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THE HONORABLE JAMAL N. WHITEHEAD

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

COSTAR GROUP, INC., AND
COSTAR REALTY INFORMATION, INC.,

Plaintiffs,

v.

ZILLOW GROUP, INC., AND
ZILLOW, INC.,

Defendants.

Case No. 2:25-cv-02591-JNW

**ZILLOW'S MOTION TO DISMISS
COSTAR'S COMPLAINT**

NOTE ON MOTION CALENDAR:
April 24, 2026

ORAL ARGUMENT REQUESTED

1 Defendants Zillow Group, Inc. and Zillow, Inc. (collectively, “Zillow”) respectfully move
2 this Court to dismiss with prejudice the Complaint of Plaintiffs CoStar Group, Inc. and CoStar
3 Realty Information, Inc. (collectively, “CoStar”) under Federal Rule of Civil Procedure 12(b)(6)
4 for failure to state a claim. Zillow certifies that counsel for Zillow, Brian Kramer, and counsel for
5 CoStar, Sarah Tomkowiak, met and conferred via videoconference on February 10, 2026, in a
6 good faith effort to resolve the issues raised in the present motion.

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1 **I. INTRODUCTION**

2 While styled as a copyright infringement action, this case is just the latest example of
3 CoStar weaponizing litigation to stifle competition and innovation, untethered from any legitimate
4 legal concern. Zillow will not allow CoStar to use the same playbook in this case.

5 Zillow was founded in Seattle in 2006 and remains headquartered there. From the start,
6 Zillow has sought to empower consumers by expanding access to information, tools, and choice
7 in a residential real estate market long characterized by opacity and gatekeeping. Today, among
8 other offerings, it operates a growing and dynamic rentals platform that helps property managers
9 connect with prospective tenants, including by allowing those property managers to upload
10 photographs of their listings. CoStar—the owner of Homes.com and Apartments.com—filed this
11 case because Zillow’s rapid growth, consumer-driven innovation, and superior product are
12 prevailing over CoStar’s long-standing dominance in the online residential rental market. Unable
13 to compete on the merits, CoStar now litigates to try and slow Zillow’s progress, at consumers’
14 expense.

15 From the start, CoStar’s lawsuit has flouted established procedures and protections for
16 service providers under the Digital Millenium Copyright Act (DMCA). *See* 17 U.S.C. § 512(c).
17 The DMCA provides standard procedures for copyright owners, like CoStar, to tell service
18 providers, like Zillow, when users have uploaded copyrighted images. If CoStar had sent a
19 takedown notice, Zillow could have and would have removed CoStar’s images; this dispute would
20 have been resolved before it was filed. Upon receiving CoStar’s Complaint, Zillow removed the
21 images identified in the exhibits and has been addressing any follow-up concerns raised by CoStar.
22 Under the DMCA framework put in place by Congress, takedowns are the standard operating
23 procedure for service providers like Zillow.

24 Instead of using this efficient and well-worn path, CoStar chose to file this action for direct
25 and vicarious copyright infringement. CoStar admits that Zillow’s and/or CoStar’s shared users—
26 not Zillow—upload CoStar images to Zillow’s website. Stuck with that admission, CoStar instead
27 alleges that Zillow should be held liable for “republishing” these images on its platform. But
28 here’s the thing: CoStar knows these claims depend on a defective legal theory that was rejected

1 by the Ninth Circuit in a similar case against Zillow that also involved copyrighted images
2 uploaded by users onto the Zillow platform. CoStar knows this effectively first-hand—as part of
3 its continued efforts to control the market, today CoStar *owns* the very company that sued Zillow
4 in that case.

5 CoStar has failed to plead volitional conduct, a foundational requirement for direct
6 copyright infringement. It has likewise failed to allege that Zillow had the practical ability to
7 identify CoStar-copyrighted images or that Zillow derived any direct financial benefit from the
8 alleged infringement, both essential elements of vicarious infringement. These deficiencies are
9 not technical or curable; they reflect the absence of any factual basis for CoStar’s claims. Zillow
10 respectfully requests that the Court dismiss CoStar’s Complaint in its entirety, with prejudice.

11 **II. BACKGROUND ON THE ZILLOW PLATFORM**

12 Zillow is a website that lists residential real estate for sale or rent. Zillow consists of
13 roughly 165 million individual property pages. Zillow allows owners and rental property
14 managers to “claim” property pages. Once an owner or property manager has claimed a page, they
15 may add property details, list the property for sale by owner, or list the property for rent. The
16 owner or property manager may later “release their claim” over the property page, which changes
17 the status of the page back to “unclaimed.”

18 If the owner or property manager of a claimed property page chooses to list that property
19 for rent, they may upload images and listing information. Rental listings will expire after a certain
20 number of days or can be ended by the property owner. Owners or property managers that upload
21 images and other listing content to the Zillow platform (1) grant Zillow a perpetual license to use,
22 reproduce, publicly display, distribute, and prepare derivative works of those materials and
23 (2) warrant they have the ownership rights necessary to grant such a license. In certain
24 circumstances, and in compliance with its terms of use, Zillow retains and displays listing
25 content—added by an owner or property manager to an active rental property listing—on the
26 property page after the owner or manager has released the page, i.e., when the page is “unclaimed.”
27 An owner or property manager that later claims a property page with listing content has the option
28 to keep or remove the content as well as to add their own listing content.

1 In addition to displaying property information, Zillow generates estimates of a home's
 2 market value and rental value. Zillow's Zestimate® home valuation model incorporates public,
 3 MLS, and user-submitted data, also taking into account home facts, location and market trends.
 4 Zillow's Rent Zestimate® tool similarly factors in publicly available data, comparable rental
 5 properties, and the market rental rates in the area, along with owner-updated home facts.

6 III. COSTAR'S ALLEGATIONS¹

7 Zillow has a thriving rental listing business. CoStar alleges that Zillow had gathered at
 8 least 2.2 million active rental listings and at least as many rental images in 2025. (*See* Compl. ¶ 56
 9 (Zillow claimed "2.2 million active rental listings by the end of the first quarter of 2025"), ¶ 74
 10 (Zillow "requires 'at least one high-quality photo of the rental property' for active listings.").
 11 Although CoStar alleges that "Zillow's infringement is on a massive scale" (Compl. ¶ 24), its
 12 Complaint connects CoStar's images to fewer than 5,600 property addresses. *See* Ex. A,
 13 Declaration of Brian M. Kramer ¶ 2 (attesting to summation of property addresses listed in Exhibit
 14 A to Complaint).

15 CoStar-copyrighted images were not reasonably identifiable by means of CoStar's logo
 16 watermark. CoStar alleges that Zillow did not "attempt to identify or remove CoStar-copyrighted
 17 images." (Compl. ¶ 76.) But CoStar also alleges that only "*about half* of the infringing
 18 photographs located on Zillow include[d] CoStar's watermark." (Compl. ¶ 77 (emphasis added).)
 19 None were alleged to have a traditional "©" copyright mark. Even for those watermarked images,
 20 CoStar does not allege that CoStar's watermarks indicated *copyright* protection, only CoStar
 21 "ownership" generally. (Compl. ¶ 23.) Further, CoStar alleges that its use of watermarks to
 22 identify ownership reflects only CoStar's "policy" rather than a rule. (Compl. ¶¶ 23, 46.) CoStar
 23 does not allege when that "policy" began, whether it is applied uniformly, or whether CoStar also
 24 watermarks images in which it does not hold a copyright.

25 CoStar has not alleged any volitional conduct by Zillow. CoStar alleges that "Zillow's
 26 customers may have uploaded or provided CoStar's photographs to Zillow's website" for

27 ¹ For this motion, Zillow accepts as true CoStar's allegation that it holds some form of registered
 28 copyright for the 47,000 photos identified in the complaint. References to CoStar's "copyrighted"
 works are not an admission that any asserted image is copyrighted.

1 “populating active property listings.” (Compl. ¶ 61.) CoStar does not identify any other source
2 who may have introduced CoStar’s images onto Zillow’s website. CoStar alleges that Zillow
3 republished user-uploaded images from active property listings to prepopulate “unclaimed
4 property pages” for multi-family properties. (Compl. ¶ 61.)

5 CoStar’s images did not cause renters and property managers to use Zillow’s paid services.
6 CoStar alleges that prepopulated listing content, as a whole, attracts users to “claim” unclaimed
7 property listings. (Compl. ¶¶ 63, 68.) But CoStar-copyrighted images, if present, are merely one
8 part of the content that makes up Zillow’s prepopulated “unclaimed property” listings, along with
9 rental content, descriptions, and images. (Compl. ¶ 63.) Further, CoStar does not allege that
10 Zillow makes any revenue when a user “claims” a property. (Compl. ¶¶ 63-64.) “Claiming” a
11 property is free. Instead, CoStar alleges that once a listing is claimed, Zillow offers its
12 advertisement services to property managers and generally makes available other rental services
13 to renters and property managers. (Compl. ¶¶ 52, 64, 65.)

14 To the extent that Zillow’s Zestimate® model and personalized recommendations utilize
15 images, CoStar admits that those features use the *data* from images, rather than any *copyright-*
16 *protected elements*. CoStar alleges that, because its images appear on Zillow, Zillow’s “valuation
17 model” “necessarily” uses data from those images to “calculate Zestimates for the properties on
18 its website.” (Compl. ¶¶ 89, 91.) Likewise, CoStar alleges that Zillow’s “machine learning
19 infrastructure” gets input data from CoStar images to “power its user recommendations.” (Compl.
20 ¶¶ 93-94.)

21 **IV. LEGAL STANDARD**

22 To survive a motion to dismiss, a plaintiff must plead “sufficient factual matter, accepted
23 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662,
24 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Where a complaint
25 pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between
26 possibility and plausibility of entitlement to relief.” *Id.* (internal quotations omitted). Conclusory
27 allegations, unlike well-pleaded allegations, “are not entitled to the assumption of truth.” *Id.*
28

1 **V. ARGUMENT**

2 CoStar fails to state any claim against Zillow. CoStar’s direct infringement claim fails
3 because it has not alleged the requisite volitional conduct *by Zillow*, i.e., that *Zillow* selected or
4 exercised control over any CoStar images on its platform, rather than Zillow’s platform performing
5 automated actions initiated by Zillow users. CoStar’s vicarious infringement claim fails for two
6 independent reasons. First, CoStar fails to allege that Zillow was able to identify—without the
7 benefit of a takedown notice—CoStar-copyrighted images to remove them from Zillow’s platform.
8 Second, CoStar fails to plausibly allege that Zillow received a direct financial benefit from
9 CoStar’s images.

10 **A. CoStar Fails to State a Claim for Direct Infringement Against Zillow**

11 CoStar fails to state a claim for direct infringement because it has not alleged that the
12 reproduction, display, distribution, and preparation of derivative works of CoStar-copyrighted
13 images was controlled by Zillow, rather than the automated actions of its platform. Direct
14 infringement requires “volitional conduct.” *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666
15 (9th Cir. 2017). The volitional conduct requirement is the “basic requirement of causation.” *Id.*
16 (quotation omitted). In other words, “*direct* liability must be premised on conduct that can
17 reasonably be described as the *direct cause* of the infringement.” *Id.* (quotation omitted). The
18 volitional conduct requirement “takes on greater importance in cases involving automated systems,
19 like the Zillow website,” and requires that the alleged infringer “exercised control (other than by
20 general operation of its website).” *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731, 732 (9th Cir.
21 2019) (cleaned up). “[A]utomatic copying, storage, and transmission of copyrighted materials,
22 when instigated by others, does not render [a website owner] strictly liable for copyright
23 infringement.” *Giganews*, 847 F.3d 657 (quoting *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d
24 544, 555 (4th Cir. 2004).

25 CoStar fails to allege that Zillow directly infringed CoStar’s rights of reproduction, public
26 display, distribution, or preparation of derivative works (Compl. ¶ 106) because CoStar fails to
27 plausibly allege volitional conduct and instead points to the general operation of Zillow’s website.
28

1 **1. CoStar Fails to Plausibly Allege Volitional Conduct to Support Its**
2 **Claim That Zillow Directly Infringed Its Right of Reproduction**

3 “Infringement of the reproduction right requires ‘copying *by* the defendant.’” *Fox Broad.*
4 *Co. v. Dish Network L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2014) (internal citation omitted). The
5 “automatic copying, storage, and transmission of copyrighted materials, when instigated by others,
6 does not render [a website] strictly liable for copyright infringement.” *Giganews*, 847 F.3d at 670
7 (quoting *CoStar*, 373 F.3d at 555) (finding that the district court correctly held no infringement of
8 the reproduction right). “[O]perating a system used to make copies at the user’s command does
9 not mean that the system operator, rather than the user, caused copies to be made.” *Fox Broad.*
10 *Co.*, 747 F.3d at 1067.

11 CoStar fails to make *any* definitive claim of copying or reproduction outside of its
12 conclusory allegation at the conclusion of its Complaint. (See Compl. ¶ 101 (“Zillow has copied
13 . . . CoStar’s copyrighted photographs”).) This conclusion is “not entitled to the assumption of
14 truth.” *Iqbal*, 556 U.S. at 679. The attenuated and scattershot allegations that CoStar does make
15 related to reproduction are addressed below.

16 **a. CoStar Fails to Plausibly Allege Zillow Republishes CoStar**
17 **Images to Unclaimed Property Pages**

18 CoStar makes a single, equivocal allegation that Zillow “republishes or uses” CoStar
19 images, uploaded by Zillow customers, “to populate unclaimed property pages.” (Compl. ¶ 61.)
20 But CoStar provides no factual support for this bare claim, as required by *Twombly/Iqbal*. (See,
21 *e.g.*, Compl. ¶¶ 15, 61, 63.) There are no details about the alleged republishing whatsoever, or any
22 facts showing that CoStar images “uploaded by Zillow’s customers to Zillow’s websites for
23 purposes of populating active property listings” were “republished” to unclaimed property pages.
24 CoStar also fails to allege which, if any, of the fewer than 5,600 property addresses purportedly
25 containing CoStar-copyrighted images correspond to unclaimed property pages. Absent such
26 facts, the Complaint does not plausibly support an inference that Zillow populated unclaimed
27 listings with content, as opposed to users populating those listings with content and later releasing
28 or “unclaiming” them.

1 CoStar’s allegations are further insufficient to support its “republish[ing]” allegation, as
 2 they only speculate about motives for copying. (*See, e.g.*, Compl. ¶ 49 (alleging that creating
 3 content for rental listings “takes significant time, effort, and money”); ¶ 63 (alleging populated
 4 pages “attract potential customers”).) “Where a complaint pleads facts that are merely consistent
 5 with a defendant’s liability, it stops short of the line between possibility and plausibility of
 6 entitlement to relief.” *Iqbal*, 556 U.S. at 678 (internal quotations omitted). CoStar’s unsupported,
 7 equivocal allegation that Zillow possibly republishes CoStar-copyrighted images to unclaimed
 8 property pages is inadequate.

9 **b. CoStar Fails to Plausibly Allege Volitional Conduct by Zillow**
 10 **“Republishing” CoStar Images**

11 CoStar fails to allege facts sufficient to show that any alleged republishing is volitional.
 12 Were the Court to credit CoStar’s conclusory allegation that Zillow “republishes or uses” CoStar
 13 images to populate unclaimed property pages, CoStar still does not allege, e.g., whether the alleged
 14 “republish[ing] or use[]” is done at the direction of the user, is automated through the Zillow
 15 platform, or is manually done by Zillow employees. Nor does CoStar allege that Zillow selected,
 16 altered, or otherwise exercised control over the user-uploaded images it allegedly “republished or
 17 used” to populate unclaimed property pages. Thus, CoStar has not plausibly alleged volitional
 18 conduct. *See Giganews*, 847 F.3d at 670 (vicarious infringement requires that a defendant
 19 “exercised control (other than by general operation of [its] service)”; *Zillow*, 918 F.3d at 733
 20 (finding that Zillow did not engage in volitional conduct because the user-uploaded photographs
 21 on the platform were not “selected” by Zillow).

22 **c. CoStar Fails to Plausibly Allege Volitional Conduct by Zillow**
 23 **Copying or Storing User-Uploaded Images**

24 CoStar alleges that Zillow’s users upload CoStar images for purposes of populating active
 25 property listings. (Compl. ¶ 61.) To the extent that a user “populating” a property listing involves
 26 copying (which CoStar does not allege), CoStar has not plausibly alleged volitional conduct, i.e.,
 27 that Zillow did anything beyond “operat[e] a system used to make copies at the user’s command.”
 28 *Fox*, 747 F.3d at 1067. For the same reason, CoStar’s allegation that CoStar images, uploaded by

1 Zillow users, were “stored in Zillow’s databases,” does not demonstrate volitional conduct.
 2 (Compl. ¶ 61); *Giganews*, 847 F.3d at 670 (“automatic copying, storage, and transmission of
 3 copyrighted materials, when instigated by others, does not render [a website owner] strictly liable
 4 for copyright infringement” (internal citation omitted)).

5 **d. CoStar Fails to Plausibly Allege Volitional Conduct by Zillow**
 6 **Monitoring Images for Possible Removal**

7 Monitoring images “does not amount to ‘copying,’ nor does it add volition to [defendant’s]
 8 involvement in storing the copy.” *CoStar*, 373 F.3d at 555. In *CoStar*, LoopNet employees
 9 reviewed each user-submitted photograph for the purpose of blocking photographs “that do not
 10 depict commercial real estate” or “with obvious signs that they are copyrighted by a third party.”
 11 The court reasoned that this screening actually “prevents users from duplicating certain
 12 photographs” and imposed no liability for direct infringement. *Id.* at 556 (affirming summary
 13 judgment of no direct infringement). Here, per CoStar’s allegations, Zillow is doing even less.
 14 CoStar does not allege review of every image, only that Zillow “monitors and flags images for
 15 removal.” (Compl. ¶ 76.) And alleged monitoring by Zillow does not include monitoring for
 16 copyrighted images, only “images that are ‘irrelevant’ to a property, ‘do not accurately represent
 17 the’ property, or ‘contain explicit or offensive material, personal information, or discriminatory
 18 content.’” (*Id.*) Zillow’s monitoring of images does not satisfy the volitional conduct element for
 19 direct infringement.

20 Because CoStar fails to allege any volitional conduct by Zillow, its claim for direct
 21 infringement of CoStar’s reproduction right should be dismissed.

22 **2. CoStar Fails to Plausibly Allege Volitional Conduct to Support Its**
 23 **Claim That Zillow Directly Infringed Its Right of Public Display**

24 CoStar fails to allege that the display of images was caused by Zillow, rather than by the
 25 users who uploaded and later accessed them. The public display right is not infringed by
 26 “passively storing material at the direction of users in order to make that material available to other
 27 users upon request.” *Giganews*, 847 F.3d at 668 (quoting *CoStar*, 373 F.3d at 555) (affirming
 28 district court’s dismissal of display rights-based infringement claim); *see also Zillow*, 918 F.3d at

1 737 (finding no jury could have found that Zillow violated VHT’s display right because “the only
2 display that occurred was triggered by the user”).

3 CoStar admits that users select and upload the images on Zillow’s active property listings.
4 (See Compl. ¶¶ 6, 61.) Even users who claim “unclaimed” listings decide whether to keep,
5 remove, or add to any prepopulated images for the active listing. (See Compl. ¶¶ 68, 75.) Thus,
6 with respect to the display of active property listings, CoStar fails to allege volitional conduct by
7 Zillow because “the materials posted are of a type and kind selected by the [user] and at a time
8 initiated by the [user].” *CoStar*, 373 F.3d at 555 (affirming summary judgment of no direct
9 infringement).

10 For Zillow’s unclaimed, prepopulated listings, CoStar alleges that “Zillow itself builds
11 ‘property pages’ for ‘unclaimed’ properties.” (Compl. ¶ 63.) But CoStar once again admits that
12 the images in those listings were uploaded by Zillow’s users. (Compl. ¶ 61.) As detailed above,
13 CoStar provides *no* factual support for its claim that Zillow “republishes or uses” user-uploaded
14 images to populate unclaimed property listings (Compl. ¶ 61), nor has it plausibly alleged
15 volitional conduct for any such republishing or use. *See supra* Sections IV.A.1.a and b.

16 CoStar’s allegation that Zillow “rearrang[es] images to make listings more attractive”
17 (Compl. ¶ 16) does not plausibly allege the volitional conduct required for direct infringement of
18 its display right. Rather, CoStar alleges that Zillow “takes an active role” in curating all (2.2
19 million) of Zillow’s rental listings by analyzing each listing’s images and rearranging them to
20 “generate the highest number of contacts.” (Compl. ¶ 75; *see also id.* ¶ 56 (alleging 2.2 million
21 active rental listings by the end of the first quarter of 2025).) This does not allege that Zillow is
22 manually rearranging images for 2.2 million listings, and the fact that Zillow’s platform does this
23 automatically does not qualify as “volitional conduct.” *Zillow*, 918 F.3d at 738 (finding that
24 Zillow’s production of cached copies of images, “a process that automatically trims or pads images
25 whose height and width did not match the target resolution . . . does not amount to volitional
26 conduct”); *see also White v. DistroKid, LLC*, 766 F. Supp. 3d 451, 461 (S.D.N.Y. 2025) (“the
27 reformatting of a song file does not necessarily indicate human involvement or other volitional
28 conduct”). Regardless of the order in which Zillow displays the user-uploaded images, “the

1 materials posted are of a type and kind selected by the [user].” *CoStar*, 373 F.3d at 555 (finding
2 no volitional conduct and affirming judgment of no direct infringement).

3 Nowhere does CoStar allege that Zillow engaged in volitional conduct in displaying
4 CoStar-copyrighted images, whether on active listings or unclaimed property pages. Its claim for
5 direct infringement of CoStar’s display right fails as a matter of law.

6 **3. CoStar Fails to Plausibly Allege Volitional Conduct to Support Its**
7 **Claim That Zillow Directly Infringed Its Right to Distribute**

8 CoStar’s allegation that Zillow is sending “multifamily listings—along with CoStar’s
9 photographs—to its partner sites, Redfin and Realtor.com,” as well as Redfin’s “partner websites,”
10 Rent.com and ApartmentGuide.com, also fails to move the needle. (Compl. ¶¶ 14, 82.) There is
11 no direct infringement of a distribution right absent an allegation that “distribution of the
12 copyrighted material did not happen automatically.” *Long v. Dorset*, 854 F. App’x 861, 863 (9th
13 Cir. 2021) (cleaned up) (citation omitted); *see also Giganews*, 847 F.3d at 669. Distribution to
14 other websites is not volitional where it occurs automatically and without human involvement by
15 the defendant. *DistroKid*, 766 F. Supp. 3d at 462. Here, CoStar does not allege that Zillow’s
16 distribution to partner sites is manual.

17 CoStar also does not allege that Zillow “sells any of [CoStar’s] copyrighted material” to
18 Zillow’s partners, to support its claim for direct infringement of CoStar’s distribution right. *See*
19 *Giganews*, 847 F.3d at 669 (citation omitted). CoStar’s allegation that Zillow generally
20 “syndicates” rental listings, even if they include CoStar-copyrighted images, does not constitute
21 the volitional conduct necessary for its claim. *See id.* (selling access to Giganews servers,
22 including infringing images, for a monthly fee implicated no volitional conduct to support a claim
23 of direct infringement of plaintiff’s distribution rights).

24 To the extent *any* control was exercised over the distribution of rental listings to partner
25 sites, CoStar’s allegations admit such control stems from *user* choices regarding advertising
26 packages, not from Zillow. (*See* Compl. ¶ 51 (“Zillow offers various tiers of advertising
27 packages.... Higher tiers include syndication on more of Zillow’s partner sites and more
28 advertisements appearing on social media websites.”).)

4. CoStar Fails to Allege Any Derivative Works

The Complaint does not allege which, if any, derivative works Zillow prepared. CoStar claims that Zillow “uses” its images to generate Zestimates (Compl. ¶¶ 89-91) and personalized recommendations (Compl. ¶¶ 93-94). But CoStar fails to allege that either constitutes a derivative work. A “derivative work . . . must incorporate that which itself is the subject of copyright.” *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1079 (9th Cir. 2000) (quoting Nimmer on Copyrights § 3.01). “When a work is based on unprotected elements of a prior work (such as the underlying idea or system), it is not derivative of that work.” *Hiller, LLC v. Success Grp. Int’l Learning All., LLC*, 976 F.3d 620, 628 n.5 (6th Cir. 2020); *see also* Nimmer on Copyrights § 3.01 (“If what is borrowed consists merely of ideas and not the expression of ideas, then, although the work may have in part been derived from prior works, it is not a derivative work.”). “The individual elements that comprise a photograph can be viewed . . . as the equivalent of unprotectable ‘facts’ that anyone may use to create new works.” *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1120 (9th Cir. 2018), *overruled on other grounds by Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020).

CoStar does not allege that Zillow’s Zestimates or the “Zillow valuation model” underlying them contain protected expression from CoStar-copyrighted images. (*See* Compl. ¶ 89.) To the contrary, CoStar alleges that the images’ contribution to the Zestimate is as a “source of information about a home’s quality.” (Compl. ¶ 90; *see also id* ¶ 91 (“[I]f a kitchen has granite countertops . . . the Zestimate now knows—based on the granite countertop’s pixels in the home photo.”).) But the quality or features of the home depicted in CoStar’s images are not protected by copyright. *Rentmeester*, 883 F.3d at 1120 (“The individual elements that comprise a photograph can be viewed . . . as the equivalent of unprotectable ‘facts’ that anyone may use to create new works.”). And CoStar does not allege that Zillow’s features incorporate “the creative decisions involved in producing [its] photograph[s]” such as “angle of photograph, lighting, and determination of the precise time when the photograph is to be taken.” *Ets-Hokin*, 225 F.3d at 1077 (citation omitted).

For the same reasons, CoStar has not alleged that Zillow’s “personalized

1 recommendations” or underlying “machine learning infrastructure” constitute derivative works.
 2 (Compl. ¶¶ 93-94.) CoStar alleges that Zillow “extracts a home’s attributes and features” from
 3 images and uses this “input data” to “compute the degree of similarity between the listing and a
 4 given user’s known preferences.” (*Id.*) Again, the home’s attributes and features are unprotected
 5 elements. *See Rentmeester*, 888 F.3d at 1119 (“photographs can be likened to factual
 6 compilations”).

7 Because CoStar identifies no allegedly infringing derivative works and alleges no facts
 8 showing that any of the protected image elements are incorporated into Zestimates or personalized
 9 recommendations, its claim for direct infringement of the derivative-works right should be
 10 dismissed.

11 **5. CoStar Fails to Plausibly Allege Volitional Conduct to Support Its**
 12 **Claim That Zillow Directly Infringed Its Right to Prepare Derivative**
Works

13 Any CoStar direct infringement claim involving Zillow’s Zestimates and personalized
 14 recommendations separately fails because CoStar does not allege that Zillow “exercised control
 15 (other than by general operation of its website)” over its Zestimates and recommendations. *Zillow*,
 16 918 F.3d at 732 (cleaned up). To the contrary, CoStar alleges that Zillow processes real estate
 17 images, “including by necessity CoStar’s photographs,” “through its machine learning
 18 infrastructure which is used to develop and operate key features such as personalized
 19 recommendation tools.” (Compl. ¶¶ 93, 94.) CoStar alleges that Zillow’s Zestimates are
 20 “generated by a Zillow valuation model.” (Compl. ¶ 89.) As with its other asserted rights, CoStar
 21 alleges no volitional conduct sufficient to support a claim for direct infringement of its derivative-
 22 works right. Having pleaded no viable theory, CoStar’s entire claim for direct infringement should
 23 be dismissed, with prejudice.

24 **B. CoStar Fails to State a Claim for Vicarious Copyright Infringement**

25 CoStar does not plausibly allege two required elements of its vicarious infringement claim:
 26 that Zillow had the technical ability to identify CoStar-copyrighted images uploaded to Zillow,
 27 and that Zillow reaped a direct financial benefit from those images.

28 The Ninth Circuit has already held that a vicarious liability theory *does not “fit the Zillow*

1 **platform.”** *Zillow*, 918 F.3d at 46 (emphasis added). Vicarious liability makes one party legally
 2 responsible for another’s copyright infringement and is limited to “cases in which a defendant ‘has
 3 the right and ability to supervise the infringing activity and also has a direct financial interest in
 4 such activities.’” *A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1022 (9th Cir. 2001) (citation
 5 omitted). The first element requires “both a legal right to stop or limit the directly infringing
 6 conduct, as well as the practical ability to do so.” *Zillow*, 918 F.3d at 746 (quotation omitted).
 7 The second element requires that “there is a causal relationship between the infringing activity and
 8 any financial benefit a defendant reaps.” *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir.
 9 2004).

10 **1. CoStar Does Not Plausibly Allege that Zillow’s Architecture Had the**
 11 **Practical Ability to Identify CoStar-Copyrighted Images**

12 Vicarious infringement occurs when one profits from direct infringement while declining
 13 to exercise a “right and ability” to stop it. *Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068,
 14 1071 (9th Cir. 2013). The Ninth Circuit has repeatedly explained that not implementing a system
 15 to prevent infringement “is not the same as declining to exercise a right and ability.” *Perfect 10,*
 16 *Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1175 (9th Cir. 2007); *Luvdarts*, 710 F.3d at 1071-72
 17 (noting that vicarious liability cannot rest on a defendant’s failure to *change* its behavior). Instead,
 18 a “right and ability” should be “evaluated in the context of a system’s ‘current architecture.’”
 19 *Luvdarts*, 710 F.3d at 1071 (quoting *Napster*, 239 F.3d at 1024). Like the plaintiff in *Luvdarts*,
 20 CoStar “failed to allege adequately that [Zillow] had the necessary right and ability to supervise
 21 the infringing conduct.” *See id.* at 1072 (finding the district court properly granted a motion to
 22 dismiss vicarious liability claim).

23 As discussed below, CoStar does not plausibly allege that Zillow had the ability to detect
 24 CoStar-copyrighted images uploaded to Zillow’s platform. CoStar admits the watermarking of the
 25 images at issue is inconsistent and, for those images that were watermarked, not a reliable marker
 26 of copyright ownership. Based on the allegations of CoStar’s own Complaint, if Zillow sought to
 27 determine copyright status based on the presence of a CoStar watermark, it would have (at best)
 28 been flipping a coin. Therefore, CoStar has insufficiently alleged that Zillow could have relied on

1 watermarking to identify and remove CoStar-copyrighted images from an ocean of uploaded
 2 images. CoStar does not allege any other means, beyond watermarking, by which Zillow may
 3 have identified CoStar-copyrighted images. And because CoStar never served Zillow with a pre-
 4 suit takedown notice for its images, it was not possible for Zillow to identify and remove the
 5 copyrighted images at issue prior to the filing of CoStar’s Complaint.

6 **a. CoStar’s Allegations Regarding Watermarking Are**
 7 **Insufficient to Allege Zillow’s Practical Ability to Identify and**
 8 **Remove CoStar-Copyrighted Images**

9 CoStar’s allegations confirm that Zillow lacked the practical ability to identify and remove
 10 CoStar-copyrighted images. CoStar alleges that Zillow had 2.2 million active rental listings
 11 (Compl. ¶ 56) with at least one image for each listing (Compl. ¶ 74). Thus, out of a *minimum* of
 12 2.2 million rental listing images on Zillow, CoStar claims copyright ownership of less than 47,000
 13 images within 5,598 rental listings. (Compl. ¶ 60; Kramer Decl. ¶ 2.) Further, CoStar alleges that
 14 only *about half* of these 47,000 alleged copyrighted images bear a watermark of CoStar’s logo.
 15 (Compl. ¶ 77.) CoStar merely alleges that its watermarks indicate ownership in general, as
 16 opposed to *copyright* protection specifically. (Compl. ¶ 23.) This ownership is reflected only
 17 within a CoStar “policy” that was never communicated to Zillow before CoStar filed suit. (Compl.
 18 ¶¶ 23, 46.) A district court in California recently found that “CoStar’s use of the logo (and what
 19 information the logo actually conveys) has changed over time,” and further notes that “evidence
 20 suggest[s] CoStar used the logo on photos it did not own.” *CoStar Group Inc. v. Commercial Real*
 21 *Estate Exchange Inc.*, No. 20-cv-8819, 2025 WL 2647269, at *12 (C.D. Cal. June 25, 2025).

22 CoStar’s allegations that it uses its trademarked “star logo” as its watermark only creates
 23 further confusion as to CoStar’s intended meaning when it uses the logo. Use of a trademark to
 24 indicate copyright ownership “eliminate[s] the differentiation of trademark from copyright that is
 25 fundamental to the statutory schemes.” *IQ Grp., Ltd. v. Wiesner Pub., LLC*, 409 F. Supp. 2d 587,
 26 592 (D.N.J. 2006), *abrogated on other grounds*. CoStar alleges extensive use of its “star logo” as
 27 a trademark rather than an indicator of copyright ownership. (Compl. ¶¶ 43-46.) CoStar alleges
 28 that its star logo “is presently on six separate registered CoStar trademarks.” (Compl. ¶ 44.)
 CoStar also alleges its star logo “is used consistently and prominently across its platforms and

1 products” and even appears “as the favicon (an icon associated with a website URL) next to the
2 title of every browser tab opened to any CoStar webpage.” (Compl. ¶ 44.)

3 Thus, CoStar’s allegations overwhelmingly demonstrate that its star logo watermark was
4 **not** a reliable indicator of copyright protection. CoStar’s conclusory allegations that Zillow had
5 the ability to identify and remove *CoStar-watermarked* images (Compl. ¶¶ 23, 78), even if true,
6 are insufficient to allege that Zillow had the ability to remove *CoStar-copyrighted* images—the
7 Complaint admits that the two groups are far from co-extensive. Moreover, roughly half of the
8 images listed in CoStar’s Complaint were copyrighted but not watermarked. CoStar offers no
9 allegation explaining how Zillow could have identified any unmarked images as copyrighted by
10 CoStar. And even for images bearing a watermark, CoStar does not allege how Zillow could
11 distinguish between images owned by CoStar, those not owned by CoStar, and which, if any, are
12 actually subject to copyright protection.

13 Given similar facts in *VHT v. Zillow*, a district court in the Western District of Washington
14 overturned a jury verdict of vicarious infringement against Zillow because “Zillow lacked the
15 practical ability to police its users’ infringing conduct . . . because it could not reasonably identify
16 which of the millions of images uploaded each day were infringing.” *VHT, Inc. v. Zillow Grp.,*
17 *Inc.*, No. C15-1096JLR, 2017 WL 2654583, at *17 (W.D. Wash. June 20, 2017) (*aff’d in part,*
18 *rev’d in part and remanded*, 918 F.3d 723 (9th Cir. 2019) (cleaned up) (internal citation omitted).
19 The court’s decision was explicitly based, in part, on the “infrequency with which VHT
20 watermarked its images during the relevant period.” *Id.* at *15.

21 There was, and is, no practical way for Zillow to affirmatively identify images copyrighted
22 by CoStar. Not even the Copyright Office could help. Copyright applicants like CoStar may
23 submit groups of up to 750 photographs to the Copyright Office in a single registration.
24 *Group Registration for Published Photographs (GRPPH)*, Copyright.gov,
25 <https://www.copyright.gov/eco/help/group/grpph.html>. “The Copyright Office does not retain all
26 works deposited for copyright registration.” *Obtaining Access to and Copies of Copyright Office*
27 *Records and Deposits*, Circular 6, U.S. Copyright Office 3 (2019),
28 <https://www.copyright.gov/circs/circ06.pdf>. If retained, deposit copies may only be requested

1 outside of litigation with written authorization from the copyright owner. *Id.* CoStar has not
2 provided Zillow with any of its copyright registration deposits, and as such, they remain
3 inaccessible to Zillow.

4 **b. CoStar Does Not Allege That Zillow Had the Practical Ability**
5 **to Identify and Remove CoStar-Copyrighted Images**

6 CoStar does not allege that Zillow’s architecture had the practical ability to identify CoStar-
7 copyrighted images (vs. watermarked images) as needed to support its claim of vicarious
8 infringement. CoStar has not “plausibly shown[n] that [Zillow] could implement an effective
9 system,” nor does it “explain what that system is” or “how it would function.” Therefore, its
10 vicarious infringement claim should be dismissed. *Luvdarts*, 710 F.3d at 1071 (granting motion
11 to dismiss vicarious infringement claim).

12 To the extent that CoStar suggests that Zillow’s monitoring and analysis of images implies
13 Zillow is able to detect copyrighted images, that allegation is also deficient. CoStar alleges that
14 Zillow monitors images for removal “that are ‘irrelevant’ to a property, ‘do not accurately
15 represent the’ property, or ‘contain explicit or offensive material, personal information, or
16 discriminatory content.’” (Compl. ¶ 76.) CoStar also alleges that Zillow analyzes images to
17 improve Zestimates and personalized recommendations. (Compl. ¶¶ 91, 93, 94.) CoStar’s claim
18 that Zillow undertook some degree of monitoring and image analysis does not sufficiently allege
19 that Zillow’s architecture could detect CoStar-copyrighted images but that Zillow decided against
20 it. *See Luvdarts*, 710 F.3d at 1072 (dismissing vicarious infringement claim where plaintiff failed
21 to allege “what that system is, how it would function, or how much implementing such a system
22 would cost.”). This is exactly the sort of “unwarranted deduction[] of fact” that courts are not
23 required to make at the motion to dismiss stage. *Sprewell v. Golden State Warriors*, 266 F.3d 979,
24 988 (9th Cir.), *opinion amended on denial of reh’g*, 275 F.3d 1187 (9th Cir. 2001).

25 **c. CoStar Did Not Send a DMCA Takedown Notice Identifying**
26 **the Alleged CoStar-Copyrighted Images**

27 CoStar chose not to send Zillow a DMCA takedown notice before filing suit, the one thing
28 which could have given Zillow the ability to identify and remove CoStar-copyrighted images. In

1 *Stross v. Zillow*, a court considering a motion to dismiss a vicarious infringement claim,
2 acknowledged that, while Zillow lacked the technical ability to identify infringing images among
3 other images uploaded to its platform, it did have the ability to identify images specifically
4 identified in a DMCA takedown notice. *Stross v. Zillow Inc.*, No. 2:21-cv-01489, 2022 WL
5 3357847, at *7 (W.D. Wash. June 21, 2022), *report and recommendation adopted*, 2022 WL
6 16574717 (W.D. Wash. Oct. 31, 2022), *aff'd*, No. 22-36000, 2023 WL 8518904 (9th Cir. Dec. 8,
7 2023). But here, CoStar chose to forgo serving Zillow with a DMCA takedown notice, thereby
8 ensuring it could not identify and remove the allegedly infringing images.

9 CoStar's failure to send a takedown notice was strategic. CoStar understood that Zillow
10 would remove any infringing material upon receipt of the notice and thereby resolve any claims
11 prior to suit. But resolution was not what CoStar wanted; it preferred dragging Zillow into costly
12 litigation and making splashy headlines in the process. Ultimately, however, CoStar's race to the
13 courthouse will prove fatal to its claims. Having failed to serve a takedown notice and by relying
14 on insufficient watermarking allegations, CoStar cannot plead the required "ability and control" to
15 support its vicarious infringement claim.

16 CoStar's hasty decision also dooms its damages claim for direct infringement, *if* it survives
17 the pleading stage. *See* 17 U.S.C. § 512 (outlining DMCA safe harbor affirmative defenses, under
18 which a "service provider shall not be liable for monetary relief . . . for infringement of
19 copyright."). To avoid the safe harbor, CoStar must prove Zillow knew of the infringing material.
20 As shown above, this is not possible here. CoStar's "decision to forgo the DMCA notice protocol
21 'stripped it of the most powerful evidence of a service provider's knowledge—actual notice of
22 infringement from the copyright holder.'" *UMG Recordings, Inc. v. Shelter Cap. Partners LLC*,
23 718 F.3d 1006, 1020 (9th Cir. 2013) (quoting *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d
24 1090, 1107 (W.D. Wash. 2004)).

25 **2. CoStar Fails to Allege a Direct Financial Benefit to Zillow That Is** 26 **Causally Connected to the Alleged Infringing Images**

27 CoStar's vicarious infringement claim fails for a second, independent reason: CoStar has
28 not alleged that Zillow received a direct financial benefit from CoStar-copyrighted images.

1 Vicarious liability for copyright infringement is limited to circumstances where “the right and
 2 ability to supervise coalesce with *an obvious and direct financial interest in the exploitation of*
 3 *copyrighted materials.*” *Shapiro, Bernstein & Co. v. H. L. Green Co.*, 316 F.2d 304, 308 (2d Cir.
 4 1963) (emphasis added) (landmark vicarious infringement case); *see also Giganews*, 847 F.3d at
 5 673. “The essential aspect of the ‘direct financial benefit’ inquiry is whether there is a causal
 6 relationship between the infringing activity and any financial benefit a defendant reaps.” *Ellison*,
 7 357 F.3d at 1079. Courts have found that a “financial benefit exists where the availability of
 8 infringing material acts as a draw for customers” rather than an “added benefit.” *Giganews*, 847
 9 F.3d at 673, 674 (quoting *Ellison*, 357 F.3d at 1078, 1079) (cleaned up).

10 CoStar fails to plausibly allege a causal connection between its images and any financial
 11 benefit to Zillow. CoStar also fails to plausibly allege that CoStar-copyrighted images are a
 12 draw for customers to use Zillow. Accordingly, CoStar fails to state a claim for vicarious
 13 infringement.

14 **a. CoStar Fails to Plausibly Allege That CoStar-Copyrighted Images**
 15 **Provided a Direct Financial Benefit to Zillow in the Form of**
 16 **Advertising Revenue**

17 CoStar does not allege that CoStar-copyrighted images provide a “direct financial benefit”
 18 to Zillow. CoStar alleges that 46,979 of its copyrighted images appear on Zillow. (Compl. ¶ 60.)
 19 CoStar ties those 46,979 images to 5,598 property addresses. (*See* Kramer Decl. ¶ 2; Compl. Ex. A
 20 (identifying property address of each image); *see also id.* ¶ 14.) However, CoStar does not allege
 21 how many of those 5,598 property addresses correspond to unclaimed rentals. (Compl. ¶ 69.)
 22 CoStar alleges that CoStar-copyrighted images are one part of the content that makes up Zillow’s
 23 prepopulated “unclaimed property” listings, along with rental content, descriptions, and images.
 24 (Compl. ¶ 63.) CoStar alleges that it takes “significant time, effort, and money to gather
 25 information about, and create content for, rental property listings.” (Compl. ¶ 49.) Accepting that
 26 as true, it does not follow, and it is not alleged, that the time, effort, and money are attributable to
 27 CoStar’s copyrighted images, as opposed to all of the other information in a rental listing. CoStar
 28 alleges that prepopulated listing content, as a whole, attracts users to claim unclaimed property
 listings. (Compl. ¶ 68.) CoStar does not allege that Zillow makes any revenue from a user

1 claiming a listing. Instead, CoStar alleges that Zillow makes revenue from selling advertisements
2 to rental property managers. (Compl. ¶¶ 21, 50.) CoStar does allege that Zillow offers its
3 advertisement services to rental property managers who claim previously unclaimed properties.
4 (Compl. ¶¶ 64, 65.) But Zillow also offers advertising services to rental property managers who
5 list brand new properties, regardless of whether CoStar-copyrighted images were uploaded. These
6 statements, taken together, do not plausibly allege that CoStar-copyrighted images provided a
7 “direct financial benefit” to Zillow.

8 “The essential aspect of the ‘direct financial benefit’ inquiry is whether there is a causal
9 relationship between the infringing activity and any financial benefit a defendant reaps.” *Ellison*,
10 357 F.3d at 1079. In *Ellison*, the plaintiff accused AOL of vicarious infringement because AOL’s
11 paid subscribers had access to infringing content. The Ninth Circuit found “no evidence that
12 indicates that AOL customers either subscribed because of the available infringing material or
13 canceled subscriptions because it was no longer available.” *Id.* (affirming summary judgment of
14 no vicarious infringement). Here, CoStar does not plausibly allege that CoStar-copyrighted
15 images *caused* rental property managers to purchase advertising on Zillow. At best, CoStar alleges
16 that its images were part of the prepopulated listing content that caused users to claim listings
17 without making a payment to Zillow (although even this allegation lacks any factual support). (*See*
18 Compl. ¶ 68.) Importantly, CoStar does not allege that its images caused users to then purchase
19 advertising, only that advertising was marketed to property claimants. This is insufficient. “Where
20 a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the
21 line between possibility and plausibility of entitlement to relief.” *Iqbal*, 556 U.S. at 678 (internal
22 quotations omitted).

23 CoStar’s two-step financial benefit theory is akin to the two-step argument that ultimately
24 failed in *Gamble v. Tyson*. *Gamble v. Tyson*, No. 17-cv-06635, 2019 WL 5722129, at *12
25 (S.D.N.Y. Jan. 4, 2019). In *Gamble*, plaintiff asserted that Neil deGrasse Tyson received a direct
26 financial benefit when a speaking venue displayed a copyrighted photograph of Tyson. *Id.* The
27 plaintiff alleged that, although Tyson didn’t financially benefit from increased ticket sales from
28 the speaking engagement, increased sales would result in a “better reputation” and “higher

1 speaking fees” for Tyson. *See id.* The court found that plaintiff’s “conclusory allegations fail[ed]
 2 to establish a causal relationship” to support its vicarious infringement claim. *Id.* Here, CoStar
 3 also advances a two-step financial benefit theory, alleging that, first, prepopulated listing content,
 4 including CoStar images, causes users to claim listings (with no financial benefit to Zillow) and,
 5 second, that users who claim listings may later purchase advertising that benefits Zillow. Like the
 6 plaintiff in *Gamble*, CoStar’s allegations are attenuated and lacking in factual support. CoStar’s
 7 bare allegations of a direct financial benefit from users claiming property listings are insufficient
 8 to support a claim for vicarious infringement.

9 For rental property listings that remain unclaimed, or whose claimant purchased no
 10 advertisements, CoStar admits Zillow received no advertising revenue. (*See* Compl. ¶ 15
 11 (alleging that Zillow markets rental advertising packages *after* a property is claimed).) Without
 12 advertising revenue from those listings, there can be no “causal relationship between the
 13 infringing activity and any financial benefit [Zillow] reaps.” *Ellison*, 357 F.3d at 1079
 14 (emphasis added). In *Klein v. CoStar*, in which CoStar was unable to show any profit from the
 15 infringing material, the court found “no ‘causal relationship’ between the infringing activity and
 16 a financial benefit” required to support vicarious infringement. *Klein & Heuchan, Inc. v. Costar*
 17 *Realty Info., Inc.*, 707 F. Supp. 2d 1287, 1299 (M.D. Fla. 2010), *aff’d*, 425 F. App’x 833 (11th
 18 Cir. 2011) (quoting *Ellison*, 357 F.3d at 1079) (finding no liability for vicarious infringement).

19 **b. CoStar Fails to Plausibly Allege That CoStar-Copyrighted Images**
 20 **Provided a Direct Financial Benefit to Zillow in the Form of Rental**
 21 **Services Revenue**

22 As with rental advertising, Zillow’s revenue from other rental-related services was not a
 23 direct financial benefit of CoStar’s images. CoStar’s allegation that Zillow earns revenue from
 24 other rental-related services (“sometimes provided through partner companies” and offered to
 25 property managers or “prospective renters”) are even further attenuated from CoStar’s images.
 26 (Compl. ¶¶ 50, 52.) And CoStar does not allege, for example, that CoStar-copyrighted images
 27 caused renters to purchase “renters’ insurance” or caused managers to “facilitat[e] the creation and
 28 signing of leases.” (Compl. ¶ 52.) Instead, CoStar generically alleges that “CoStar’s photographs
 on unclaimed ‘property pages’ [] attract rental listing customers and thereby generate revenue.”

(Compl. ¶ 69.) This vague and conclusory allegation does not plausibly link the images to any Zillow revenue and is insufficient to allege a direct financial benefit. *See Stross v. Zillow Inc.*, No. 21-cv-01489, 2022 WL 3357847, at *7, 8. In *Stross v. Zillow*, Stross alleged copyright infringement against Zillow for displaying Stross’s property images. *Id.* at *1. The court dismissed the vicarious infringement claim against Zillow, concluding that Stross’s allegations of financial benefit were vague and conclusory because they merely alleged that “Zillow and Trulia obtained direct and indirect profits they would otherwise not have realized but for the infringements of the Works.” *Id.* at *8.

c. CoStar Fails to Plausibly Allege That CoStar-Copyrighted Images Provided a Direct Financial Benefit to Zillow Through Zestimates or Personalized Recommendations

Zestimates and personalized recommendations are not derivative works and therefore cannot support a claim of vicarious infringement. *See supra* Section IV.A.4 (addressing derivative work allegations); *see also Ellison*, 357 F.3d at 1076 (vicarious liability requires “a direct financial benefit from *another’s* infringing activity”).

CoStar does not allege that Zillow derived any financial benefit from its Zestimates or personalized recommendations, much less a benefit attributable to CoStar-copyrighted images, in particular. (*See* Compl. ¶¶ 88-94.) At most, CoStar alleges that the images were one of many inputs to those features. (*See* Compl. ¶ 91 (“Zillow uses both property-specific data and data from neighboring and comparable properties to calculate the Zestimate for a given property.”), ¶¶ 93-94 (personalized recommendations “rely on high volumes of real estate images” and “combin[e] extracted image features with other inputs, such as user behavior data”).)

Having not alleged a financial benefit to Zillow or infringement by Zillow’s Zestimates or personalized recommendations (*see supra* Section V.A.4), CoStar has failed to plead the direct financial benefit element required for vicarious infringement.

d. CoStar Fails to Allege That CoStar-Copyrighted Images Displayed on Partner Websites Provided a Direct Financial Benefit to Zillow

CoStar alleges that Zillow is sending multi-family listings, including CoStar images, to Zillow’s “partner sites, Redfin and Realtor.com.” (Compl. ¶ 14.) Although CoStar generally

1 alleges that Zillow “monetizes these listings by distributing them to its partners,” it provides no
 2 further facts sufficient to allege a causal relationship to CoStar images. (Compl. ¶¶ 16, 82-87.)
 3 Instead of showing that Zillow earns revenue from its partnership, CoStar alleges that “Zillow
 4 made a \$100 million upfront payment to Redfin and will pay at least \$75 million more over the
 5 next year,” and that those terms were also “indicative” of the separate Zillow-Realtor.com
 6 agreement. (Compl. ¶ 82.) CoStar fails to allege a direct financial benefit derived from allegedly
 7 sending CoStar-copyrighted images to partner sites.

8 **e. CoStar Fails to Plausibly Allege That CoStar-Copyrighted Images**
 9 **Were a “Draw” for Customers to Zillow**

10 CoStar has not plausibly alleged that CoStar-copyrighted images are a “draw” for rental
 11 customers to Zillow. In assessing whether defendants received a “direct financial benefit” from
 12 customer revenue generally, courts have considered whether infringing material acts as a “draw”
 13 for customers to the business. *See, e.g., Giganews*, 847 F.3d at 674 (finding no evidence that
 14 customers subscribed to Giganews because of the availability of infringing material); *Ellison*, 357
 15 F.3d 1072 (finding no evidence that AOL “attracted or retained subscriptions because of the
 16 infringement”); *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 263 (9th Cir. 1996) (finding
 17 that the sale of pirated recordings was a “draw” to a swap meet); *Broad. Music, Inc. v. Benchley*
 18 *Ventures, Inc.*, 131 F. Supp. 3d 1097, 1103 (W.D. Wash. 2015) (finding that live performances of
 19 copyrighted works drew customers to a saloon).

20 CoStar alleges that, by including CoStar-copyrighted images on unclaimed property
 21 listings, “Zillow attracts property owners who might not otherwise be interested in listing on
 22 Zillow to ‘Claim [their] property’ and purchase an advertising package.” (Compl. ¶ 68.) These
 23 alleged facts do not support CoStar’s conclusory allegation.

24 Owners and property managers must navigate—on their own—to Zillow and then to an
 25 unclaimed property page, prior to being able to view CoStar-copyrighted images and claim a
 26 listing. This is confirmed by CoStar, which does not allege that Zillow’s “Claim this property”
 27 button is available *anywhere* but on the property page. (*See* Compl. ¶¶ 66, 69.) Nor does CoStar
 28 allege that for unclaimed listings, CoStar-copyrighted images are displayed anywhere *but* the

1 property page. (*See, e.g.*, Compl. ¶ 21.) Because an owner or property manager must
2 independently navigate to an unclaimed property page, CoStar’s conclusory allegation that CoStar
3 images “attract[] property owners who might not otherwise be interested in listing on Zillow” is
4 untenable. (Compl. ¶ 68.) Owners must navigate first to the Zillow site and then to a property
5 page before they see any CoStar images. As such, if CoStar images appear on an unclaimed page,
6 they cannot be a draw, only a mere “added benefit.” *See Giganews*, 847 F.3d at 674 (“[t]hat a
7 Giganews customer may have posted or accessed copyrighted Perfect 10 material as ‘an added
8 benefit’ to a subscription is insufficient” (citation omitted)); *Erickson Prod., Inc. v. Kast*, 921 F.3d
9 822, 829-30 (9th Cir. 2019) (finding that website photographs that “enhanced its appeal to potential
10 customers” was an added benefit rather than a draw).

11 And of course, for *claimed* rental property pages where CoStar-copyrighted images were
12 uploaded by the owner or property manager *after* claiming the page, it goes without saying that
13 the images could not have been a draw to claiming the page or to later purchase advertising. Nor
14 does CoStar allege that the mere ability to upload CoStar-copyrighted images is a draw for owners
15 or property managers to use Zillow’s website. *See DistroKid*, 738 F. Supp. 3d at 402 (granting
16 motion to dismiss vicarious infringement where there were no “allegations ‘showing that users are
17 attracted to a defendant’s product because it enables infringement.’” (internal citation omitted)).

18 CoStar has not plausibly alleged that users are drawn to Zillow by CoStar-copyrighted
19 images. This is not a case “where the value of the service lies in providing access to infringing
20 material.” *Ellison*, 357 F.3d at 1079 (citation omitted). Thus, CoStar cannot allege a direct
21 financial benefit between CoStar-copyrighted images and Zillow’s revenue. CoStar’s vicarious
22 infringement claim should be dismissed, with prejudice.

23 VI. CONCLUSION

24 CoStar’s Complaint should be dismissed in its entirety, with prejudice.
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, a true and correct copy of the foregoing document was electronically filed with the Court via the CM/ECF system which sent notification of such filing to all Counsel of Record.

s/ David A. Perez

CERTIFICATE OF WORD COUNT

I certify that this memorandum contains 8,391 words, in compliance with the Local Civil Rules.

s/ David A. Perez
