans every year. Total spending on the housing market accounted for 17 percent of the Gross Domestic Product in 2020, or approximately $3.7 trillion. Cong. Research Serv., *Introduction to U.S. Economy: Housing Market Report* 1 (May 3, 2021), https://crsreports.congress.gov/product/pdf/IF/IF11327/9. And in 2021 alone, existing home sales reached a 15-year high of over six million transactions. *See* Nicole Friedman, *U.S. Existing-Home Sales Reached a 15-Year High of 6.1 Million Last Year*, Wall St. J. (Jan. 20, 2022), https://www.wsj.com/articles/u-s-existing-home-sales-reached-a-15-year-high-of-6-1-million-last-year-11642691655.

Third, as several courts have recognized, two-sided markets are a complex and emerging area of antitrust law. *See Unigestion Holding, S.A. v. UPM Tech., Inc.*, 305 F. Supp. 3d 1134, 1150 n.4 (D. Or. 2018) (recognizing that "[a] new area of antitrust law appears to be emerging for two-sided markets"); *see also U.S. Airways, Inc. v. Sabre Holdings Corp.*, No. 11 Civ. 2725 (LGS), 2017 WL 1064709, at *8 (S.D.N.Y. Mar. 21, 2017) (observing that "[t]he concept of two-sidedness in economics is relatively new and complex"), *rev'd on other grounds*, 938 F.3d 43 (2d Cir. 2019). Against this backdrop, it is particularly important for this Court to provide clear guidance on how its rules should be applied.

Fourth, the Ninth Circuit should not be permitted to circumvent or water down Supreme Court precedent simply because it disagrees. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (criticizing lower court for overruling binding precedent "on its own authority"). Indeed, the ruling below is particularly problematic given *Amex*'s clarity and recency and because the Ninth Circuit and its district courts hear a disproportionate number of antitrust cases, *see* Daniel B. Asimow et al., *Developments in US Antitrust Litigation 2021 Year in Review*, v|lex (Jan. 31, 2022), https://vlex.com/vid/developments-in-us-antitrust-901845607 (citing Westlaw analytics); *see also* Joshua P. Davis & Rose Kohles, *2021 Antitrust Annual Report: Class Action Filings in Federal Court*, Ctr. for Litig. & Cts. at U.C. Hastings Law (May 23, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4117930 (recognizing that the Northern District of California is the nation's busiest forum for antitrust class actions).

The Ninth Circuit decided an important question of law in a manner contrary to the principles articulated by this Court. Given the national legal and economic importance of this question, the Court should step in now to make clear *Amex* means what it says.

II. The Ninth Circuit Upended Established Law, Including *Illinois Brick* And *Brunswick*, By Inviting Competitors And Co-Conspirators To Bring Antitrust Suits

The Court should grant the petition for the additional and independent reason that the Ninth Circuit—in tension with *Illinois Brick, Brunswick*, and subsequent decisions across the country—wrongly interpreted this Court's precedents to allow a competitor to bring an antitrust suit based on alleged harm to *co-conspirators*. Absent intervention by this Court, that nonsensical outcome will encourage complaints by competitors and conspirators, even where, as here, that suit seeks relief that would harm consumers.

A. This Court's Precedent Does Not Authorize Antitrust Suits By Alleged Competitors Like PLS

"The antitrust laws . . . were enacted for 'the protection of competition not competitors'"—and certainly not members of allegedly illegal conspiracies in restraint of trade. *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)). *Brunswick* and its progeny have made it more difficult for competitors to bring antitrust suits because relief that benefits competitors rarely benefits consumers.

To have standing to sue Petitioners, PLS must satisfy *Brunswick*'s antitrust injury requirement,

which requires that PLS's injury was caused by a reduction in competition. Here, however, PLS fails to allege antitrust standing by focusing on competition for brokers, and not buyers and sellers. Brokers are not the relevant consumers to assess whether the Clear Cooperation Policy reduces competition because, according to the Amended Complaint, brokers are co-conspirators. Any reduction of competition to them is legally irrelevant. Instead, buyers and sellers, as the first consumers outside the conspiracy, are the relevant consumers.

PLS alleged that brokers conspired with each other and with Defendants to adopt the challenged policy. For example, PLS alleged that brokers and real estate agents are "licensed real estate professionals," Pet. App. 79a, 96a–97a ¶¶ 29, 103, that comprise the membership of Defendant NAR, enable NAR's purported market "ability to control competition," *id.* at 72a ¶ 4, and participated in the challenged conduct, the Clear Cooperation Policy, *id.* at 75a ¶ 14; *see also, e.g.*, *id.* at 78a ¶ 25 ("MLSs are joint ventures among virtually all licensed real estate professionals operating in local or regional areas"); *id.* at 97a ¶ 104; *id.* at 79a ¶ 27.

Despite these allegations, the Ninth Circuit's analysis erroneously looked to the alleged harm to ***participants*** in the alleged conspiracy: real estate brokers (and the agents they employed), when assessing harm to competition. *Id.* at 12a–14a. The problem with that approach is that for decades this Court has recognized that only those directly injured by such a conspiracy are the relevant victims who may bring suit. Here, the Ninth Circuit's decision, if left unchecked, would allow *members* of an antitrust conspiracy to file claims, thereby leapfrogging those *harmed* by the conspiracy. And it would simultaneously allow competitors to

bring cases based on a purported harm to competition predicated on treating the co-conspirators as the victims.

This novel approach contravenes this Court's precedent, specifically *Brunswick*, *Illinois Brick*, and their progeny. In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), this Court established the "indirect purchaser rule." This rule applies to cases in which antitrust harms occur at multiple "levels"—for instance, where a cartel sells a product at a supracompetitive price to an intermediary, who in turn passes that inflated price on to its own customers (and so on). *See* Herbert J. Hovenkamp, *Apple v. Pepper: Rationalizing Antitrust's Indirect Purchaser Rule*, 120 Colum. L. Rev. 14, 14 (2020). Under the indirect purchaser rule*, only the first purchaser* in line may recover damages for the alleged violations, and suits by "indirect purchasers" are barred. *See, e.g.*, *Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1521 (2019) ("[I]f manufacturer A sells to retailer B, and retailer B sells to consumer C, then C may not sue A. But B may sue A if A is an antitrust violator.").

Neither *Illinois Brick*—nor any other decision of this Court—has permitted the indirect purchaser rule to operate as a green light to suits by antitrust conspirators *themselves*. To the contrary, the Courts of Appeals—including the Ninth Circuit—have long recognized that *Illinois Brick*'s "'principles of proximate cause' apply differently when the injury to plaintiffs is caused by a multi-level conspiracy to violate antitrust laws." *In re Nat'l Football League's Sunday Ticket Antitrust Litig.* ("*NFL*"), 933 F.3d 1136, 1156 (9th Cir. 2019) (citation omitted). In particular, "[w]hen co-conspirators have jointly committed the antitrust violation, a plaintiff who is the immediate purchaser from any of the conspirators is directly injured by the violation." *Id.* at 1157.

The bar against suits by alleged conspirators is particularly salient because antitrust liability is joint and several: a plaintiff is entitled to recover 100% of the damages of a conspiracy from any or all of the conspirators. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 820 F. Supp. 2d 1055, 1059 (N.D. Cal. 2011) ("[O]nce a defendant joins a conspiracy it is jointly and severally liable for any actions taken in furtherance of the conspiracy. This liability continues until the objectives of the conspiracy are completed, or the defendant withdraws from the conspiracy." (citing *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981)).

Permitting an alleged competitor to sue based on harm to alleged co-conspirators would produce untenable results: a plaintiff-competitor could easily circumvent the antitrust injury requirement and plaintiff-co-conspirators would necessarily be on both sides of the damages equation—on the hook for 100% of the damages and yet entitled to receive the same damages it owes. Under *Brunswick*, *Illinois Brick*, and their progeny, this outcome is, understandably, forbidden.[4]

Properly applied, therefore, *Illinois Brick* directs that any antitrust claim relating to the policy challenged in this case belongs to home buyers and sellers as the first-in-line "consumers" who potentially have standing, not the brokers (*i.e.*, the "licensed real estate professionals" that comprise PLS). Pet. App. 75a–76a ¶ 16. And those consumers are the only

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[4] This Court has cautioned lower courts against creating new exceptions to the *Illinois Brick* rule. *See Kansas v. UtiliCorp United, Inc.*, 497 U.S. 199, 216 (1990) ("The rationales underlying . . . *Illinois Brick* will not apply with equal force in all cases. We nonetheless believe ample justification exists for our stated decision not to carve out exceptions to the direct purchaser rule." (internal quotation marks omitted)).

relevant victims for purposes of evaluating harm to competition caused by the policy.[5]

B. The Ninth Circuit's Allowance Of A Competitor's Claim Based On Alleged Harm To A Co-Conspirator Is In Tension With Decisions Across The Country

The Ninth Circuit's allowance of an antitrust claim based on harm to an alleged co-conspirator deviates not only from *Brunswick* and *Illinois Brick* but also from the decisions of multiple other courts—including at least one decision of the Ninth Circuit itself. These courts have appropriately recognized that an alleged antitrust conspirator is not the relevant victim.

For example, in *Marion Healthcare, LLC v. Becton Dickinson & Co.*, 952 F.3d 832 (7th Cir. 2020), the Seventh Circuit held that only the first purchasers *outside* a conspiracy—there, involving medical device manufacturers, group purchasing organizations, and distributors—could sue for anticompetitive behavior under *Illinois Brick*. The Seventh Circuit correctly held that, "when a monopolist" conspires with its direct purchaser distributor, "the first buyer from a conspirator is the right party to sue." *Id.* at 836. In doing so, it observed that the *Illinois Brick* rule "is a way of determining which firm, or group of firms

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[5] Moreover, this Court has long held that plaintiffs cannot sue over a self-inflicted injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (noting that if the alleged injury results from the plaintiff's own actions, the plaintiff lacks standing because the injury is not "fairly . . . trace[able] to the challenged action of the defendant"); *see also, e.g.*, *W. Goebel Porzellanfabrik v. Action Indus., Inc.*, 589 F. Supp. 763, 766 (S.D.N.Y. 1984) (where injury was "strictly self-inflicted," plaintiff lacked standing for antitrust claim).

collectively, should be considered to be the relevant seller (and from that, identifying which one is the direct purchaser)," as "[t]he central point of *Illinois Brick* is to allocate the right to recover to one and only one entity in the market." *Id.* at 839–40.

Likewise, even the Ninth Circuit's prior precedent recognizes this point. In *In re National Football League's Sunday Ticket Antitrust Litigation*, the Ninth Circuit held that subscribers of bundled packages of NFL games, available exclusively to DirectTV subscribers, had standing to assert antitrust injury against the NFL, teams, and DirectTV. All the defendants were allegedly involved in an antitrust conspiracy that limited the output of NFL telecasts and resulted in higher prices for out-of-market games. 933 F.3d at 1157. Accordingly, the court recognized that all the defendants were co-conspirators and thus the first purchaser *outside the conspiracy*—the subscribers—had suffered antitrust injury and had standing to sue. By contrast, "co-conspirators [that] have jointly committed the antitrust violation"—like the brokers PLS accused here—have allegedly benefited from the conspiracy and accordingly lack the requisite antitrust injury to challenge its actions. *Id.*; *see also id.* at 1157 n.7 (recognizing that plaintiff-subscribers were the right plaintiff under *Illinois Brick* "[b]ecause plaintiffs allege that DirecTV is part of the conspiracy, [so] DirecTV directly caused the injury to the consumers").

* * *

The Court should not allow the Ninth Circuit's subversion of *Amex*, *Brunswick*, and *Illinois Brick*. Review should be granted to ensure that this Court's critical antitrust precedents are faithfully applied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 23, 2022

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: May 18, 2022]

No. 21-55164

THE PLS.COM, LLC,
a California limited liability company,

Plaintiff-Appellant,

v.

THE NATIONAL ASSOCIATION OF REALTORS; *et al.,*

Defendants-Appellees.

D.C. No. 2:20-cv-04790-JWH-RAO
U.S. District Court for Central California, Los Angeles

MANDATE

The judgment of this Court, entered April 26, 2022, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rebecca Lopez
Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed April 26, 2022]

No. 21-55164

THE PLS.COM, LLC,
a California limited liability company,

Plaintiff-Appellant,

v.

THE NATIONAL ASSOCIATION OF REALTORS;
BRIGHT MLS, INC.; MIDWEST REAL ESTATE DATA, LLC;
CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.,

Defendants-Appellees.

D.C. No. 2:20-cv-04790-JWH-RAO

Appeal from the United States District Court
for the Central District of California
John W. Holcomb, District Judge, Presiding

Argued and Submitted January 14, 2022
Pasadena, California

Before: MILAN D. SMITH, JR. and
JOHN B. OWENS, Circuit Judges, and
STEPHEN J. MURPHY, III,* District Judge.

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* The Honorable Stephen Joseph Murphy, III, United States District Judge for the Eastern District of Michigan, sitting by designation.

Opinion by Judge Milan D. Smith, Jr.

OPINION

SUMMARY[**]

Antitrust

The panel reversed the district court's dismissal of an action brought by The PLS.com, LLC, alleging that its competitors in the real estate network services market violated antitrust laws because they conspired to take anticompetitive measures to prevent PLS from gaining a foothold in the market, and remanded for further proceedings.

PLS challenged the National Association of Realtors' Clear Cooperation Policy, which required members of an NAR-affiliated multiple listing service who chose to list properties on the PLS real estate database also to list those properties on an MLS. The district court dismissed on the ground that PLS did not, and could not, adequately allege antitrust injury under § 1 of the Sherman Act or California's Cartwright Act because it did not allege harm to home buyers and sellers.

A competitor has standing to assert a Sherman Act claim only when the claimed injury flows from acts harmful to consumers. The panel held that the definition of the term consumer is not limited to one who buys goods or services for personal, family, or house-

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

hold use, with no intention of resale. Rather, a business that uses a product as an input to create another product or service is a consumer of that input for antitrust purposes and can allege antitrust injury. Accordingly, PLS was not required to allege harm to home buyers and sellers to allege antitrust injury, and its allegation that the Clear Cooperation Policy harmed buyers' and sellers' real estate agents, the consumers of PLS's and the MLSs' listing network services, could suffice.

To allege antitrust injury, PLS was required to allege unlawful conduct, causing injury to PLS, that flowed from that which made the conduct unlawful, and that was of the type that the antitrust laws were intended to prevent. Without a violation of the antitrust laws, there can be no antitrust injury.

The panel held that PLS adequately alleged a violation of Sherman Act § 1, which prohibits a contract, combination, or conspiracy that unreasonably restrains trade. The panel held that PLS adequately alleged that the Clear Cooperation Policy was an unreasonable restraint of trade because it was a per se group boycott, but the panel left to the district court to determine in the first instance whether it should apply per se or rule of reason analysis at later stages in the litigation. The panel held that PLS satisfied *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018) (*Amex*), which requires a plaintiff to define the relevant market to include both sides of the market in certain circumstances. The panel held that *Amex* can apply at the pleading stage, and that because PLS satisfied *Amex* by alleging injury to both sellers' agents and buyers' agents, the panel need not resolve the more difficult questions the parties raised about how broadly *Amex* applies.

The panel concluded that PLS adequately alleged antitrust injury by alleging a group boycott in which the Clear Cooperation Policy prevented PLS from gaining a foothold in the market and made it virtually impossible for new competitors to enter the market, leaving agents with fewer choices, supra-competitive prices, and lower quality products.

The panel held that it had jurisdiction to consider whether PLS adequately alleged that defendant Midwest Real Estate Date, LLC ("MRED") was involved in the alleged conspiracy. At the time of PLS's appeal, Federal Rule of Appellate Procedure 3(c)(1)(B) required a party to "designate" in its notice of appeal "the judgment, order, or part thereof being appealed." PLS's notice of appeal identified the object of its appeal as Subsection 1 of the district court's dismissal order, addressing antitrust injury, but PLS's opening brief also challenged Subsection 3 of the order, addressing whether PLS adequately alleged that MRED was part of the conspiracy. The panel held that it had jurisdiction to review Subsection 3 because PLS's intent to appeal Subsection 3 could be fairly inferred from its opening brief, and defendants were not prejudiced because they fully briefed the issue. The panel further held that PLS adequately alleged that MRED was involved in the conspiracy by alleging a conscious commitment to a common scheme designed to achieve an unlawful objective.

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OPINION

M. SMITH, Circuit Judge:

The PLS.com, a new entrant in the real estate network services market after decades of there being little or no competition in that market, alleges that its entrenched competitors violated the antitrust laws because they conspired to take anticompetitive measures to prevent it from gaining a foothold in the market. The district court dismissed PLS's complaint without leave to amend because it concluded PLS did not, and could not, adequately allege antitrust injury. We reverse.

FACTUAL BACKGROUND

Most people seeking to buy or sell a home hire a real estate agent to assist them with the process.[1] Agents assist sellers by marketing their homes, and they assist buyers by finding homes that match their preferences. To do so, most agents pay monthly fees to access multiple listing services (MLSs), which are databases of homes for sale in certain geographic areas. For example, the California Regional Multiple Listing Service (CRMLS) lists homes for sale in parts of California; the Bright MLS lists homes for sale in parts of New Jersey, Delaware, Maryland, Pennsylvania, West Virginia, Virginia, and Washington, D.C.; and Midwest Real Estate Data, LLC (MRED) lists homes for sale in parts of Illinois, Wisconsin, and Indiana.

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[1] This account is based entirely on the allegations in PLS's complaint, which we must accept as true at this stage of the litigation. *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 24 F.4th 1262, 1266 (9th Cir. 2022). The complaint distinguishes between real estate "agents" and "brokers," and uses the term "real estate professional" to refer to both collectively. Because this distinction does not affect our analysis, we use the term "agent" to refer to agents and brokers collectively.

Most MLSs are owned and controlled by members of the National Association of Realtors (NAR), a trade association to which the "vast majority" of residential real estate agents belong. There are approximately 600 NAR-affiliated MLSs in the United States, and CRMLS, Bright, and MRED each contain "over 65 percent of residential real estate listings marketed by licensed real estate professionals in their respective service areas." Residential real estate agents "regard participation in their local MLS as critical to their ability to compete."

Most sellers prefer to list their homes on NAR-affiliated MLSs to reach the widest possible range of buyers, but some sellers prefer not to do so because they do not wish to share all of the information NAR-affiliated MLSs require. For instance, a public figure may not wish to share certain details about his or her home with an entire MLS. Listings that are not shared on a NAR-affiliated MLS are sometimes called "pocket listings."

Historically, pocket listings were marketed through face-to-face communications, telephone calls, or email. In 2017, as "[d]emand for pocket listing[s] . . . skyrocketed," a group of real estate agents created PLS, which was a database similar to an MLS, but that allowed sellers to choose how much information to share, and that included listings anywhere in the United States rather than just in a particular region. PLS was open to any agent who wished to join, and agents who joined were charged less than they were by the MLSs. PLS grew rapidly, and by late 2019 had 20,000 members who "were cooperating to sell billions of dollars of residential real estate listings nationwide."

Even before PLS was formed, NAR and several MLSs, including CRMLS, Bright MLS, and MRED,

became concerned with the growth of pocket listings. A 2015 NAR study warned, "Off-MLS listings may contribute to the unraveling of the MLS as we know it, and its replacement by a private network that serves to benefit a certain group of participants." Another NAR study cautioned, "A number of industry initiatives suggest that the current MLS-centric era might be coming to an end. After half a century of operating as the only gateway, there is a strong likelihood that the MLS may lose its exclusive positioning as the principal source of real estate listings."

Two years after PLS launched, NAR's "MLS Technology and Emerging Issues Advisory Board" voted to recommend that NAR adopt a policy that would require agents posting listings on competing services to also post those listings on the appropriate MLS. A month later, CRMLS, Bright MLS, MRED, and other MLSs issued a white paper "that called for collective action to address the threat to the MLS system presented by the rise of pocket listings and the prospect of a competing listing network that would aggregate such listings." A month after that, Bright MLS adopted a policy consistent with the NAR board's recommendation, and CRMLS, Bright MLS, and MRED met with other NAR-affiliated MLSs "at a [Council of Multiple Listing Services] conference in Salt Lake City, Utah to discuss the competitive threat presented by pocket listings and the need for NAR to take action at the upcoming NAR Convention to eliminate that threat through adoption of" the policy nationwide. MRED's CEO "explained that the [policy] was motivated by concerns that pocket listings were 'making the MLS less valuable.'"

The next month, NAR adopted the Clear Cooperation Policy, which provides: "Within one (1) business

day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants." This new policy meant that members of a NAR-affiliated MLS who chose to list properties on PLS were required to also list those properties on an MLS. Agents who did not comply faced severe penalties, including in some cases several-thousand dollar fines, or suspension from, or termination of, their access to the MLS.

"NAR-affiliated MLSs and [the Council of Multiple Listing Services] have admitted that the purpose of the Clear Cooperation Policy was to maintain the market dominance of the NAR-affiliated MLS system, and specifically to exclude PLS." PLS alleges that the Clear Cooperation Policy has had its intended effect: After the Clear Cooperation Policy was adopted, "[l]istings were removed from PLS and submitted instead to NAR-affiliated MLSs," "[a]gent participation in PLS declined," and "PLS was foreclosed from the commercial opportunities necessary to innovate and grow" "a critical mass of members and listings to create a powerful network effect."

PLS also alleges that the Clear Cooperation Policy "harmed PLS and consumers in the relevant market by excluding PLS." Based on PLS's briefing, we initially understood this allegation to mean that PLS was driven from the market.[2] At oral argument, however, PLS conceded that it did not allege that the

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[2] For example, PLS cites to this part of the complaint and states that "competition from listing networks such as PLS that competed with the MLSs was eliminated." In its reply brief, PLS argues that "the graveyard of the MLS Defendants' former direct competitors—like PLS and the Top Agent Network—proves that Clear Cooperation *actually succeeded* at having [the] practical effect" of "driving those competitors out of business."

Clear Cooperation Policy drove it from the market, and instead directed us to a news article, which is not cited in the complaint, that suggests that PLS has exited the market. Although the parties seem to agree that PLS is no longer in the listing network services market, our analysis at this stage is confined to the allegations in the complaint, so we proceed on the understanding that the Clear Cooperation Policy injured PLS but did not drive it from the market.

PROCEDURAL BACKGROUND

Roughly seven months after the Clear Cooperation Policy was adopted, PLS filed suit, alleging that the Clear Cooperation Policy is an unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 1670(a)–(c) of California's Cartwright Act.[3] PLS seeks treble damages for its "lost profits and damaged equity and goodwill" and a permanent injunction prohibiting Defendants from enforcing the Clear Cooperation Policy.

Defendants moved to dismiss, arguing that PLS failed to state a claim. The district court granted the motions to dismiss because it concluded that PLS did not allege antitrust injury, and it denied PLS leave to amend because it determined that PLS could not cure this deficiency. The district court also held that PLS did not adequately allege that MRED participated in the alleged conspiracy. PLS timely appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's dismissal of the complaint de novo. *City of Oakland v. Oakland Raiders*, 20 F.4th 441, 451 (9th Cir. 2021). "To survive a motion to

[3] PLS's claim is brought via the Clayton Act, 15 U.S.C. § 15, which provides a private right of action for enforcing the Sherman Act and other federal antitrust laws.

dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The Cartwright Act analysis mirrors the Sherman Act analysis, so we analyze both claims together. *See Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001).

ANALYSIS

I

At the outset, we hold that the district court erred when it held that PLS did not adequately allege antitrust injury because it did not allege harm to home buyers and sellers.

We begin with some general principles. The purpose of the Sherman Act is "the promotion of consumer welfare." *GTE Sylvania Inc. v. Cont'l T.V., Inc.*, 537 F.2d 980, 1003 (9th Cir. 1976). Therefore, the Act seeks "to preserve competition for the benefit of consumers," not competitors. *Am. Ad Mgmt. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999). But sometimes harm to a competitor also harms competition which, in turn, harms consumers. For example, predatory pricing designed to eliminate "competitors in the short run and reduc[e] competition in the long run . . . harms both competitors *and* competition" if the predator can raise prices above the competitive level after its rivals are driven from the market. *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 117–18 (1986).

Congress has allowed competitors to enforce the antitrust laws only when they have experienced an "antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). In other words, a competitor has standing to assert a Sherman Act claim "only when the claimed injury flows from acts harmful to consumers." *Rebel Oil Co., Inc. v. Atl. Richfield Co.*, 51 F.3d 1421, 1445 (9th Cir. 1995). This requirement "ensures that the harm claimed by the plaintiff corresponds to the rationale for finding a violation of the antitrust laws in the first place." *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990).

The district court held that these principles required PLS to allege that the Clear Cooperation Policy directly harmed "*ultimate* consumers"—which the court identified as "home buyers and sellers"—to allege antitrust injury. (emphasis added). According to the district court, PLS did not allege antitrust injury because "PLS [did] not adequately allege that the Clear Cooperation Policy has increased prices for services purchased or otherwise paid for by home sellers and buyers or that home sellers and buyers have been denied brokerage services that they desire as a result of the Clear Cooperation Policy." The legal basis for the district court's conclusion is not clear. The district court appears to have understood the term "consumer" to mean something like one "who buys goods or services for personal, family, or household use, with no intention of resale." *Consumer*, *Black's Law Dictionary* (11th ed. 2019). But our use of the term in the antitrust context has not been so limited. As our opinion in *Glen Holly Entertainment, Inc. v. Tektronix, Inc.*, 352 F.3d 367 (9th Cir. 2003) demonstrates, a business that uses a product as an input to create

another product or service is a consumer of that input for antitrust purposes and can allege antitrust injury.

In that case, Tektronix and Avid Technology were the only manufacturers of "non-linear editing systems" that were used by film production companies to edit movies and television shows. *Id.* at 368. Glen Holly purchased Tektronix's machines and leased them to digital film companies or used them itself to provide editing services for those companies. *Id.* at 369. Tektronix and Avid unexpectedly formed an "alliance" and Tektronix agreed not to sell its product anymore. *Id.* Glen Holly, which had purchased only Tektronix's product, was forced out of business when its customers "refuse[d] to have their films edited with [Tektronix's] technology after they discovered that the system had been discontinued" and Glen Holly could not switch to Avid's product due to its cost and "insurmountable change-over complications." *Id.* at 370.

Throughout the opinion, we characterized Glen Holly as a "consumer-purchaser" and a "customer-consumer" of Tektronix's products and held that the alliance harmed competition because it "limited consumers' choice to one source of output." *Id.* at 368–69, 374. We also used "consumer" and "customer" interchangeably, explaining, for example, that "*customers* are the intended beneficiaries of competition, and . . . *customers* are presumptively those injured by its unlawful elimination." *Id.* at 378 (emphasis added). We ultimately held that Glen Holly adequately alleged antitrust injury even though it was not an "ultimate consumer" of movies and television shows. *See id.* at 374–78.

As *Glen Holly* makes clear, our use of the term "consumer" is not limited to "ultimate consumers" as the district court appears to have understood the term. Businesses that use a product or service as an input to

provide another product or service can be consumers for antitrust purposes. Therefore, PLS was not required to allege harm to home buyers and sellers to allege antitrust injury. Its allegation that the Clear Cooperation Policy harmed real estate agents—who are the consumers of PLS's and the MLSs' listing network services—may suffice.

II

Our conclusion that PLS can adequately allege antitrust injury without alleging harm to an "ultimate consumer" does not answer the question of whether it has actually done so. To allege antitrust injury, PLS must allege "(1) unlawful conduct, (2) causing an injury to [PLS], (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent." *Am. Ad Mgmt.*, 190 F.3d at 1055. "Without a violation of the antitrust laws, there can be no antitrust injury." *Id.* at 1056.

A

We consider first whether PLS has adequately alleged a Sherman Act violation. The Sherman Act prohibits "[e]very contract, combination . . . or conspiracy in restraint of trade." 15 U.S.C. § 1. The Supreme Court has interpreted this language to "prohibit only *unreasonable* restraints of trade." *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 98 (1984) (emphasis added). We use two kinds of analysis to determine whether a restraint of trade is unreasonable: the *per se* approach and the rule of reason. Some practices are "so harmful to competition and so rarely prove justified that the antitrust laws do not require proof that an agreement of that kind is, in fact, anticompetitive in the particular circumstances." *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 133 (1998).

These practices are *per se* violations of the Sherman Act, and we presume that they are anticompetitive "without inquiry into the particular market context in which [they] are found." *Bd. of Regents of Univ. of Okla.*, 468 U.S. at 100.

Most restraints, however, are subject to the rule of reason. *Hahn v. Or. Physicians' Serv.*, 868 F.2d 1022, 1026 (9th Cir. 1988). "The rule of reason requires courts to conduct a fact-specific assessment of 'market power and market structure . . . to assess the restraint's actual effect' on competition." *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018) (cleaned up) (quoting *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768 (1984)). A "three-step, burden-shifting framework" guides courts' analysis. *Id*. "Under this framework, the plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market." *Id.* "If the plaintiff carries its burden, then the burden shifts to the defendant to show a procompetitive rationale for the restraint." *Id.* "If the defendant makes this showing, then the burden shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means." *Id.*

A plaintiff can establish a substantial anticompetitive effect for purposes of the first step of the rule of reason analysis either "directly or indirectly." *Id.* To prove a substantial anticompetitive effect directly, the plaintiff must provide "'proof of actual detrimental effects [on competition]' such as reduced output, increased prices, or decreased quality in the relevant market." *Id.* (quoting *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 460 (1986)). When a plaintiff does so, no "inquir[y] into market definition and market power" is

required. *Ind. Fed'n of Dentists*, 476 U.S. at 460–61. To prove a substantial anticompetitive effect indirectly, a plaintiff must show that the defendants have market power in the relevant market and that "the challenged restraint harms competition." *Am. Express Co.*, 138 S. Ct. at 2284.

PLS argues that the Clear Cooperation Policy is an unreasonable restraint of trade because it is an unlawful group boycott.[4] Our court has found the following description of a group boycott from the D.C. Circuit to be helpful:

> The classic "group boycott" is a concerted attempt by a group of competitors at one level to protect themselves from competition from non-group members who seek to compete at that level. Typically, the boycotting group combines to deprive would-be competitors of a trade relationship which they need in order to enter (or survive in) the level wherein the group operates. The group may accomplish its exclusionary purpose by inducing suppliers not to sell to potential competitors, by inducing customers not to buy from them, or, in some cases, by refusing to deal with would-be competitors themselves. In each instance, however, the hallmark of the "group boycott" is the effort of competitors to "barricade themselves from competition at their own level."

Smith v. Pro Football, Inc., 593 F.2d 1173, 1178 (D.C. Cir. 1978) (quoting L.A. Sullivan, Antitrust 230, 232,

[4] PLS also argues that the Policy is an agreement to restrict output. Because we conclude that PLS adequately alleged a violation of the Sherman Act through its group boycott theory, we decline to address its alternative theory.

244–45 (1977)) (footnotes omitted); *accord Oakland Raiders*, 20 F.4th at 453 n.5.

The Clear Cooperation Policy, as PLS characterizes it, shares all the hallmarks of a group boycott: PLS's competitors coerced its suppliers (sellers' agents) not to supply PLS with listings (or to do so only on highly unfavorable terms), and they did so for the express purpose of preventing PLS, a new entrant to the market after decades of little to no competition, from competing with the MLSs. *See NYNEX Corp.*, 525 U.S. at 135 (describing "a group boycott in the strongest sense" as when a "group of competitors threaten[s] to withhold business from third parties unless those third parties . . . help them injure their directly competing rivals"). PLS also alleges that the effort succeeded: "Listings were removed from PLS and submitted instead to NAR-affiliated MLSs," "[a]gent participation in PLS declined," and "PLS was foreclosed from the commercial opportunities necessary to innovate and grow." Therefore, PLS has adequately alleged a group boycott.

The district court appeared to agree with this conclusion when it held that PLS adequately alleged that "the Clear Cooperation Policy is a *prima facie* unreasonable restraint of trade under the Rule of Reason framework." But to the extent the district court's reference to the rule of reason implicitly dismissed PLS's *per se* claim, the district court erred. Precisely which group boycotts qualify as *per se* violations of the Sherman Act has been a source of confusion for decades. In 1985, the Supreme Court observed that "[t]here is more confusion about the scope and operation of the *per se* rule against group boycotts than in reference to any other aspect of the *per se* doctrine." *Nw. Wholesale Stationers, Inc. v. Pac.*

Stationery & Printing, Co., 472 U.S. 284, 294 (1985) (quoting L. Sullivan, Law of Antitrust 229–30 (1977)). In that case, the Court held that a group boycott "generally" falls into the *per se* category if "the boycotting firms possess[] a dominant position in the relevant market," they "cut off access to a supply, facility, or market necessary to enable the boycotted firm to compete," and the practice is "not justified by plausible arguments that [it was] intended to enhance overall efficiency and make markets more competitive." *Id.* at 294. At the same time, "a concerted refusal to deal need not necessarily possess all of these traits to merit *per se* treatment." *Id.* at 295. The Court has provided little guidance since then.

Defendants argue that the Policy is not a *per se* group boycott because (1) it "does not cut off access to anything, and brokers remain free to use PLS or any other listing service," (2) "on its face" it does not prevent real estate agents from posting listings on competing networks or from "making a choice about the listing network platforms in which they choose to participate," and (3) it is procompetitive.[5] These arguments are not persuasive.

First, a group of competitors coercing a competitor's suppliers to sell to that competitor only on "unfavor-

[5] Defendants do not seriously dispute that PLS has adequately alleged that they have market power. Defendants' only argument regarding market power is a single line in NAR's brief, which states: "PLS's hazy, speculative allegations about market share do not plead the necessary evidentiary facts to support its claims about market power.'" (Citation and quotation marks omitted). But NAR never explains *why* it believes PLS's allegations are inadequate, and "a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review." *Greenwood v. F.A.A.*, 28 F.3d 971, 977 (9th Cir. 1994).

able terms" constitutes a group boycott even if the competitors do not completely cut off the competitor's access to inputs it needs. *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 209, 213 (1959). That is because businesses that can obtain those inputs only on unfavorable terms are unlikely to be able to compete. *See Nw. Wholesale Stationers*, 472 U.S. at 295 n.6 (noting that "a concerted refusal to deal . . . *on substantially equal terms* . . . might justify *per se* invalidation if it place[s] a competing firm at a severe competitive disadvantage" (emphasis added)); *see also Ind. Fed'n of Dentists*, 476 U.S. at 458 (characterizing a group boycott as "a concerted refusal to deal *on particular terms*" (emphasis added)).

Here, the Clear Cooperation Policy impaired PLS's ability to compete against the MLSs in the market for sellers' listings on almost any dimension because it requires the vast majority of PLS's suppliers (sellers' agents that are members of a NAR-affiliated MLS) to supply to PLS's dominant competitors (NAR-affiliated MLSs) even if PLS's product is better on the merits. Regardless of what PLS does—whether it charges less to list properties, provides a nationwide network, or develops a better interface—agents who belong to a NAR-affiliated MLS may not list on PLS without also listing on an MLS. Thus, the Clear Cooperation Policy essentially *eliminates* competition for most sellers' agents' listings between NAR-affiliated MLSs and rival services.

Defendants' second argument—that the Clear Cooperation Policy is not coercive because sellers' agents who wish to place some listings exclusively on competing services may do so if they give up their access to the MLSs—is even less persuasive. That is precisely the dilemma the Sherman Act is designed to prevent.

In *every* group boycott, the dominant firms force their suppliers or customers to choose between assisting the dominant firms in injuring their competitors or working exclusively with those competitors, knowing that because of the dominant firms' market power very few suppliers or customers will be able to rely exclusively on the competitors. That the customers or suppliers technically have a choice does not mean the group boycott is not coercive.

Finally, Defendants argue that the Clear Cooperation Policy is procompetitive because it "reduc[es] search and transaction costs." Although this contention is dressed up in the language of economics, at its core it is just an argument that the Clear Cooperation Policy benefits buyers' agents because it allows them to see more listings on the MLSs and to avoid the need to consult competing services. This is not a procompetitive justification because it does not explain how the Clear Cooperation Policy enhances *competition*. At bottom, Defendants argue that the Clear Cooperation Policy results in a higher quality product: a listing service with all of the publicly available listings in one place. But justifying a restraint on competition based on an assumption it will improve a product's quality "is nothing less than a frontal assault on the basic policy of the Sherman Act." *Nat'l Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 695 (1978). The antitrust laws assume that "competition will produce not only lower prices, but also better goods and services." *Id.* If Defendants are correct that buyers' agents prefer listing networks that offer more listings in one place, the MLSs should be in a good position to compete with upstarts like PLS. But the fact that PLS was growing rapidly despite the MLSs' larger inventory of listings might suggest that PLS offered features that at least some buyers' agents found attractive, despite the

lower concentration of listings. In the end, sparing consumers the need to patronize competing firms is not a procompetitive justification for a group boycott. *See id.* at 689 (rejecting "the argument that because of the special characteristics of a particular industry, monopolistic arrangements will better promote trade and commerce than competition").

Although we hold that PLS has adequately alleged a *per se* group boycott, we leave to the district court to determine in the first instance whether it should apply *per se* analysis or rule of reason analysis at later stages in this litigation.

B

Defendants next argue that PLS failed to state a claim because it did not define the market properly, and did not allege injury to participants on both sides of the market, as they contend is required by *Ohio v. American Express Company*, 138 S. Ct. 2274 (2018) (*Amex*). PLS responds that *Amex* does not apply here, both because it does not apply at the pleading stage and because it applies only to two-sided platforms that facilitate simultaneous transactions, like credit-card networks. PLS also argues that it has satisfied *Amex* even if it does apply. We hold that *Amex* can apply at the pleading stage in some circumstances, but that PLS has satisfied *Amex*, so we need not resolve the more difficult questions the parties raise about how broadly the *Amex* decision applies.

(1)

In *Amex*, the federal government and several states sought to prove that an anti-steering provision American Express (Amex) imposed on merchants who chose to accept its cards violated Section 1 of the Sherman Act. *See* 138 S. Ct. at 2283. To understand

the Court's decision, one must first have a basic understanding of Amex's business model. Briefly stated, credit-card companies earn revenue by charging merchants fees, which are generally calculated as a percentage of each transaction. *Id.* at 2281. Amex earns most of its revenue from these fees, and Amex generally charges merchants a higher percentage of each transaction than do its rivals. *Id.* at 2282. As a result, merchants sometimes attempt to persuade or incentivize customers to use different cards to make their purchases. *Id.* at 2283. "This practice is known as 'steering.'" *Id.* Amex's anti-steering provision prohibits merchants who accept its cards from steering customers toward using other credit cards. *Id.*

After a bench trial, the district court held that Amex's anti-steering provision violates the Sherman Act based on the rule of reason because Amex has market power in the transaction-processing market and has used that market power to prohibit merchants from steering their customers toward lower-cost cards, thereby "short-circuit[ing] the ordinary price-setting mechanism" and eliminating "price competition among American Express and its rival networks." *See United States v. Am. Express Co.*, 88 F. Supp. 3d 143, 151–52 (E.D.N.Y. 2015). The Supreme Court ultimately reversed and provided new instructions about how to define the relevant market when analyzing a product that is a two-sided platform.

According to the Court, "a two-sided platform offers different products or services to two different groups who both depend on the platform to intermediate between them." *Amex*, 138 S. Ct. at 2280. The Court offered two examples: credit-card companies and newspapers. *See id.* at 2285–86. Credit card companies, the Court explained, sell credit to consumers on one side

of the market and sell transaction-processing services to merchants on the other side of the market. *Id.* at 2280. Newspapers are also "arguably" two-sided platforms: they sell advertising space to advertisers and news to subscribers. *Id.* at 2286. The key difference between two-sided platforms and traditional products is that two-sided platforms "often exhibit what economists call 'indirect network effects,' . . . where the value of the two-sided platform to one group of participants depends on how many members of a different group participate." *Id.* at 2280. "A credit card, for example, is more valuable to cardholders when more merchants accept it, and is more valuable to merchants when more cardholders use it." *Id.* at 2281.

The Court held that, for at least certain subsets of two-sided platforms, courts must define the relevant market to "include both sides of the platform" because one cannot accurately assess the competitive impact of a particular practice by looking to only one side of the market. *Id.* at 2286–87.[6] For instance, a credit card company might choose to increase merchant fees and use the increased revenue to offer more generous rewards for cardholders, thus reducing the price to cardholders and keeping the overall cost of the credit card service the same. *Id.* at 2281. The plaintiffs in *Amex* failed to prove an anticompetitive effect at the first step of the rule of reason analysis, the Court held, because they "wrongly focus[ed] on only one side of the two-sided credit-card market." *Id.* at 2287. To meet their burden of proof, they were required to prove anticompetitive effects "on the two-sided credit-card

[6] However, "it is not always necessary to consider both sides of a two-sided platform." *Id.* at 2286. For example, "the market for newspaper advertising behaves much like a one-sided market and should be analyzed as such." *Id.*

market as a whole." *Id.* In other words, they were required to prove that the "provisions increased the cost of credit-card transactions above a competitive level, reduced the number of credit-card transactions, or otherwise stifled competition in the credit-card market." *Id.*

(2)

PLS argues that *Amex* has no role to play at the pleading stage because the proper definition of the market and whether a practice is anticompetitive "are fact-bound issues not susceptible to resolution on a motion to dismiss." We disagree.

A plaintiff is not required to define a particular market for a *per se* claim, *see Bd. of Regents of Univ. of Okla.*, 468 U.S. at 100; *Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096, 1104 (9th Cir. 1999), nor is it required to do so for a rule of reason claim based on evidence of the actual anticompetitive impact of the challenged practice, *see Ind. Fed'n of Dentists*, 476 U.S. at 460–61.[7] PLS is therefore correct that *Amex* does not apply to these claims. For rule of reason claims based on indirect evidence, however, *Amex* may play a role. For those claims, a plaintiff must define the relevant market and show that the defendant has market power in that market to prove that the challenged practice is anticompetitive. *See Amex*, 138 S. Ct. at 2284. Since these are elements of the claim, the plain-

[7] In *Amex*, the Supreme Court held that the plaintiffs were required to define the relevant market even though they relied on direct evidence of an anticompetitive impact. *See Amex*, 138 S. Ct. at 2285 n.7. But the Court distinguished *Amex*, where the plaintiff complained of a vertical restraint of trade, from cases like this one, where the plaintiff complains of a horizontal restraint of trade. *Id.* Therefore, *Amex* did not disturb the *Indiana Federation of Dentists* rule.

tiff must plead facts that, when accepted as true, show they are satisfied. *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038, 1044 (9th Cir. 2008). If "the alleged market suffers a fatal legal defect," the court may dismiss the claim at the pleading stage. *Id.* at 1045.

Although we hold that *Amex can* apply to rule of reason claims based on indirect evidence at the pleading stage, we do not hold that it always does. Under both parties' theories, whether *Amex* applies depends on the characteristics of the relevant product. Defendants argue that strong indirect network effects alone trigger *Amex*, while PLS argues that simultaneous transactions are required. Either way, whether *Amex* applies depends on the facts. In some cases, a plaintiff will include facts in the complaint that disclose these characteristics and thus trigger *Amex*. In others, the complaint will not contain the necessary facts, and the court may need to wait to examine the evidence to determine whether *Amex* applies.

In this case, PLS alleges that the listing networks do not facilitate simultaneous transactions, but they nevertheless exhibit strong indirect network effects. Therefore, if PLS is correct that *Amex* applies only to transaction networks, it does not apply here. But if Defendants are correct that only strong indirect network effects are required, then *Amex does* apply because PLS alleged that the relevant products exhibit strong indirect network effects. We need not resolve the parties' dispute regarding the precise characteristics that trigger *Amex*, however, because PLS's allegations satisfy *Amex*, even if it applies.

(3)

The district court held that PLS failed to satisfy *Amex* because "PLS does not allege a plausible injury

to participants on both sides of the market," namely to "*both* home sellers *and home buyers*." Defendants also argue that PLS failed to satisfy *Amex* because it did not "take account of the impact of the Policy on home buyers (or their agents)." As we have explained, the relevant consumers in this case are buyers' and sellers' *agents*, not the people buying and selling homes. But even substituting buyers' agents and sellers' agents for the references to buyers and sellers, we find ourselves puzzled by Defendants' argument.

As a preliminary matter, *Amex* does not require a plaintiff to allege harm to participants on both sides of the market. All *Amex* held is that to establish that a practice is anticompetitive in certain two-sided markets, the plaintiff must establish an anticompetitive impact on the "market as a whole." 138 S. Ct. at 2287. Sometimes this will be by alleging harm to participants on both sides of the market and sometimes it will not. It is possible that a practice harming participants on one side of the market could outweigh the benefits to participants on the other, causing anticompetitive effects on the market as a whole.

More importantly, although it is not required, PLS *did* allege that the Clear Cooperation Policy harms competition in the real estate listing network services market because it injures *both* sellers' agents *and* buyers' agents. PLS alleges that the Clear Cooperation Policy prevented innovative competitors from entering the market and growing large enough to meaningfully compete with the MLSs, leaving both buyers' agents and sellers' agents with fewer choices, supra-competitive prices, and lower quality products. Defendants suggest that the purported benefits of the Clear Cooperation Policy to buyers' agents outweigh the costs to buyers' agents and sellers' agents, so PLS did

not adequately allege harm to the market as a whole. But whether the alleged procompetitive benefits of the Clear Cooperation Policy outweigh its alleged anticompetitive effects is a factual question that the district court cannot resolve on the pleadings. *See Amex*, 138 S. Ct. at 2284 (describing the rule of reason as a "fact-specific assessment" designed to distinguish between anticompetitive and procompetitive practices).

In sum, even if *Amex* were to apply to PLS's indirect evidence claim, PLS's allegations satisfy *Amex's* requirements.

III

Having concluded that PLS has adequately alleged a Sherman Act violation, we next examine the relationship between that violation and PLS's injury to determine whether PLS has adequately alleged antitrust injury. We hold that it has.

We find our precedent regarding antitrust injury in the context of predatory pricing to provide a helpful guide. The Supreme Court has held that a competitor can adequately allege antitrust injury when it alleges that it has been injured by a competitor's predatory pricing. *See Cargill*, 479 U.S. at 117–18. "Predatory pricing [is] pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run." *Id.* at 117. It "harms both competitors *and* competition" because it "has as its aim the elimination of competition." *Id.* at 118. At the same time, the Court has made clear that a competitor that loses profits or market share due to a competitor's *non*-predatory price cuts does not experience antitrust injury because non-predatory price competition is procompetitive. *Id.* at 116–17.

The same reasoning applies to group boycotts: the Sherman Act prohibits group boycotts because they are designed to drive existing competitors out of the market or to prevent new competitors from entering, thus leaving consumers with fewer choices, higher prices, and lower-quality products. PLS alleges that is what happened here: the Clear Cooperation Policy prevented PLS from gaining a foothold in the market and makes it virtually impossible for new competitors to enter, leaving agents with fewer choices, supra-competitive prices, and lower quality products. Therefore, PLS has adequately alleged antitrust injury. *See Am. Needle*, *Inc. v. Nat'l Football League*, 560 U.S. 183, 195 (2010) ("[T]he 'central evil addressed by Sherman Act § 1' is the 'elimin[ation of] competition that would otherwise exist.'" (quoting 7 P. Areeda & H. Hovenkamp, Antitrust Law ¶ 1462b, at 193–94 (2d ed. 2003))).

Defendants cite an out-of-context quotation from *Pool Water Products v. Olin Corporation*, 258 F.3d 1024 (9th Cir. 2001), to argue that decreased market share and shifting sales from one competitor to another can never constitute antitrust injuries. They suggest that because PLS does not allege that it was driven from the market entirely, there was no antitrust injury. But that is not what *Pool Water* held. In *Pool Water*, we held that the plaintiffs had "not presented any evidence that [the defendants] engaged in predatory pricing. Plaintiffs' reduced profits attributable to defendants' decrease in prices [was] therefore not an antitrust injury." *Id.* at 1036 (citations omitted). Nor was the plaintiffs' decreased market share. *Id.* Thus, *Pool Water* simply reiterated what the Supreme Court had already made clear: injuries due to lower prices are not antitrust injuries unless those lower prices are predatory. It did not hold that injuries short of being forced from the market—

such as shifting sales or decreased market share—*never* constitute antitrust injuries.

Contrary to Defendants' argument, the Supreme Court has long recognized that "competitors may be able to prove antitrust injury before they actually are driven from the market and competition is thereby lessened." *Brunswick Corp.*, 429 U.S. at 489 n.14. And we recently reaffirmed that "a plaintiff need not allege that the exclusionary conduct has succeeded in displacing all competition" to "adequately plead antitrust injury." *Ellis*, 24 F.4th at 1274. Therefore, the fact that PLS does not allege that it was driven from the market does not mean that it failed to allege antitrust injury.

IV

Bright MLS and MRED argue that we should affirm the district court's dismissal of PLS's claims against them even if we hold that PLS has stated a claim against the other Defendants because PLS did not adequately allege that they were involved in the alleged conspiracy. Before turning to the merits of these arguments, we must first determine whether we have jurisdiction to consider the parties' dispute regarding MRED's involvement.

A

At the time of PLS's appeal, Federal Rule of Appellate Procedure 3(c)(1)(B) required a party to "designate" in its notice of appeal "the judgment, order, or part thereof being appealed."[8] This require-

[8] Rule 3(c)(1)(B) was amended in April 2021 to eliminate the "or part thereof" language because the advisory committee concluded that it contributed to "the misconception that it is necessary or appropriate to designate each and every order of the district court that the appellant may wish to challenge on appeal"

ment is jurisdictional, so we must assure ourselves that it is satisfied, even though no party has raised it. *Smith v. Barry*, 502 U.S. 244, 248 (1992). PLS's notice of appeal identifies the object of its appeal as "Subsection 1 of Order (ECF 97) dismissing First Amended Complaint with prejudice and without leave to amend." This portion of the order addresses only whether PLS adequately alleged antitrust injury. But PLS's opening brief also challenges the district court's holding in Subsection 3 of its order that PLS did not adequately allege that MRED was part of the alleged conspiracy. If PLS had simply designated the entire order or the district court's judgment as the object of its appeal, we would clearly have jurisdiction to review Subsection 3. But PLS's designation of only Subsection 1 muddies the waters. Nevertheless, we hold that we have jurisdiction to review Subsection 3.

We have not required technical compliance with Rule 3(c)(1)(B). *Le v. Astrue*, 558 F.3d 1019, 1022 (9th Cir. 2009). To determine whether we have jurisdiction to entertain an appeal from a portion of an order that is not designated in the notice of appeal, we have applied a two-part test. *See id.* at 1022–23. At the first step, we determine "whether the intent to appeal a specific judgment can be fairly inferred," and at the second step, we analyze "whether the appellee was prejudiced." *Id.* at 1023 (quoting *Lolli v. Cnty. of Orange*, 351 F.3d 410, 414 (9th Cir. 2003)).

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rather than simply designating the judgment into which all of the district court's orders merge.

Fed. R. App. P. 3(c) advisory committee's note to 2021 amendment. We quote the former language because the 2021 amendment did not become effective until several months after PLS filed its notice of appeal.

When examining whether the appellant's intent to appeal a portion of an order can be fairly inferred, we have not limited ourselves to inferences from the face of the notice of appeal; we have also inferred "appellants' intent to appeal . . . from their briefs," and from an appellant appealing another portion of the same order. *West v. United States*, 853 F.3d 520, 524 (9th Cir. 2017) (holding that notice of appeal designating the district court's dismissal of some counts against one defendant "sufficiently indicated [the plaintiff's] intent to appeal the entire district court order," including the dismissal of the plaintiff's claims against another defendant); *see also Le*, 558 F.3d at 1021, 1024–25. In addition, we have held that when an "appellee has argued the merits [of the disputed issue] fully in its brief, it has not been prejudiced by the appellant's failure to designate specifically an order which is subject to appeal." *Le*, 558 F.3d at 1025 (quoting *Lockman Found. v. Evangelical All. Mission*, 930 F.2d 764, 772 (9th Cir. 1991)). PLS's opening brief notified Defendants that it sought to appeal Subsection 3 of the district court's order and Defendants have fully briefed the issue. We therefore have jurisdiction to address the district court's holding that PLS did not adequately allege that MRED was involved in the alleged conspiracy.

B

Turning to the merits, we hold that PLS adequately alleged that Bright and MRED were involved in the alleged conspiracy. "Section 1 applies only to concerted action that restrains trade." *Am. Needle*, 560 U.S. at 190. Therefore, to adequately allege that Defendants violated Section 1, PLS must allege that Defendants' conduct was concerted action and was "not merely parallel conduct that could just as well be independent

action." *Twombly*, 550 U.S. at 557. A formal agreement is not necessary. *Interstate Cir. v. United States*, 306 U.S. 208, 227 (1939). All that is required is "a conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984) (quoting *Edward J. Sweeney & Sons*, *Inc. v. Texaco, Inc.*, 637 F.2d 105, 111 (3d Cir. 1980)).

PLS has satisfied this requirement. Specifically, PLS alleges that MRED and other MLSs conceived of the Clear Cooperation Policy through "private interfirm communications," including at a meeting of "NAR's MLS Technology and Emerging Issues Advisory Board" that MRED's CEO attended. PLS then alleges that MRED, Bright, and CRMLS signed a white paper "call[ing] for collective action to address the threat to the MLS system presented by . . . the prospect of a competing listing network." That same day, "MRED published a statement supporting adoption by NAR of the Clear Cooperation Policy at the upcoming NAR convention." The next day, MRED and other NAR-affiliated MLSs met in Salt Lake City "to discuss the competitive threat presented by pocket listings and the need for NAR to take action at the upcoming NAR Convention to eliminate that threat through adoption of the Clear Cooperation Policy." MRED's CEO and Bright's Chairman both addressed representatives of NAR-affiliated MLSs at the CMLS conference in Salt Lake City and urged them to adopt the Clear Cooperation Policy, and to encourage NAR's Board of Directors to do the same. Bright's CEO said, among other things, "We have an opportunity in front of us to make, put this policy into effect in November. And Bright adopted it yesterday, MRED's already adopted it, other people are already doing it, but we really need to get it through." The next month, Bright and MRED

executives advocated for the policy at a meeting of NAR's Multiple Listing Issues and Policies Committee, where the policy was approved. Two days later, NAR's Board of Directors formally adopted it.

These allegations suggest that Bright and MRED agreed to adopt the Clear Cooperation Policy and then worked together to ensure that NAR required it so that every NAR-affiliated MLS would be forced to adopt it too. Therefore, PLS has plausibly alleged that Bright and MRED acted in concert rather than independently.

Bright argues that because PLS alleges it adopted "a version of what would become the Clear Cooperation Policy . . . before having any obligation under NAR rules . . . to do so," PLS has not alleged that it adopted the policy pursuant to an agreement. But PLS is not required to allege that Bright adopted the Policy because of NAR's rule. All that PLS must allege is that Bright adhered to a common scheme. Whether it did so by formally adopting the Clear Cooperation Policy after NAR required it or by voluntarily adopting a substantially equivalent policy beforehand makes no difference. *See Interstate Cir.*, 306 U.S. at 227 ("Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act.").

V

We hold that PLS adequately alleged a violation of the Sherman Act and antitrust injury. We therefore reverse the district court's dismissal of PLS's complaint and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed February 3, 2021]

Case No. 2:20-cv-04790-JWH-RAOx

THE PLS.COM, LLC,

Plaintiff,

v.

THE NATIONAL ASSOCIATION OF REALTORS; BRIGHT MLS, INC.; MIDWEST REAL ESTATE DATA, LLC; AND CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.,

Defendants.

ORDER ON MOTIONS OF DEFENDANTS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT [ECF Nos. 50, 53, & 55]; MOTION TO STRIKE OF DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC. [ECF No. 54]; and MOTION OF DEFENDANTS FOR STAY OF DISCOVERY [ECF No. 90]

For the reasons set forth in the accompanying Memorandum Opinion, the Court hereby ORDERS as follows:

1. The three motions to dismiss the First Amended Complaint [ECF No. 46] of Plaintiff The PLS.com, LLC, filed by Defendants Bright MLS, Inc. and Midwest Real Estate Data, LLC [ECF No. 50]; Defendant California Regional Multiple Listing Service, Inc. [ECF No. 53]; and Defendant The National Association of Realtors [ECF No. 55], respectively, are each

GRANTED, without leave to amend. The First Amended Complaint is DISMISSED, with prejudice.

2. The motion of Defendant California Regional Multiple Listing Service, Inc. to strike Plaintiff's second claim for relief for violation of the Cartwright Act pursuant to California's Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16 [ECF No. 54], is DENIED as moot.

3. The motion of Defendants for an order staying discovery pending resolution of Defendants' motions to dismiss [ECF No. 90] is DENIED as moot. The hearing on that motion set for February 5, 2021, at 1:00 p.m. is VACATED.

4. To the extent and any party seeks any other form of relief, it is DENIED.

5. The Clerk is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: February 3, 2021

/s/ John W. Holcomb
John W. Holcomb
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed February 3, 2021]

Case No. 2:20-cv-04790-JWH-RAOx

THE PLS.COM, LLC,

Plaintiff,

v.

THE NATIONAL ASSOCIATION OF REALTORS; BRIGHT MLS, INC.; MIDWEST REAL ESTATE DATA, LLC; AND CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.,

Defendants.

MEMORANDUM OPINION ON MOTIONS OF DEFENDANTS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT [ECF Nos. 50, 53, & 55] and MOTION TO STRIKE OF DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC. [ECF No. 54]

I. INTRODUCTION

This antitrust case concerns an alleged conspiracy among three regional real property multiple listing services—Defendants Bright MLS, Inc. ("*Bright MLS*"); Midwest Real Estate Data, LLC ("*Midwest RED*"); and California Regional Multiple Listing Service, Inc. ("*Cal Regional MLS*") (collectively, the "*MLS Defendants*")—and Defendant The National Association of Realtors ("*NAR*") to eliminate a competitor, Plaintiff The PLS.com, LLC. PLS maintains that Defendants

are engaging in an unreasonable restraint of trade in violation of § 1 of the Sherman Act, 15 U.S.C. § 1, and California's Cartwright Act, Cal. Bus. & Prof. Code § 16720(a)–(c).[1]

Before the Court are the three motions of Defendants Bright MLS and Midwest RED (jointly), Cal Regional MLS, and NAR, respectively, to dismiss PLS's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[2] Also pending before the Court is the motion of Cal Regional MLS to strike the second claim for relief in PLS's Amended Complaint pursuant to California's Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16.[3] The Court held a hearing on Defendants' three Motions to Dismiss and on Cal Regional MLS's Motion to Strike on October 15, 2020. After considering the papers filed in support of and in opposition to all four Motions[4] and the

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[1] First Am. Compl. (the "*Amended Complaint*") [ECF No. 46] ¶¶ 123 & 126.

[2] Defs. Bright MLS's and Midwest RED's Mot. to Dismiss (the "*Bright MLS & Midwest RED Motion*") [ECF No. 50]; Def. Cal Regional MLS' Mot. to Dismiss (the "*Cal Regional MLS Motion*") [ECF No. 53]; and Def. NAR's Mot. to Dismiss (the "*NAR Motion*") [ECF No. 55] (collectively, the "*Motions*").

[3] Def. Cal Regional MLS' Mot. to Strike Pl.'s Second Claim for Violation of the Cartwright Act Pursuant to Cal. Code Civ. Proc. § 425.16 (Anti-SLAPP Statute) (the "*Motion to Strike*") [ECF No. 54].

[4] The Court considered the following papers: (1) the Amended Complaint; (2) the Motions (including all of their respective supporting declarations and attachments); (3) the Motion to Strike; (4) Pl.'s Opp'n to the Motions (the "*Opposition*") [ECF No. 62]; (5) Pl.'s Opp'n to the Motion to Strike [ECF No. 63]; (6) Defs. Bright MLS's and Midwest RED's Reply in Supp. of Mot. to Dismiss (the "*Bright MLS & Midwest RED Reply*") [ECF No. 64]; (7) Def. Cal Regional MLS' Reply in Supp. of Mot. to Dismiss (the "*Cal Regional MLS Reply*") [ECF No. 65]; (8) Def. NAR's Reply in

arguments of counsel presented at the hearing, for the reasons explained herein, the Court will GRANT Defendants' Motions to Dismiss without leave to amend and will DENY Defendant Cal Regional MLS's Motion to Strike as moot.

II. BACKGROUND[5]

Transactions for the sale of residential real estate involve a seller and a buyer who are typically each represented by a real estate professional.[6] Real estate professionals are licensed real estate brokers and agents.[7] Agents have the most direct relationship with the consumer; they solicit listings, work with sellers to market their homes, and work with buyers to find homes that match the buyers' preferences.[8] Brokers supervise agents and often provide branding, advertising, and other services that help agents attract sellers

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Supp. of Mot. to Dismiss (the "*NAR Reply*") [ECF No. 66]; (9) Def. Cal Regional MLS' Reply in Supp. of Motion to Strike [ECF No. 67]; (10) Pl.'s Notice of Suppl. Authority in Supp. of Opposition [ECF No. 71]; (11) Suppl. Brief in Supp. of the Motions (the "*Defs.' Suppl. Brief*") [ECF No. 83]; (12) Suppl. Brief in Supp. of the Opposition (the "*Pl.'s Suppl. Brief*") [ECF No. 84]; (13) Pl.'s Notice of Suppl. Authority [ECF No. 86] and Pl.'s Ex. to Suppl. Authority. [ECF No. 87]; and (14) Def. NAR's Notice of Resp. to Pl.'s Suppl. Authority (including its attachments) [ECF No. 88].

[5] The Court assumes the truth of the factual allegations in PLS's Amended Complaint solely for the purpose of deciding the Motions. The Court restates PLS's allegations for context, but it makes no determination regarding their veracity at this stage of the case. *See, e.g.*, *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996) (on a motion to dismiss for failure to state a claim, "[a]ll allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party").

[6] Amended Complaint ¶¶ 27 & 28.

[7] *Id.* at ¶ 27.

[8] *Id.*

and buyers and complete transactions.[9] Brokers and agents compete between and among themselves to provide residential real estate brokerage services to home sellers and buyers.[10]

A. The MLS Defendants and NAR

Most residential real property for sale in the United States is marketed through a multiple listing service ("*MLS*") platform.[11] MLSs are joint ventures among, in effect, their members: licensed real estate professionals doing business in a particular local or regional area.[12] Real estate professionals pay for membership and, therefore, access to an MLS, and those professionals must adhere to any restrictions that the MLS imposes.[13] An MLS combines its members' home sale listings information into a central database and then makes the listing data available to all of its members.[14] Listing a property on an MLS enables a home seller's professional to market the property to a large set of potential buyers.[15] Correspondingly, a professional who represents a buyer can search an MLS for listed homes in the area that match the buyer's preferences.[16]

The value of the network services provided by an MLS is largely a function of the number of members

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[9] *Id.*

[10] *Id.* at ¶ 32.

[11] *Id.* at ¶ 1.

[12] *Id.*at ¶ 32 & 34.

[13] *Id.* at ¶ 32.

[14] *Id*.

[15] *Id.*

[16] *Id.*

within the network.[17] That is, the greater the number of members in the MLS, the greater the number of listings on the MLS, which increases the value of membership.[18] Bright MLS, Cal Regional MLS, and Midwest RED are each regional MLSs: Bright MLS serves the Mid-Atlantic region;[19] Cal Regional MLS serves California;[20] and Midwest RED serves areas in the Upper Midwest.[21]

NAR is a trade association with more than 1.4 million individual members who are organized into 54 state and territorial associations and more than 1,200 local associations (the "*Realtor Associations*").[22] NAR establishes and promulgates policies and professional standards for its individual members and for its Realtor Associations.[23] Most real estate professionals in the U.S. are NAR members.[24] Realtor Associations are required to adopt the rules and polices promulgated by NAR and to enforce those rules on the real estate professionals comprising the associations.[25]

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[17] *Id.* at ¶ 50 & 51.

[18] *Id.* at ¶¶ 32, 50, & 51.

[19] *Id.* at ¶ 19 (Bright MLS is owned and controlled by NAR members throughout the states of New Jersey, Delaware, Maryland, Pennsylvania, West Virginia; the Commonwealth of Virginia; and the District of Columbia).

[20] *Id.* at ¶ 18 (Cal Regional MLS "is the largest MLS in the United States with over 100,000 members who have access to more than 70[%] of the listings for sale in California").

[21] *Id.* at ¶ 20 (Midwest RED serves northern Illinois, southern Wisconsin, and northwest Indiana, with over 45,000 members).

[22] *Id.* at ¶ 17. "Realtor" is a registered trademark of NAR.

[23] *Id.* at ¶¶ 30 & 33.

[24] *Id.*at ¶ 29.

[25] *Id.* at ¶ 30.

Those policies include NAR's Handbook on Multiple Listing Policy.[26]

B. The NAR-Affiliated MLS System

There are around 600 MLSs nationwide that are affiliated with NAR through their ownership or operation by NAR's Realtor Associations (the "*NAR-affiliated MLSs*").[27] NAR-affiliated MLSs are required to adopt new or amended NAR policies.[28] All NAR-affiliated MLSs are actual or potential competitors with other NAR-affiliated MLSs.[29] Bright MLS and Cal Regional MLS are NAR-affiliated MLSs,[30] while Midwest RED is indirectly owned and controlled by NAR members.[31] Real estate professionals are not required to be NAR members to participate in NAR-affiliated MLSs.[32] Consequently, many real estate professionals who are not NAR members participate in NAR-affiliated MLSs.[33]

The majority of NAR-affiliated MLSs are for-profit entities that charge membership fees for access to their services.[34] For years, NAR-affiliated MLSs have enjoyed a high market share across the country.[35]

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[26] *Id.* at ¶ 33.

[27] *Id.* at ¶¶ 2 & 33.

[28] *Id.* at ¶ 35.

[29] *Id.* at ¶ 40.

[30] *Id.* at ¶¶ 18 & 19.

[31] *Id.* at ¶ 20.

[32] *Id.* at ¶ 34.

[33] *Id.*

[34] *Id.* at ¶ 39.

[35] *Id.* at ¶ 38.

C. Pocket Listings

MLSs generally impose specific requirements for their members' entry of listing data regarding residential real properties. Sometimes, for a variety of reasons (including privacy), sellers of residential real property want to avoid providing all of the information required to market a listing through an MLS. A seller with those interests might ask her real estate professional to market the listing by other means, outside of an NAR-affiliated MLS system. An off-MLS listing service is referred to as a "pocket listing."[36] A pocket listing allows a seller to customize and to limit the amount of information that she provides about her home, and, in this way, a pocket listing affords a seller with a level of privacy and discretion that is not available with an MLS listing.[37] Historically, pocket listings were marketed bilaterally by real estate professionals—"face to face, through phone calls, or by email."[38]

PLS was created in 2017 in response to consumer demand for a centralized, nationwide searchable repository for pocket listings.[39] Like an MLS, membership in PLS is available to all licensed real estate professionals who pay a membership fee. But unlike the many regionally-based MLSs, each of which charges its own membership fee, PLS charges a single fee to access its nationwide network.[40] By joining PLS, real estate professionals can privately share pocket listings in cooperation with other members while avoiding the

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[36] *Id.* at ¶ 7.

[37] *Id.* at ¶¶ 6 & 61.

[38] *Id.* at ¶ 8.

[39] *Id.* at ¶¶ 8 & 58.

[40] *Id.* at ¶¶ 59, 60, 63, & 64.

exposure of those listings through the NAR-affiliated MLSs.[41] Also unlike MLS listings, PLS offers sellers the ability to share as much or as little information about their property as they desire.[42] In sum, PLS's business model combines the network efficiencies of an MLS with the privacy and discretion of the pocket listing on a national—as opposed to a local or regional—platform.[43]

D. The Clear Cooperation Policy

1. Definition

On November 11, 2019, NAR adopted its "Clear Cooperation Policy."[44] The text of the Clear Cooperation Policy is as follows:

> Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays . . ., digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.[45]

NAR created an exception to its Clear Cooperation Policy for so-called "office listings," which are listings marketed entirely within a brokerage firm without

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[41] *Id.* at ¶ 8.

[42] *Id.* at ¶ 61.

[43] *Id.* at ¶¶ 12 & 61.

[44] *Id.* at ¶¶ 86–90.

[45] *Id.* at ¶ 89.

submission to an MLS.[46] The Clear Cooperation Policy became effective on January 1, 2020, and it was included as a mandatory rule in the 2020 NAR Handbook on Multiple Listing Policy.[47] NAR-affiliated MLSs enforce Clear Cooperation by monitoring members' adherence to the policy, by encouraging members to report violations, and by threatening or imposing penalties on members for non-compliance.[48]

2. History and Adoption

In the months leading up to NAR's adoption of the Clear Cooperation Policy, the MLS Defendants privately and publicly coordinated with NAR, which has a national footprint, to formulate Clear Cooperation as a method to stamp out pocket listings.[49] The collusion between the MLS Defendants and NAR began in August 2019 at a meeting of NAR's MLS Technology and Emerging Issues Advisory Board.[50] PLS alleges, on information and belief, that a representative of Midwest RED was present at this meeting as a representative of the Council of Multiple Listing Services (the "*MLS Council*").[51] The NAR Technology and Emerging Issues Advisory Board ultimately voted to recommend a version of what would become the Clear Cooperation Policy.[52]

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[46] *Id.* at ¶ 93.

[47] *Id.* at ¶ 90. NAR-affiliated MLSs, including Bright MLS and Cal Regional MLS, were required to modify their rules by May 1, 2020, to conform to the Clear Cooperation Policy. *Id.*

[48] *Id.* at 94.

[49] *See id.* at ¶¶ 69–86.

[50] *Id.* at ¶ 71.

[51] *Id.*

[52] *Id.*

In September 2019, the MLS Defendants were among the signatories of a white paper that called for action against the threat of pocket listings.[53] On October 16, 2019, Bright MLS adopted a policy similar to the Clear Cooperation Policy, which (as discussed above) NAR adopted the next month.[54] Around the same time, Midwest RED published a statement supporting the adoption of the Clear Cooperation Policy at NAR's upcoming convention.[55] On October 17 and 18, 2019, the MLS Defendants met at an MLS Council conference.[56] The CEO of Midwest RED and the Chairman of Bright MLS each made statements at the conference to address the purported threat of pocket listings to the MLS business model. Midwest RED's CEO discussed Midwest RED's pocket listing policy,[57] and Bright MLS's Chairman advocated for the adoption of similar policies—including the policy that eventually became Clear Cooperation—and encouraged participants to attend the upcoming NAR convention.[58]

III. LEGAL STANDARD

A. Motions to Dismiss

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the claims asserted in a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In ruling on a Rule 12(b)(6) motion, "[a]ll allegations of material fact are taken as true and construed in the light most

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[53] *Id.* at ¶ 75.

[54] *Id.* at ¶ 76.

[55] *Id.* at ¶ 77.

[56] *Id.* at ¶ 78.

[57] *Id.* at ¶ 79.

[58] *Id.* at ¶¶ 80–85.

favorable to the nonmoving party." *Am. Family Ass'n v. City & County of San Francisco*, 277 F.3d 1114, 1120 (9th Cir. 2002). Although a complaint attacked through a Rule 12(b)(6) motion "does not need detailed factual allegations," a plaintiff must provide "more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

To state a plausible claim for relief, the complaint "must contain sufficient allegations of underlying facts" to support its legal conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact) . . . ." *Twombly*, 550 U.S. at 555 (citations and footnote omitted). Accordingly, to survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," which means that a plaintiff must plead sufficient factual content to "allow[] the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). A complaint must contain "well-pleaded facts" from which the Court can "infer more than the mere possibility of misconduct." *Id.* at 679.

B. Leave to Amend

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend "shall be freely granted when justice so requires." The purpose underlying the amendment policy is to "facilitate decision on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Leave to amend should be granted unless the Court determines "that the pleading could not possibly be

cured by the allegation of other facts." *Id.* (quoting *Doe v. United States*, 8 F.3d 494, 497 (9th Cir. 1995)).

IV. DISCUSSION

PLS argues that, by promulgating and adopting the Clear Cooperation Policy, Defendants engaged in an unreasonable restraint of trade in violation of § 1 of the Sherman Act and California's Cartwright Act.[59] To assess the plausibility of PLS's claims, it is necessary first to take note of the applicable antitrust principles and the elements that PLS must plead to state a claim. *See Iqbal*, 556 U.S at 675; *Twombly*, 550 U.S. at 553–54.

A. PLS's Claim Under § 1 of the Sherman Act

Section 1 of the Sherman Act provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1. "Congress designed the Sherman Act as 'a consumer welfare prescription.'" *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (quoting R. BORK, THE ANTITRUST PARADOX 66 (1978)). Key concepts underlying antitrust law include the notion that when economic resources are allocated to their best use, and when competitive price and quality are assured to the consumer, consumer welfare is maximized. *See Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995); *accord National Gerimedical Hosp. and Gerontology Ctr. v. Blue Cross of Kansas City*, 452 U.S. 378, 387–88 & n.13 (1981). Thus, "an act is deemed anticompetitive under the Sherman Act only when it harms both allocative efficiency and raises the prices of goods above competitive

[59] *Id.* at ¶¶ 123 & 126.

levels or diminishes their quality." *Id.* Accordingly, the Supreme Court has repeatedly emphasized that in enacting the Sherman Act, "Congress intended to outlaw only unreasonable restraints" on trade or commerce. *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006) (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997)).

Restraints can be unreasonable for antitrust purposes in one of two ways. Some restraints are unreasonable *per se* because they "always or almost always tend to restrict competition and decrease output." *Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc.*, 441 U.S. 1, 19-20 (1979); *see also Ohio v. American Express Co.*, 138 S. Ct. 2274, 2283 (2018) ("*Amex*"). If the challenged restraint is not unreasonable *per se*, then the restraint is judged under the Rule of Reason. *Id.* at 2284.

Most antitrust claims are analyzed under the Rule of Reason. *See State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997). The goal of the Rule of Reason analysis is to "distinguis[h] between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest." *Id.* (quoting *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007)). To state a § 1 claim under the Rule of Reason, a plaintiff must plead sufficient facts to show the plausible existence of "(1) a contract, combination or conspiracy among two or more persons or distinct business entities; (2) by which the persons or entities intended to harm or restrain trade or commerce among the several States, or with foreign nations; (3) which actually injures competition." *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008). In addition, a plaintiff must also plead (4) that it was harmed by the unlawful anti-competitive restraint and that such

harm flowed from an "anti-competitive aspect of the practice under scrutiny." *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990). The latter element is referred to as an "antitrust injury." *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1197 (9th Cir. 2012); *accord Atl. Richfield*, 4985 U.S. at 334.

The underlying goal of the *per se* rule and the Rule of Reason is, ultimately, the same; both "'are employed "to form a judgment about the competitive significance of the restraint.'" [Citation.] '[W]hether the ultimate finding is the product of a presumption or actual market analysis, the essential inquiry remains the same—whether or not the challenged restraint enhances competition.'" *Atl. Richfield*, 495 U.S. at 342 n.12 (internal citations omitted). In this regard, the antitrust injury requirement is paramount. "The antitrust injury requirement ensures that a plaintiff can recover only if the loss stems from a competition-*reducing* aspect or effect of the defendant's behavior." *Id.* at 341 (emphasis in original).

1. Antitrust Injury

Standing is a "threshold question in every federal case;" it implicates "the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975) ("the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues"). In private antitrust cases, the plaintiff is required to make plausible allegations regarding both *constitutional standing* and *antitrust standing*. *See Associated Gen. Contractors of Calif., Inc. v. Calif. State Council of Carpenters*, 459 U.S. 519, 535 n.31 (1983). In the constitutional dimension, standing requires justiciability: that "the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of [Article] III."

Warth, 422 U.S. at 498. In most antitrust cases, the "[h]arm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact." *Associated Gen. Contractors*, 459 U.S. at 535 n.31. But the standing inquiry does not end there.

In addition to the traditional constitutional limitations upon standing, "Congress imposed . . . limitations upon those who can recover damages under the antitrust laws." *Pool Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1034 (9th Cir. 2001); *see also Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 485–86 (1977). These limitations are often referred to as "antitrust standing requirements." *Pool Water*, 258 F.3d at 1034. Because § 1 of the Sherman Act does not provide a private right of action, private parties like PLS must bring their Sherman Act claim "pursuant to the authorization under [§] 4 of the Clayton Act."[60] *Id*. Under that statute, "private plaintiffs can be compensated only for injuries that the antitrust laws were intended to prevent." *Id.*; *see also Atl. Richfield*, 495 U.S. at 334 (the plaintiff must plausibly allege "the existence of 'antitrust injury.'" (quoting *Brunswick*, 429 U.S. at 489)).[61]

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[60] PLS alleges that it has standing to assert its claim under § 1 of the Sherman Act pursuant to §§ 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 & 26. Amended Complaint ¶ 23.

[61] "[A] plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions and a formulaic recitation of the elements of a cause of action will not do. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. 544.

As a rule of standing, the "antitrust injury" requirement embodies the fundamental principle that antitrust laws "were enacted for 'the protection of *competition* not *competitors*'" *Brunswick Corp.*, 429 U.S. at 488 (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)) (emphasis in original), because "'[i]t is inimical to [the antitrust] laws to award damages' for losses stemming from continued competition," *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 109–110 (1986) (quoting *Brunswick*, 429 U.S. at 488).[62] The Supreme Court has explained that "[t]he purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993). In this regard, the antitrust injury requirement clarifies that the Sherman Act is not directed against "conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself . . . , out of concern for *the public interest*." *Id.* (emphasis added).

Thus, even when a challenged restraint has the effect of eliminating a rival, thereby reducing competi-

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[62] In *United States v. Topco Associates, Inc.*, 405 U.S. 596 (1972), the Supreme Court explained that "[a]ntitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete—to assert with vigor, imagination, devotion and ingenuity whatever economic muscle it can muster." *Id.* at 610; *see also* William Page, *The Scope of Liability for Antitrust Violations* 37 STAN. L. REV. 1445 1451 (1985) ("most commentators now agree that the purpose of [antitrust law is to maximize economic efficiency, or consumer welfare, by the preservation of competitive markets" (footnote omitted)).

tion (at least with that rival), the elimination of a rival without harm to consumer welfare does not invoke the Sherman Act. *See Rebel Oil Co.*, 51 F.3d at 1433 (citing *Prods. Liab. Ins. Agency, Inc. v. Crum & Forster Ins. Cos.*, 682 F.2d 660, 663 (7th Cir. 1982)); *see also Reiter*, 442 U.S. at 343. A private antitrust plaintiff must allege a plausible connection between the harm to itself and harm to the ultimate consumer. *See Atl. Richfield*, 495 U.S. at 340–42. In sum, to allege a plausible antitrust injury, a private plaintiff must allege facts that, assumed to be true, show that the plaintiff's injuries are caused by an anticompetitive aspect of the defendant's conduct that also injures competition and consumers. *See id.* at 334–35 & 342–44; *Rebel Oil Co.*, 51 F.3d at 1445; *see also Cargill*, 479 U.S. at 109–110; *Brunswick*, 429 U.S. at 489.

Here, Defendants contend that PLS has not alleged facts plausibly to demonstrate that PLS has suffered an antitrust injury and, therefore, that PLS does not have standing as an antitrust plaintiff. For the reasons explained below, the Court agrees.

In analyzing the antitrust injury requirement in the context of this case, one fundamental point informs the Court's analysis: the distinction between, on the one hand, a pocket listing as a particular service offered to home sellers by real estate professionals, and, on the other hand, PLS's business, which provides a platform for its members to market their pocket listings. As described above, a pocket listing, or an off-MLS listing, is a type of brokerage service provided by real estate professionals to home sellers who, "for reasons of privacy or security"[63] for example, wish to avoid

[63] Amended Complaint ¶ 6. A seller might also desire a pocket listing in order "to test the market for their home without the

providing the detailed information that is required for a listing to be submitted to, and marketed through, an NAR-affiliated MLS.[64] PLS emerged as a platform for real estate professionals to market private listings to other members without having to provide the detailed listing information required by the NAR-affiliated MLSs, thus preserving the home seller's interest in not disclosing certain information about her listing.[65]

a. The Alleged Injury to PLS

To assess whether PLS states a plausible antitrust injury, the Court begins with PLS's allegations regarding how the Clear Cooperation Policy harms PLS's business.

PLS alleges that the Clear Cooperation Policy has "eliminated the ability and incentive of real estate professionals to market pocket listings through PLS,"[66] which has foreclosed PLS from accessing "a critical mass of listings necessary to obtain significant network effects and compete with the NAR-affiliated MLSs in the relevant market(s)."[67] Consequently, listings were removed from PLS and submitted to NAR-affiliated MLSs, agent participation in PLS declined, and "PLS was foreclosed from the commercial opportunities necessary to innovate and grow."[68] PLS claims damages in the form of "lost profits"[69] and "lost equity and

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stigma that comes from listing and then delisting the property on a NAR-affiliated MLS." *Id.*

[64] *Id.* at ¶¶ 6–8 & 61.

[65] *Id.* at ¶¶ 8, 58–60, 63,& 64.

[66] *Id.* at ¶ 112.

[67] *Id.* at ¶ 113.

[68] *Id.* at ¶ 121.

[69] *Id.* at ¶ 124.

goodwill,"[70] which "diminish[ed] the value of PLS as a going concern."[71] PLS seeks injunctive relief and an award of compensatory and treble damages.[72]

PLS's allegations in this regard are sufficient to meet the constitutional requirement for injury-in-fact and the first element of antitrust injury. PLS plausibly alleges that the Clear Cooperation Policy effectively discourages real estate professionals who are also members of an NAR-affiliated MLS from marketing their listings on PLS's platform. Those real estate professionals' refusal to use PLS's platform necessarily harms PLS's business. But this is only the first element of antitrust injury—the constitutional dimension of the standing inquiry.

Whether the Clear Cooperation Policy "may be properly characterized as exclusionary" for the purpose of an antitrust injury cannot be answered simply by considering its alleged effects on PLS. *See Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 605 (1985); *Brantley*, 675 F.3d at 1200 ("Plaintiffs may not substitute allegations of injury to the claimants for allegations of injury to competition."). The Court must also consider whether PLS has alleged facts to show that the Clear Cooperation Policy harms competition and consumers in the same way. *See id.*; *Rebel Oil Co.*, 51 F.3d at 1445 ("because the Sherman Act's concern is consumer welfare, antitrust injury occurs only when the claimed injury flows from acts harmful to consumers").

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[70] *Id.* at ¶ 125.

[71] *Id.* at ¶¶ 125 & 128.

[72] *See id.* at Prayer for Relief.

b. The Alleged Injury to Consumers

In evaluating whether conduct can be properly characterized as exclusionary, the Court must consider how the challenged restraint affects consumers and "whether it has impaired competition in an unnecessarily restrictive way." *Aspen Skiing Co.*, 472 U.S. at 605. In this regard, "'exclusionary' comprehends at the most behavior that not only (1) tends to impair the opportunities of rivals, but also (2) either does not further competition on the merits or does so in an unnecessarily restrictive way." *Id.* at 605 n.32 (quoting 3 P. AREEDA & D. TURNER, ANTITRUST LAW 78 (1978)) (quotation marks omitted).

Thus, the second element of antitrust injury requires PLS to allege facts showing a plausible injury to consumers that flows from an anticompetitive aspect of Defendants' conduct; in this case, the alleged restraint on output through the Clear Cooperation Policy that limits the ability of NAR members, or members of an NAR-affiliated MLS, to compete to provide services to consumers.[73] *See Atl. Richfield*, 495 U.S. at 335–36, 338–40, & 342–44 (rejecting the contention that "any loss flowing from a *per se* violation of § 1 automatically satisfies the antitrust injury requirement" and explaining that antitrust injury does not arise until "an *anticompetitive* aspect of the defendant's conduct" injures both the plaintiff and consumers (emphasis in original)). The Supreme Court has explained that violations of the antitrust laws may have three, often interwoven, effects: "In some respects the conduct may reduce competition, in other respects it may increase competition, and in still other respects effects may be neutral as to competi-

[73] *See* Opposition 27:1–13.

tion." *Id.* at 344. An antitrust injury does not arise, however, unless and until the challenged restraint also injures consumers. *Id.* at 335–36, 338–40, & 342–44.

PLS attempts to translate its own harm into harm to consumers by alleging that the Clear Cooperation Policy injures real estate professionals (the proximate purchasers of real estate listing network services) and home sellers and buyers (the ultimate consumers) through the same "mechanism of injury" to PLS.[74] Specifically, PLS avers that through the Clear Cooperation Policy, NAR "restrained the ability of licensed real estate professionals to offer" pocket listings, which purportedly harms consumers and competition by eliminating "from the market a form of real estate brokerage services desired by consumers,"[75] thus excluding PLS, and thereby artificially maintaining or increasing the prices paid by real estate professionals for listing services.[76] The Court finds that these allegations do not show a *plausible* injury to the ultimate consumers—the home buyers and sellers. Fatally, PLS's theory that the Clear Cooperation Policy is a restraint on the output of brokerage listing services to consumers is illogical, and, additionally, it is contradicted by the allegations that PLS makes elsewhere in its Amended Complaint.[77] *See Iqbal*, 556

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[74] Amended Complaint ¶ 122.

[75] *Id.* at ¶ 115.

[76] *Id.* at ¶¶ 115 & 122

[77] *Cf. id.* at ¶¶ 35–37, 88–91, & 106–115. Citing these paragraphs, PLS succinctly summarizes its antitrust injury allegations as follows: "By requiring third-party listing agents who wish to obtain the essential benefits of NAR membership to provide their listings to the MLS defendants, *id.* ¶¶ 35–37, 88–91, Clear Cooperation not only harms cometition by reducing output and quality in the market for listing services, *id.* at

U.S at 675 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."); *Brantley*, 675 F.3d at 1198 ("a complaint's allegation of a practice that may or may not injure competition is insufficient to 'state a claim to relief that is plausible on its face.'" (quoting *Twombly*, 550 U.S. at 570)); *Kendall*, 518 F.3d at 1047–48.

PLS does not allege any facts showing when, where, or, notably, how the output of real estate brokerage services or off-MLS listing services has decreased.[78] Defendants and PLS provide different marketing platforms for those listings. PLS does not adequately allege that the Clear Cooperation Policy has increased prices for services purchased or otherwise paid for by home sellers and buyers[79] or that home sellers and

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¶¶ 106–15, but in so doing, it 'cut[s] off' PLS's access to a supply, pocket real estate listings, that is 'necessary to enable the boycotted firm'—PLS—'to compete.'" Pl.'s Suppl. Brief 7:1–7 (quoting *Nw. Wholesale Stat., Inc. v. Pac. Stat. & Print. Co.*, 472 U.S. 284, 294 (1985)).

[78] *Cf.* Amended Complaint at ¶¶ 95, 111, 112, & 121 (listings were removed from PLS and submitted *instead* to NAR-affiliated MLSs, and NAR-affiliated MLSs continue to allow members to market off-MLS listings).

[79] With respect to conspiracies to restrict output and how they injure consumers, *compare, e.g.*, *In re National Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1155, 1157–58 (9th Cir. 2019) (allegations of conspiracy to restrict output of telecasts resulting in prices paid by the ultimate consumers being higher than they would be in the absence of the conspiracy were sufficient to allege antitrust standing), *with* Amended Complaint ¶¶ 114, 115, & 122; *see also Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1521–23 (2019).

buyers have been denied brokerage services[80] that they desire as a result of the Clear Cooperation Policy.[81] In the absence of any specific factual allegations to support PLS's conclusions regarding consumer harm, there is no plausible antitrust injury.

PLS's antitrust injury contention is fundamentally flawed in yet another respect. PLS does not allege a plausible injury to participants on both sides of the market. The real estate market is a typical two-sided market where different products or services are offered to two distinct groups of customers—home sellers and home buyers. Listing platforms such as those provided by the MLS Defendants and PLS facilitate transactions by connecting sellers with potential buyers.[82] *See Ohio v. American Express*, 138 S. Ct. 2274, 2280 (2018) ("a two-sided platform offers different products or services to two different groups who both depend on the platform to intermediate between them"); *see also*

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[80] PLS acknowledges that the market for real estate brokerage services is relevant to assess harm to competition and consumers. Amended Complaint ¶ 115 (the Clear Cooperation Policy "harmed consumers and competition by eliminating from the market a form of real estate brokerage services desired by consumers").

[81] S*ee Cal. Dental Ass'n v. F.T.C.*, 526 U.S. 756, 776–77 (1999) (the relevant question is whether the challenged restraint obviously tends to limit the total delivery of services to the consumer); Amended Complaint ¶ 95 (NAR-affiliated MLSs continue to allow members to market off-MLS listings through private networks); *cf. Nat'l Collegiate Athletic Ass'n v. Board of Regents of Univ. of Oklahoma*, 468 U.S. 85, 114–15 (1984) (plaintiffs alleged a reduction in overall output of services to consumers as a consequence of the challenged restraint).

[82] *See* Amended Complaint at ¶ 31; *see also id.* at ¶¶ 19, 26, & 31 (explaining that the MLS Defendants "facilitate[ ]" real estate transactions).

Evans & Noel, *Defining Antitrust Markets When Firms Operate Two–Sided Platforms*, 2005 COLUM. BUS. L. REV. 667, 668 (2005) ("members of one customer group need members of the other group").[83] *Amex* sets forth a pleading standard in antitrust cases involving two-sided platforms: a plaintiff must allege (and later prove) injury to participants on both sides of the market. *See Amex*, 138 S. Ct. at 2287 ("Evaluating both sides of a two-sided transaction platform is . . . necessary to accurately assess competition."); *Iqbal*, 556 U.S. at 675.

Accordingly, PLS must allege a plausible injury to *both* home sellers *and home buyers*, which it has not done. It is, perhaps, telling that PLS's allegations focus almost entirely on home sellers. PLS makes no allegations regarding any demand for pocket listings by home buyers, no allegations explaining how pocket listings are beneficial to home buyers,[84] and no allega-

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[83] *Compare* Amended Complaint ¶¶ 50 & 51 (discussing the value of network services offered by MLSs), *with* Evans & Noel, *supra*, at 686–87 (indirect network effects promote larger and fewer two-sided platforms because "[p]latforms with more customers in each group are more valuable to the other group").

[84] *Cf. id.* at ¶ 8. PLS alleges that its platform benefits buyers by offering them an opportunity to learn about properties that were not widely marketed. This allegation, however, does not explain how buyers are otherwise benefited by off-MLS listings. According to PLS's allegations, PLS effectively offers buyers the same basic benefit as an MLS (an opportunity to learn about properties on the market), but without the other efficiencies that are created by increased information and competition (mostly through information sharing on an MLS), as explained above. Indeed, one of the most important market efficiencies created by an MLS "is manifested in the reduction of the obstacles brokers must face in adjusting supply to demand: market imperfections are overcome in that information and communication barriers are reduced, along with the easing of the built-in geographical barrier

tions regarding how the Clear Cooperation Policy harms home buyers. PLS's failure to address the buyer's side of the market is not surprising given that the alleged inherent advantages of a pocket listing—*e.g.*, increased privacy and security for a seller to market his home without the wide exposure of the MLS and the avoidance of the stigma from listing and then delisting a property from the MLS[85]—appear to benefit the seller, almost exclusively. In contrast, home buyers stand to benefit from an increase in available information about the market (which increases price competition), not from a reduction in the provision of such information.

PLS simply has not alleged plausible facts to show an injury to consumers on both sides of the market. These fundamental problems, taken together, show that PLS cannot allege a plausible antitrust injury.

c. The Alleged Injury to Competition

On its face, the Clear Cooperation Policy does not preclude real estate professionals from offering pocket listing services, nor does it preclude them from marketing their listings on PLS. Furthermore, there is no plausible inference from the alleged facts that the Clear Cooperation Policy has any such restrictive effect on the output of brokerage services to consumers. PLS does not allege any facts to show that real estate professionals have stopped (or will stop) offering pocket listings, or other types of listing services, when those

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confronting the buyer-seller relationship. Moreover, a realistic price structure is engendered." Arthur D. Austin, *Real Estate Boards and Multiple Listing Systems as Restraints of Trade*, 70 COLUM. L. REV. 1325, 1329 (1970), *cited with approval in U.S. v. Realty Multi-List, Inc.*, 629 F.3d 1351, 1356 (5th Cir. 1980).

[85] *Id.* at ¶ 6.

services are demanded by consumers.[86] To the contrary, sellers who desire to avoid listing their properties on an MLS may do so, for example, by working with an NAR-affiliated MLS member through the office exclusive exception[87] or by engaging a real estate professional who does not belong to an NAR-affiliated MLS.[88] Moreover, the plain text of the policy does not proscribe real estate professionals from marketing pocket listings in the same way as they have previously: "bilaterally . . . , face to face, through phone calls, or by email."[89] Furthermore, the Clear Cooperation Policy does not proscribe real estate professionals from making a choice about the listing network platforms in which they choose to participate. Of equal importance, consumers are not deprived of any choice in products or services.

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[86] *Cf.* Amended Complaint ¶ 115 (suggesting the opposite, *i.e.*, that real estate professionals will presumably continue to compete to provide pocket listings as they have before).

[87] The office exclusive exception is significant. PLS alleges that the presence of large brokerages operating, across the nation increased demand for a nationwide listing network. *See id. at* ¶¶ 46, 48, & 49. Surely, then, marketing a private listing within a large nationwide brokerage under the office exclusive exception provides significant exposure of the property in an off-MLS setting. This is important in evaluating whether the Clear Cooperation Policy has the plausible effect of reducing output of services to consumers. It does not.

[88] *Id.* at ¶ 95 (since the adoption of the Clear Cooperation Policy, NAR-affiliated MLSs have "effectively allow[ed] their members to market off-MLS listings under the auspices of the NAR-affiliated MLSs without violation of . . . Clear Cooperation Policy"); *see also id.* at ¶¶ 89, 93, & 115–17 (implicitly recognizing that the Clear Cooperation Policy has not resulted in a decrease in overall output of services to consumers).

[89] *Id.* at ¶ 8; *see also id.* at ¶ 95.

Indeed, accepting PLS's allegations as true, the Clear Cooperation Policy has some plainly pro-competitive aspects, which underscore that PLS cannot allege a plausible connection between harm to its business and harm to competition and consumers. *See F.T.C. v. Indiana Federation of Dentists*, 476 U.S. 447, 459 (1986) (in some cases, anticompetitive effects, or their absence, can be logically inferred based upon a rudimentary understanding of economics). At worst, the Clear Cooperation Policy is neutral to competition. And when a challenged restraint is beneficial or neutral to competition, "there is no antitrust injury, *even if* the defendant's conduct is illegal *per se*." *Rebel Oil Co.*, 51 F.3d at 1433 (emphasis added).

The Clear Cooperation Policy requires listings that are publicized by a member of an NAR-affiliated MLS to be reciprocally listed on an MLS for exposure to other MLS members.[90] This means that all MLS members have access to information about listings that are publicly marketed by other MLS members, which ultimately promotes competition among real estate professionals and home sellers and buyers.[91] Basic economics dictates that increased information about market conditions stimulates more competition among real estate professionals, whose goal is, at least in part, to match a buyer and a seller as quickly and efficiently as possible. This effect minimizes transaction costs. Consumers also have access to more information regarding market conditions, enabling them to make

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[90] *Id.* at ¶ 89; *see also id.* at ¶¶ 32, 50, & 51 (explaining the inherent benefits of MLS membership, and that the value of membership in an MLS is a function of the contributions of the MLSs members).

[91] *Id.* at ¶ 89; *see also id* at ¶¶ 32, 50, 51, & 95.

better informed choices about the bundle of real estate brokerage services that will best serve their needs.

Although the Clear Cooperation Policy may harm PLS by discouraging the use of PLS's platform,[92] that injury to PLS's business model does not translate to consumer harm. Notably, PLS alleges that the Clear Cooperation Policy results in, among other things, listings being "removed from PLS and submitted instead to NAR-Affiliated MLSs."[93] Shifting sales to "other competitors in the market," however, "does not directly affect consumers and therefore does not result in antitrust injury." *Pool Water Prods.*, 258 F.3d at 1036. Indeed, based upon this allegation (and others like it),[94] it is evident that the Clear Cooperation Policy does not reduce the output of brokerage services to home sellers and buyers, nor does the policy reduce competition among the real estate professionals who provide services to consumers. *Compare Cal. Dental Ass'n*, 526 U.S. at 776–77 (no reduction in overall output of services to consumers), *and Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 21–24 (1979) (to similar effect), *with Sunday Ticket Antitrust Litig.*, 933 F.3d at 1155 (the challenged restraint plausibly reduced the overall output of services to consumers by restricting games available for viewing).

2. Leave to Amend

In sum, based upon the foregoing, the Court finds that PLS fails to allege a plausible antitrust injury, so it will grant Defendants' Rule 12(b)(6) Motions. PLS

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[92] *Id.* at ¶¶ 111 & 112.

[93] *Id.* at ¶ 121.

[94] *See, e.g.*, *id.* at ¶¶ 95, 108, & 121.

requests leave to amend.[95] The Court, however, finds that another amendment of the complaint would be futile, for two reasons.

First, the parties' substantive meet-and-confer efforts already resulted in PLS's filing of the Amended Complaint, and PLS declined to amend its pleading a second time.[96] *See Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (a district court has "particularly broad" discretion to deny leave to amend where the plaintiff has previously amended). Second, under these circumstances, an amended complaint must allege "other facts consistent with the challenged pleading" that could "cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). In view of the fundamental problems with PLS's theory of antitrust injury discussed above, the Court finds that the complaint cannot be saved by amendment. *See Steckman v. Hart Brewing*, 143 F.3d 1293, 1298 (9th Cir. 1998) ("Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility or where the amended complaint would also be subject to dismissal.") (citations omitted).

Accordingly, the Court will GRANT Defendants' respective Motions, without leave to amend.

3. The Remaining Elements of PLS's Claim Under § 1 of the Sherman Act

With respect to Defendants' other arguments for the dismissal of PLS's Amended Complaint, the Court

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[95] *See* Opposition 37:26–27.

[96] *See* NAR Motion 20:4–14; NAR Reply 15:11–16.

would grant the motion by Midwest RED for the reasons set forth below.

As stated in the preceding sections, to state a § 1 claim, a plaintiff must plead facts showing the plausible existence of "(1) a contract, combination or conspiracy among two or more persons or distinct business entities; (2) by which the persons or entities intended to harm or restrain trade or commerce among the several States, or with foreign nations; (3) which actually injures competition." *Kendall*, 518 F.3d at 1047.

With respect to the first element, the Court would find that PLS sufficiently alleges concerted action by Defendants Bright MLS, Cal Regional MLS, and NAR. NAR promulgated the Clear Cooperation Policy, *see Alvord-Polk, Inc. v. Schumacher Co.*, 37 F.3d 996, 1007 (3d Cir. 1994) (a trade association's adoption of regulations that govern competition between members is sufficient to plead concerted action); *see also Silver v. N.Y. Stock Exchange*, 373 U.S. 341 (1963), and Bright MLS and Midwest RED, as NAR-affiliated MLSs,[97] were obligated to adopt the Clear Cooperation Policy by May 1, 2020, pursuant to the 2020 NAR Handbook on Multiple Listing Policy,[98] *see, e.g.*, *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 286-87 (4th Cir. 2012) (MLS rules are concerted action under § 1); *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d at 1150; *Realty Multi-List*, 629 F.2d at 1361 & n.20. Although the Amended Complaint does not allege that Bright MLS and Cal Regional MLS ultimately adopted the Clear Cooperation Policy, PLS's allegation that Bright MLS and Cal Regional MLS were required

[97] *Id.* at ¶¶ 18 & 19.

[98] *Id.* at ¶ 90; *see also id.* at ¶¶ 103–105.

to do so supports a plausible inference that they did.[99] At this stage of the litigation, such allegations are sufficient to plead concerted action under § 1.

PLS does not, however, allege facts plausibly to show that Midwest RED was part of the alleged conspiracy. Notably, Midwest RED is not an NAR-affiliated MLS, and PLS does not allege that Midwest RED adopted the Clear Cooperation Policy. PLS merely alleges that Midwest RED participated in private communications about the Clear Cooperation Policy through the MLS Council, voiced support for the Clear Cooperation Policy, and was present for a vote recommending that NAR adopt the Clear Cooperation Policy at a later date.[100] These are allegations of parallel business conduct; they are not sufficient to establish Midwest RED's participation in the alleged conspiracy because such allegations do not give rise to a plausible inference that Midwest RED ever reached an agreement with the other MLS Defendants or NAR regarding the Clear Cooperation Policy. *Twombly*, 550 U.S. at 553–554 (allegations of parallel business behavior, even "conscious parallelism," falls short of establishing an agreement constituting a Sherman Act offense); *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1194 (9th Cir. 2015) (to similar effect). Moreover, PLS's conclusory allegation that Midwest RED is a competitor with the other MLS Defendants is not plausible, given that each of the MLS Defendants serves a different geographic market.[101]

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[99] *See id.* at ¶¶ 68–94, 102, & 104–05.

[100] *Id.* at ¶¶ 71, 73–74, 77–79, & 86.

[101] The Court would not make any such finding with respect to the NAR-affiliated MLS Defendants because PLS's allegation that the NAR-affiliated MLSs were obligated to adopt the Clear

Putting aside, for the moment, the Court's analysis and conclusion with respect to the element of antitrust injury, the Court would otherwise find that PLS has alleged facts plausibly to show that the Clear Cooperation Policy is a *prima facie* unreasonable restraint of trade under the Rule of Reason framework.[102] *See Indiana Fed. Of Dentists*, 476 U.S. at 459–62 (agreement to limit services offered to consumers requires a procompetitive justification under the Rule of Reason); *In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1150–51 (9th Cir. 2019) (same); *Newcal Indus.*, 513 F.3d at 1044–45 (there is no requirement that a plaintiff allege the defendants' power within the relevant market with specificity, and "relevant market" element is typically a factual element); *Rebel Oil Co.*, 51 F.3d at 1433–35. Whether PLS would ultimately prevail under the Rule of Reason framework necessarily would involve questions of fact—such as the procompetitive justifications offered by Defendants and the market power of the respective Defendants—that would not be appropriate for resolution at this stage of the litigation.

B. PLS's Claim under the Cartwright Act

Claims under § 1 of the Sherman Act and claims under the Cartwright Act are analyzed under the same legal standard. *See name.space, Inc. v. Internet*

Cooperation Policy is sufficient to plead concerted action, as explained above. Thus, the question with respect to Bright MLS and Cal Regional MLS is whether they were competitors with each other, and competitors with PLS in a national market. The Court would find that this is a question of fact not suitable for resolution on a motion to dismiss. *See Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1044–45 (9th Cir. 2015).

[102] *See* Amended Complaint at ¶¶ 1–15, 28–32, 38–41, 46–51, 94–101, & 106–116.

Corp. for Assigned Names & Numbers, 795 F.3d 1124, 1131 n.5 (9th Cir. 2015); *City of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001). Accordingly, the Court's analysis of and conclusion regarding, PLS's claim under § 1 of the Sherman Act are dispositive of PLS's claim under the Cartwright Act.

V. CONCLUSION

Based upon the foregoing, the Court will enter an Order GRANTING Defendants' respective Motions to Dismiss, without leave to amend, on the ground that PLS fails to allege a plausible antitrust injury. The Court will also DENY Cal Regional MLS's Motion to Strike as moot, in view of its ruling on the Motions to Dismiss.

Dated: February 3, 2021

/s/ John W. Holcomb
John W. Holcomb
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

[Filed July 20, 2020]

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Case No. 2:20-cv-04790-PA-RAO

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THE PLS.COM, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY,

Plaintiff,

vs.

THE NATIONAL ASSOCIATION OF REALTORS; BRIGHT MLS, INC.; MIDWEST REAL ESTATE DATA, LLC; AND CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC.,

Defendants.

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Assigned to the Hon. Percy Anderson
Courtroom 9A, 9th Floor

Action Filed: May 28, 2020

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FIRST AMENDED COMPLAINT
JURY TRIAL DEMANDED

Plaintiff The PLS.com, LLC, ("PLS"), by and through its undersigned attorneys, brings this action for trebled compensatory damages and injunctive relief under the antitrust laws of the United States, and under the laws of the State of California, against the above-named Defendants, demanding a trial by jury. For its First Amended Complaint against Defendants, PLS alleges the following:

NATURE OF THE CASE

1. For over 50 years, residential real estate in the United States has been primarily marketed through

the multiple listing services ("MLSs") owned by members of the National Association of Realtors ("NAR").

2. NAR, by itself and through its affiliates, controls competition in the residential real estate brokerage industry through its members' ownership of most of the nation's MLSs.

3. NAR has frequently used its control over MLSs to exclude new and disruptive market entrants to the benefit of NAR members, and the detriment of consumers. NAR and its members have abused the market power conferred upon them by control over the MLS system time and time again.

4. NAR's ability to control competition in the residential real estate brokerage industry rests on the market power of the MLSs operated by its members.

5. In recent years, the edifice on which NAR's ability to control competition was built had begun to crumble. For the first time in the life of most Americans, an alternative to the NAR-affiliated MLS system had emerged, promising a wave of innovation, competition, and new entry.

6. Home sellers have for years sought to retain the services of licensed real estate professionals to market their homes outside of the NAR-affiliated MLS system. Sellers sought these services for a number of reasons. Many sellers desired for reasons of privacy or security to market their home without the wide exposure that comes from listing a property in NAR-affiliated MLSs. Many sellers desired to test the market for their home without the stigma that comes from listing and then delisting the property on a NAR-affiliated MLS.

7. Listings marketed by licensed real estate professionals outside the NAR-affiliated MLS system are sometimes called "pocket listings." Demand for pocket listing services has skyrocketed in recent years, particularly in large and competitive real estate markets such as Los Angeles, San Francisco, Miami, and Washington D.C. In some of these markets, 20 percent or more of residential real estate was being sold outside the NAR-affiliated MLS system, primarily as pocket listings. NAR recognized in 2018 that NAR members were competing with one another to meet consumer demand for pocket listing services.

8. As consumer demand for pocket listing service grew, so did the need for a centralized, searchable repository of pocket listings. PLS was formed as the "Pocket Listing Service" to meet this need. Pocket listings had historically been marketed bilaterally by licensed real estate professionals, face to face, through phone calls, or by email. By joining PLS, licensed real estate professionals could privately share pocket listings with other licensed real estate professionals while avoiding the exposure of those listings through the NAR-affiliated MLSs. For home sellers and the licensed real estate professionals serving those home sellers, the PLS offered all of the benefits of the NAR-affiliated MLSs while retaining the privacy and discretion that would be lost by listing with NAR-affiliated MLSs. For home buyers and the licensed real estate professionals serving those home buyers, the PLS offered an opportunity to learn about properties that were not widely marketed.

9. The surge in consumer demand for pocket listings, and the rise of a listing network to market pocket listings effectively, was a competitive threat to the viability of the NAR-affiliated MLS system. These mar-

ket changes also threatened NAR's ability to control competition in the residential real estate brokerage industry.

10. NAR-affiliated MLSs were aware of this competitive threat. Competing MLS systems met together privately and through NAR to discuss this threat and formulated a common plan to eliminate that competitive threat.

11. In September 2019, the largest NAR-affiliated MLSs, including Defendants California Regional Multiple Listing Service, Bright MLS, as well as Defendant Midwest Real Estate Data, jointly authored and published a white paper on pocket listings and the future of the NAR-affiliated MLS system. The white paper provided that "The multiple listing service as we know it is in jeopardy and this call-to-action serves as an impassioned plea to brokers and MLSs to take immediate action." The white paper identified the declining share of properties listed in NAR-affiliated MLSs due to the "persistent, and increasing, presence of off-MLS home marketing" as among the "largest challenges MLSs face[.]" The white paper further noted the risk that one or more private listing networks would obtain a critical mass of pocket listings that "could fuel the trend to power private listing databases in general" which "will soon exceed, or circumvent, the service MLSs offer."

12. PLS was the listing network that NAR-affiliated MLSs feared. Having amassed nearly 20,000 members, PLS had or would have soon attracted a critical mass of members and listings to create a powerful network effect that was likely to quickly lead to substantial market share as new members joined, bringing new listings, attracting in turn more new members and more new listings in a virtuous and self-

sustaining cycle. The more competitive future that the NAR-affiliated MLSs feared had arrived.

13. Acting through NAR, the NAR-affiliated MLSs moved swiftly to eliminate the competitive threat from listing networks aggregating pocket listings. In November 2019, NAR promulgated a mandatory rule governing all NAR-affiliated MLSs. The rule, called the Clear Cooperation Policy, requires NAR members participating in NAR-affiliated MLSs to submit their listings to the MLS within one business day of marketing the property to the public. For purposes of the Clear Cooperation Policy, NAR defines marketing a property to the public to include listing on private "multi-brokerage listing sharing networks" such as PLS. NAR members that violate the Clear Cooperation Policy face discipline and punishment by other NAR members.

14. The Clear Cooperation Policy eliminates the viability of the private network of pocket listings that the MLS Defendants and other NAR-affiliated MLSs had identified as a competitive threat. By eliminating the threat to NAR-affiliated MLSs, NAR cements its ability to control competition in the market for residential real estate brokerage services.

15. Through the Clear Cooperation Policy, the Defendants eliminated the possibility of a more competitive future in the market for residential real estate listing network services. A once-in-a-lifetime opportunity for competition in a monopolized market has been lost. Defendants' conduct has harmed competition and consumers, and is illegal.

PLAINTIFF

16. Plaintiff PLS is a California Limited Liability Company headquartered in Los Angeles, California.

At the time the Clear Cooperation Policy was adopted, PLS operated the largest network of licensed real estate professionals marketing pocket listings in the United States.

DEFENDANTS

17. Defendant NAR is a trade association headquartered in Chicago, Illinois, that establishes and enforces policies and professional standards for its over 1.4 million members. NAR is incorporated under the laws of Illinois. Its 54 state and territorial associations and over 1,200 local associations are members of, and are overseen by, NAR. NAR promulgates rules governing the operation of the approximately 600 MLSs that are affiliated with NAR through their ownership or operation by NAR's state, local and territorial associations. NAR is registered to do business as a non-profit in the state of California and advertises and solicits members in the state. It has more than 185,000 members in California, derives revenue from California, and holds meetings in California. NAR also directs its California-based members to follow rules it promulgates.

18. Defendant California Regional Multiple Listing Service, Inc. ("CRMLS") is the largest MLS in the United States with over 100,000 members who have access to more than 70 percent of listings for sale in California. CRMLS is owned and controlled by NAR members operating through 39 local associations of NAR throughout the State of California. CRMLS is headquartered in Chino Hills, California, and is incorporated under the laws of California. CRMLS is a NAR-affiliated MLS governed and controlled by NAR rules.

19. Defendant Bright MLS, Inc. ("Bright MLS") is a MLS serving the Mid-Atlantic region of the United

States with over 88,000 members. Bright MLS is owned and controlled by NAR members operating through 43 local associations of NAR members operating through local associations of NAR throughout the States of New Jersey, Delaware, Maryland, Pennsylvania, West Virginia, the Commonwealth of Virginia, and the District of Columbia. Bright MLS is headquartered in Rockville, Maryland, and is incorporated under the laws of Delaware. In a typical year, Bright MLS will facilitate approximately $70 billion in residential real estate transactions. Bright MLS is a NAR-affiliated MLS governed and controlled by NAR rules.

20. Defendant Midwest Real Estate Data, LLC ("MRED") is a MLS serving northern Illinois, southern Wisconsin, and northwest Indiana with over 45,000 members. MRED is indirectly owned and controlled by NAR members operating through 15 local associations of NAR throughout the States of Illinois, Wisconsin, and Indiana. MRED is headquartered in Lisle, Illinois, and organized under the laws of the Illinois.

JURISDICTION, STANDING, AND VENUE

21. Plaintiff brings this action to recover damages, including treble damages, cost of suit, and reasonable attorney's fees, as well as injunctive relief, arising from Defendants' violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

22. This Court has subject matter jurisdiction of Plaintiff's federal law claims pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (commerce and antitrust regulation).

23. Plaintiff has standing to bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26.

24. This Court has subject matter jurisdiction of Plaintiff's pendent state law claims pursuant to 28 U.S.C. § 1367. Plaintiff's state law claims arise out of the same factual nucleus as Plaintiff's federal law claims.

25. This Court has personal jurisdiction over each Defendant and venue is proper in the Central District of California and this division under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 28 U.S.C. § 1391, because NAR and CRMLS regularly transact business within the Central District of California, and because Bright MLS and MRED formulated, led and joined a conspiracy among NAR members and NAR-affiliated MLSs that expressly aimed their intentional and anticompetitive conduct at California. All of the Defendants knew and specifically intended that their conspiracy would be formulated, negotiated, and implemented in California, would exclude competition in California (where they knew PLS was based), and would harm consumers in California. The Defendants worked in concert to effect NAR's adoption of the Clear Cooperation Policy at a 2019 NAR Convention in California, and each Defendant committed overt acts in furtherance of the Defendants' conspiracy in California. CRMLS, Bright MLS and MRED (together, the "MLS Defendants") were among the MLSs that caused the September 2019 white paper, setting forth the competitive threat from pocket listings and the need for collective action among NAR-affiliated MLSs, to be published from San Juan Capistrano, California.

26. Defendants are engaged in, and their activities substantially affect, interstate trade and commerce. Billions of dollars flow across state lines in the mortgage market to finance the sales of residential real estate facilitated by the MLS Defendants.

RESIDENTIAL REAL ESTATE BROKERAGE

27. State law regulates entry into the residential real estate brokerage services industry. There are two licensee categories: (i) the real estate broker; and (ii) the individual real estate licensee or agent. Brokers supervise agents who work directly with consumers. Agents solicit listings, work with homeowners to sell their homes, and show buyers homes that are likely to match their preferences. Brokers often provide agents with branding, advertising, and other services that help the agents complete transactions.

28. Although there is no legal impediment to consumers buying and selling homes on their own, the large majority of consumers choose to work with a real estate broker. The substantial majority of residential real estate transactions involve the services of licensed real estate professionals. According to NAR, in 2017, 92 percent of sellers sold their home and 87 percent of buyers purchased their home with the assistance of a real estate broker.

29. The vast majority of licensed real estate professionals active in the residential real estate brokerage services industry are NAR members.

30. NAR promulgates rules and codes of conduct for its members and for its state, territorial and local associations. These associations, in turn, are required to adopt NAR's rules and bylaws and to enforce NAR-promulgated rules upon the licensed real estate professionals comprising the associations.

31. Until recently, with the surge in consumer demand for pocket listings, NAR-affiliated MLSs facilitated the vast majority of residential real estate transactions.

32. MLSs are joint ventures among virtually all licensed real estate professionals operating in local or regional areas. Licensed real estate professionals regard participation in their local MLS as critical to their ability to compete with other licensed real estate professionals for home sellers and buyers. The MLS combines its members' home listings information into a database, usually in electronic form. The MLS then makes these data available to all licensed real estate professionals who are members of the MLS. By listing in the MLS, a licensed real estate professional can market properties to a large set of potential buyers. By searching the MLS, a licensed real estate professional representing a buyer can provide that buyer with information about all the listed homes in the area that match the buyer's housing needs. An MLS is thus a market-wide joint venture of competitors that possesses substantial market power: to compete successfully, a licensed real estate professional must be a member; and to be a member, a licensed real estate professional must adhere to any restrictions that the MLS imposes.

33. The state, territorial and local associations of NAR (sometimes referred to as "Realtor® associations") own NAR-affiliated MLSs. NAR requires each of these associations to comply with the mandatory provisions in NAR's Handbook on Multiple Listing Policy.

34. NAR does not require that licensed real estate professionals be NAR members to participate in NAR-affiliated MLSs. In Alabama, California, Florida, and Georgia, NAR-affiliated MLSs are prohibited by law from promulgating any such requirement. As a result, many licensed real estate professionals that are not NAR members participate in NAR-affiliated MLSs.

35. NAR-affiliated MLSs must adopt new or amended NAR policies. NAR's Handbook on Multiple

Listing Policy states that NAR-affiliated MLSs "must conform their governing documents to the mandatory MLS policies established by the National Association's Board of Directors to ensure continued status as member boards and to ensure coverage under the master professional liability insurance program."

36. One of the many benefits that NAR provides to its state, territorial and local associations and the MLSs owned by those associations is professional liability insurance. To be eligible for this insurance, associations and their MLSs must comply with the mandatory provisions in the Handbook on Multiple Listing Policy. NAR threatens to withhold these valuable insurance benefits from associations and MLSs that fail to comply with these mandatory provisions. NAR's Handbook states that "[t]hose associations or multiple listing services found by the National Association to be operating under bylaws or rules and regulations not approved by the National Association are not entitled to errors and omissions insurance coverage and their charters are subject to review and revocation."

37. NAR reviews the governing documents of its state, territorial and local associations to ensure compliance with its rules. NAR requires its state, territorial and local associations to demonstrate their compliance with these rules by periodically sending their governing documents to NAR for review.

THE NAR-AFFILIATED MLS SYSTEM

38. For decades, the NAR-affiliated MLSs have often been regarded as a permanent, unavoidable, and inevitable feature of the residential real estate brokerage industry. NAR-affiliated MLSs have for decades

enjoyed durably high market shares in markets across the country.

39. The majority of NAR-affiliated MLSs, including Bright MLS, are managed as for-profit enterprises. Regardless of their corporate form, the majority of NAR-affiliated MLSs, and MRED, serve directly or indirectly as the primary revenue stream for their owners, the state, territorial and local associations of NAR, whose shareholders use the funds for other purposes.

40. All NAR-affiliated MLSs are actual or potential competitors with other NAR-affiliated MLSs. NAR-affiliated MLSs frequently have overlapping service areas and licensed real estate professionals may choose to pay for access to only one of several available NAR-affiliated MLSs.

41. NAR-affiliated MLSs charge licensed real estate professionals for access to each MLS. The prices charged by NAR-affiliated MLSs to licensed real estate professionals for access to the MLS are excessive, above competitive levels, and unrelated to the MLSs' cost of service.

42. NAR-affiliated MLSs have been slow to innovate and unresponsive to consumer demand. According to NAR-affiliated MLSs writing in 2019, "the software used in most MLSs has become obsolete."

43. According to a white paper commissioned by NAR-affiliated MLSs in 2017, "Almost everyone interviewed for this study feels that the MLS industry has meandered aimlessly for over a decade. There are of course various reasons, but the dominant contributing factor is the fact that most MLS organizations are owned and governed by Realtor® associations. And Realtor® associations, and their fragmentally managed

committee structure, are simply not geared to compete in today's new, bold, fast-paced technology arena."

44. A Chief Executive Officer of one NAR-affiliated MLS stated in 2017, "As an industry, we have outdated technology that is the result of the community we represent resisting change. There are perhaps 30 to 40 MLSs across the country that have it right or are moving toward the right direction, but there are also 650 MLS organizations that are continuing to rest on how they have done it for decades. They are ignoring the fact that the marketplace and the needs of the user have changed, and their failure to respond is spiraling the MLS industry to the bottom."

45. Another Chief Executive Officer of a NAR-affiliated MLS stated in 2017, "The MLS has a business model problem. The industry has forgotten who their customers are. The industry's longstanding 'product in a box' solution is no longer valid and the platform it is delivered on is antiquated. In essence, the MLS is still trying to operate as a gatekeeper and continues to block real estate professionals from having access to the best-in-class products they need to help them do their job."

46. The regionally-fragmented system of NAR-affiliated MLSs is inefficient and imposes unnecessary and redundant costs on licensed real estate professionals. According to an executive of a large real estate brokerage in 2017, "Mid-sized and large brokerages that operate across states and regions face unique challenges in having to belong to multiple MLSs, and that can be costly, redundant and inefficient." According to a 2015 study commissioned by NAR, "An estimated $250-$500 million in MLS fees are attributable to duplication, redundancy, and excess among MLSs

every year. If economies of scale were implemented nationwide, MLS fees would be significantly less."

47. There is consumer demand for a listing network aggregating listings nationwide. According to a 2015 study commissioned by NAR, "A national MLS has been talked about for decades, but never before has the likelihood of it actually becoming a reality been so high."

48. One driver of consumer demand for a national listing network service is attributable to large brokerages, which purchase listing network services nationwide. These brokerages can belong to dozens of MLSs across the country with often different rules, policies, technology and underlying systems. In 2013, dozens of large brokerages threatened to pull out of NAR-affiliated MLSs and create their own multi-brokerage listing network, voicing concerns about MLSs overcharging for MLS services.

49. Another driver of consumer demand for a national listing network service is attributable to brokerages that specialize in serving clients interested in listing properties that may be of interest to buyers nationwide, clients interested in considering the purchase of properties nationwide, or both. These properties are sometimes relatively unique and have high listing prices.

POCKET LISTINGS CREATE THE OPPORTUNITY FOR COMPETITION

50. MLSs, like other networks, exhibit what economists call "network externalities," meaning the value of the network services is a function of the number of trading partners connected by the network.

51. The dominance of NAR-affiliated MLSs is a function of the percentage share of listings submitted to NAR-affiliated MLSs by licensed real estate professionals. When all or almost all listings are submitted to the NAR-affiliated MLSs, the possibility of effective competition to those MLSs is nil. Conversely, when listings are not submitted to the MLS and are marketed by licensed real estate professionals in other ways, the possibility of competition to the MLSs emerges. And when a critical mass of listings becomes available for a competing listing network, the possibility of head-to-head, network-to-network competition becomes real.

52. The dominance of NAR-affiliated MLSs is neither inevitable nor efficient. The surge in consumer demand for pocket listings created, for the first time in living memory, the possibility of competition for the NAR-affiliated MLSs. Pocket listings presented the opportunity for a competing listing network to aggregate a critical mass of listings that could support a listing network competing with the NAR-affiliated MLSs.

53. According to a 2015 study commissioned by NAR, "Off-MLS listings may contribute to the unraveling of the MLS as we know it, and its replacement by a private network that serves to benefit a certain group of participants."

54. There is substantial and unmet demand among licensed real estate professionals, and among the customers they serve, for an alternative to the NAR-affiliated MLSs.

55. According to a 2015 study commissioned by NAR, "A number of industry initiatives suggest that the current MLS-centric era might be coming to an end. After half a century of operating as the only

gateway, there is a strong likelihood that the MLS may lose its exclusive positioning as the principal source of real estate listings."

56. According to the President and Chief Executive Officer of a network of large real estate brokerage firms in 2017, "MLS has been of great value to agents, but their loyalty to the MLS is waning . . . For the first time, the industry has entered a world where there are realistic and legitimate attempts to create alternatives to the MLS that exists today."

57. As one licensed real estate professional wrote after the NAR Clear Cooperation Policy was adopted, "I long for the day when a private company decides to create an MLS platform that competes with association-owned MLSs freeing us from the clutches of NAR."

PLS WAS A COMPETITIVE THREAT TO NAR'S MLS SYSTEM

58. PLS was formed in 2017 to address the demand of licensed real estate professionals, and for the consumers they serve, for an alternative to the NAR-affiliated MLS system.

59. Like the NAR-affiliated MLSs, PLS is a private network limited to licensed real estate professionals. All licensed real estate professionals were eligible to be members in the PLS.

60. The PLS, like the NAR-affiliated MLSs, is a means for licensed real estate professionals to cooperate in the sale of residential real estate. Like the NAR-affiliated MLSs, PLS operates an electronic database of listings submitted by PLS members with an offer of compensation to other PLS members that can find a buyer. Like the NAR-affiliated MLSs, PLS then makes

these data available to all licensed real estate professionals who are members of the PLS.

61. Unlike the NAR-affiliated MLSs, licensed real estate professionals listing on PLS could share as much or as little information about the listing as their client desired. In this way, the PLS combined the powerful network efficiencies of the MLS with the privacy and discretion of the pocket listing.

62. Before PLS was launched, there was no place for licensed real estate professionals operating in separate brokerage firms to privately list, search, organize and share information about pocket listings.

63. PLS's fees to licensed real estate professionals would have been substantially lower than the fees charged for similar services to licensed real estate professionals by the NAR-affiliated MLSs.

64. PLS was designed and marketed as a national platform, unlike the fragmented NAR-affiliated MLS system that imposes duplicative and burdensome fees on brokerages operating in multiple geographic markets.

65. PLS was an actual or potential competitor to every single NAR-affiliated MLS, and each MLS Defendant. At the time the Clear Cooperation Policy was adopted, PLS had members across the country, including in the service areas of the MLS Defendants.

66. PLS launched successfully and grew quickly. At the time the Clear Cooperation Policy was adopted, nearly 20,000 licensed real estate professionals were cooperating to sell billions of dollars of residential real estate listings nationwide.

67. PLS was a serious competitive threat to the NAR-affiliated MLS system, and to the MLS Defendants.

68. NAR and the NAR-affiliated MLSs, and the MLS Defendants, were aware of this competitive threat and acted through the Clear Cooperation Policy and otherwise to eliminate this threat.

NAR AND ITS AFFILIATES EXCLUDE COMPETITION

69. For the NAR-affiliated MLSs, pocket listings are a form of lost market share. The NAR-affiliated MLSs were concerned that a critical mass of pocket listings could be aggregated in a competing listing network, making possible for the first time network-to-network competition to the MLS system.

70. NAR-affiliated MLSs, and MRED, recognized that they could not unilaterally eliminate the competitive threat that pocket listings posed, in part because pocket listings are a national phenomenon and could create the possibility of a nationwide competitor to the MLS system. NAR-affiliated MLSs, and MRED, recognized the need for collective action among NAR-affiliated MLSs, in the form of a change to the mandatory provisions in NAR's Handbook on Multiple Listing Policy that would require all NAR-affiliated MLSs to take action to stamp out the possibility of competitive entry presented by the rise of pocket listings.

71. In August 2019, NAR's MLS Technology and Emerging Issues Advisory Board voted to recommend the adoption of what would become the Clear Cooperation Policy at the upcoming NAR Convention in San Francisco, California. The members present for this vote included executives of NAR-affiliated MLSs, and Defendant MRED. On information and belief, MRED's representative participated in this NAR Advisory Board meeting as a representative of the Council of Multiple Listing Services ("CMLS"), an association of approxi-

mately 200 MLSs, including NAR-affiliated MLSs and the MLS Defendants.

72. NAR admits that the Clear Cooperation Policy was formulated and advanced by the NAR-affiliated MLSs, and by MRED. According to NAR, "The association's MLS Technology and Emerging Issues Advisory Board, a group made up of brokers and MLS executives, developed the proposal in consultation with brokerage and MLS leaders across the industry."

73. NAR-affiliated MLSs around the country communicate frequently and privately among themselves regarding pocket listings, using internet forums and social media, and through CMLS.

74. MRED's Chief Executive Officer admits that these private interfirm communications among NAR-affiliated MLSs, MRED, and the other MLS Defendants, were the means by which the Clear Cooperation Policy was formulated and advanced.

75. In September 2019, Bright MLS, MRED, and CRMLS were among the signatories of the white paper issued by the largest NAR-affiliated MLSs that called for collective action to address the threat to the MLS system presented by the rise of pocket listings and the prospect of a competing listing network that would aggregate such listings.

76. On October 16, 2019, Defendant Bright MLS adopted a version of what would become the Clear Cooperation Policy, before having any obligation under NAR rules or otherwise to do so.

77. On or around the same day, Defendant MRED published a statement supporting adoption by NAR of the Clear Cooperation Policy at the upcoming NAR Convention.

78. On October 17 and 18, 2019, NAR-affiliated MLSs, MRED, and the other MLS Defendants, met at a CMLS conference in Salt Lake City, Utah to discuss the competitive threat presented by pocket listings and the need for NAR to take action at the upcoming NAR Convention to eliminate that threat through adoption of the Clear Cooperation Policy.

79. On October 17, 2019, the Chief Executive Office of MRED addressed the assembled representatives of the NAR-affiliated MLSs at the CMLS conference. MRED's Chief Executive Officer, who had attended the August NAR meeting where the Clear Cooperation Policy was first proposed and recommended, explained that the Clear Cooperation Policy was motivated by concerns that pocket listings were "making the MLS less valuable." At this October 2019 CMLS conference, representatives of the assembled NAR-affiliated MLSs were provided with copies of MRED's published statement in support of the Clear Cooperation Policy and urged to review it.

80. On October 17, 2019, the Chairman of Bright MLS addressed representatives of the NAR-affiliated MLSs at the CMLS conference, recited the fact that Bright MLS the day before had adopted a policy banning pocket listings, and urged the assembled NAR-affiliated MLSs to adopt similar policies. The Chairman of Bright MLS also urged the representatives of the NAR-affiliated MLSs to attend the upcoming NAR Convention, and to work as a group at that meeting to ensure NAR's adoption of the Clear Cooperation Policy.

81. Among other things, the Chairman of Bright MLS stated "Now, the people who want to do pocket listings? They're a little pissed. They'll get over it. We need to not worry about it. Because that's bad for our

industry, right? All right, let me tell you what we all need to do. We have an opportunity in front of us to make, put this policy into effect in November. And Bright adopted it yesterday, MRED's already adopted it, other people are already doing it, but we really need to get it through."

82. The Chairman of Bright MLS continued on: "So what do we need to do? We need to go back and talk to your Boards of Directors, talk to your big brokers, and make sure that they understand we're talking pocket listings and not everything else and make sure that they understand. And then you need to make a policy statement. What are you guys going to do? And then you need to come to that MLS forum, and you need to line up at the microphone and say 'Bright MLS, we're all in. 8.0. Go.'" What would become the Clear Cooperation Policy was referred to at this time as MLS Statement 8.0.

83. The Chairman of Bright MLS explained to the representatives of the assembled NAR-affiliated MLSs that he anticipated a degree of resistance to passage of the Clear Cooperation Policy at the upcoming NAR Convention, in part from NAR members who wished to continue to offer pocket listings.

84. The Chairman of Bright MLS urged the representatives of the assembled MLSs to contact members of their MLS who were on NAR's Board of Directors to advocate for the adoption of the Clear Cooperation Policy at the upcoming NAR Convention.

85. The Chairman of Bright MLS urged the representatives of the assembled NAR-affiliated MLSs to take collective action in the State of California to effect the adoption of the Clear Cooperation Policy. Specifically, the Chairman of Bright MLS said "I look

forward to seeing you in San Francisco. I look forward to us, in this room, getting this through."

86. In November 2019, the Defendants gathered in San Francisco to take action on the Clear Cooperation Policy. On November 9, 2019, NAR's Multiple Listing Issues and Policies Committee approved the Clear Cooperation Policy by a voice vote, sending the Policy to NAR's Board of Directors. Executives of the NAR-affiliated MLSs, including Bright MLS, and MRED, attended this meeting and spoke in support of the Clear Cooperation Policy. As had been discussed and planned at the October CMLS conference, other NAR-affiliated MLSs did the same. At this meeting, elimination of competition to NAR-affiliated MLSs from networks aggregating pocket listings was cited as a reason for passage of the Clear Cooperation Policy.

87. NAR's Executive Committee reviewed and discussed the Clear Cooperation Policy at the San Francisco meeting on November 10, 2019. NAR's Board of Directors approved the Clear Cooperation Policy at the San Francisco meeting on November 11, 2019.

88. NAR adopted the Clear Cooperation Policy over the complaints of some NAR members, who informed NAR that the policy was anticompetitive and likely illegal.

89. The text of the Clear Cooperation Policy provides:

> "Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage

> website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)."

90. The Clear Cooperation Policy was effective January 1, 2020, and was included as a mandatory rule in the 2020 version of the NAR Handbook on Multiple Listing Policy. NAR required that all NAR-affiliated MLSs, including Bright MLS and CRMLS, modify their rules to conform to the Clear Cooperation Policy by May 1, 2020. NAR admits that all NAR-affiliated MLSs, including Bright MLS and CRMLS, must adopt and enforce the Clear Cooperation Policy. According to NAR, "By establishing a national policy, it is mandatory that all REALTOR® Association MLSs adopt the policy and have the same consistent standard."

91. NAR admits that there are no exceptions for properties that are "publicly marketed." According to NAR, "The new policy does not include an 'opt out.' Any listing that is 'publicly marketed' must be filed with the service and provided to other MLS Participants for cooperation within (1) one business day."

92. Previously, NAR-affiliated MLSs had generally allowed members to withhold listings from the MLS if the seller of the property so desired. The Clear Cooperation Policy eliminates this possibility, and in that way renders the provision of residential real estate brokerage services unresponsive to consumer demand.

93. The Clear Cooperation Policy does, however, have an exception that allows brokerages to maintain so-called "office listings," or listings marketed entirely

within a brokerage firm, without submission of those listing to the MLS.

94. NAR-affiliated MLSs, including Bright MLS and CRMLS, enforce the Clear Cooperation Policy by monitoring adherence to the policy, encouraging MLS members to report their colleagues using pocket listings, and through fines for non-compliance. For example, one MLS in South Florida, a market where consumer demand for pocket listings is high, describes the penalties it levies for violations of the Clear Cooperation Policy as "severe," including maximum fines of up to $15,000 and possible suspension or termination of access to the MLS. The penalties imposed by the NAR-affiliated MLSs for violations of the Clear Cooperation Policy are intended to, and in fact do, make violations of the Clear Cooperation Policy cost-prohibitive for NAR members, and are a constructive refusal to offer MLS services to NAR members that violate the Clear Cooperation Policy.

95. Since the adoption of the Clear Cooperation Policy, NAR-affiliated MLSs have operated, or planned to operate, their own private listing networks, effectively allowing their members to market off-MLS listings under the auspices of the NAR-affiliated MLSs without violation of the Clear Cooperation Rule. MRED has also operated a private listing network.

96. NAR-affiliated MLSs and CMLS have admitted that the purpose of the Clear Cooperation Policy was to maintain the market dominance of the NAR-affiliated MLS system, and specifically to exclude PLS.

RELEVANT MARKET

97. PLS and the NAR-affiliated MLSs, including Bright MLS and CRMLS, and MRED, compete to offer listing networks that facilitate the sale of residential

real estate listings among licensed residential real estate professionals in the United States.

98. The provision of listing network services to licensed real estate professionals for the sale of residential real estate listings is a relevant antitrust market. Consumers of listing network services for the sale of residential real estate listings view these networks, including the NAR-affiliated MLSs, MRED and PLS, as substitutes for each other. A hypothetical monopolist of listing network services for the sale of residential real estate listings could profitably impose a small but significant, non-transitory increase in price above competitive levels.

99. Listing network services are not a two-sided transaction market because listing networks do not involve a simultaneous sale between buyers and sellers of real estate. No transaction between buyers and sellers occurs on these networks. The networks simply list available residential real estate for sale and charges brokerages monthly fees to access the network, regardless of whether their agents represents buyers, sellers, or both. Access to the listing network gives real estate agents the ability to list properties for sale or view available properties for sale.

100. One relevant geographic market is nationwide. Licensed real estate professionals and their customers seek listing network services that aggregate listings nationwide, from across the United States. In the alternative, each and every service area of a NAR-affiliated MLS, as well as the service areas of each MLS Defendant, is a relevant geographic market. On information and belief, each of the MLS Defendants has enjoyed a durably high share of over 65 percent of residential real estate listings marketed by licensed real estate professionals in their respective service areas.

101. The Defendants collectively have substantial market power in the relevant market or markets, however defined. Substantial barriers to entry exist to protect that market power, as shown by the durably high market shares enjoyed by the NAR-affiliated MLSs and NAR's ability to exclude competition. One substantial barrier to entry are the network effects that accrue to the NAR-affiliated MLSs as a result of their large market shares. The value of an MLS to licensed real estate professionals is a function of its market share. The greater the market share, the larger the network effects that accrue to the MLS, and the more important access to the MLS is to licensed real estate professionals. NAR and NAR-affiliated MLSs, including Bright MLS and CRMLS, and MRED, have the power to profitably elevate the prices paid by licensed real estate professionals for access to listing network services above the competitive level, and to impose onerous conditions of access on licensed real estate professionals, including the Clear Cooperation Policy.

DEFENDANTS' UNLAWFUL CONDUCT

102. The Defendants agreed with one another to exclude PLS. The Defendants had a conscious commitment to a common scheme to prevent the emergence of a viable competitor to NAR-affiliated MLSs, to exclude PLS from the relevant market, and to eliminate PLS as an effective competitor. Defendants took overt acts in furtherance of this conspiracy.

103. NAR is a combination or conspiracy among its members, who are licensed real estate professionals who compete with one another. The members of NAR, as a group and through the Board they elect and the staff they indirectly employ, have agreed to, adopted, maintained, and enforced rules, including the Clear Cooperation Policy, affecting how members compete to

provide brokerage services, participate in NAR-affiliated MLSs, and access MLS services. NAR's members agree (and adhere) to NAR's code of ethics, bylaws, and rules as a condition of membership. NAR's rules, including the Clear Cooperation Policy, are therefore the product of agreements and concerted action among its members, including the owners of the NAR-affiliated MLSs. that operate and control the MLS Defendants.

104. The adoption and enforcement of the Clear Cooperation Policy by the NAR-affiliated MLSs is also the product of agreements and concerted action (i) among the MLS Defendants and (ii) between and among each NAR-affiliated MLS and their members. Each NAR-affiliated MLS is owned and controlled by associations of competing real estate brokers, who collectively have the power to admit new members, propose bylaws, and enact rules for members. The NAR-affiliated MLSs' rules are an agreement among competitors that define the way in which they will compete with one another.

105. The Clear Cooperation Policy and the overt acts taken by NAR and NAR-affiliated MLSs in formulating, adopting, implementing, and enforcing that Policy, are unreasonable restraints of trade. Each of the MLS Defendants joined the conspiracy to formulate and adopt the Clear Cooperation Policy for their own financial benefit and to eliminate the threat posed by upstart networks such as the PLS, and took overt acts in furtherance of that conspiracy.

106. The Clear Cooperation Policy imposes an "all or nothing" term on licensed real estate professionals that seek to use listing networks: the licensed real estate professional must either submit all such listings to the NAR-affiliated MLSs, or risk losing access to the NAR-affiliated MLSs.

107. The "all or nothing" term imposed on licensed real estate professionals by the Clear Cooperation Policy is exclusionary.

108. Because licensed real estate professionals generally believe that they must submit at least a portion of their listings to NAR-affiliated MLSs to serve their customers, the Clear Cooperation Policy predictably ensures that all listings are submitted to NAR-affiliated MLSs.

109. By ensuring that all listings are submitted to NAR-affiliated MLSs, the Clear Cooperation Policy eliminates the ability of listing networks that compete with the NAR-affiliated MLSs to feature listings that are not on the NAR-affiliated MLSs, and ensures that the NAR-affiliated MLSs will always offer a superset of the listings available on any listing network.

110. By ensuring that the NAR-affiliated MLSs will always offer a superset of the listings available on any listing network, the Clear Cooperation Policy degrades the quality of competing listing networks, reduces the incentives of licensed real estate professionals to use those competing listing networks, and makes those competing listing networks less effective competitors to the NAR-affiliated MLSs.

111. By ensuring that the NAR-affiliated MLSs will always offer a superset of the listings available on any listing network, the Clear Cooperation Policy imposes a penalty on the use of competing listing networks and creates strong economic incentives for licensed real estate professionals to purchase listing network services exclusively from NAR-affiliated MLSs. By ensuring that licensed real estate professionals accessing listings through a competing listing network pay twice for access to the same listings, the Clear Cooperation

Policy creates strong economic incentives for licensed real estate professionals to exclusively use NAR-affiliated MLSs to avoid the surcharge imposed by the Clear Cooperation Policy on the use of competing listing networks.

112. The Clear Cooperation Policy has had actual and substantial anticompetitive effects by eliminating the ability and incentive of licensed real estate professionals to market pocket listings through PLS, or any other listing network, thereby harming competition in the market for the provision of listing network services to licensed real estate professionals.

113. By eliminating the ability and incentive of licensed real estate professionals to market pocket listings through PLS or any other listing network, the Clear Cooperation Policy forecloses competing listing networks from access to a critical mass of listings necessary to obtain significant network effects and compete with the NAR-affiliated MLSs in the relevant market(s). All or nearly all active licensed real estate professionals depend upon access to NAR-affiliated MLSs.

114. Through the Clear Cooperation Policy, NAR and the NAR-affiliated MLSs maintained the cost of listing network services for residential real estate listings above a competitive level, and otherwise stifled competition in the market for listing network services for residential real estate listings. In that way, the conduct of NAR and the MLS Defendants harmed (i) real estate professionals serving both buyers and sellers of residential real estate services that desired to use listing networks other than those operated by the NAR-affiliated MLSs, and also (ii) those buyers and sellers of residential real estate.

115. The Clear Cooperation Policy also harmed consumers and competition by eliminating from the market a form of real estate brokerage services desired by consumers, and which lowered barriers to entry for listing networks competing with the NAR-affiliated MLSs and MRED. There was substantial consumer demand for pocket listings. Before the Clear Cooperation Policy, licensed real estate professionals, including but not limited to NAR members, competed to offer pocket listings, and listing networks that competed with the NAR-affiliated MLSs and MRED were formed. Through the Clear Cooperation Policy, NAR restrained the ability of licensed real estate professionals to offer those services. Because NAR and its members collectively have market power, NAR's restraint on the ability of licensed real estate professionals to offer pocket listings has excluded competition in the relevant market(s), restricted output of residential real estate brokerage services and rendered the provision of those services unresponsive to consumer demand.

116. There is no cognizable or plausible procompetitive justification for the Defendants' unlawful conduct, or one that outweighs its anticompetitive effects. NAR's tolerance of off-MLS listings when privately marketed by NAR members that do not compete with the NAR-affiliated MLSs as listing networks (the "office listing" exclusion) or under the auspices of NAR-affiliated MLSs shows that NAR's asserted justifications for the Clear Cooperation Policy are pretext, and illuminate the purpose and effect of the Clear Cooperation Policy as the elimination of competition to the NAR-affiliated MLSs in the relevant market(s) from PLS and other licensing networks not affiliated with NAR.

117. For nearly 60 years, NAR's Bylaws have recognized that forcing NAR members to list properties in the MLS in the routine provision of real estate brokerage services is improper and not reasonably related to any legitimate business justification. Since 1960, Interpretation No. 1 of Article 1, Section 2 of NAR's Bylaws has provided that "A requirement to participate in a Multiple Listing Service in order to gain and maintain REALTOR® membership is an inequitable limitation on its membership. When a Multiple Listing Service is available, is well operated and properly organized, it is the duty of the REALTOR® to consider thoroughly whether he can serve the best interests of his clients by participating in it. The decision, however, must be his own. As a REALTOR®, it is possible for him to conduct business in an ethical and efficient manner without participating in a Multiple Listing Service. Therefore, his participation must not be a requirement of REALTOR® membership."

118. According to NAR's handbook on Multiple Listing Policy, "Any multiple listing activity in which it is compulsory that all members of an association of REALTORS® participate and submit information on all designated types of listings would be in direct conflict with the National Association's bylaws, Article I, Section 2, which bans the adoption by associations of REALTORS® of inequitable limitations on membership."

119. The Clear Cooperation Policy does not eliminate or prevent any free-riding at the expense of NAR, NAR members, or the NAR-affiliated MLSs. NAR does not itself provide MLS services. NAR can and does charge membership fees, and can and does recoup the costs of providing its services in those fees. The NAR-

affiliated MLSs charge a membership fee for access to their listing networks, and can and do recoup the costs of providing listing network services in those fees. The membership fees charged by the NAR-affiliated MLS do not generally vary depending on the number of listings submitted by NAR members to the MLS. PLS members that seek to list properties on the PLS while also accessing a NAR-affiliated MLS are not free-riding on NAR members that only submit listings to NAR-affiliated MLS because PLS members that continue to also access the NAR-affiliated MLS continue to pay fees to the NAR-affiliated MLSs. There are no uncompensated services being provided by NAR, NAR members or NAR-affiliated MLSs to members of the PLS. Instead, the Defendants advocated for and/or adopted the Clear Cooperation Policy as a means of preventing the continued exponential growth of a competitor that was providing a lower cost and nationwide listing service.

120. The Clear Cooperation Policy is also overbroad and restrains competition unnecessarily. The Clear Cooperation Policy was passed by NAR members but limits the ability of licensed real estate professionals who are not NAR members to compete using alternative listing network services because even non-NAR members generally depend upon access to the NAR-affiliated MLSs for at least some of their business. NAR has no legitimate business justification for using NAR rules to restrain the ability of non-NAR members to deal with PLS and other listing networks that compete with the NAR-affiliated MLSs. The overbreadth of the Clear Cooperation Policy illuminates its anticompetitive purpose and effect.

121. PLS suffered injury and damages as a result of Defendants' unlawful conduct. Adoption and imple-

mentation of the Clear Cooperation Policy had the natural and intended effect on PLS's business operations. Listings were removed from PLS and submitted instead to NAR-affiliated MLSs. Agent participation in PLS declined. PLS's access to capital was constrained. PLS was foreclosed from the commercial opportunities necessary to innovate and grow.

122. Injury to PLS was the direct, foreseeable and intended result of the Defendants' conduct. The Defendants' conduct simultaneously harmed PLS and consumers in the relevant market by excluding PLS and thereby artificially maintaining or increasing the prices paid by licensed real estate professionals for listing network services for the sale of residential real estate. Although the mechanism of injury to PLS and to licensed real estate professionals (and thereby to consumers) is the same, the damages caused by Defendants' conduct in the form of higher prices is distinct from, and not duplicative of, the damages caused to PLS, which take the form of lost profits and damaged equity and goodwill.

PLS'S CLAIMS FOR RELIEF

COUNT ONE
(Violation of the Sherman Act)

123. Plaintiff hereby restates Paragraphs 1 through 122 of this Complaint. The Defendants' conduct as alleged herein are unreasonable restraints of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

124. The Defendants' conduct has caused injury and damage to PLS in the form of lost profits.

125. The Defendants' conduct has caused injury and damage to PLS in the form of lost equity and goodwill, diminishing the value of PLS as a going concern.

COUNT TWO
(Violation of the Cartwright Act)

126. Plaintiff hereby restates Paragraphs 1 through 122 of this Complaint. The Defendants' conduct as alleged herein are unreasonable restraints of trade in violation of the Cartwright Act, Bus. & Prof. Code § 16720(a)-(c).

127. The Defendants' conduct has caused injury and damage to PLS in the form of lost profits.

128. The Defendants' conduct has caused injury and damage to PLS in the form of lost equity and goodwill, diminishing the value of PLS as a going concern.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief and judgment against Defendants as follows:

1. Enter an Order permanently enjoining the Defendants from enforcing the Clear Cooperation Policy or any variant of that policy;

2. Award compensatory and trebled damages in favor of the Plaintiff and against all Defendants, jointly and severally, including all interest thereon;

3. Award Plaintiff reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees; and

4. Any other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: July 20, 2020

DAVIS WRIGHT TREMAINE LLP

By: /s/ Scott R. Commerson

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APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 21-55164

THE PLS.COM, LLC,

Plaintiff and Appellant,

v.

THE NATIONAL ASSOCIATION OF REALTORS, *et al.*,

Defendants and Appellees.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:20-cv-04790-JWH-RAO
The Honorable John W. Holcomb

EXCERPTS OF RECORD
VOLUME 4 OF 4

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:20-cv-04790-JWH-RAO

The PLS.com, LLC v. The National Association of Realtors et al
Assigned to: Judge John W. Holcomb
Referred to: Magistrate Judge Rozella A. Oliver
Case in other court: Ninth Circuit Court, 21-55164
Cause: 15:0001 Antitrust Litigation
Date Filed: 05/28/2020
Date Terminated: 02/03/2021
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

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DATE	NO.	PROCEEDINGS
05/28/2020	1	COMPLAINT Receipt No: ACACDC-26607517 - Fee: $400, filed by Plaintiff The PLS.com, LLC, a California limited liability company. (Attorney Scott R Commerson added to party The PLS.com, LLC, a California limited liability company(pty:pla)) (Commerson, Scott) (Entered: 05/28/2020)
05/28/2020	2	CIVIL COVER SHEET filed by Plaintiff The PLS.com, LLC, a California limited liability company. (Commerson, Scott) (Entered: 05/28/2020)
05/28/2020	3	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), 1 filed by Plaintiff The PLS.com, LLC, a California limited liability company. (Attachments: # 1 Bright MLS, Inc. Summons, # 2 Midwest Real Estate Data, LLC Summons, # 3 California Regional Multiple Listing Service, Inc. Summons) (Commerson, Scott) (Entered: 05/28/2020)
05/28/2020	4	CERTIFICATE of Interested Parties filed by Plaintiff The PLS.com, LLC, a California limited liability company, identifying FASP Realty, Inc., Midnight Capital, LLC, Harris Family Trust, David Parnes Living Trust, Green Collective, LLC, Sidehill Ventures, Inc.. (Commerson, Scott) (Entered: 05/28/2020)

DATE	NO.	PROCEEDINGS
05/28/2020	5	CORPORATE DISCLOSURE STATEMENT filed by Plaintiff The PLS.com, LLC, a California limited liability company (Commerson, Scott) (Entered: 05/28/2020)
05/29/2020	6	NOTICE OF ASSIGNMENT to District Judge Percy Anderson and Magistrate Judge Rozella A. Oliver. (lh) (Entered: 05/29/2020)
05/29/2020	7	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (lh) (Entered: 05/29/2020)
05/29/2020	8	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening), 1 as to Defendants Bright MLS, Inc., California Regional Multiple Listing Service, Inc., Midwest Real Estate Data, LLC, The National Association of Realtors. (Attachments: # 1 Summons as to Defendant Bright MLS, Inc., # 2 Summons as to Defendant Midwest Real Estate Data, LLC, # 3 Summons as to Defendant California Regional Multiple Listing Service, Inc.) (lh) (Entered: 05/29/2020)
05/29/2020	9	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Christopher G. Renner. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you

DATE	NO.	PROCEEDINGS
		are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov. You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (lh) (Entered: 05/29/2020)
05/29/2020	10	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Douglas E. Litvack. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov. You

DATE	NO.	PROCEEDINGS
		have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (lh) (Entered: 05/29/2020)
05/29/2020	11	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney John F. McGrory, Jr.. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov. You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (lh) (Entered: 05/29/2020)
05/29/2020	12	STANDING ORDER by Judge Percy Anderson. READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE AND DIFFERS IN SOME RESPECTS FROM THE LOCAL

DATE	NO.	PROCEEDINGS
		RULES. (lom) (Entered: 05/29/2020)
06/02/2020	13	PROOF OF SERVICE Executed by Plaintiff The PLS.com, LLC, upon Defendant Bright MLS, Inc. served on 6/1/2020, answer due 6/22/2020; California Regional Multiple Listing Service, Inc. served on 5/29/2020, answer due 6/19/2020; The National Association of Realtors served on 5/29/2020, answer due 6/19/2020. Service of the Summons and Complaint were executed upon National Registered Agents, Inc. Kamesha James, Authorized to Accept Service for Bright MLS, Inc. in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Attachments: # 1 Bright MLS, Inc. Proof of Service, # 2 California Regional Multiple Listing Service, Inc. Proof of Service) (Commerson, Scott) (Entered: 06/02/2020)
06/03/2020	14	NOTICE of Appearance filed by attorney Ethan C Glass on behalf of Defendant The National Association of Realtors (Attorney Ethan C Glass added to party The National Association of Realtors(pty:dft))(Glass, Ethan) (Entered: 06/03/2020)
06/03/2020	15	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Notice of Appearance 14 . The

DATE	NO.	PROCEEDINGS
		following error(s) was/were found: Incorrect event selected. Correct event to be used is: Notice of Appearance of Withdrawal of Counsel G123.. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (ak) (Entered: 06/03/2020)
06/04/2020	16	NOTICE of Interested Parties filed by Defendant The National Association of Realtors, (Glass, Ethan) (Entered: 06/04/2020)
06/05/2020	17	PROOF OF SERVICE Executed by Plaintiff The PLS.com, LLC, upon Defendant Midwest Real Estate Data, LLC served on 6/1/2020, answer due 6/22/2020. Service of the Summons and Complaint were executed upon Sarah Burke, Authorized to Accept Service on behalf of Midwest Real Estate Data, LLC in compliance with Federal Rules of Civil Procedure by substituted service by mail and by also mailing a copy.Original Summons NOT returned. (Attachments: # 1 POS by Mail re Midwest Real Estate Data, LLC)(Commerson, Scott) (Entered: 06/05/2020)

DATE	NO.	PROCEEDINGS
06/05/2020	18	APPLICATION of Non-Resident Attorney Douglas E. Litvack to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-26706752) filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Declaration, # 2 Proposed Order) (Commerson, Scott) (Entered: 06/05/2020)
06/05/2020	19	APPLICATION of Non-Resident Attorney Christopher G. Renner to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-26707088) filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Declaration, # 2 Proposed Order) (Commerson, Scott) (Entered: 06/05/2020)
06/05/2020	20	APPLICATION of Non-Resident Attorney John F. McGrory, Jr. to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-26707241) filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Declaration, # 2 Proposed Order) (Commerson, Scott) (Entered: 06/05/2020)
06/05/2020	21	STIPULATION Extending Time to Answer the complaint as to The National Association of Realtors answer

DATE	NO.	PROCEEDINGS
		now due 7/20/2020; Bright MLS, Inc. answer now due 7/20/2020; California Regional Multiple Listing Service, Inc. answer now due 7/20/2020; Midwest Real Estate Data, LLC answer now due 7/20/2020, re Complaint (Attorney Civil Case Opening), 1 filed by Defendant The National Association of Realtors.(Glass, Ethan) (Entered: 06/05/2020)
06/08/2020	22	ORDER ON APPLICATION OF NONRESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE PRO HAC VICE by Judge Percy Anderson: granting 18 Non-Resident Attorney Douglas E. Litvack APPLICATION to Appear Pro Hac Vice on behalf of The PLS.com, LLC, a California limited liability company, designating Scott Commerson as local counsel. (yl) (Entered: 06/09/2020)
06/08/2020	23	ORDER by Judge Percy Anderson: DENYING 20 Non-Resident Attorney John F. McGrory, Jr. APPLICATION to Appear Pro Hac Vice on behalf of The PLS.com, LLC, a California limited liability company for failure to attach a Certificate of Good Standing issued within 30 days prior to filing of Application. Terming Attorney John F McGrory, Jr. (yl) (Entered: 06/09/2020)
06/08/2020	24	ORDER by Judge Percy Anderson: granting 19 Non-Resident Attorney

DATE	NO.	PROCEEDINGS
		Christopher G. Renner APPLICATION to Appear Pro Hac Vice on behalf of plaintiff The PLS.com, LLC, a California limited liability company, designating Scott Commerson as local counsel. (mrgo) (Entered: 06/10/2020)
06/11/2020	25	SUPPLEMENT to APPLICATION of Non-Resident Attorney Douglas E. Litvack to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-26706752) 18 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Exhibit A) (Commerson, Scott) (Entered: 06/11/2020)
06/11/2020	26	APPLICATION of Non-Resident Attorney John F. McGrory, Jr. to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400.00 Previously Paid on 6/5/2020, Receipt No. ACACDC-26707241) filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Declaration of John F. McGrory, Jr. in support of Application to Appear as Pro Hac Vice, # 2 Exhibit A (Certificate of Good Standing for John F. McGrory, Jr.), # 3 Proposed Order) (Commerson, Scott) (Entered: 06/11/2020)
06/12/2020	27	ORDER by Judge Percy Anderson: granting 26 Non-Resident Attorney John F. McGrory, Jr. APPLICATION

DATE	NO.	PROCEEDINGS
		to Appear Pro Hac Vice on behalf of The PLS.com, LLC, designating Scott R Commerson as local counsel. (lom) (Entered: 06/12/2020)
06/12/2020	28	NOTICE of Interested Parties filed by Defendant Midwest Real Estate Data, LLC, identifying Multiple Listing Service of Northern Illinois, Inc.. (Attorney Jerrold E Abeles added to party Midwest Real Estate Data, LLC (pty:dft))(Abeles, Jerrold) (Entered: 06/12/2020)
06/12/2020	29	NOTICE of Interested Parties filed by Defendant Bright MLS, Inc., identifying Chubb, Ltd.. (Attorney Jerrold E Abeles added to party Bright MLS, Inc. (pty:dft))(Abeles, Jerrold) (Entered: 06/12/2020)
06/15/2020	30	SUPPLEMENT to APPLICATION of Non-Resident Attorney Christopher G. Renner to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-26707088) 19 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Exhibit A) (Commerson, Scott) (Entered: 06/15/2020)
06/30/2020	31	APPLICATION of Non-Resident Attorney Brian D. Schneider to Appear Pro Hac Vice on behalf of Defendants Bright MLS, Inc., Midwest Real Estate

DATE	NO.	PROCEEDINGS
		Data, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27021189) filed by Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. (Attachments: # 1 DC Certificate of Good Standing, # 2 MD Certificate of Good Standing, # 3 Letter to the State Bar re Pro Hac Vice, # 4 Proposed Order) (Abeles, Jerrold) (Entered: 06/30/2020)
07/01/2020	32	ORDER by Judge Percy Anderson: Granting Application of Non-Resident Attorney Brian Schneider to Appear Pro Hac Vice on behalf of Defendant Bright MLS Inc, Midwest Real Estate Data, Inc, designating Jerrold Abeles as local counsel 31 . (iv) (Entered: 07/01/2020)
07/07/2020	33	APPLICATION of Non-Resident Attorney Ashlee Aguiar to Appear Pro Hac Vice on behalf of Plaintiff The PLS.com, LLC (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27108766) filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Proposed Order) (Commerson, Scott) (Entered: 07/07/2020)
07/08/2020	34	ORDER by Judge Percy Anderson: granting 33 Non-Resident Attorney Ashlee Aguiar APPLICATION to Appear Pro Hac Vice on behalf of plaintiff The PLS.com, LLC, a California limited liability company,

DATE	NO.	PROCEEDINGS
		designating Scott R. Commerson as local counsel. (mrgo) (Entered: 07/08/2020)
07/09/2020	35	NOTICE of Appearance filed by attorney Robert Patrick Vance, Jr on behalf of Defendant The National Association of Realtors (Attorney Robert Patrick Vance, Jr added to party The National Association of Realtors(pty:dft))(Vance, Robert) (Entered: 07/09/2020)
07/09/2020	36	NOTICE OF MOTION AND MOTION of Non-Resident Attorney William A. Burck to Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27145788) filed by Defendant The National Association of Realtors. (Attachments: # 1 Proposed Order) (Vance, Robert) (Entered: 07/09/2020)
07/09/2020	37	NOTICE OF MOTION AND MOTION of Non-Resident Attorney Michael D. Bonanno to Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27145898) filed by Defendant The National Association of Realtors. (Attachments: # 1 Proposed Order) (Vance, Robert) (Entered: 07/09/2020)

DATE	NO.	PROCEEDINGS
07/10/2020	38	NOTICE of Deficiency in Electronically Filed Pro Hac Vice Application RE: NOTICE OF MOTION AND MOTION of Non-Resident Attorney William A. Burck to Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27145788) 36 , NOTICE OF MOTION AND MOTION of Non-Resident Attorney Michael D. Bonanno to Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. ACACDC-27145898) 37 . The following error(s) was/were found: Incorrect event selected. Correct event is Appear Pro Hac Vice (G-64) Other error(s) with document(s): Document is an APPLICATION, not a MOTION. (Thrasher, Lupe) (Entered: 07/12/2020)
07/10/2020	39	ORDER by Judge Percy Anderson: granting 36 Non-Resident Attorney William A. Burck MOTION to Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors, designating Robert Patrick Vance, Jr as local counsel. (et) (Entered: 07/13/2020)
07/10/2020	40	ORDER by Judge Percy Anderson: granting 37 Non-Resident Attorney Michael D. Bonanno MOTION to

DATE	NO.	PROCEEDINGS
		Appear Pro Hac Vice on behalf of Defendant The National Association of Realtors, designating Robert Patrick Vance, Jr as local counsel. (et) (Entered: 07/13/2020)
07/13/2020	41	Notice of Appearance or Withdrawal of Counsel: for attorney Wendy Qiu counsel for Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. Adding Wendy Qiu as counsel of record for Bright MLS, Inc. and Midwest Real Estate Data, LLC for the reason indicated in the G-123 Notice. Filed by Defendants Bright MLS, Inc. and Midwest Real Estate Data, LLC. (Attorney Wendy Qiu added to party Bright MLS, Inc.(pty:dft), Attorney Wendy Qiu added to party Midwest Real Estate Data, LLC(pty:dft))(Qiu, Wendy) (Entered: 07/13/2020)
07/16/2020	42	STIPULATION to Amend Complaint (Attorney Civil Case Opening), 1 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Proposed Order) (Commerson, Scott) (Entered: 07/16/2020)
07/17/2020	43	ORDER GRANTING STIPULATION REGARDING AMENDMENT OF COMPLAINT by Judge Percy Anderson, re Stipulation to Amend/ Correct 42 . 1. Plaintiff The PLS.com, LLC ("PLS") shall file an Amended Complaint on or before July 20, 2020.

DATE	NO.	PROCEEDINGS
		2. The parties shall meet and confer following the filing of the Amended Complaint. PLS shall inform Defendants whether it will file a Second Amended Complaint on or before August 3, 2020 at 5:00 p.m. PDT. 3. Should PLS decide to further amend the Amended Complaint after the second round of meeting and conferring, PLS may file a Second Amended Complaint on or before August 10, 2020. (mrgo) (Entered: 07/20/2020)
07/20/2020	44	NOTICE of Interested Parties filed by Defendant California Regional Multiple Listing Service, Inc., identifying Chubb, Ltd and Scottsdale Insurance Company. (Attorney Robert J Hicks added to party California Regional Multiple Listing Service, Inc.(pty:dft))(Hicks, Robert) (Entered: 07/20/2020)
07/20/2020	45	CORPORATE DISCLOSURE STATEMENT filed by Defendant California Regional Multiple Listing Service, Inc. (Hicks, Robert) (Entered: 07/20/2020)
07/20/2020	46	First AMENDED COMPLAINT against Defendants Bright MLS, Inc., California Regional Multiple Listing Service, Inc., Midwest Real Estate Data, LLC, The National Association of Realtors amending Complaint (Attorney Civil Case Opening), 1 , filed by Plaintiff The PLS.com, LLC

DATE	NO.	PROCEEDINGS
		(Commerson, Scott) (Entered: 07/20/2020)
07/27/2020	47	JOINT REPORT Rule 26(f) Discovery Plan Report ; estimated length of trial 15 days, filed by Plaintiff The PLS.com, LLC.. (Commerson, Scott) (Entered: 07/27/2020)
07/31/2020	48	STIPULATION for Extension of Time to File Answer to 8/13/2020 re Amended Complaint/Petition, 46 filed by defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. (Attachments: # 1 Proposed Order) (Abeles, Jerrold) (Entered: 07/31/2020)
07/31/2020	49	ORDER GRANTING STIPULATION TO EXTEND TIME TO RESPOND TO FIRST AMENDED COMPLAINT BY 10 DAYS by Judge Percy Anderson re Stipulation to Extend Time to Answer (More than 30 days) 48 . The deadline for Defendants to answer, move to dismiss, or otherwise respond to the First Amended Complaint is extended to and including August 13, 2020. (mrgo) (Entered: 08/03/2020)
08/13/2020	50	NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint filed by Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. Motion set for hearing on 9/14/2020 at 01:30 PM before Judge Percy Anderson. (Attachments: # 1 Request

DATE	NO.	PROCEEDINGS
		for Judicial Notice, # 2 Exhibit A to Request for Judicial Notice, # 3 Proposed Order) (Abeles, Jerrold) (Entered: 08/13/2020)
08/13/2020	51	Joint STIPULATION for Extension of Time to File Response and Reply filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Proposed Order Proposed Order)(Commerson, Scott) (Entered: 08/13/2020)
08/13/2020	52	DECLARATION of Christopher G. Renner re Stipulation for Extension of Time to File Response/Reply 51 filed by Plaintiff The PLS.com, LLC. (Commerson, Scott) (Entered: 08/13/2020)
08/13/2020	53	NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint filed by Defendant California Regional Multiple Listing Service, Inc.. Motion set for hearing on 9/14/2020 at 01:30 PM before Judge Percy Anderson. (Attachments: # 1 Proposed Order) (Hicks, Robert) (Entered: 08/13/2020)
08/13/2020	54	NOTICE OF MOTION AND MOTION to Strike Plaintiff's Second Claim for Violation of the Cartwright Act Pursuant to CCP Sec. 425.16 (Anti-SLAPP Statute) Amended Complaint/ Petition, 46 filed by Defendant California Regional Multiple Listing Service, Inc.. Motion set for hearing on

DATE	NO.	PROCEEDINGS
		9/14/2020 at 01:30 PM before Judge Percy Anderson. (Attachments: # 1 Proposed Order) (Hicks, Robert) (Entered: 08/13/2020)
08/13/2020	55	NOTICE OF MOTION AND MOTION to Dismiss the First Amended Complaint filed by Defendant The National Association of Realtors. Motion set for hearing on 9/14/2020 at 01:30 PM before Judge Percy Anderson. (Attachments: # 1 Proposed Order) (Glass, Ethan) (Entered: 08/13/2020)
08/14/2020	56	ORDER GRANTING STIPULATION REGARDING BRIEFING SCHEDULE FOR MOTIONS TO DISMISS AND SPECIAL MOTION TO STRIKE by Judge Percy Anderson, re Stipulation for Extension of Time to File Response/Reply 51 . Plaintiff's responses due by 9/7/2020. Defendants' Replies due by 9/14/2020. Defendants' motions will be scheduled for hearing on 9/28/2020, at 1:30 p.m. (mrgo) (Entered: 08/14/2020)
08/17/2020	57	STIPULATION for Hearing re Motions to Dismiss and Motion to Strike filed by Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. (Attachments: # 1 Proposed Order) (Abeles, Jerrold) (Entered: 08/17/2020)
08/17/2020	58	ORDER GRANTING STIPULATION REGARDING HEARING ON MOTIONS TO DISMISS AND MOTION TO

DATE	NO.	PROCEEDINGS
		STRIKE by Judge Percy Anderson, re Stipulation for Hearing 57 . Good cause appearing, the Court grants the Parties' Stipulation Regarding Hearing on Motions to Dismiss and Motion to Strike as follows: 1. Defendants' Motions to Dismiss and Defendant CRMLS's Motion to Strike, currently scheduled for hearing on September 28, 2020, will be rescheduled to be hearing on October 5, 2020, at 1:30 pm in Courtroom 9A. (mrgo) (Entered: 08/18/2020)
08/21/2020	59	Joint STIPULATION for Order Re Length of Briefing in Response to Motions to Dismiss filed by Plaintiff The PLS.com, LLC.(Commerson, Scott) (Entered: 08/21/2020)
09/03/2020	60	NOTICE of Proposed Order re Dkt. 59 filed by Plaintiff The PLS.com, LLC. (Commerson, Scott) (Entered: 09/03/2020)
09/03/2020	61	ORDER GRANTING STIPULATION REGARDING LENGTH OF BRIEFING IN RESPONSE TO MOTIONS TO DISMISS by Judge Percy Anderson, re Stipulation for Order 59 . Plaintiff The PLS.com, LLC may file a consolidated response to the Motions to Dismiss of up to 30-pages. Defendant NAR will file a reply brief of no more than 15 pages that includes a discussion of (i) issues common to the four defendants

DATE	NO.	PROCEEDINGS
		and (ii) issues specific to the allegations against NAR. (mrgo) (Entered: 09/04/2020)
09/07/2020	62	Opposition to Motions to Dismiss re: NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 , NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 50 , NOTICE OF MOTION AND MOTION to Dismiss the First Amended Complaint 55 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Proposed Order) (Renner, Christopher) (Entered: 09/07/2020)
09/07/2020	63	Opposition to Motion to Strike re: NOTICE OF MOTION AND MOTION to Strike Plaintiff's Second Claim for Violation of the Cartwright Act Pursuant to CCP Sec. 425.16 (Anti-SLAPP Statute) Amended Complaint/ Petition, 46 54 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Proposed Order)(Renner, Christopher) (Entered: 09/07/2020)
09/14/2020	64	REPLY In Support NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 50 filed by Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC. (Abeles, Jerrold) (Entered: 09/14/2020)

DATE	NO.	PROCEEDINGS
09/14/2020	65	REPLY in support of NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 filed by Defendant California Regional Multiple Listing Service, Inc.. (Hicks, Robert) (Entered: 09/14/2020)
09/14/2020	66	REPLY in support of NOTICE OF MOTION AND MOTION to Dismiss the First Amended Complaint 55 filed by Defendant The National Association of Realtors. (Glass, Ethan) (Entered: 09/14/2020)
09/14/2020	67	REPLY in Support of NOTICE OF MOTION AND MOTION to Strike Plaintiff's Second Claim for Violation of the Cartwright Act Pursuant to CCP Sec. 425.16 (Anti-SLAPP Statute) Amended Complaint/Petition, 46 54 filed by Defendant California Regional Multiple Listing Service, Inc.. (Hicks, Robert) (Entered: 09/14/2020)
09/25/2020	68	ORDER OF THE CHIEF JUDGE (#20-129) approved by Judge Philip S. Gutierrez. Pursuant to the recommended procedure adopted by the Court for the CREATION OF CALENDAR of Judge John W. Holcomb, this case is transferred from Judge Percy Anderson to the calendar of Judge John W. Holcomb for all further proceedings. The case number will now reflect the initials of the transferee Judge 2:20-cv-04790-JWH (RAOx). (ap) (Entered: 09/28/2020)

DATE	NO.	PROCEEDINGS
09/30/2020	69	This action has been reassigned to the Honorable John W. Holcomb, United States District Judge. Judge Holcomb is located in Courtroom 2, on the 2nd Floor of the George E. Brown, Jr. Federal Building and United States Courthouse at 3470 Twelfth Street, Riverside, California 92501. Additional information regarding Judge Holcomb's procedures and schedules is available on the court's website at www.cacd.uscourts.gov. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (iva) TEXT ONLY ENTRY (Entered: 09/30/2020)
09/30/2020	70	SCHEDULING NOTICE AND ORDER by Judge John W. Holcomb: The hearing on Defendants' Motion to Dismiss (Dkts. 50 , 53 , and 55) and Defendant's Motion to Strike (Dkt. 54), are ordered CONTINUED from Monday, October 5, 2020 to Friday, October 9, 2020, at 10:00 a.m., via video conference. The Courtroom Deputy Clerk shall provide counsel instructions prior to the scheduled hearing. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (iva) TEXT ONLY ENTRY (Entered: 09/30/2020)
10/05/2020	71	PLAINTIFFS NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF OPPOSITION TO MOTIONS TO

DATE	NO.	PROCEEDINGS
		DISMISS (ECF 62) AND OPPOSITION TO MOTION TO STRIKE (ECF 63) re NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 , NOTICE OF MOTION AND MOTION to Strike Plaintiff's Second Claim for Violation of the Cartwright Act Pursuant to CCP Sec. 425.16 (Anti-SLAPP Statute) Amended Complaint/Petition, 46 54 , NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 50 , NOTICE OF MOTION AND MOTION to Dismiss the First Amended Complaint 55 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Exhibit A)(Renner, Christopher) (Entered: 10/05/2020)
10/08/2020	72	REQUEST for Protective Order for Discovery Stipulated Protective Order filed by Plaintiff The PLS.com, LLC. (Renner, Christopher) (Entered: 10/08/2020)
10/08/2020	73	SCHEDULING NOTICE AND ORDER by Judge John W. Holcomb: On the Court's own motion, the hearing on Defendants' Motion to Dismiss (Dkts. 50 , 53 , and 55) and Defendant's Motion to Strike (Dkt. 54), are ordered CONTINUED from Friday, October 9, 2020, at 10:00 a.m. to Thursday, October 15, 2020, at 10:00 a.m., via video conference. The Courtroom

DATE	NO.	PROCEEDINGS
		Deputy Clerk shall provide counsel updated instructions prior to the scheduled hearing. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (iva) TEXT ONLY ENTRY (Entered: 10/08/2020)
10/13/2020	74	PROTECTIVE ORDER by Magistrate Judge Rozella A. Oliver: granting 72 Request for Stipulated Protective Order. (see document for details) (hr) (Entered: 10/13/2020)
10/13/2020	75	Notice of Appearance or Withdrawal of Counsel: for attorney Adam S Sieff counsel for Plaintiff The PLS.com, LLC. Adding Adam Sieff as counsel of record for The PLS.com, LLC for the reason indicated in the G-123 Notice. Filed by Plaintiff The PLS.com, LLC. (Attorney Adam S Sieff added to party The PLS.com, LLC(pty:pla))(Sieff, Adam) (Entered: 10/13/2020)
10/15/2020	76	MINUTES OF MS TEAMS VIDEO HEARING RE: MOTIONS TO DISMISS [50 , 53 , and 55] held before Judge John W. Holcomb: Counsel state their appearances. The Court confers with counsel and hears oral argument. The Court allows the parties to submit additional briefing, to be no more than 10 pages in length per side, due within fourteen (14) days of this Order. Upon completion of that briefing the matter

DATE	NO.	PROCEEDINGS
		will be under submission. IT IS SO ORDERED. Court Reporter: Miriam Baird. (yl) (Entered: 10/16/2020)
10/17/2020	77	STANDING ORDER by Judge John W. Holcomb. (iva) (Entered: 10/17/2020)
10/20/2020	78	TRANSCRIPT ORDER as to Defendants Bright MLS, Inc., Midwest Real Estate Data, LLC for Court Reporter. Court will contact Vivian La Barreda at vivian.labarreda@arentfox.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter. (Abeles, Jerrold) (Entered: 10/20/2020)
10/21/2020	79	TRANSCRIPT ORDER as to Defendant The National Association of Realtors for Court Reporter. Court will contact Peter Benson at peterbenson@quinnemanuel.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter. (Glass, Ethan) (Entered: 10/21/2020)
10/21/2020	80	TRANSCRIPT ORDER as to Plaintiff The PLS.com, LLC for Court Reporter. Court will contact Adam Sieff at adamsieff@dwt.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with

DATE	NO.	PROCEEDINGS
		the court reporter. (Sieff, Adam) (Entered: 10/21/2020)
10/23/2020	81	TRANSCRIPT for proceedings held on 10/15/2020 10:00 a.m.. Court Reporter/ Electronic Court Recorder: miriam baird, phone number mvb11893@ aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 11/13/2020. Redacted Transcript Deadline set for 11/23/2020. Release of Transcript Restriction set for 1/21/2021. (Baird, Miriam) (Entered: 10/23/2020)
10/23/2020	82	NOTICE OF FILING TRANSCRIPT filed for proceedings 10/15/2020 10:00 am re Transcript 81 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Baird, Miriam) TEXT ONLY ENTRY (Entered: 10/23/2020)
10/29/2020	83	SUPPLEMENT to NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 , NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 50 , NOTICE OF MOTION AND MOTION to Dismiss the First

DATE	NO.	PROCEEDINGS
		Amended Complaint 55 filed by Defendant The National Association of Realtors. (Glass, Ethan) (Entered: 10/29/2020)
10/29/2020	84	OPPOSITION to NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 , NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 50 , NOTICE OF MOTION AND MOTION to Dismiss the First Amended Complaint 55 Supplemental Brief In Opposition to Defendants' Motions to Dismiss filed by Plaintiff The PLS.com, LLC. (Renner, Christopher) (Entered: 10/29/2020)
10/29/2020	85	Notice of Appearance or Withdrawal of Counsel: for attorney Scott R Commerson counsel for Plaintiff The PLS.com, LLC. Scott R. Commerson is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Plaintiff The PLS.com, LLC. (Commerson, Scott) (Entered: 10/29/2020)
11/19/2020	86	NOTICE OF SUPPLEMENTAL AUTHORITY filed by PLAINTIFF The PLS.com, LLC. (Renner, Christopher) (Entered: 11/19/2020)
11/19/2020	87	EXHIBIT Filed filed by Plaintiff The PLS.com, LLC. Exhibit 1 as to Notice

DATE	NO.	PROCEEDINGS
		(Other) 86 . (Sieff, Adam) (Entered: 11/19/2020)
11/20/2020	88	NOTICE in Response to Plaintiff's Notice of Supplemental Authority filed by Defendant The National Association of Realtors. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Glass, Ethan) (Entered: 11/20/2020)
01/04/2021	89	NOTICE filed by Defendants Bright MLS, Inc., California Regional Multiple Listing Service, Inc., Midwest Real Estate Data, LLC, The National Association of Realtors. Regarding PLS's Prior Representations Concerning Its Business (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Glass, Ethan) (Entered: 01/04/2021)
01/04/2021	90	NOTICE OF MOTION AND MOTION for Order Staying Discovery Pending Resolution of Defendants' Motions to Dismiss (ECF 50, 53, 55) filed by Defendants Bright MLS, Inc., California Regional Multiple Listing Service, Inc., Midwest Real Estate Data, LLC, The National Association of Realtors. Motion set for hearing on 2/5/2021 at 09:00 AM before Judge John W. Holcomb. (Attachments: # 1 Declaration of Ethan Glass, # 2 Exhibit A, # 3 Exhibit B) (Attorney Ethan C Glass added to party Bright MLS, Inc.(pty:dft), Attorney Ethan C Glass added to party California Regional

DATE	NO.	PROCEEDINGS
		Multiple Listing Service, Inc.(pty:dft), Attorney Ethan C Glass added to party Midwest Real Estate Data, LLC (pty:dft)) (Glass, Ethan) (Entered: 01/04/2021)
01/05/2021	91	OBJECTIONS to Notice (Other), 89 filed by Plaintiff The PLS.com, LLC. (Renner, Christopher) (Entered: 01/05/2021)
01/08/2021	92	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: NOTICE OF MOTION AND MOTION for Order Staying Discovery Pending Resolution of Defendants' Motions to Dismiss (ECF 50, 53, 55) 90 . The following error(s) was/were found: Proposed Document was not submitted as separate attachment. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (yl) (Entered: 01/08/2021)
01/15/2021	93	OPPOSITION to NOTICE OF MOTION AND MOTION for Order Staying Discovery Pending Resolution of Defendants' Motions to Dismiss (ECF 50, 53, 55) 90 filed by Plaintiff The PLS.com, LLC. (Renner, Christopher) (Entered: 01/15/2021)

DATE	NO.	PROCEEDINGS
01/15/2021	94	DECLARATION of Christopher G. Renner in opposition to NOTICE OF MOTION AND MOTION for Order Staying Discovery Pending Resolution of Defendants' Motions to Dismiss (ECF 50, 53, 55) 90 filed by Plaintiff The PLS.com, LLC. (Attachments: # 1 Exhibit A. NAR Discovery Responses, # 2 Exhibit B. CRMLS Discovery Responses, # 3 Exhibit C. Bright Discovery Responses, # 4 Exhibit D. MRED Discovery Responses) (Renner, Christopher) (Entered: 01/15/2021)
01/22/2021	95	REPLY in support of NOTICE OF MOTION AND MOTION for Order Staying Discovery Pending Resolution of Defendants' Motions to Dismiss (ECF 50, 53, 55) 90 filed by Defendants Bright MLS, Inc., California Regional Multiple Listing Service, Inc., Midwest Real Estate Data, LLC, The National Association of Realtors. (Glass, Ethan) (Entered: 01/22/2021)
02/02/2021	96	SCHEDULING NOTICE AND ORDER by Judge John W. Holcomb: The hearing on Defendants' Motion to Stay Discovery [ECF No. 90], set for February 5, 2021, via video conference, is hereby moved from 9:00 a.m. to 1:00 p.m. To obtain the video conference link for the scheduled hearing, the parties are directed to Judge Holcomb's Procedures and Schedules page on the

DATE	NO.	PROCEEDINGS
		Court's website: http://www.cacd.uscourts.gov/honorable-john-w-holcomb. Please follow the instructions listed under "Zoom Webinar Hearings." IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (iva) TEXT ONLY ENTRY (Entered: 02/02/2021)
02/03/2021	97	ORDER ON MOTIONS OF DEFENDANTS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT [ECF Nos. 50 , 53 , & 55 ; MOTION TO STRIKE OF DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC. [ECF No. 54]; and MOTION OF DEFENDANTS FOR STAY OF DISCOVERY [ECF No. 90] by Judge John W. Holcomb: The three motions to dismiss the First Amended Complaint [ECF No. 46] of Plaintiff The PLS.com, LLC, filed by Defendants Bright MLS, Inc. and Midwest Real Estate Data, LLC [ECF No. 50]; Defendant California Regional Multiple Listing Service, Inc. [ECF No. 53]; and Defendant The National Association of Realtors [ECF No. 55], respectively, are each GRANTED, without leave to amend. The First Amended Complaint is DISMISSED, with prejudice. The motion of Defendant California Regional Multiple Listing Service, Inc. to strike Plaintiffs second claim for relief for violation of

DATE	NO.	PROCEEDINGS
		the Cartwright Act pursuant to California's Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16 [ECF No. 54], is DENIED as moot. The motion of Defendants for an order staying discovery pending resolution of Defendants motions to dismiss [ECF No. 90] is DENIED as moot. The hearing on that motion set for February 5, 2021, at 1:00 p.m. is VACATED. (See Order for further details)(yl) (Entered: 02/03/2021)
02/03/2021	98	MEMORANDUM AND OPINION ON MOTIONS OF DEFENDANTS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT [ECF Nos. 50, 53, & 55] and MOTION TO STRIKE OF DEFENDANT CALIFORNIA REGIONAL MULTIPLE LISTING SERVICE, INC. [ECF No. 54] by Judge John W. Holcomb. Based upon the foregoing, the Court will enter an Order GRANTING Defendants respective Motions to Dismiss, without leave to amend, on the ground that PLS fails to allege a plausible antitrust injury. The Court will also DENY Cal Regional MLS's Motion to Strike as moot, in view of its ruling on the Motions to Dismiss. (See document for further details) (yl) (Entered: 02/03/2021)
02/23/2021	99	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiff The PLS.com, LLC. Appeal of

DATE	NO.	PROCEEDINGS
		Order on Motion to Dismiss,,,,,,,,,,,, Order on Motion to Strike,,,,,,,,,,,, Order on Motion for Order,,,,, 97 , Memorandum & Opinion,, 98 . (Appeal Fee - $505 Fee Paid, Receipt No. ACACDC-30673301.) (Renner, Christopher) (Entered: 02/23/2021)
02/23/2021	100	REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals, 99 . (Renner, Christopher) (Entered: 02/23/2021)
02/25/2021	101	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 21-55164 assigned to Notice of Appeal to 9th Circuit Court of Appeals, 99 as to Plaintiff The PLS.com, LLC. (iv) (Entered: 02/26/2021)