THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHANIE M. DUPUIS and SOUND MUSIC I INC., BRIAN GRAHAM, and ANNA ALVAREZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ZILLOW GROUP, INC., ZILLOW, INC., ZILLOW HOME LOANS, LLC, ZILLOW HOMES, INC., ZILLOW LISTING SERVICES, INC.,

Defendants.

Case No. 3:26-cv-05049-JLR

DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO DISMISS AMENDED CLASS ACTION COMPLAINT

NOTE ON MOTION CALENDAR:
October 8, 2026

ORAL ARGUMENT REQUESTED

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Zillow respectfully moves the Court to reconsider the September 28, 2026 order, Dkt. 37 ("Order"), denying Zillow's Motion to Dismiss the Amended Class Action Complaint ("ACAC"). ("Mot.). While Zillow acknowledges that reconsideration is "disfavored," reconsideration is warranted where, as here, there is "manifest error in the prior ruling." L.R. 7(h)(1); *see also Grae-El v. City of Seattle*, 2022 WL 1206748, at *1 (W.D. Wash. Apr. 21, 2022) (Robart, J.) (granting reconsideration of denial of motion to dismiss due to manifest error). Here, several citations in the Order do not appear to support its rulings. To the extent the Order relies on those citations, it thus contains manifest errors that would allow plaintiffs to proceed to discovery on facially deficient claims.

First, with respect to Alvarez's UTPA claim (Count 9), the Order finds that "[p]aid referral loops function as a transaction under the UTPA." Order 28. In support, the Order cites *Bohr v. Tillamook County Creamery Association*, 567 P.3d 413, 416 (Or. 2025) and describes *Bohr* as "concluding that paid routing networks satisfy the commercial transaction requirement of the UTPA." Order 28-29. However, *Bohr* discussed neither "paid routing networks" nor any commercial transaction requirement. Instead, *Bohr* addressed claims relating to the marketing of Tillamook dairy products and opined on whether UTPA plaintiffs must show ascertainable loss and reliance. *See* 567 P.3d at 415, 428. Thus, any reliance on *Bohr* to reject Zillow's argument, Mot. 22, that Alvarez failed to allege an actionable "transaction" or "discount" under ORS §646.608(1)(o) constitutes manifest error.

Second, the Order incorrectly conflates Article III and antitrust standing. The Order states that Article III standing and antitrust standing "are analyzed under identical multi-plaintiff rules at the pleading stage" such that "[w]here multiple plaintiffs seek identical relief, the presence of one plaintiff with standing satisfies the court's jurisdictional inquiry for the entire action." Order 13. However, the only case cited in support, *Mecinas v. Hobbs*, does not discuss antitrust standing. 30 F.4th 890, 897 (9th Cir. 2022) (finding Article III standing in voting rights action). Binding authority confirms that each antitrust plaintiff must establish statutory antitrust standing

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to maintain a claim. *See, e.g.*, *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990) ("[T]he right of action under § 4 of the Clayton Act is available only to those private plaintiffs who have suffered antitrust injury."); *Glen Holly Ent., Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1007 (9th Cir. 2003) ("Only those who meet the requirements for 'antitrust *standing*' may pursue a claim under the Clayton Act . . . ."), *amended on denial of reh'g*, 352 F.3d 367 (9th Cir. 2003); *Am. Ad Mgmt., Inc. v. Gen. Tel. Co.*, 190 F.3d 1051, 1054 n.3 (9th Cir. 1999) ("Antitrust standing is distinct from Article III standing. A plaintiff who satisfies the constitutional requirement of injury in fact is not necessarily a proper party to bring a private antitrust action."). Accordingly, it is manifest error to rely on *Mecinas* to find (a) that Plaintiffs Sound Music, Graham, and Alvarez may proceed on their FUB tying claims (Count 1) without each Plaintiff alleging they purchased or compete with FUB, *see* Mot. 8-9; or (b) that any Plaintiff may proceed on their Section 1 unreasonable restraint theory (Count 2) that Zillow "compels participating agents and brokerages to steer prospective homebuyers toward ZHL," Order 18, without each Plaintiff alleging they purchased anything from or compete with ZHL. *See* Mot. 12-13.[1]

Third, as to Count 2, the Order correctly notes that "[t]o prevail on a motion to dismiss, an antitrust plaintiff must allege that 'the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market,' . . . 'such as reduced output, increased prices, or decreased quality,'" Order 19, but then cites *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 949-50 (9th Cir. 2025) ("*Play*") to find that "[w]hile aggressive corporate growth can be achieved through procompetitive means, a firm may not expand its market share by deploying coercive platform rules that structurally insulate its products from merit-based competition." Order 20. However, the cited passage of *Play* does not address antitrust pleading

[1] The manifest error as to the Section 1 claims also affected the Order's analysis of the Section 2 claim (Count 3) and the state law antitrust claims (Counts 4, 5, and 7). *See* Order 21, n.4 (adopting analysis of Section 1 claims to find anticompetitive conduct under Section 2); *id.* at 23-26 (relying on alleged Sherman Act violations in analyzing WCPA and MAA claims).

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or liability standards; it discusses Google's challenges to the scope of a post-trial permanent injunction. *See* 147 F.4th at 944-57. The Order concludes that "[a] platform policy that systematically restricts consumer choice and undermines the competitive process states a plausible injury to the marketplace," Order 20, citing the factual and procedural background sections of the Ninth Circuit's opinion in *Play*, which also do not discuss pleading or liability standards for anticompetitive effects. *See id.* (citing *Play*, 147 F.4th at 932). The Order does not discuss whether the ACAC pleads anticompetitive *effects*; only conduct in the form of "platform rules" or a "platform policy."

Binding authority confirms that "courts must focus on anticompetitive effects 'in the market where competition is [allegedly] being restrained.'" *F.T.C. v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020) (alteration in original) (citation omitted); *see also Ohio v. Am. Express Co.*, 585 U.S. 529, 543 (2018) (finding plaintiffs failed to show anticompetitive effects in the relevant market).[2] Thus, under the theory adopted by the Order that Zillow's alleged conduct "shields ZHL from standard, merit-based market competition," Order 20, Plaintiffs were required to allege anticompetitive effects, such as increased costs, reduced output, or decreased quality, in the mortgage lending market. *See Qualcomm*, 969 F.3d at 992 (reversing where district court considered "anticompetitive impacts outside of the relevant markets"). Any reliance on *Play* to excuse Plaintiffs from doing so constitutes manifest error.

Fourth, with respect to the WCPA claim (Count 5), the Order finds that "[b]ecause [Zillow's] platform dynamics plausibly disrupt the marketplace, they serve as sufficient grounds to establish an unfair trade practice" and cites only *PBTM LLC v. Football Northwest, LLC*, 511 F. Supp. 3d 1158, 1178-82 (W.D. Wash. 2021). Order 26. The cited discussion in *PBTM*,

[2] The Order characterizes the ACAC as having alleged that Zillow's conduct "shut[] out independent mortgage providers," Order 18 (citing ACAC ¶¶ 107-109), but Plaintiffs nowhere allege (in the cited paragraphs or otherwise) that other mortgage providers have been shut out or left the mortgage lending market. Similarly, the Order finds that "Plaintiffs explicitly allege that Zillow's 61% audience share generates powerful, self-reinforcing network effects," Order 22 (citing ACAC ¶ 25), but paragraph 25 discusses Zillow's market position, not network effects.

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however, concerned market definition. The court ultimately dismissed the antitrust claims because PBTM had not "alleged sufficient facts to plausibly plead a relevant market." 511 F. Supp. 3d at 1181. Further, Washington law requires that, even when a plaintiff establishes public interest impact *per se*, "[t]he other four elements of a private CPA action must be separately established." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 538 (Wash. 1986); *see also* Order 25-26; Mot. 17-20. Thus, it is manifest error to rely solely on an alleged violation of the Sherman Act to find a violation of the WCPA.

Finally, with respect to Plaintiffs' unjust enrichment claims (Counts 6, 8, and 10), the Order dispenses with Zillow's argument that "Plaintiffs' unjust enrichment claims are barred because they are parties to valid contracts," Mot. 23, based on the proposition that "[a]n unjust enrichment claim survives dismissal . . . if a defendant deploys coercive, mid-stream changes that fall completely outside the original contemplation of the parties or transfer significant, uncompensated financial burdens onto the plaintiffs." Order 31.[3] The Order cites three cases from Washington, Oregon, and Maryland, but two of them do not address a "mid-stream" exception and one rejects it:

- *Young v. Young*, 191 P.3d 1258, 1262-63 (Wash. 2008), does not discuss a mid-stream exception. The counterclaimants there moved onto a family member's property and "did a large amount of work on the property" for which they sought unjust enrichment from the owner. *Id.* at 1260-61. "[T]he only issue" was "the legal standard of recovery," *id.* at 1261, and the court held that "when calculating an unjust enrichment award in a quasi-contract action for improvements to real property[,] the award may not be reduced by the claimant's actual cost absent fault by the claimant or inconsequential relationship to the benefit conferred to the defendant." *Id.* at 1266.

- *Janusz v. Gilliam*, 947 A.2d 560 (Md. App. Ct. 2008), does not discuss a mid-stream exception. *Janusz* interpreted a Voluntary Separation and Property Settlement Agreement between former spouses, *id.* at 562, and the court was "asked to decide whether a mutual mistake of law by the parties to a contract . . . is grounds for rescinding their contract, or

[3] The Order also characterized Zillow as having argued that "assets—such as mandatory software subscription revenues and mortgage referrals—fall completely outside the scope of actionable benefits." Order 33. Zillow did not raise this argument in its Motion; it asserted that Plaintiffs failed to allege a benefit due to their failure to allege any actual referrals to ZHL or any purchase of FUB. *See* Mot. 23.

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in the alternative, whether Mr. Gilliam has been unjustly enriched," *id.* at 563. The appellate court ultimately did not reach the merits of the unjust enrichment dispute, remanding to the trial court. *See id.* at 563, 569. And while the court did not address any purported mid-stream exception to the rule under Maryland law that "a claim of unjust enrichment, . . . 'may not be brought where the subject matter of the claim is covered by an express contract between the parties,'" *id.* at 567 (citations omitted), in *dicta* the court remarked that "we rarely depart from this long-standing rule" except "'when there is evidence of fraud or bad faith, there has been a breach of contract or a mutual rescission of the contract, when rescission is warranted, or when the express contract does not fully address a subject matter.'" *Id.* at 567-68 (citation omitted).

- *Kizer Excavating Co. v. Stout Bldg. Contractors, LLC*, 525 P.3d 883, *as modified on reconsideration*, 529 P.3d 1024 (Or. Ct. App. 2023), rejects the argument that mid-stream changes provide an exception to the contract bar. The "parties executed a subcontract for plaintiff to provide labor and materials for . . . the excavation" of 500 cubic yards of "fill." *Id.* at 885. Despite the contract, the "plaintiff excavated 3,290 cubic yards of fill" and the "parties agree[d] that the discrepancy was due in part to a clerical error by plaintiff." *Id.* The trial court concluded that the additional scope of work was "extracontractual" and that the "plaintiff was entitled to be compensated for that work." *Id.* at 886. The Court of Appeals reversed, observing that "[i]f a dispute is governed by an express contract, no contract will be implied either in fact or in law, and the terms of the express contract control." *Id.* at 888. Accordingly, it "conclude[d] that work could not provide a basis for relief in *quantum meruit* under an implied-in-law quasi-contractual theory." *Id.* at 889.

For the foregoing reasons, Zillow respectfully requests that the Court reconsider the Order.

Dated: October 8, 2026

I certify that this memorandum contains 1,896 words, in compliance with the Local Civil Rules.

Respectfully submitted,

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