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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC., a Delaware corporation,  
  
Plaintiff,  
  
v.  
  
ZILLOW GROUP, INC., a Washington  
corporation; and ZILLOW, INC., a Washington  
corporation,  
  
Defendants.

No.  
  
**COMPLAINT FOR  
COPYRIGHT INFRINGEMENT**  
  
**JURY DEMAND**

Plaintiff VHT, Inc., d/b/a VHT Studios (“VHT”) by its undersigned attorneys, Davis Wright Tremaine LLP, as and for its complaint against defendants Zillow Group, Inc. (“Zillow Group”) and Zillow, Inc. (“Zillow, Inc.” and Zillow Group, “Zillow”), alleges as follows:

**INTRODUCTION**

1. This is an action arising from Zillow’s massive and intentional infringement of copyrights that VHT owns in thousands of unique photographic images of real estate properties around the United States. Zillow claims to be the world’s largest online marketplace for real estate property listings, but as its CEO recently publicly admitted, “we sell ads, not houses.”<sup>1</sup> The focus of this complaint is not Zillow’s central listing site of properties for sale or rental (the “Listing Site”), but rather Zillow Digs – an independent section of its website and a stand-

<sup>1</sup> Ben Lane, Housing Wire.com, *Zillow CEO: “We sell ads not houses”* (quoting Zillow CEO Spencer Rascoff) <http://www.housingwire.com/articles/33882-zillow-ceo-we-sell-ads-not-houses>.

1 alone mobile app (together, the “Digs Site”) – which showcases groups of photographs of  
2 particular elements of home design, such as kitchen countertops, plumbing fixtures, or art deco  
3 sofas, and pairs them with advertising from vendors who sell the goods depicted in the  
4 photographs or offer related services.

5 2. As Zillow well knows, VHT – the leading full-service provider of professional  
6 photographs for the real estate industry – owns the copyrights in many of these photographs.  
7 Zillow is also abundantly aware that the photographs transmitted by listing agents and brokers  
8 to the Zillow Listing Site are licensed by VHT only for purposes of marketing the properties for  
9 sale. Nonetheless, when Zillow launched its Digs Site, it populated it with these photographs –  
10 not for purpose of marketing the properties – but rather for the purpose of selling advertising  
11 for design elements depicted in these photographs. VHT’s photographs remain on the Digs  
12 Site to date without license or authority.

13 3. VHT’s photographs are extremely valuable assets, each of which has  
14 independent economic value for multiple purposes, including licensing for the very purpose  
15 Zillow uses them on Zillow Digs. VHT is just now poised to leverage the very significant  
16 economic value of these photographs. It has taken great pains to get to this point. It currently  
17 offers listing agents and brokers non-exclusive license agreements that are specifically tailored  
18 to permit use of VHT’s photographs only for the marketing of the properties listed for sale.  
19 VHT retains control over all other and future use of these photographs to maximize its future  
20 business prospects and to ensure it can make its own business decisions as to the proper  
21 manner, means and extent of future exploitation of these photographs, both individually and as  
22 a database.

23 4. That Zillow knew the value of VHT’s photographs cannot be questioned.  
24 Shortly after it launched the Digs Site in 2013, Zillow and VHT specifically discussed the  
25 possibility of Zillow licensing VHT’s photographs for use on the Digs Site. No deal was ever  
26 reached because Zillow advised VHT at that time that it had decided *not* to use the VHT  
27 photographs displayed on the Zillow Listing Site on the Digs Site. Yet, that is exactly what

1 Zillow did and continues to do, without license or authority, and in blatant derogation of VHT's  
2 copyrights.

3 5. Despite transparent efforts to immunize itself from copyright infringement  
4 claims by pointing its corporate finger at both its users and the listing agents and brokers who  
5 post their photographs on Zillow to sell their properties, it is Zillow itself which posted many of  
6 VHT's images to the Digs Site; Zillow uses photographs from homes that are not for sale and  
7 makes no effort whatsoever to remove those images once properties are sold; it induces users to  
8 post images to the Digs Site; it uses those images to induce advertisers to fill Zillow's coffers  
9 with advertising revenue; and it tags and groups the photographs and pastes advertisements  
10 directly on top of VHT's images. Zillow cannot hide behind safe harbors and blame others for  
11 its own brazen theft.

12 6. As detailed hereinafter, VHT's very preliminary analysis of a random sample of  
13 the many photographs on the Zillow Digs Site revealed a minimum of 316 individual VHT  
14 images infringed on the Digs Site. In discovery, VHT intends to seek access to the back-end  
15 databases that support the Digs Site so that it can determine the full extent of Zillow's  
16 infringements, which VHT believes to number in the thousands. VHT will seek to amend its  
17 complaint accordingly to add those additional acts of infringement as this case progresses.

18 **JURISDICTION AND VENUE**

19 7. This is a civil action seeking damages and injunctive relief for copyright  
20 infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*

21 8. This Court has original subject matter jurisdiction over all claims pleaded herein  
22 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

23 9. This Court has personal jurisdiction over defendants. Defendants Zillow Group  
24 and Zillow, Inc. do continuous and systematic business in Washington State and in this  
25 District. They have their principal places of business in this District, employ personnel in this  
26 District, have transacted business in this District in connection with the matters giving rise to  
27 this suit, and have committed infringing acts within this District.



1 photographs of that property. In today's world, nearly every home buyer begins their search on  
2 the Internet rather than in person, which makes having high-quality photographs of the property  
3 a paramount concern for home sellers and their listing agents and brokers. In order to attract  
4 buyers, listing agents and brokers need photographs that are attractive, and that effectively use  
5 lighting and camera angles to best showcase the property. The properties must be  
6 photographed thoroughly, covering interior and exterior spaces, and highlighting the positive  
7 features that are unique to each property.

8 16. To achieve these results, listing agents and brokers need photographs taken by  
9 experienced professional photographers. Many agents and brokers turn to VHT to provide  
10 them with professional photographs of the highest quality. VHT has invested considerable  
11 resources in building a network of reliable, highly-skilled photographers, who are independent  
12 contractors. Not only must these professionals be talented and experienced photographers,  
13 knowledgeable about real estate and capable of taking high-quality images, they also must be  
14 extremely trustworthy. People allow photographers into their homes because they recognize  
15 that photographs are crucial to selling a property in today's Internet-driven marketplace, and  
16 listing agents and brokers rely on VHT's trusted network to insure that this process is  
17 conducted in a secure and professional manner. Therefore, VHT conducts background checks  
18 on and/or otherwise investigates each of the photographers it contracts, reviews their portfolio  
19 of work, and provides training for them.

20 17. The photographers receive a monetary payment from VHT for each shoot they  
21 conduct and, in exchange, all photographs they take of the properties are owned by VHT.  
22 Under the terms of the photographers' contracts, these photographs are created as works-for-  
23 hire for VHT's benefit and subject to its ownership. For the avoidance of doubt, the  
24 photographers also assign any arguable rights in those photographs to VHT by contract. Thus,  
25 VHT owns all copyright interest in and to all of these photographs.

26 18. VHT takes these pains to obtain and retain ownership of its photographs for  
27 good reason. The professional-quality photographs of real property it commissions are the

1 primary asset VHT owns, and the entire basis of its business model. VHT invests substantial  
2 resources to that end, including but not limited to creating and maintaining its network of  
3 photographers, the relationships it has cultivated with listing agents and brokers, its state-of  
4 the-art post-production facility and its sophisticated website. VHT has invested these resources  
5 and years of “sweat equity” into creating this system, not just so it can license the photographs  
6 to listing agents and brokers, but also because each of the photographs in its database has  
7 additional, independent value beyond its initial use to market property listed for sale.

8 19. VHT places a copy of the photographs it commissions and owns into a master  
9 database that currently contains more than 4 million unique images of the interiors and  
10 exteriors of residential properties. The photographs are extremely high-quality, professionally  
11 taken and digitally finished to meet the highest aesthetic standards. VHT believes that its  
12 database is the largest of its kind in the country.

13 20. The millions of photographs in the VHT database have significant monetary  
14 value, both individually and as a collective whole. Professional photographs like those in  
15 VHT’s database are in high demand in the marketplace and are used everywhere, from listing  
16 agents’ and brokers’ active property listings, to television shows, to magazines, to websites.

17 21. It is for this reason that VHT grants all but one of its brokerage clients only a  
18 non-exclusive license to use the photographs for the narrowly limited purpose of marketing the  
19 specific properties they depict and the listing broker, and then only while those properties are  
20 on the market. VHT retains ownership of the copyright in these photographs so it can realize  
21 the full fruits of its labors by licensing the photographs in its database, either collectively or  
22 individually, to third parties for a myriad of other purposes.

23 22. But VHT has been, and continues to be, deprived of the fruits of those labors  
24 because Zillow has been stealing its photographs *en masse* and illegally using them for its own  
25 profit and gain, as hereinafter detailed.  
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1                   **B.      Creation of VHT’s Photographs**

2           23.      The process begins when a listing agent or broker contacts VHT and requests  
3           photographs of a particular property. VHT then sends one of its photographers to the site of the  
4           property to do the photo shoot, capturing high-quality images of both the interior and exterior  
5           of the property.

6           24.      VHT maintains its own state-of-the-art production studio. Once a photographer  
7           transmits to VHT the photographs of a particular property s/he has been commissioned to take,  
8           the VHT studio then selects the best of them and digitally edits and enhances those images  
9           selected for aesthetic purposes.

10          25.      When the photographs are ready for dissemination, high-resolution digital  
11          copies are uploaded to the VHT website, where they can be accessed by the listing agent or  
12          broker licensed to use them to market the subject property. A typical shoot results in  
13          approximately 16 finished, high-quality photographs of each property. Prices paid by VHT’s  
14          customers vary, but generally range from \$60-\$600 per property or \$10 to \$100 per  
15          photograph.

16                   **C.      VHT’s Copyright Registrations**

17          26.      Given the unique and valuable nature of its photographs, VHT takes all steps  
18          necessary to protect its rights in and to those photographs.

19          27.      Because of the sheer volume of photographs at issue—over 4 million images in  
20          its database to date – VHT registers its copyrights in those images (both individually and as a  
21          whole) by filing periodic group registrations with the United States Copyright Office. It began  
22          filing its applications to register the photographs in its database in January of 2014. As VHT  
23          continues to create new photographs, it has been filing additional registrations, generally on a  
24          quarterly basis, including its latest filing in mid-June 2015 for photographs created and  
25          distributed during the first quarter of 2015. In addition, because these photographs have  
26          independent economic value to VHT long after the property has been sold, in 2014, VHT also  
27          filed applications to register many of the photographs that were already in its database before it

1 started filing on a periodic basis. As of today, VHT has filed applications to register  
2 photographs in its database created from the beginning of 2010 through the end of the first  
3 quarter of 2015. Those applications are pending. True and correct copies of the applications  
4 for VHT's registrations are annexed hereto as **Exhibits 1-9**.

5 28. VHT has duly maintained the copyrights that it has applied to register with the  
6 Copyright Office, which provide valid and subsisting copyright protection for each of the  
7 photographs therein.

8 **D. VHT's Licensing of Images for Use In Marketing Properties Listed for Sale**

9 29. Listing agents and brokers either hire VHT on a project-by-project basis, or  
10 enter into longer-term umbrella agreements with VHT under which they automatically contract  
11 with VHT to provide photographs of some or all new properties the agent or broker represents;  
12 VHT grants the listing agent or broker a non-exclusive license that gives them the right to use  
13 the photographs to market that property for sale. (The *only* exception is one brokerage agency  
14 which, by agreement, owns the copyright in the photographs of its listings. Those photographs  
15 are not the subject of VHT's copyright applications, are not maintained in the VHT database,  
16 and no allegation of copyright infringement of that brokerage's photographs is made herein).

17 30. The umbrella agreements provide that VHT licenses the photographs to the  
18 listing agent or broker for the limited purpose of "the sales and marketing of the subject  
19 property or the company/agent representing the property." The scope and term of this umbrella  
20 license, both for marketing the property and for marketing the agent "representing" the  
21 property, is, by definition, limited to the time while the property is on the market and the agent  
22 is trying to sell it.

23 31. For those listing agents and brokers who contract with VHT on a one-off basis,  
24 the Terms of Use on the VHT website govern their use of the VHT images. Those Terms of  
25 Use provide that "[a]ll images and media ('Content') created by VHT is the sole property of  
26 VHT. VHT retains ownership and licensing rights to all Content. Content is made available to  
27 clients for property specific marketing purposes only. Any publication of content for non-



1 specific property marketing purposes is strictly prohibited by law without the express written  
2 consent of VHT.” See <https://www.vht.com/Terms-Of-Use.aspx>.

3 32. The listing agents and brokers then incorporate VHT’s photographs into their  
4 property listings and, in many cases, send those listings to Multiple Listing Services  
5 (“MLS’s”). MLS’s are database services that aggregate property listings for the convenience of  
6 real estate industry professionals. Generally speaking, listing agents and brokers pay  
7 membership dues to join an MLS, which allows them to upload all of their new listings to the  
8 MLS’s database. Some MLS’s then serve as a “middleman” by bundling a large number of  
9 listings together and transmitting them to consumer-facing real-estate websites such as Zillow  
10 and Trulia, and to other brokers.

11 33. In many cases, MLS’s feed their aggregated listings to an additional  
12 “middleman” such as ListHub, which has been described as a “listing syndicator.” ListHub  
13 receives the data feeds from many different MLS’s and aggregates them into an even larger  
14 bundle of listings, which it then provides to consumer-facing websites such as Zillow in a daily  
15 “feed.” There are approximately 800 separate MLS’s in the country, many of which ultimately  
16 feed (whether through ListHub or directly) into consumer-facing sites.

17 34. In this way, the listing agents and brokers are able to utilize VHT’s photographs  
18 for the licensed purpose, *i.e.*, to market their properties for sale.

19 **E. Independent Economic Value of VHT’s Photographs**

20 35. Notwithstanding the group registration of its copyrights, each of the photographs  
21 in the VHT database has independent economic value, both on an aggregate basis and/or on a  
22 per photograph basis for various purposes, including but not limited to home design, use in  
23 television or film, on news, entertainment and social media websites, and on mobile apps;  
24 indeed, in virtually any other medium where there is a need for high-quality photographic  
25 content.

26 36. Over the past several years, VHT has been approached by various third parties  
27 about potential licenses of some or all of its photographs for purposes other than use in active

1 real estate listings, including requests to potentially license the entire database as a resource for  
2 websites and other media entities that require a large supply of professional photographs to  
3 create visually-striking content for their audiences. In addition, VHT has been approached by  
4 TV producers about the possibility of licensing photographs from its database for use on  
5 lifestyle and design programs. VHT has also licensed certain of its photos on an individual or  
6 small-group basis, including for a coffee table book and a residential community website.

7 37. For example, both HGTV and Better Homes and Gardens have approached VHT  
8 about potentially licensing access to its entire database for use in connection with proposed web  
9 pages for home design applications, such as remodeling and/or redecorating projects. More  
10 recently, a company called Glossre.com contacted VHT about potentially licensing certain of  
11 VHT's images for use on a home design social media website, which is currently being test-  
12 marketed in Chicago.

13 38. In or around February of 2013, shortly after Zillow launched the Digs Site,  
14 Zillow and VHT began discussing the possibility of Zillow licensing VHT's images for use on  
15 the Digs Site. Although the negotiations never advanced to the point of monetary offer or  
16 demand, the mere fact that Zillow discussed a license with VHT demonstrates *both* that Zillow  
17 knew it needed permission to use the photographs on the Listing Site for the Digs Site, and that  
18 Zillow recognized that those photographs have independent economic value, either on a  
19 database or individual license basis. When Zillow terminated these negotiations in May 2013,  
20 it advised VHT that it did not intend to use photographs from the Listing Site on the Digs Site.  
21 Yet that is exactly what Zillow did: without obtaining a license from VHT, Zillow used untold  
22 thousands of VHT's photographs on the Digs Site in order to sell advertising and line its own  
23 pockets, in willful infringement of VHT's copyrights.

24 39. As more fully described hereinafter, Zillow's own unauthorized use of VHT's  
25 images on the Digs Site also underscores the independent economic value in each of the  
26 photographs. Zillow monetizes many of the VHT photographs which appear on the Digs Site  
27 by pairing them with advertisements from local companies that sell goods and services depicted

1 in, or illustrated by, those photographs; in some cases, Zillow actually implants those  
2 advertisements directly into VHT's copyright-protected photographs.

3 40. On information and belief, Zillow uses the individual VHT-owned photographs,  
4 or groups of them, to attract advertisers and to induce them to advertise on its website and sells  
5 advertisements that are directly linked to specific content in specific VHT-owned photographs.

6 **F. Zillow's Overall Business Model**

7 41. Zillow, founded in 2006, features a "database of more than 110 million U.S.  
8 homes - including homes for sale, homes for rent and homes not currently on the market." *See*  
9 <http://www.zillow.com/corp/About.htm>. Many of those homes are included in its Listing Site.

10 42. On information and belief, Zillow built all or a significant portion of its Listing  
11 Site by contracting with the MLS's to obtain property listings — paying fees to the MLS's to  
12 transmit daily feeds of all of their listings to Zillow's site. Until very recently, Zillow also paid  
13 ListHub a fee to receive its feed of listings, but its agreement with ListHub ended this past  
14 April and, upon information and belief, Zillow now obtains the bulk of its listings directly from  
15 MLS's or from individual listing agents or brokers.

16 43. Zillow has been on an aggressive campaign to consolidate and indeed  
17 monopolize the market for online real estate listings. In April 2011, it acquired Postlets, an  
18 online real estate listing creation and distribution platform. In November of that year, it  
19 acquired Diverse Solutions, which provides technology and websites to real estate  
20 professionals. In May 2012, it acquired Rent Juice, an online real estate marketplace for rental  
21 listings. Next, Zillow acquired Buyfolio, a real estate shopping and collaboration platform in  
22 October 2012. The very next month, it acquired both Mortech, a mortgage technology  
23 company, and Hot Pads, which provides real estate listings on a map-based web interface.  
24 Continuing its path to domination, in August 2013 Zillow acquired Street Easy, an online real  
25 estate sale and rental marketplace for New York City. Then in July of last year, it acquired  
26 Retsly, which helps developers access data from MLSs. Most recently, in July 2014, Zillow  
27 announced a \$3.5 billion deal to purchase Trulia, its biggest competitor, and closed that

1 transaction in February of this year. According to the *New York Times*, the new combined  
2 entity, Zillow Group, will now have 137 million users, controlling 61% of the Internet market  
3 for the real estate listings category, and “will dominate the traffic for online home listings.”<sup>2</sup>

4 44. As described above, VHT licenses its photographs to listing agents and brokers  
5 for the limited purpose of marketing the subject properties. They in turn incorporate the  
6 photographs into their listings, which they then transmit, individually or through the MLS’s  
7 and/or ListHub, to consumer-facing websites such as Zillow. Because Zillow is by far the most  
8 prominent consumer-facing real estate website, VHT’s photographs are routinely posted to  
9 Zillow’s Listing Site as part of listing agents’ and brokers’ efforts to sell the properties  
10 depicted. On information and belief, there are literally tens of thousands of VHT-owned  
11 photographs appearing on Zillow’s Listing Site at any given time, many of properties that have  
12 already been sold.

13 **G. Zillow’s Listing Site**

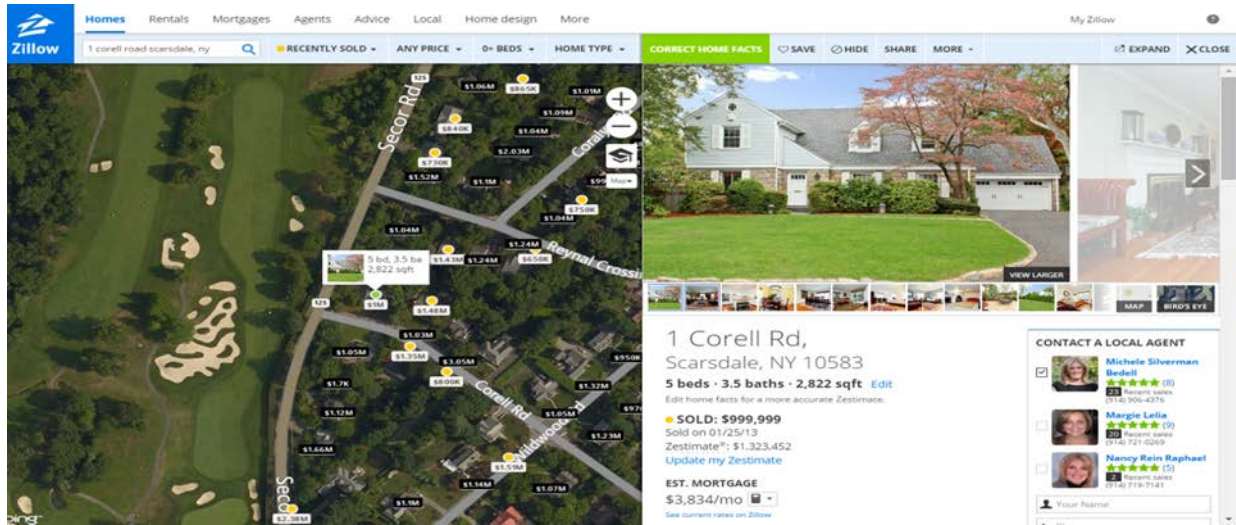
14 45. Zillow’s Listing Site is a searchable database of property listings that consumers  
15 can search by inputting their desired specifications (such as price range, location, number of  
16 bedrooms, etc.). Zillow then provides users with lists of properties matching those  
17 specifications. For each property, Zillow displays relevant information, such as asking price,  
18 square footage and amenities, and allows consumers to contact the listing agent directly.  
19 Zillow also offers a mobile app that provides substantially the same services.

20 46. The most prominent feature of the Listing Site is the display of multiple  
21 photographs of each of the listed properties. On information and belief, it is these photographs  
22 that attract users to the Zillow website, and they also appear in the Google searches that drive  
23 traffic to Zillow’s site.

24 47. Each listing on the Zillow Listing Site has several medium-sized photographs of  
25 the property displayed prominently at the top, as well as numerous smaller, thumbnail-sized  
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27 <sup>2</sup> Michael J. De La Merced, *The New York Times*, July 28, 2014, [http://dealbook.nytimes.com/2014/07/28/zillow-to-buy-trulia-for-3-5-billion/?\\_r=0](http://dealbook.nytimes.com/2014/07/28/zillow-to-buy-trulia-for-3-5-billion/?_r=0).

1 photographs below. Users can scroll through the photographs in slideshow format and click on  
2 any of them to enlarge it so that it nearly fills the entire screen.



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12 48. Alongside each listing, Zillow displays a menu of other, similar properties, each  
13 one also accompanied by thumbnail photographs. Clicking on those thumbnails takes the user  
14 to the listing page for that property where there are still more photographs, each of which can  
15 likewise be scrolled through and enlarged.

16 49. Zillow does not charge consumers to shop for real estate on its Listing Site.  
17 Rather, as its CEO recently admitted, Zillow makes its money primarily from advertising.  
18 Agents and brokers who pay for ads on Zillow's Listing Site are advertised all over that Site,  
19 not just next to listings of properties those agents and brokers represent. Many times, the name  
20 and face of an agent or broker who has paid Zillow for advertising will appear next to a  
21 particular property, even though that agent or broker has nothing whatsoever to do with that  
22 property. In those cases, the listing agent or broker to whom the listing actually belongs (and  
23 who has a license to use the photographs to sell the property) may be identified only in a  
24 barely-noticeable position at the bottom of the page. On information and belief, for this reason,  
25 many listing agents and brokers have to pay Zillow for ads to appear on their *own* listings,  
26 since it is the only way to insure that their names will be prominently displayed alongside the  
27 photographs of the properties they are marketing.

1           **H.     Zillow’s Continued Inclusion of Photographs**  
2           **of Sold Properties On the Listing Site**

3           50.     Because most MLS’s require that individual listing agents and brokers keep  
4           their listings in the feeds up to date, when an agent or broker sells a property, s/he promptly  
5           either removes it from the feed or changes the description in the feed to indicate that it is  
6           “SOLD.” Thus, the feed that Zillow receives from the MLS’s and/or in the past from ListHub,  
7           explicitly advises Zillow which of the properties on its Listing Site are no longer on the market.

8           51.     Notwithstanding that express notice, Zillow does not remove all of the “SOLD”  
9           listings from its site, although it does remove the listing agent or broker’s name once the  
10          property is sold. Instead, Zillow continues to display many of the SOLD listings with the  
11          accompanying photographs in an apparent effort to drive further web traffic to its site and to  
12          sell more ads. It is readily apparent that the continued appearance of these “SOLD” listings is  
13          not the result of some automated process by which any data that comes in through the feeds is  
14          automatically posted to Zillow; to the contrary, Zillow takes affirmative steps to remove the  
15          listing agent’s or broker’s name and yet fails to remove the listings or the photographs of the  
16          sold property, even when they have been removed from the feeds provided by the MLS’s.

17          52.     Zillow well knows that VHT owns the copyright in all of its photographs and  
18          that VHT licenses listing agents and brokers to use the photographs solely for marketing of the  
19          homes. These facts are not only widely known in the real estate industry, but VHT has  
20          expressly informed Zillow of those facts. VHT’s ownership of the copyrights was central in  
21          the discussions between VHT and Zillow back in the spring of 2013 about potentially licensing  
22          VHT images for use on the Digs Site, and VHT reiterated that point and highlighted the  
23          limitations on the licenses it grants to listing agents and brokers in a July 2014 letter to Zillow.

24          53.     Nonetheless, Zillow continues to use photographs owned by VHT in listings for  
25          properties that were sold weeks, months, or even years ago. These uses of the photographs  
26          cannot serve to market or advertise the properties that are pictured because the properties have  
27          already been sold.

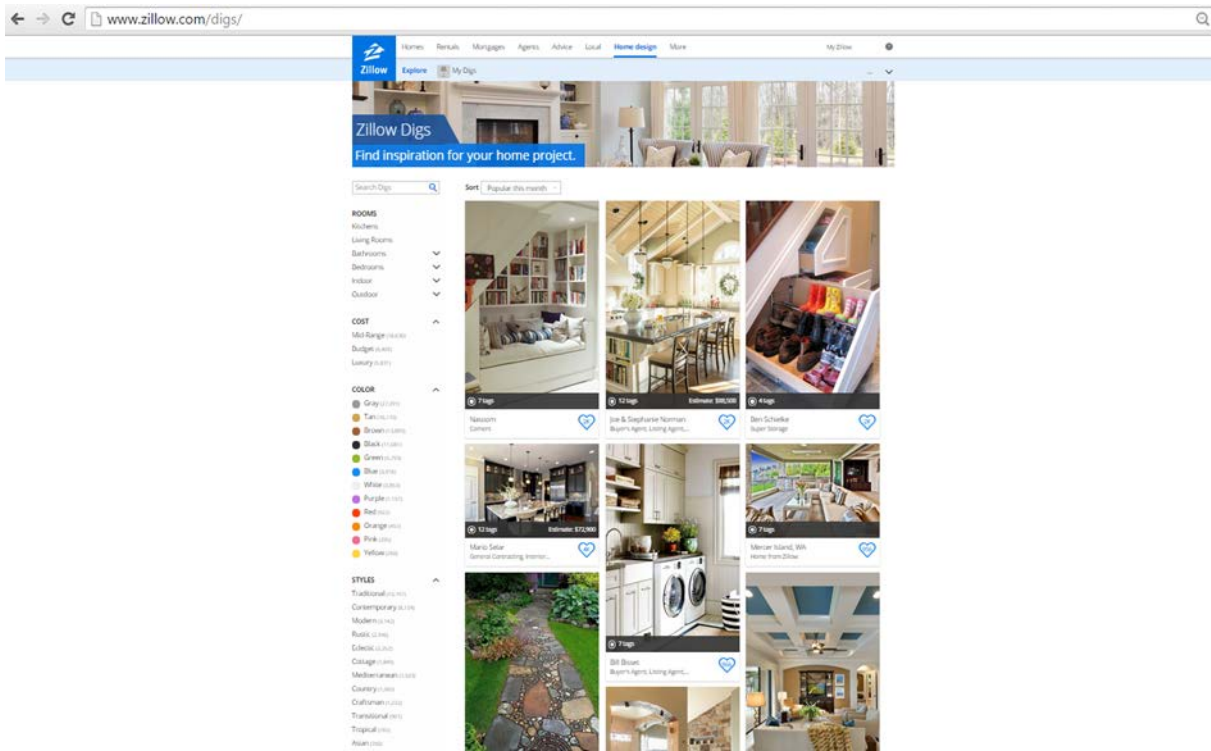
1           **I.       Zillow Digs**

2           54.     In or around February of 2013, Zillow first introduced the Digs Site, a home  
3 design section of its website that is separate from its Listing Site and is independently  
4 supported by a totally different type of advertising. Unlike the Listing Site, which is devoted to  
5 listing properties for sale and advertises brokers and listing agents offering similar properties,  
6 Digs is not designed for or aimed at the marketing of real property in any way. Rather, Zillow  
7 touts Digs as a place where users can go to “[f]ind inspiration for your home project.”  
8 <http://www.zillow.com/digs/>.

9           55.     Zillow has launched an aggressive marketing campaign to promote Digs,  
10 including but not limited to promotional efforts by Zillow on Facebook and Pinterest. Zillow  
11 also encourages its users to share photos from Digs on social media. Consequently, images  
12 from Digs also appear on a wide variety of highly-trafficked sites and mobile applications such  
13 as Twitter, Tumblr and Instagram.

14           56.     The home page of Zillow.com features a link at the top of the page labeled  
15 “Home Design,” which leads users to the Digs Site.

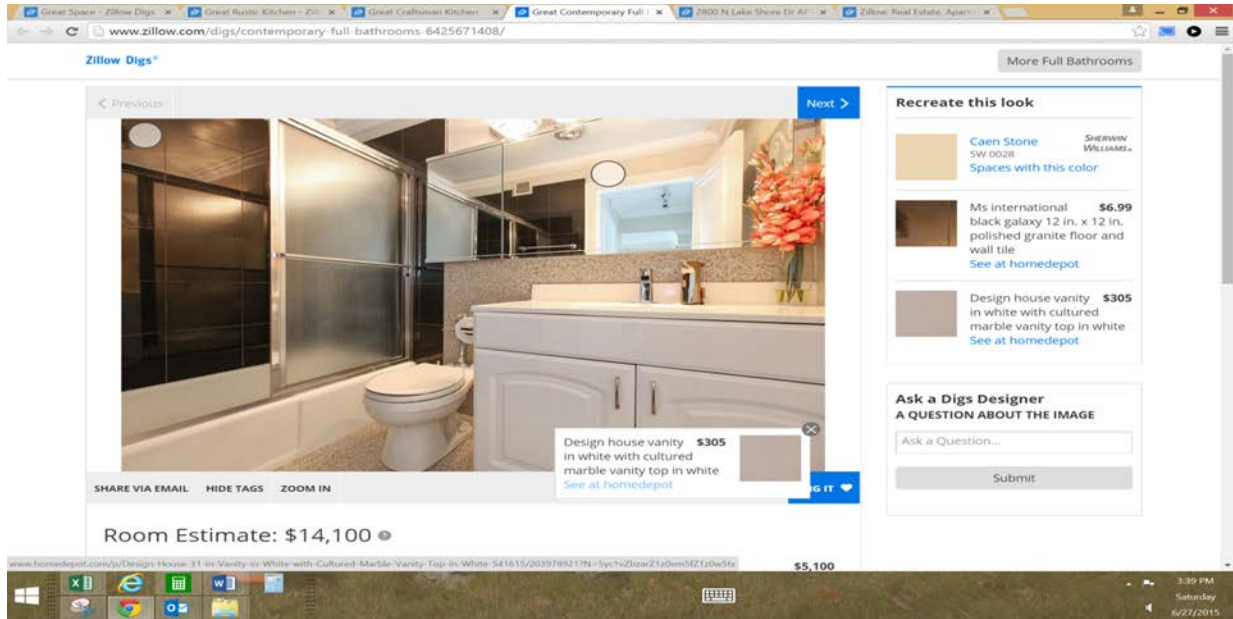
16           57.     Once a user clicks on that link, s/he is directed to the main landing page of the  
17 Digs Site where s/he sees a screen filled with medium-sized photographs of all different  
18 elements of home design. The user can scroll through thousands upon thousands of  
19 photographs grouped by Zillow to depict various elements of home design—everything from  
20 roofs to bathroom fixtures to kitchen tables, to chandeliers to dining room chairs to marble  
21 countertops. For example:  
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58. A menu on the left side of the Digs landing page allows the user to refine their search in various ways. For example, a user can search for only “kitchens” or only items in a “mid-range” budget, or only items in the “art deco” style.” The top of the page also has a “search box” which allows users to enter their own search terms.

59. The user can click on the images to view larger versions which appear centered on a new screen page. Whenever a user clicks to view an enlarged photograph, s/he becomes the target of paid advertisements that have absolutely nothing to do with the marketing of the homes depicted in the photographs. These advertisements appear in at least two different forms on the Digs website, both of which appear in the following screenshot.





60. First, Zillow has affixed small bubbles to targeted areas of many of the enlarged photographs, indicating where an advertised product can be seen in the image. For example, a picture of a bathroom might have bubbles marking the cabinets, the paint on the wall and tile in the shower. When a user clicks on the bubble, a box appears showing the name of the product, the price and a link to where users can buy the product directly from a vendor.

61. Second, to the right of the enlarged photo, under the heading “Recreate this look”, Zillow posts a list of vendors with prices and links to those vendors’ websites, advertising and promoting those vendors.

62. Zillow has publicly admitted that it has hired a team of designers to go through each photograph individually and insert the advertising bubbles, which it calls “product tags,” onto the copyright-protected photographs.<sup>3</sup> Zillow then sells advertising to vendors based on items that are depicted in the particular photograph, and the advertising appears each time future users see the photograph on the Digs Site.

<sup>3</sup> March 18, 2015 Zillow Press Release, “From Inspiration to Realization: Zillow Digs Now Helps Consumers Find Products Similar to Those Featured In Popular Home Design Photos.” Available at <http://zillow.mediaroom.com/2015-03-18-From-Inspiration-to-Realization-Zillow-Digs-Now-Helps-Consumers-Find-Products-Similar-to-Those-Featured-In-Popular-Home-Design-Photos>.

1           63.     Zillow has carefully designed the Digs Site as a tool for it to sell advertising  
2 space, generating significant advertising revenue for itself from sources other than those trying  
3 to sell or rent out real estate. On information and belief, these features of the Digs Site have  
4 been intentionally designed to encourage browsing (and shopping). The more photographs on  
5 the site to browse, the longer users are likely to stay on the site, and thus Zillow can sell more  
6 ads at higher prices to vendors advertising the wares shown in the photographs.

7           64.     On information and belief, Zillow also uses a practice called Search Engine  
8 Optimization (“SEO”) so that Zillow’s links will be more prominently or more highly  
9 displayed in results on search engines such as Google. Having a large number of professional  
10 quality photographs on its site, regardless of whether those photographs are actually being used  
11 to market properties, necessarily increases Zillow’s ranking in search results. It has been  
12 publicly reported that “Zillow dominates SEO in the real estate space.”<sup>4</sup> On information and  
13 belief, Zillow touts its high-ranking position in web searches, driven in large part by its huge  
14 database of copyright-protected photographs owned by others, including VHT, to its investors  
15 and advertisers.

16           **J.     The Digs App**

17           65.     Separate and apart from the Digs platform on the Zillow website (“Digs  
18 Desktop”), Zillow also offers a mobile application by which users can access Digs on their  
19 iPads and iPhones (the “Digs App”). The Digs App provides functionality that is essentially  
20 the same as that of Digs Desktop, featuring the same types of advertisements, including both  
21 advertising bubbles and “recreate this look” links to vendor websites.

22           66.     In addition, the Digs App offers a game that users can play using the  
23 photographic images on Digs, called “Dueling Digs.” In the game, users are asked to pick their  
24 favorite example of an image from a particular category – for example, their favorite “cottage  
25 kitchen” – and Zillow displays two different photographs of kitchens from the Digs database;

26 \_\_\_\_\_  
27 <sup>4</sup> Rohin Dhar, “The SEO Dominance of Zillow,” Pricenomics.com (Nov. 6, 2014). Available at  
<http://priceonomics.com/theseodominanceofzillow/>.

1 the user is invited to eliminate whichever image she likes the least and the remaining image is  
2 the “winner” of the “duel.” The rejected image is automatically replaced with a new image  
3 which again faces off against the “winning” image. After several rounds of round-robin, the  
4 tournament ends and the user is invited to type comments into a dialogue box explaining their  
5 choice, or to “share” their “favorite” with other users.

6 67. The “Dueling Digs” game provides no opportunity whatsoever for users to view  
7 the underlying real estate listings from which the copyright-protected photographs have been  
8 taken. And like the rest of the Digs Site, the game has nothing whatsoever to do with  
9 marketing the underlying properties. It serves only as a means to keep people using the Digs  
10 App, remaining in the Zillow online universe, and thereby increasing the number of eyeballs  
11 for which Zillow can charge its advertisers. Indeed, Zillow itself has publicly boasted that “the  
12 Zillow Digs iPad App experiences 10 times the page views per session versus the desktop.”<sup>5</sup>

13 68. On information and belief, every time one of VHT’s copyrighted photographs  
14 appears on the Digs App, Zillow makes and distributes another copy of the infringing  
15 photograph.

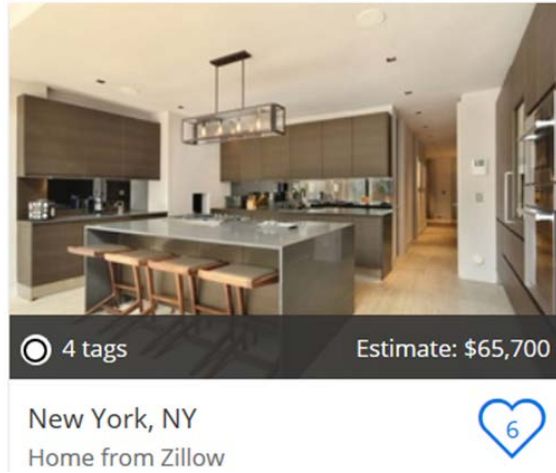
16 **K. Zillow’s Involvement and Control of Postings on the Digs Website**

17 69. On information and belief, when Zillow launched Digs, it initially populated the  
18 Digs Site with photographs from the Listing Site. Thus, for more than a year, the vast majority  
19 of the photographs on the Digs Site were selected, copied and displayed by Zillow for uses that  
20 it knew or should have known were outside the scope of the limited license the listing agents  
21 and brokers had to use those photographs.

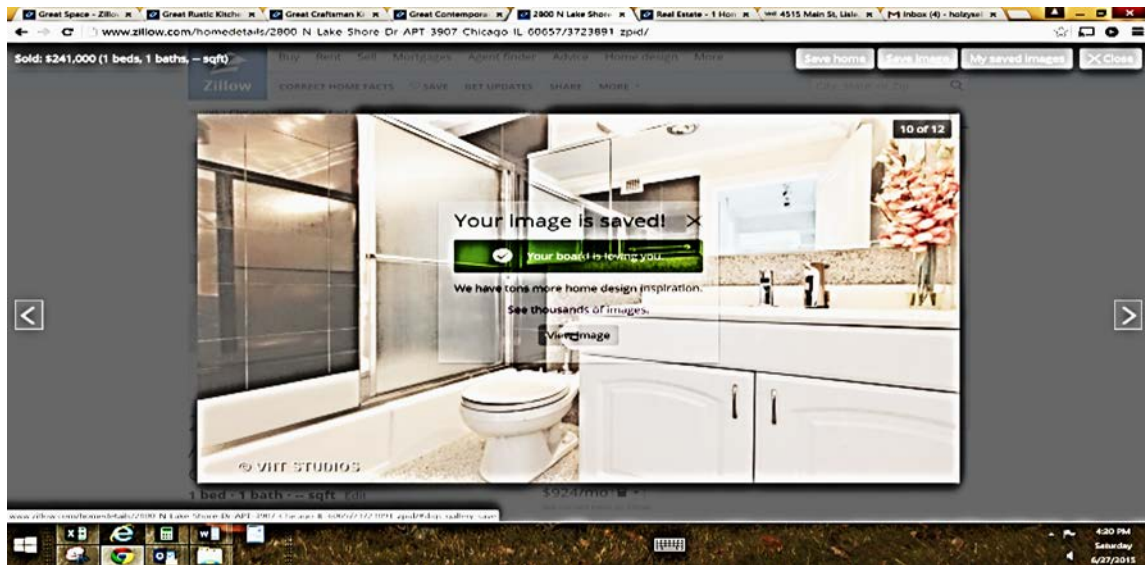
22 70. At some point in mid to late 2014, *after* VHT complained to Zillow in writing  
23 that its practice of including VHT-owned photographs on the Digs Site constituted copyright  
24 infringement, on information and belief, Zillow began encouraging users of its Listing Site to  
25 add photographs to the Digs Site. However, some of the photographs on the Digs Site are still  
26

27 <sup>5</sup> May 15, 2013 Zillow Press Release, “Zillow Digs’ User-Generated Content Drives Rapid Growth.” Available at <http://zillow.mediaroom.com/2013-05-15-Zillow-Digs-User-Generated-Content-Drives-Rapid-Growth>.

1 designated “Home From Zillow,” suggesting that Zillow itself is still involved in selecting and  
2 posting some of the infringing photographs and/or that the images Zillow posted before it  
3 started encouraging user posts remain on the site to this day. *E.g.:*



71. Since the latter part of 2014, when a user views a photograph on the Listing Site,  
s/he is presented with a button marked “Add to Digs” or “Save” or “Save Image.” If the user  
clicks on that button, the photograph is then saved directly to their “My Digs” board on the  
Digs Site. Users can also save images that are already part of the Digs database to their  
personal “My Digs” boards by clicking a button marked “Dig it.”



1           72.     On information and belief, once a user has saved a photograph from the Listing  
2 Site to their Digs board, that image is tagged by Zillow with Digs description tags (e.g., “living  
3 room,” “lamps,” “art deco”) and becomes part of the database of images that is available to all  
4 users who are browsing on the Digs Site. If the user clicks on one of the description tags, s/he  
5 is directed to another screen page with still more photographs of other items in that same  
6 product category.

7           73.     On information and belief, the photographs added to the Digs Desktop by users  
8 and/or by Zillow itself are copied and then displayed with corresponding advertising, on the  
9 Digs App.

10          74.     On both the Digs Desktop and the Digs App, Zillow has the right and ability to  
11 control what the users post, and actively induces them to post photographs by providing them  
12 with prominently placed buttons urging them to save every photograph, even photographs of  
13 homes that have already been sold, and exhorting users to “keep filling up your board,” and  
14 reminding them that “tons more” images are available.

15          75.     Since Zillow knows that the Listing Site contains tens of thousands of VHT-  
16 owned images and that VHT has licensed the use of those photographs solely for the marketing  
17 of the subject properties, these exhortations to users are blatant invitations to post infringing  
18 content. Indeed, Zillow even brags in the “About” section of its Listing Site that it features  
19 photographs of “homes not currently on the market,” so by inviting users to take photographs  
20 from its Listing Site and post them to the Digs Site, Zillow is specifically inducing users to post  
21 material that Zillow knows is infringing.

22          76.     Zillow continues to take active steps to monetize the specific infringing content,  
23 even when posted by users. On information and belief, it does not passively host those images,  
24 but rather actually goes through the photographs, either by human review or an automated  
25 program designed for the purpose or some combination of the two, to cull the ones appropriate  
26 for inclusion in the Digs database and to categorize them with its “tags” so that they are  
27 searchable by pre-defined groups on the Digs Site, and can be sold to advertisers based on that

1 categorization. In addition, Zillow has publicly admitted it uses a team of human designers to  
2 go through the photographs and superimpose the “bubbles” on at least some of the photographs  
3 so that users will click on them to see the prices for goods depicted in the photographs, along  
4 with links to vendor websites where they can purchase those goods.

5 77. On information and belief, the advertising Zillow sells on Digs and which  
6 appears in the bubbles and alongside the images, is specifically matched to the particular  
7 photograph. That is to say, a picture of a kitchen will feature advertisers from vendors selling  
8 kitchen wares in the area where the user is located; a dining room picture will feature ads for  
9 sellers of home furnishings in that same area, etc.

10 78. On information and belief, vendors are more likely to advertise their goods and  
11 services in connection with photographs that are of sufficient aesthetic quality to induce users  
12 to copy or recreate the look depicted in those photographs. The more high-end the vendor, the  
13 greater the need for eye-catching, high-quality photographs, and the more money Zillow can  
14 charge vendors for related advertising.

15 79. Therefore, Zillow’s profits from the advertising it sells on Digs are *directly*  
16 attributable to the use of *specific* photographs owned by VHT.

17 **L. Specific Acts of Infringement Identified to Date and Likelihood That**  
18 **Discovery Will Reveal Significant Numbers of Additional Infringements**

19 80. On information and belief, there are tens of thousands of photographs on the  
20 Digs Site at any given time, a substantial portion of which are photographs that were submitted  
21 to Zillow for use on the Listing Site in order to market the properties they depict. Given VHT’s  
22 leading role in creating and licensing to listing agents and brokers a significant number of the  
23 photographs that end up on Zillow’s Listing Site and the professional quality of the VHT  
24 images, a large number of VHT’s images are likely being used or have been used on the Digs  
25 Site over the past three years and continuing to date.

26 81. VHT has attempted to determine just how many of its photographs have been  
27 infringed by Zillow and/or by users on the Digs Site by comparing a sampling of the

1 photographs it owns to a sampling of the photographs appearing on the Digs Site. As of the  
2 date of this filing, VHT has been able to identify 316 of its photographs displayed on the Digs  
3 website (the “Infringed Images”). Annexed hereto as **Exhibit 10** is a spreadsheet listing each  
4 of the specific Infringed Images identified to date, the copyright application disc on which that  
5 Infringed Image was submitted to the Copyright Office for registration, and a URL at which  
6 that Infringed Image appears or has appeared during the past three years on the Digs Site.

7 82. VHT cannot identify the total population of VHT-owned photographs that  
8 Zillow or Zillow Digs users have infringed on the Digs Site or know when they were posted or  
9 by whom, without access to Zillow’s back-end systems and databases supporting the Digs Site.  
10 Given the small sampling to date and the use by Zillow of multiple copies of the same image, it  
11 is clear that VHT’s initial search has revealed but a small fraction of the number of VHT  
12 images used on the Digs Site.

13 83. VHT intends to conduct focused discovery of Zillow’s databases and records  
14 relating to the reproduction, public display and distribution of VHT’s registered copyrighted  
15 photographs on the Digs Site. Given the number of Infringed Images that VHT’s limited  
16 search to date has identified, VHT anticipates that this process will reveal widespread use of  
17 thousands of its registered copyrighted photographs on the Digs Desktop and separately on the  
18 Digs App, and therefore will evidence a vast number of separate acts of infringement. After  
19 identifying the full scope of this infringement, VHT intends to amend its complaint to add these  
20 additional infringements.

21 **CLAIMS FOR RELIEF**

22 **COUNT I**

23 **(Direct Copyright Infringement)**

24 84. VHT incorporates by reference paragraphs 1 through and including 83 set forth  
25 hereinabove, as if the same were fully set forth herein.

26 85. VHT is, and at all relevant times has been, the owner of all copyright interest in  
27 and to each of its works at issue and the subject of pending registration issuance, and has the

1 exclusive rights under 17 U.S.C. § 106 to, *inter alia*, reproduce, publicly display and distribute  
2 those works, and to create derivative works therefrom.

3 86. Each of VHT's works at issue is copyrightable subject matter under 17 U.S.C.  
4 §102(a)(5).

5 87. VHT has complied in all respects with the provisions of the Copyright Act and  
6 all regulations thereunder, including timely applications to register its works and the copyrights  
7 therein are valid and subsisting.

8 88. Beginning at a time currently unknown, and continuing through the present,  
9 defendants, without the permission or consent of VHT, and without authority, have:

- 10 a. made, caused to be made, and purported to authorize the making of  
11 unauthorized copies of the Infringed Images;
- 12 b. publicly displayed and purported to authorize the public display of  
13 unauthorized copies of the Infringed Images;
- 14 c. distributed and purported to authorize the distribution of the Infringed  
15 Images; and
- 16 d. created unauthorized derivative works.

17 89. Defendants' conduct in connection with the Digs Site (including both Desktop  
18 Digs and the Digs App) constitutes direct infringement of VHT's exclusive rights under the  
19 Copyright Act to reproduce, publicly display and distribute the Infringed Images, and to create  
20 derivative works therefrom under 17 U.S.C. §§ 106(1), (2), (3) and (5).

21 90. Defendants' acts of direct infringement have been willful, intentional, and  
22 purposeful, in wholesale disregard of and indifferent to the rights of VHT.

23 91. As a direct and proximate result of defendants' infringement of VHT's  
24 copyrights and exclusive rights under the Copyright Act, VHT is entitled to the maximum  
25 statutory damages for each photograph infringed on each of the Digs Desktop and the Digs  
26 App, under and pursuant to 17 U.S.C. § 504(c), for those of the Infringed Images first infringed  
27 by Zillow after the effective date of VHT's registration thereof.









1 109. Defendants' acts have been willful, intentional, and purposeful, in wholesale  
2 disregard of and indifferent to the rights of VHT.

3 110. As a direct and proximate result of defendants' contributory infringement of  
4 VHT's copyrights and exclusive rights under the Copyright Act, VHT is entitled to the  
5 maximum statutory damages for each photograph infringed on each of the Digs Desktop and  
6 the Digs App, under and pursuant to 17 U.S.C. § 504(c) for those of the Infringed Images first  
7 infringed by Zillow after the effective date of VHT's registration thereof.

8 111. Alternatively, at VHT's election, pursuant to 17 U.S.C. § 504(b), for all  
9 Infringing Images, and for any images first infringed by Zillow prior to VHT's registration  
10 thereof, VHT is entitled to its actual damages plus all of defendants' profits attributable to the  
11 infringements, in an amount to be proved at trial.

12 112. Defendants' conduct is causing, and unless enjoined by this Court, will continue  
13 to cause VHT great and irreparable injury that cannot be fully compensated or measured in  
14 money. VHT has no adequate remedy at law.

15 **COUNT IV**

16 **(Vicarious Copyright Infringement)**

17 113. VHT incorporates by reference paragraphs 1 through and including 83 and 85  
18 through and including 88 set forth hereinabove, as if the same were fully set forth herein.

19 114. If and to the extent VHT's photographs were posted to the Digs Site (including  
20 both Desktop Digs and the Digs App) by Zillow Digs users, those users have infringed and are  
21 infringing VHT's rights in its registered works by, *inter alia*, posting infringing copies of  
22 VHT's copyrighted works onto the Digs Site, distributing and publicly displaying such  
23 infringing copies, all without authorization. Zillow Digs users are consequently directly  
24 infringing VHT's exclusive rights of reproduction, distribution and public display under 17  
25 U.S.C. §§ 106(1), (3) and (5).

26 115. Defendants are vicariously liable for the infringing acts of Zillow Digs users.  
27 Defendants provide a forum, *i.e.* the Digs Site, to which users can post and do post and display

1 the Infringing Images. Defendants have both the right and the ability to supervise and/or  
2 control Digs users' posting and display of infringing conduct, and to prevent Digs users from  
3 infringing VHT's copyrighted works and purposefully and wantonly fail to do so.

4 116. Defendants significantly and directly benefit from the infringement by Zillow  
5 Digs users. On information and belief, the availability of the additional infringing copyrighted  
6 works on the Digs Site (in addition to the images posted by Zillow itself) acts as a substantial  
7 added draw, attracting more users to the Digs Site and increasing the amount of time they  
8 spend there once they visit, optimizing search engine results, and maximizing Zillow's  
9 revenues therefrom.

10 117. On information and belief, defendants derive substantial advertising revenue tied  
11 directly to the volume of traffic they are able to attract to the Digs Site as the direct and  
12 proximate result of the number, quality, popularity, and variety of copyrighted images,  
13 including the Infringed Images, which appear on the site.

14 118. Defendants' acts of infringement have been willful, intentional, and purposeful,  
15 in wholesale disregard of and indifferent to the rights of VHT.

16 119. As a direct and proximate result of defendants' infringement of VHT's  
17 copyrights and exclusive rights under the Copyright Act, VHT is entitled to the maximum  
18 statutory damages for each photograph infringed on each of the Digs Desktop and Digs App,  
19 under and pursuant to 17 U.S.C. § 504(c) for those of the Infringed Images first infringed by  
20 Zillow after the effective date of VHT's registration thereof.

21 120. Alternatively, at VHT's election pursuant to 17 U.S.C. § 504(b) for all  
22 Infringing Images and for any images first infringed by Zillow prior to VHT's registration  
23 thereof, VHT is entitled to its actual damages plus all of defendants' profits attributable to the  
24 infringements, in an amount to be proved at trial.

25 121. Defendants' conduct is causing, and unless enjoined by this Court, will continue  
26 to cause VHT great and irreparable injury that cannot be fully compensated or measured in  
27 money. VHT has no adequate remedy at law.

**PRAYER FOR RELIEF**

1           WHEREFORE, VHT prays for judgment against defendants and each of them as  
2 follows:

3           A.     For a declaration that defendants have infringed VHT’s copyrights in each of the  
4 Infringed Images which appear on the Digs Site, both directly and secondarily, both in Desktop  
5 Digs and the Digs App.

6           B.     For a permanent injunction requiring that defendants and their agents, servants,  
7 employees, officers, attorneys, successors, licensees, partners and assigns, and all persons  
8 acting in concert or participation with each or any of them, cease directly or indirectly  
9 infringing, or causing, enabling, facilitating, encouraging, promoting, inducing or participating  
10 in the infringement of any of VHT’s copyrights or exclusive rights protected by the Copyright  
11 Act, whether now in existence or hereafter created.

12           C.     For maximum statutory damages including such damages for willful  
13 infringement for each separate act of infringement in each of the Digs Desktop and the Digs  
14 App, pursuant to 17 U.S.C. § 504(c).

15           D.     Alternatively, at VHT’s election pursuant to 17 U.S.C. § 504(b) and/or for each  
16 VHT-owned image or derivative thereof first posted, reproduced, displayed, or distributed on  
17 the Digs Site prior to the effective date of VHT’s registration thereof, actual damages plus  
18 defendants’ infringing profits attributable to the infringements, in an amount to be proved at  
19 trial.

20           E.     For VHT’s costs, including its reasonable attorneys’ fees, pursuant to 17 U.S.C.  
21 § 505.

22           F.     For pre- and post-judgment interest according to law.

23           G.     For such other and further relief as this Court may deem just and proper.  
24  
25  
26  
27

1 DATED this 8<sup>th</sup> day of July, 2015.

2  
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