

The Honorable John C. Coughenour

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

IN RE ZILLOW GROUP, INC.
SHAREHOLDER DERIVATIVE
LITIGATION

Master File No.: 17-cv-01568-JCC

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**EXHIBIT C – NOTICE OF PENDENCY
AND PROPOSED SETTLEMENT OF
SHAREHOLDER DERIVATIVE
ACTIONS**

LEAD CASE NO: 2:17-cv-01568-JCC
EXHIBIT C – NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF SHAREHOLDER
DERIVATIVE ACTION

BADGLEY MULLINS TURNER PLLC
19929 Ballinger Way NE, Suite 200
Shoreline, WA 98155
TEL: 206.621.6566
FAX: 206.621.9686

Please note that there is no proof of claim form for shareholders to submit in connection with this Settlement, and shareholders are not required to take any action in response to this Notice.

Also, please note that this Notice is not an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted by or against any Party. It is solely to notify you of pendency of the Actions and the terms of the proposed Settlement, and your rights related thereto. Capitalized terms not otherwise defined herein shall have the definitions set forth in the Stipulation and Agreement of Settlement entered into by the Parties on April 20, 2023 (the “Stipulation”). A copy of the Stipulation may be found on Zillow’s corporate website at <https://investors.zillowgroup.com/investors/resources/investor-faqs/default.aspx>.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Actions, the terms of the proposed Settlement, and how the proposed Settlement affects Zillow shareholders’ legal rights.

2. In a derivative action, one or more people who are current shareholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation’s legal rights. In this case, Plaintiffs have filed suit on behalf of Zillow asserting claims against defendants Richard Barton, Erik Blachford, Lloyd Frink, Jay Hoag, Gregory Maffei, Spencer Rascoff, Gordon Stephenson, Gregory Waldorf, and Kathleen Philips, all of whom are current or former members of the Board of Directors (the “Board”) of Zillow and/or current or former senior officers of Zillow (collectively, the “Individual Defendants” and together with nominal defendant Zillow, the “Defendants”).

3. The Court will hold a hearing (the “Settlement Hearing”) on _____, 2023, at __: __.m., at the United States District Court for the Western District of Washington, 700 Stewart St., Seattle, Washington, 98101, at which the Court will: (a) determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate; (b) determine whether the Court should enter the Judgment dismissing the Action with prejudice pursuant to the Stipulation; (c) determine whether to approve the agreed to amount of attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel by Zillow’s insurers; (d) hear and determine any objections to the Settlement or to an amount of the Plaintiffs’ attorneys’ fees; and (e) rule on such other matters as the Court may deem appropriate.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING DESCRIPTION OF THE ACTIONS AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDINGS OF

1 FACT, OR AN AGREEMENT BY THE DEFENDANTS THAT ANY ALLEGATION IS
2 CORRECT.

3 4. According to the allegations in the Actions, in June 2013, Zillow launched its
4 co-marketing program, which allows mortgage lenders to pay for portions of a real estate
5 agent’s monthly online advertising costs. In return, the lender appears at the bottom of the
6 listing as the agent’s “preferred lender.”

7 5. Until the beginning of 2017, Zillow permitted any lender to cover up to 50% of
8 an agent’s monthly advertising spend, and up to five (5) lenders to cover 90% of the spend.
9 While cost-sharing between lenders and agents is legal, under the Real Estate Settlement
10 Procedures Act (“RESPA”) it is illegal for lenders to pay agents for referrals. In addition,
11 RESPA prohibits lenders from paying more than fair market value to agents for advertising.
12 Any payments in excess of fair market value are presumed to be illegal payments for referrals.

13 6. In 2015, the Consumer Financial Protection Bureau (“CFPB”) stepped up
14 RESPA enforcement, entering into several enforcement actions and consent orders with real
15 estate industry participants. In response to the CFPB’s concerns, the Company altered its co-
16 marketing program in the beginning of 2017. Instead of allowing lenders to collectively
17 contribute up to 90% of the ad cost, the Company restricted lenders to 50% of that cost.
18 However, it did not disclose this to the market and did not alter its website to reflect the change
19 for several months.

20 7. Around this time, in February 2017, the Company received a Notice and
21 Opportunity to Respond (“NORA”) letter from the CFPB, stating that the Enforcement Division
22 was considering recommending the CFPB take legal action against the Company for violation
23 of Section 8 of RESPA, and Section 1036 of the Consumer Financial Protection Act. The
24 Company responded in March 2017, and in April 2017, Zillow received a Civil Investigative
25 Demand (“CID”). In August 2017, the CFPB informed the Company that it had concluded its
26 investigation, requested that the Company negotiate a settlement, and absent a settlement, it
27 intended to pursue an action against the Company for violating RESPA.

28 8. The Actions allege that against this backdrop, Defendants made materially false
and misleading statements to the public regarding Zillow’s efforts to comply with RESPA.

WHAT ARE THE TERMS OF THE SETTLEMENT?

9. Defendants have acknowledged that the filing, prosecution, and resolution of the
Actions was a substantial factor in the Company’s accelerated adoption of the corporate
governance reforms (the “Reforms”) enumerated above and that the Reforms will confer a
substantial benefit to Zillow and Current Zillow Shareholders.

WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?

1 10. Plaintiffs' Counsel have conducted an extensive investigation relating to the
2 claims and the underlying events alleged in the Actions including, but not limited to: (a)
3 inspecting, analyzing, and reviewing Zillow's public filings with the SEC, press releases,
4 announcements, transcripts of investor conference calls, and news articles; (b) drafting and
5 filing the various complaints and other pleadings in the Actions; (c) researching the applicable
6 law with respect to the claims asserted in the Actions and the potential defenses thereto; (d)
7 researching corporate governance issues; (e) reviewing discovery and attending depositions; (f)
8 preparing a detailed settlement demand; and (g) participating in extensive settlement
9 discussions with counsel for the Defendants.

10 11. Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Actions
11 have merit and that their investigation supports the claims asserted. Without conceding the
12 merit of any of Defendants' defenses or the lack of merit of any of their own allegations, and
13 solely in order to avoid the potentially protracted time, expense, and uncertainty associated with
14 continued litigation, including potential trial(s) and appeal(s), Plaintiffs have concluded that it
15 is desirable that the Actions be fully and finally settled in the manner and upon the terms and
16 conditions set forth in the Stipulation. Plaintiffs and Plaintiffs' Counsel recognize the
17 significant risk, expense, and length of continued proceedings necessary to prosecute the
18 Actions against the Individual Defendants through trial and through possible appeal. Plaintiffs
19 and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any
20 litigation, especially in complex cases such as this Actions, as well as the difficulties and delays
21 inherent in such litigation. Based on their evaluation, Plaintiffs and Plaintiffs' Counsel have
22 determined that the Settlement is in the best interests of Plaintiffs, Zillow, and Current Zillow
23 Shareholders, and have agreed to settle the Actions upon the terms and subject to the conditions
24 set forth in the Stipulation.

25 12. The Individual Defendants have denied and continue to deny that they have
26 committed or attempted to commit any violations of law, any breach of fiduciary duty owed to
27 Zillow, or any wrongdoing whatsoever. Each Individual Defendant has further asserted that at
28 all material times, he/she has acted in good faith and in a manner he/she reasonably believed to
be in the best interests of the Company and Current Zillow Shareholders. Without admitting
the validity of any of the claims Plaintiffs have asserted in the Actions, or any liability with
respect thereto, Defendants have concluded that it is desirable that the claims be settled on the
terms and subject to the conditions set forth in the Stipulation. Defendants have entered into
the Settlement because it will eliminate the uncertainty, distraction, disruption, burden, risk, and
expense of further litigation. Further, Defendants have acknowledged that the Settlement is
fair, reasonable, adequate, and in the best interests of Zillow and Current Zillow Shareholders.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS
WILL THE SETTLEMENT RELEASE?**

13. At the Settlement Hearing, the Parties shall jointly request that the Court enter
the Judgment finally approving the Settlement. Pursuant to the Judgment, upon the Effective

1 Date of the Settlement (as defined in the Stipulation), the Actions will be dismissed with
2 prejudice and the following releases (the “Releases”) will occur:

3 **Release of Claims by Current Zillow Shareholders and Zillow:** (i) Plaintiffs and all other
4 Current Zillow Shareholders shall be deemed to have, and by operation of the law and of
5 the Judgment shall have, fully, finally and forever released, relinquished and discharged
6 their right to assert derivatively on behalf of the Company any and all of the Plaintiffs’
7 Released Claims (including Unknown Claims) against the Defendants’ Released Persons,
8 and shall forever be barred and enjoined from instituting, commencing, or prosecuting
9 derivatively on behalf of the Company any and all of the Plaintiffs’ Released Claims against
10 the Defendants’ Released Persons; and (ii) Zillow shall be deemed to have, and by operation
11 of the law and of the Judgment shall have, fully, finally, and forever released, relinquished
12 and discharged its right to assert directly any and all of the Plaintiffs’ Released Claims
13 against the Defendants’ Released Persons, and shall forever be barred and enjoined from
14 instituting, commencing, or prosecuting directly any and all of the Plaintiffs’ Released
15 Claims against the Defendants’ Released Persons

16 “Plaintiffs’ Released Claims” means all claims, rights, duties, controversies, obligations,
17 debts, demands, actions, sums of money, suits, contracts, agreements, promises, damages,
18 losses, judgments, liabilities, allegations, arguments, and cause of action of every nature and
19 description, whether known claims or Unknown Claims, whether arising under federal,
20 state, local, statutory, common, or foreign law, or any other rule or regulation, whether at
21 law or equity, whether fixed or contingent, whether accrued or unaccrued, whether matured
22 or unmatured, whether liquidated or unliquidated, that (i) were or could have been asserted
23 by the Company or by Plaintiffs or any other Current Zillow Shareholder derivatively on
24 the Company’s behalf and arise out of or relate to the allegations, transactions, facts,
25 matters, disclosures, statements, acts, omissions or occurrences set forth in the complaints
26 or any other filing by Plaintiffs in the Actions, or (ii) arise out of or in any way relate to the
27 defense or settlement of the claims against Defendants, except for claims relating to the
28 enforcement of the Settlement. For the avoidance of doubt, the Plaintiffs’ Released Claims
do not include any direct claims belonging to Zillow shareholders, including, without
limitation, any claims arising under the federal securities laws.

“Defendants’ Released Persons” means (i) Defendants, (ii) each of the Individual
Defendants’ current and former representatives, insurers, Immediate Family members,
agents, advisors, attorneys, heirs, executors, administrators, and assigns, in their capacities
as such, and (iii) the Company’s current and former parents, affiliates, subsidiaries, and
divisions and all of their current and former principals, partners, officers, owners, directors,
supervisors, employees, agents, members, representatives, insurers, attorneys, heirs,
executors, administrators, and assigns of the same.

Release of Claims by Defendants: Defendants shall be deemed to have, and by operation
of the law and of the Judgment shall have, fully, finally and forever released, relinquished
and discharged any and all of the Defendants’ Released Claims (defined below) against the
Plaintiffs’ Released Persons (defined below), and shall forever be barred and enjoined from

1 instituting, commencing, or prosecuting any and all of the Defendants’ Released Claims
2 against the Plaintiffs’ Released Persons.

3 “Defendants’ Released Claims” means all claims and causes of action of every nature and
4 description whatsoever, including both known claims and Unknown Claims, that arise out
5 of, are based on, or relate to the institution, prosecution, pendency, or settlement of the
6 claims asserted against Defendants in the Actions (except for claims to enforce the
7 Settlement).

8 “Plaintiffs’ Released Persons” means each of the Plaintiffs, Plaintiffs’ Counsel, and all other
9 Current Zillow Shareholders and each of their respective present and former directors,
10 officers, Immediate Family members, agents, advisors, attorneys, personal and legal
11 representatives, employees, affiliates, predecessors, successors, heirs, beneficiaries,
12 executors, estates, trusts, administrators, trustees, insurers, and assigns, in their capacity as
13 such.

14 “Unknown Claims” means any of the Plaintiffs’ Released Claims which any Plaintiff does
15 not know or suspect to exist in his, her, or its favor at the time of the release of such claims
16 and any of the Defendants’ Released Claims that any Defendant or the Company does not
17 know or suspect to exist in his, her, or its favor at the time of the release of such claims
18 which, if known by him, her, or it, might have affected his, her, or its decision with respect
19 to this Settlement. With respect to any and all Released Claims, the Parties stipulate and
20 agree as part of this Settlement that they expressly waive, relinquish, and release any and
21 all provisions, rights, and benefits conferred by or under California Civil Code Section 1542
22 (“§ 1542”) or any other law of the United States or any state or territory of the United States,
23 or principle of common law, which is similar, comparable, or equivalent to § 1542, which
24 provides:

25
26
27
28
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR OR RELEASING PARTY DOES
NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE,
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

29 Plaintiffs, Defendants, and the Company acknowledge that the foregoing waiver was
30 separately bargained for and is a key element of the Settlement. Plaintiffs, Defendants, the
31 Company and each Current Zillow Shareholder may hereafter discover facts in addition to
32 or different from those which he, she, it, or their counsel now knows or believes to be true
33 by them, with respect to Plaintiffs’ Released Claims or Defendants’ Released Claims, as the
34 case may be, but upon the Effective Date, Plaintiffs, Defendants, the Company, and each
35 Current Zillow Shareholder derivatively on behalf of the Company shall be deemed to have,
36 and by the operation of the Judgment shall have completely, fully, finally, and forever
37 settled and released all Released Claims, known or unknown, suspected or unsuspected,
38 contingent or non-contingent, whether or not concealed or hidden, which now exist or

1 heretofore have existed upon any theory of law or equity now existing or coming into
2 existence in the future, without regard to the subsequent discovery or existence of such
3 different or additional facts. The Parties acknowledge, and the Current Zillow Shareholders
4 shall be deemed by operation of the Judgment to have acknowledged, that the foregoing
waiver was separately bargained for and is a key element of the Settlement of which this
release is a part.

5 14. By Order of the Court, (a) all proceedings in the Action, other than those relating
6 to the Settlement itself, have been stayed until further Order of the Court; and (b) pending final
7 determination of whether the Settlement should be approved, Plaintiffs and all other Current
8 Zillow Shareholders are barred and enjoined from commencing or prosecuting, derivatively on
9 behalf of Zillow, any of the Plaintiffs’ Released Claims against any of the Defendants’ Released
10 Persons.

9 **HOW WILL PLAINTIFFS’ COUNSEL BE PAID?**

11 15. After all material settlement terms were agreed upon, Plaintiffs’ Counsel
12 engaged in arm’s-length negotiations with Defendants, directly and through an experienced
13 mediator, concerning an appropriate award of attorneys’ fees and expenses for Plaintiffs’
14 Counsel. Defendants have agreed to pay an award of attorneys’ fees and expenses in the total
15 amount of \$1,300,000.00 (the “Fee and Expense Award”), subject to Court approval.

16 16. Plaintiffs’ Counsel’s application will include a request on behalf of the two
17 Plaintiffs in the Federal Derivative Action for service awards in the amount of \$5,000.00 each
18 and the two Plaintiffs in the State Derivative Action for service awards in the amount of
19 \$1,500.00 each, to be paid out of the Court-approved Fee and Expense Award, based on the
20 substantial benefits they have helped to create for Zillow and Current Zillow Shareholders.

18 **WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I
19 HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

21 17. The Court will consider the Settlement and all matters related to the Settlement
22 at the Settlement Hearing. The Settlement Hearing will be held before The Honorable John C.
23 Coughenour, on _____, 2023 at __:__.m., at the United States District Court for the
24 Western District of Washington, 700 Stewart St., Seattle, Washington, 98101. At the Settlement
25 Hearing, the Court will (a) determine whether the Settlement should be approved by the Court
26 as fair, reasonable, and adequate; (b) determine whether the Court should enter the Judgment
27 dismissing the Action with prejudice pursuant to the Stipulation; (c) determine the amount of
28 the Fee and Expense Award; (d) hear and determine any objections to the Settlement or to
approval of the Agreed Fee; and (e) rule on such other matters as the Court may deem
appropriate.

1 18. Any Current Zillow Shareholder (*i.e.*, any person or entity who owned Zillow
 2 common stock as of April 20, 2023) who continues to own Zillow common stock through
 3 _____, 2023, the date of the Settlement Hearing, may object to the terms and
 4 conditions of the Settlement and/or to the payment of the Fee and Expense Award to Plaintiffs’
 5 Counsel. Objections must be in writing and must be filed, together with copies of all other
 6 papers and briefs supporting the objection, with the Clerk of the Court at the address set forth
 7 below on or before _____, 2023. Objections must also be served on Representative
 8 Plaintiffs’ Counsel and Representative Defendants’ Counsel (by hand, first-class U.S. mail, or
 9 express service) at the addresses set forth below so that the objection is **received** on or before
 10 _____, 2023.

<u>Clerk of the Court</u>	<u>Representative Plaintiffs’ Counsel</u>	<u>Representative Defendants’ Counsel</u>
United States District Court Western District of Washington 700 Stewart St. Seattle, WA 98101	Gregory Egleston, Esq. Gainey McKenna & Egleston 501 Fifth Avenue, 19 th Fl. New York, NY 10017	Joseph De Simone, Esq. Mayer Brown LLP 1221 Avenue of the Americas New York, NY 10020

12
 13 19. Any objection: (a) must state the name, address and telephone number of the
 14 person or entity objecting and, if represented by counsel, the name, address and telephone
 15 number of his, her or its counsel; (b) must be signed by the shareholder; (c) must contain a
 16 written, specific statement of the shareholder’s objection or objections, and the specific reasons
 17 for each objection, including any legal and evidentiary support the shareholder wishes to bring
 18 to the Court’s attention; (d) must state that the objection is being filed with respect to “*In re*
 19 *Zillow Group, Inc. Shareholder Derivative Litigation*, Lead Case No: 17-cv-01568-JCC”; and
 20 (e) must include documentation sufficient to prove that the shareholder held shares of Zillow
 21 common stock as of the close of business on April 20, 2023 and continues to hold such shares.

22 20. You may file a written objection without having to appear at the Settlement
 23 Hearing. You may not, however, appear at the Settlement Hearing to present your objection
 24 unless you first filed and served a written objection in accordance with the procedures described
 25 above, unless the Court orders otherwise.

26 21. If you wish to be heard orally at the hearing in opposition to the approval of the
 27 Settlement, and if you file and serve a timely written objection as described above, you must
 28 also file a notice of appearance with the Clerk of the Court and serve it on Representative
 Plaintiffs’ Counsel and Representative Defendants’ Counsel at the addresses set forth above so
 that it is **received** on or before _____, 2023. Shareholders who intend to object and
 desire to present evidence at the Settlement Hearing must include in their written objection or
 notice of appearance the identity of any witnesses they may call to testify and exhibits they
 intend to introduce into evidence at the hearing. Any person appearing at the Settlement
 Hearing must present at the hearing documentation sufficient to prove that the shareholder

continues to hold shares of Zillow common stock as of the date of the hearing. Such persons may be heard orally at the discretion of the Court.

22. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Representative Plaintiffs' Counsel and Representative Defendants' Counsel at the addresses set forth above so that the notice is *received* on or before _____, 2023.

23. Unless the Court otherwise directs, any person or entity who fails to object in the manner prescribed above shall be deemed to have waived his, her, or its right to object and shall be forever barred from raising any objection to the Settlement and/or the Fee and Expense Award, or any other matter related to the Settlement, in the Action or in any other action or proceeding, but shall otherwise be bound by the Judgment to be entered by the Court and the Releases to be given.

WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

24. This Notice does not purport to be a comprehensive description of the Actions, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Actions, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Clerk, United States District Court for the Western District of Washington, _____, during regular business hours of each business day. You may also view a copy of the Stipulation at www._____.com. If you have questions regarding the Settlement, you may write or call the following counsel for Plaintiffs: Gregory Egleston, Esq., Gainey McKenna & Egleston, New York, NY 10017 (212) 983-1300 or gegleston@gme-law.com.

DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE.

Dated: _____, 2023

By Order of the Court
United States District Court
Western District of Washington