

SHEEHAN & ASSOCIATES, P.C.

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United States District Court
Eastern District of New York

1:19-cv-06733

Andrew Kim, John Doe, individually and on
behalf of all others similarly situated,

Plaintiffs,

- against -

Trulia, LLC,

Defendant

Complaint

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

1. Trulia, LLC (“defendant”) operates one of the nation’s leading real estate website which purports to make the process of buying and selling a home easier and more transparent.
2. However, defendant’s practices are unfair and deceptive towards traditional real estate brokers and listing agents and cause consumer confusion, economic harm and deception.
3. Defendant’s actions are equivalent of buying a billboard to advertise the listing of another real estate broker and including a picture of the property and telephone number for prospective buyers to call.
4. Defendant does not request specific consent of the listing agent or firm prior to promoting their property with its Premier Agents.
5. Defendant’s practices make it less likely that a prospective homebuyer is able to

successfully contact the listing agent instead of the Premier Agents.

6. When a prospective homebuyer searches for open houses in their desired area, the first few search engine results will be listings on defendant's website.

7. When a prospective homebuyer clicks through to a property listing, defendant's website offers them prospective two options: (1) contacting a Premier Agent who they believe to be the listing agent on the property and/or (2) submission of their contact information which gets transmitted not to the listing agent but to defendant's employees who screen the lead through phone, text message or email, prior to forwarding it to a Premier Agent.

8. Since Premier Agents have signed up with defendant, their contact information and their names and numbers are highlighted, along with their recent sales and a picture.

9. In contrast, the listing agent information looks similar to a website that ceased updating in 2007 – gray, non-inviting and lifeless.

10. The prospective homebuyer will eventually get contacted by the Premier Agent and will be unable to provide the information requested because the Premier Agents have no actual connection to the property being advertised, other than having paid defendant to be presented prominently next to the property.

11. In fact, Premier Agents have economic incentives to direct, and do direct, their leads to properties where they, not the prospective homebuyers, get a better financial arrangement.

12. These arrangements entail attempting to induce prospective purchasers into signing Buyer's Agent Agreements to maximize their commission.

13. The laws which defendant has violated exist to protect the public from inept, inexperienced or dishonest persons who might perpetrate or aid in the perpetration of frauds in the brokerage and sale of real estate.

14. The relevant laws require conspicuously and adequately disclosing the listing agents to prospective buyers.

15. The purpose of this is to prevent prospective buyers from falling into the clutches of real estate agents who have no interest in selling them the property they viewed and no relation to or knowledge about the listing for which they submitted an inquiry.

Jurisdiction and Venue

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

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

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

19. Plaintiff Andrew Kim is a citizen of New York.

20. Defendant Trulia, LLC is a Delaware limited liability company with a principal place of business in San Francisco, San Francisco County, California and upon information and belief, at least one member of defendant is not a citizen of New York.

21. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

22. Venue is proper because plaintiffs' and many class members reside in this District and defendant does business in this District and State.

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

Parties

24. Plaintiff Andrew Kim is a citizen of Queens County, New York.

25. Plaintiff John Doe Real Estate Broker (“Plaintiff Broker”) has been a licensed real estate broker for at least the past three years, who oversees six real estate sales agents.

26. Plaintiff Broker also works as a sales agent obtaining listing from the sellers and showing properties to buyers.

27. During the class period, plaintiffs were engaged in the brokerage and sale of real estate.

28. Properties for which plaintiffs were listing agents were placed on defendant’s website without adequate, conspicuous and lawful disclosures designating them as the listing agents.

29. Plaintiffs have not utilized defendant’s services, which has caused them to suffer financial loss.

30. As a result of Defendant’s conduct, plaintiffs have lost numerous potential customers and will continue to lose customers and money until the illegal and deceptive practice is put to an end.

31. Defendant is a Delaware limited liability company with a principal place of business in San Francisco, San Francisco County, California.

32. Defendant is one of the largest real estate websites in the country in terms of average visitors per month.

Class Allegations

33. The class will consist of all real estate brokers in New York.

34. Common questions of law or fact predominate and include whether the

representations on defendant's website were likely to harm plaintiffs, the general public and if plaintiffs and class members are entitled to damages.

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

36. Plaintiffs are adequate representative because their interests do not conflict with other members.

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

38. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

39. Plaintiffs' counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

40. Plaintiffs seek class-wide injunctive relief because the practices continue.

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

41. Plaintiffs incorporate by reference all preceding paragraphs.

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

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

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

45. Defendant's actions have a detrimental effect on licensed real estate brokers and those working for them since defendant's business model is based on Premier Agents paying to be

listed on properties which they are not the listing agents and obscuring the identities and contact information for the listing agents.

New York GBL § 340 (“Donnelly Act”)

46. Plaintiffs incorporate by reference all preceding paragraphs.
47. The relevant market for real estate broker services is the state of New York.
48. Defendant enables and promotes the Premier Agents to do indirectly what it cannot do directly – advertise to and solicit prospective homebuyers based on the listings supplied by other real estate brokers, without permission.
49. When a prospective homebuyer clicks on a webpage connected with a property listing and supplies their contact information, this information is directed to defendant’s employees, who screen them.
50. Defendant’s employees then forward the leads to the Premier Agents.
51. This is contrary to standard advertising practices purchasers who have an arms-length relationship with the platform where they buy advertising.
52. Defendant fails to conspicuously disclose these facts to prospective purchasers to benefit the Premier Agents.
53. Though the Premier Agents have a cloak of independence from defendant, this is belied by their relationship.
54. Defendant selects Premier Agents from real estate brokers based on factors such as the number of homes sold within the previous year.
55. Defendant maintains the unilateral right to terminate Premier Agents and otherwise control or direct their conduct through tacit or other means.
56. These factors are the hallmarks of an employer-employee relationship with the

Premier Agents acting as real estate brokers under defendant.

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

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

59. Prospective homebuyers are induced by defendant's employees to enter into Buyer's Agent agreements which typically include higher fees for the agent and result in less money spent on purchasing a home.

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

61. The Premier Agents, in turn, supply defendant with the monthly advertising revenues needed to consolidate control in the real estate industry, to the detriment of licensed real estate brokers and those operating for such licensed brokers.

Unfair Competition

62. Plaintiffs incorporate by reference all preceding paragraphs.

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

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

65. Defendant's bad faith is evident by its efforts at promoting the "Premier Agent" program at the expense of listing agents, in knowing violation of law.

Unjust Enrichment

66. Plaintiffs incorporate by reference all preceding paragraphs.

67. Defendant obtained benefits and monies because they profited off the labor and

expenses of listing agents, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiffs demand a jury trial on all issues.

WHEREFORE, Plaintiffs pray for judgment:

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

Dated: November 28, 2019

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

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E.D.N.Y. # SS-8533

S.D.N.Y. # SS-2056

1:19-cv-06733
United States District Court
Eastern District of New York

Andrew Kim, John Doe, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

Trulia, LLC,

Defendant

Complaint

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Fax: (516) 234-7800

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

Dated: November 28, 2019

/s/ Spencer Sheehan
Spencer Sheehan

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Andrew Kim, John Doe, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) SHEEHAN & ASSOCIATES, P.C., 505 NORTHERN BLVD STE 311 GREAT NECK NY 11021-5101, (516) 303-0552

DEFENDANTS

Trulia, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332. Brief description of cause: Unfair competition, false advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

DATE 11/28/2019 JUDGE SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Spencer Sheehan, counsel for plaintiffs', do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/Spencer Sheehan

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Andrew Kim, John Doe, individually and on
behalf of all others similarly situated,

Plaintiff(s)

v.

Trulia, LLC

Defendant(s)

Civil Action No. 1:19-cv-06733

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Trulia, LLC
c/o The Corporation Trust Company
CORPORATION TRUST CENTER 1209 ORANGE ST
WILMINGTON, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: SHEEHAN & ASSOCIATES, P.C., 505 NORTHERN BLVD STE 311 GREAT
NECK NY 11021-5101, (516) 303-0552

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk