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September 11, 2025

VIA ECF

The Honorable Jeannette A. Vargas  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Compass, Inc. v. Zillow, Inc. et al*, Case No. 1:25-cv-05201-JAV (S.D.N.Y.)

Dear Judge Vargas:

Pursuant to section 10(C) of Your Honor's Individual Rules and Practices in Civil Cases, Defendants Zillow, Inc., Zillow Group, Inc., and Trulia, LLC (collectively, "Zillow") respectfully request permission to redact portions of the contemporaneously-filed Joint Discovery Letter ("Letter") and supporting Exhibits relating to Compass's request to compel the deposition of apex witness Lloyd Frink, Co-Founder, President, and Co-Executive Chairman of the Board of Directors of Zillow Group. The material Zillow seeks to redact contains confidential, competitively sensitive commercial information, disclosure of which could cause competitive and other harms to Zillow. Exhibits 1, 2, 3, and 4 to the Letter contain Zillow's proposed, narrowly-tailored redactions to protect the confidentiality of its commercially sensitive information. Zillow met and conferred with Plaintiff Compass, Inc. ("Compass") in advance of filing this request, and Compass has no objection to the proposed sealing and redactions.

"Notwithstanding the presumption of access under both the common law and the First Amendment, [court] documents may be kept under seal if 'countervailing factors'" so demand. *Lugosch v. Pyramid Co.*, 435 F.3d 110, 124 (2d Cir. 2006); *see also, e.g., Fairstein v. Netflix, Inc.*, 2023 WL 6164293, at \*4 (S.D.N.Y. Sept. 21, 2023) (granting request to seal "proprietary and confidential materials about business operations"); *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, 2014 WL 12772236, at \*2 (S.D.N.Y. Nov. 5, 2014) ("The need to protect sensitive commercial information from disclosure to competitors seeking an advantage may constitute such an interest.").

Here, Zillow's interest in preserving the confidentiality of its commercially sensitive information outweighs the presumption of public access in this circumstance, particularly since this information is submitted in connection with a discovery dispute. *See Brown v. Maxwell*, 929 F.3d 41, 49 (2d Cir. 2019). The Second Circuit has made clear that there is a "lower interest" in confidential information submitted in connection with a discovery dispute, as compared with

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evidence submitted in connection with a dispositive motion or at trial. *See id.* Accordingly, courts in this district regularly seal material connected to discovery disputes in recognition of this lowered presumption. *See, e.g., Authors Guild v. OpenAI Inc.*, 2025 WL 66500, at \*3 (S.D.N.Y. Jan. 10, 2025) (“a low presumption of public access attaches because these documents are related to discovery”); *Metacapital Mgmt., L.P. v. Meta Platforms, Inc.*, 2024 WL 1508655, at \*2 (S.D.N.Y. Apr. 5, 2024) (“the presumption [of access to discovery materials] is generally somewhat lower than the presumption applied to materials submitted for trial or related to dispositive motions”). In the context of a discovery motion, sealing has been granted where documents “reference information of the type that would normally be kept strictly confidential by the parties” and sealing would “preserve the parties’ privacy and business interests,” or where the documents contain “confidential information about existing products and negotiations with other parties” that would cause a disadvantage if disclosed. *See Authors Guild*, 2025 WL 66500, at \*3; *Metacapital*, 2024 WL 1508655, at \*2.

Zillow requests to seal its “proprietary and confidential materials about business operations that, if disclosed, have the potential to harm” Zillow. *Fairstein*, 2023 WL 6164293, at \*4. Specifically, Zillow seeks to seal the narrow, highlighted portions of Exhibits 1, 2, and 3 to the Letter, for the following reasons.

**Category 1:** Zillow seeks to seal portions of the Letter and Exhibits that quote from and discuss a confidential Zillow strategy document titled “Post Clear Cooperation Strategy.” The proposed redactions related to this document are those on pages 2, 3 (second paragraph), and 4 of the Letter ; Ex. 1 (Samuelson Transcript) at 120:21–122:15; Ex. 3 (Wacksman Transcript) at 55:12–25, 107:01–108:25.

This document contains Zillow’s detailed and confidential response strategy for several possible business scenarios. *See Cartales Decl.* ¶ 9. The document was labeled as confidential in the ordinary course of Zillow’s business and was kept confidential within Zillow. *See id.* Zillow produced it with a Highly Confidential – Outside Counsel’s Eyes Only designation, which Compass has not challenged. *See id.* If that document were itself an exhibit to the Letter, sealing would plainly be warranted, as this is type of document “that would normally be kept strictly confidential” and sealing would preserve Zillow’s “privacy and business interests.” *See Authors Guild*, 2025 WL 66500, at \*3 (citation omitted). Accordingly, quotes and testimony regarding this document should likewise be sealed. Zillow’s redactions narrowly seek to seal the detailed and confidential Zillow strategy reflected in these quotes, including Compass’s arguments related to this document, a quote from another executive that purportedly summarized Lloyd Frink’s views (Ex. 1 at 120:21–24), and a related line of inquiry as to whether Mr. Samuelson and Mr. Wacksman agreed with Mr. Frink’s purported views (Ex. 1 at 121:01–122:25; Ex. 3 at 55:12–25, 107:01–108:25).

**Category 2:** Zillow seeks to seal other testimony regarding its confidential business strategy for similar reasons. The proposed redactions related to Zillow’s confidential strategy are

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those on page 3 (first paragraph) of the Letter; Ex. 1 at 154:01–25; Ex. 2 (Hofmann Transcript) at 132:22–25; Ex. 3 at 09:16–25, 42:1–25. This category of testimony relates to various confidential details of Zillow’s plans and strategy. The strategy, and Zillow’s views on its relations with other participants in the real estate industry, are kept confidential because disclosure would allow other market participants to adapt their behavior in responding to Zillow, including in commercial negotiations. *See* Cartales Decl. ¶ 11. Such testimony should be sealed as “proprietary and confidential materials about business operations.” *Fairstein*, 2023 WL 6164293, at \*4. A low presumption of public access should attach because this testimony is submitted in connection with a discovery dispute, and sealing is warranted because this testimony references “confidential information about existing products and negotiations with other parties” that would cause a disadvantage if disclosed. *See Metacapital*, 2024 WL 1508655, at \*2.

**Category 3:** Zillow seeks to seal references to third parties with which it sought to negotiate contracts: Ex. 1 at 154:04, 154:20–25.<sup>1</sup> Zillow has confidentiality obligations to some of these third parties, *see* Cartales Decl. ¶ 13, and the very fact that Zillow negotiated with them is sensitive and should not be disclosed. *See Metacapital*, 2024 WL 1508655, at \*2 (recognizing that disclosure of “negotiations with other parties” can cause harm, and sealing material referencing such negotiations filed in support of discovery motion); *Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 413 (S.D.N.Y. 2015) (granting motion to seal “emails revealing confidential negotiations between [plaintiff] and one of its customers”).

Zillow’s confidentiality concerns as to the three categories of material identified above outweigh any public access interest here, especially given the reduced public interest in documents related to a discovery motion. *See Metacapital*, 2024 WL 1508655, at \*2 (granting motion to seal confidential business information filed in support of discovery dispute and noting that courts “have found that such sensitive business information including negotiations may remain under seal even where a stronger presumption of access would apply”).

For these reasons, Zillow respectfully requests that the Court seal the redacted portions of the Letter and of the deposition transcripts in Exhibits 1, 2 and 3 to the Letter.

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<sup>1</sup> The request to seal references to third parties is in the alternative to the request above to seal general information about Zillow’s confidential business strategy. Zillow believes that all of Ex. 1 page 154 should be sealed. But if the Court is not inclined to seal the whole page on the basis that it is Zillow’s confidential strategy, Zillow requests that the Court seal the specific lines that reference third parties.

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Hon. Jeannette A. Vargas

September 11, 2025

Sincerely,

/s/ Beau W. Buffier

Beau W. Buffier (NY Bar No. 3932050)

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

COMPASS, INC,

*Plaintiff,*

v.

ZILLOW, INC.; ZILLOW GROUP, INC.;  
and TRULIA, LLC,

*Defendants.*

**DECLARATION OF SHANNON  
CARTALES IN SUPPORT OF REQUEST  
TO SEAL EXHIBITS TO JOINT LETTER  
BRIEF REGARDING APEX DEPOSITION  
OF LLOYD FRINK**

Case No.: 1:25-cv-05201-JAV

**DECLARATION OF SHANNON CARTALES**

I, Shannon Cartales, declare the following under penalty of perjury:

1. I am in-house legal counsel at Zillow, Inc. (“Zillow”).
2. I have personal knowledge of the facts in this declaration and could testify competently to them if called as a witness.
3. Attached as Exhibit 1 is a true and correct copy of excerpts of the deposition transcript of Errol Samuelson, Zillow Group, Inc.’s Chief Industry Development Officer, taken on August 28, 2025, with proposed redactions marked in yellow.
4. Attached as Exhibit 2 is a true and correct copy of excerpts of the deposition transcript of Jeremy Hofmann, Zillow Group, Inc.’s Chief Financial Officer, taken on August 29, 2025, with proposed redactions marked in yellow.
5. Attached as Exhibit 3 is a true and correct copy of excerpts of the deposition transcript of Jeremy Wacksman, Zillow Group, Inc.’s Chief Executive Officer, taken on August 26, 2025, with proposed redactions marked in yellow.

6. Attached as Exhibit 4 is a true and correct copy of the simultaneously filed Joint Letter Brief regarding Compass's request to compel the apex deposition of Lloyd Frink with proposed redactions marked in yellow.
7. Exhibits 1, 2 and 3 are exhibits to the Joint Letter Brief regarding Compass's request to compel the apex deposition of Lloyd Frink. Zillow seeks to seal certain portions of each transcript and of the Joint Letter Brief on the basis that the arguments and testimony disclose confidential and commercially sensitive information, disclosure of which could cause Zillow competitive or other harms.

### **Category 1**

8. Zillow seeks to redact portions of the arguments and testimony that quote from and discuss a confidential Zillow strategy document titled "Post Clear Cooperation Strategy," which was produced in discovery as ZG-00026158. It is a highly confidential Zillow strategy document which contains a detailed analysis of how Zillow would respond to various business scenarios. The strategy contained in ZG-00026158 is confidential to Zillow, and Zillow maintained this document as confidential in the ordinary course of Zillow's business. Prior to this litigation ZG-00026158 contained an ordinary course header identifying it as confidential to Zillow. When Zillow's counsel produced ZG-00026158 in discovery, my understanding is that counsel designated the document as Highly Confidential – Outside Counsel's Eyes Only.
9. Zillow seeks to redact arguments and deposition testimony that quote from, discusses, and/or relates to ZG-00026158 in order to protect the confidentiality of the contents of the underlying document and to protect Zillow from competitive harm. For this reason, Zillow seeks to redact the following: Ex. 1 120:21–122:15; Ex. 3 55:12–25 and 107:01–108:25; and portions of the Joint Letter Brief on pages 2, 3 (second paragraph), and 4.

### **Category 2**

10. Zillow seeks to redact other portions of the arguments and cited testimony regarding its confidential plans and business strategy. The strategy, and Zillow's views on its relations

with other participants in the real estate industry, are kept confidential because disclosure would allow other market participants to adapt their behavior in responding to Zillow, including in commercial negotiations.

11. For this reason, Zillow seeks to redact the following: Ex. 1 154:09–16 and 154:01–25, Ex. 2 132:22–25, Ex. 3 09:16–25 and 42:1–25; and portions of the Letter Brief on page 3 (first paragraph).

### **Category 3**

12. Zillow also seeks to redact references to third parties with which it sought to negotiate contracts, including some third parties to which it owes confidentiality obligations based on non-disclosure agreements. The disclosure of Zillow’s negotiations with these third parties could cause Zillow competitive harm and/or harm its relationships with these third parties. Zillow has confidentiality obligations to third parties based on non-disclosure agreements, and the fact that Zillow negotiated with these third parties should not be disclosed.
13. Zillow seeks to redact deposition testimony that would reveal the identities of third parties with whom Zillow negotiated. For this reason, Zillow seeks to redact the following: Exhibit 1, 154:04 and 154:20–25.

\* \* \*

14. Having reviewed the redactions to the Joint Letter Brief and to Exhibits 1, 2, and 3, I believe that each individual redaction is necessary to protect Zillow’s business interests described above, and that there is no narrower set of redactions that would be adequate.

Executed September 11, 2025:

DocuSigned by:  
  
93AF941A389F40C...  
Shannon Cartales



# Exhibit 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 COMPASS, INC., )  
5 )  
6 Plaintiff, ) Case No.  
7 vs. )  
8 ) 1:25-cv-05201-JAV  
9 ZILLOW, INC., ZILLOW GROUP, )  
10 INC., and TRULIA, LLC, )  
11 )  
12 Defendants. )  
13 )  
14

15 HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY  
16

17 VIDEOTAPED DEPOSITION OF ERROL SAMUELSON  
18

19 August 28, 2025  
20

21 Seattle, Washington  
22

23 Reporter: Teri Simons, CCR, RMR, CRR  
24  
25

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

119

1	I am sure you have used the product.	12:00:50
2	Based on permissions, right?	12:00:52
3	Q Sure.	12:00:54
4	Do you see the comments that are listed on	12:00:56
5	the right-hand column of the second page of	12:00:58
6	Exhibit No. 122?	12:01:01
7	A I haven't read them, but I do see them,	12:01:01
8	yes.	12:01:05
9	Q I am going to draw your attention to	12:01:05
10	Comment No. 3, and I'm just going to ask you-- you	12:01:07
11	can read it to yourself or I can read it to you,	12:01:10
12	but was that your comment?	12:01:12
13	A It was not.	12:01:15
14	Q Okay. And do you have an idea of who	12:01:16
15	Lloyd might be, referred to in that comment?	12:01:18
16	A I do.	12:01:20
17	Q Who is Lloyd?	12:01:21
18	A "Lloyd" is referring to "Lloyd Frink" who	12:01:22
19	is one of the cofounders of Zillow.	12:01:26
20	Q And do you have contact with Mr. Frink on	12:01:28
21	a regular basis?	12:01:31
22	A Not-- it depends on what you mean by	12:01:32
23	"regular," but I wouldn't characterize it as	12:01:39
24	regularly.	12:01:41
25	Both he and his cofounder have stepped	12:01:44

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

120

1	back quite a bit from the business.	12:01:46
2	It's primarily Jeremy Wacksman and the	12:01:49
3	leadership team that I would interface with.	12:01:52
4	I see him occasionally.	12:01:55
5	Q And in this comment it says, "Chatting	12:01:57
6	with Lloyd at the Z retreat."	12:01:59
7	Do you go to the Z retreat?	12:02:01
8	A So a Z retreat-- I will try to keep this	12:02:05
9	short.	12:02:11
10	Now that we have gone to remote work,	12:02:12
11	teams get together in person a couple times a	12:02:14
12	year, and those are referred to as Z retreats.	12:02:18
13	Q Okay.	12:02:20
14	A Given the comment and given the timing, I	12:02:24
15	think this particular Z retreat was one that sort	12:02:25
16	of senior people in the company, VPs and so on,	12:02:30
17	that we had in early December in Scottsdale of	12:02:37
18	last year-- I think that's this--	12:02:41
19	Q Did you go to it?	12:02:45
20	A I did go to it.	12:02:46
21	[REDACTED]	12:02:50
22	[REDACTED]	12:02:53
23	[REDACTED]	12:02:55
24	[REDACTED]	12:02:58
25	[REDACTED]	12:03:00

HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

121

1	[REDACTED]	12:03:00
2	[REDACTED]	12:03:01
3	[REDACTED]	12:03:04
4	[REDACTED]	12:03:07
5	[REDACTED]	12:03:10
6	[REDACTED]	12:03:12
7	[REDACTED]	12:03:16
8	[REDACTED]	12:03:19
9	[REDACTED]	12:03:21
10	[REDACTED]	12:03:24
11	[REDACTED]	12:03:29
12	[REDACTED]	12:03:31
13	[REDACTED]	12:03:32
14	[REDACTED]	12:03:33
15	[REDACTED]	12:03:34
16	[REDACTED]	12:03:35
17	[REDACTED]	12:03:38
18	[REDACTED]	12:03:41
19	[REDACTED]	12:03:41
20	[REDACTED]	12:03:43
21	[REDACTED]	12:03:46
22	[REDACTED]	12:03:47
23	[REDACTED]	12:03:57
24	[REDACTED]	12:03:58
25	[REDACTED]	12:04:02

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HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

122

1	[REDACTED]	12:04:04
2	[REDACTED]	12:04:06
3	[REDACTED]	12:04:11
4	[REDACTED]	12:04:14
5	[REDACTED]	12:04:16
6	[REDACTED]	12:04:19
7	[REDACTED]	12:04:47
8	[REDACTED]	12:04:50
9	[REDACTED]	12:04:54
10	[REDACTED]	12:04:54
11	[REDACTED]	12:05:04
12	[REDACTED]	12:05:10
13	[REDACTED]	12:05:13
14	[REDACTED]	12:05:13
15	[REDACTED]	12:05:16
16	[REDACTED]	12:05:18
17	[REDACTED]	12:05:20
18	[REDACTED]	12:05:22
19	[REDACTED]	12:05:24
20	[REDACTED]	12:05:31
21	[REDACTED]	12:05:33
22	[REDACTED]	12:05:35
23	[REDACTED]	12:05:37
24	[REDACTED]	12:05:38
25	[REDACTED]	12:05:41

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

125

1 A I mean, taking the example of Compass,  
2 that would be a true statement, I think.

3 Given it's couched in the "majority of  
4 brokerages" language in the previous sentence, I  
5 don't think the majority of brokerages are looking  
6 to keep their listing off the MLS or pitch price  
7 testing to their sellers.

8 I think most-- in my opinion, most brokers  
9 recognize the value of broad exposure.

10 Q Some brokerages believe that they would  
11 get an advantage if they kept some of their  
12 listings off the MLS?

13 A Yes.

14 Q Okay. No further questions on that  
15 document, sir.

16 With respect to Mr. Frink, he's also  
17 Zillow's-- on Zillow's board of directors, right?

18 A I believe so, yes.

19 Q And given his role as the founder and also  
20 on the board of directors, his opinion is  
21 something that the executives at Zillow care  
22 about?

23 MR. BUFFIER: Objection to form.

24 A So Lloyd is not tremendously active in a  
25 lot of the discussions that we have. That was

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

126

1 true-- I should say he was much more involved when 12:09:51  
2 I joined the company 11 or so years ago. 12:09:54

3 Generally speaking, most of the decisions 12:09:59  
4 are made fairly collaboratively but made 12:10:02  
5 ultimately by the senior leadership team. 12:10:06

6 Lloyd will occasionally attend one of 12:10:09  
7 those meetings. If he has a point of view, he is 12:10:11  
8 certainly listened to. People hear his opinion. 12:10:16  
9 It's one voice of many. 12:10:21

10 Q Okay. The Zillow listing standards in 12:10:24  
11 draft form, were those previewed to the board of 12:10:26  
12 directors-- I'm sorry, let me ask, do you attend 12:10:30  
13 board of director meetings? 12:10:33

14 A Occasionally, but not often. 12:10:35

15 Q Were the Zillow listing standards, in 12:10:37  
16 draft form, previewed to the board of directors? 12:10:42

17 A I don't know, but it would surprise me if 12:10:44  
18 they were. 12:10:49

19 It's not the level of detail, as far as I 12:10:49  
20 understand, that we would normally provide to the 12:10:52  
21 board. 12:10:54

22 (Exhibit No. 123 marked 12:10:54  
23 for identification.) 12:10:54

24 Q Okay. Sir, you have been handed Exhibit 12:10:54  
25 No. 123, Bates numbered ZG-00009526. 12:12:00



## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

146

1	there is a list of numbered points.	13:20:55
2	I assume that these are the points that	13:20:58
3	were going to be made during the Compass-Zillow	13:20:59
4	meeting; is that right?	13:21:03
5	A I'm sorry, can you repeat that again?	13:21:04
6	Q Of course.	13:21:06
7	The second page of Exhibit No. 125,	13:21:06
8	there's five numbered points.	13:21:08
9	A I see.	13:21:11
10	Q Are these points that were to be made	13:21:12
11	during the Compass-Zillow meeting?	13:21:15
12	A Yes, I believe so.	13:21:18
13	Q And were you the lead for Zillow on that	13:21:19
14	meeting?	13:21:21
15	A I was definitely a participant. I	13:21:22
16	wouldn't describe myself as the lead.	13:21:29
17	Q Who had lead for Zillow in that meeting?	13:21:30
18	A I would say it was Jeremy Wacksman, our	13:21:33
19	CEO, with-- there was commentary by Jeremy Hofmann	13:21:37
20	and me during that meeting as well. Lloyd made a	13:21:43
21	few comments as well. He also attended the	13:21:45
22	meeting.	13:21:49
23	Q What was Mr. Frink's role in the	13:21:49
24	Compass-Zillow meeting on April 1st?	13:21:53
25	A I will give you my point of view.	13:21:55

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

147

1 I believe part of it was to demonstrate to 13:21:57  
2 Compass how serious we were about trying to find a 13:22:01  
3 solution and reach agreement with them and work 13:22:04  
4 together, and by having one of our cofounders 13:22:06  
5 there, it sort of underscored the fact that we 13:22:10  
6 were really serious on trying to work on a 13:22:13  
7 solution. 13:22:15

8 Q And the solution that Zillow was looking 13:22:15  
9 for was a situation where Compass would take down 13:22:19  
10 the elements on its website and its marketing that 13:22:22  
11 violated the Zillow rule, and in exchange Zillow 13:22:25  
12 would find a way to increase its partnering with 13:22:30  
13 Compass? 13:22:34

14 MR. BUFFIER: Objection to form. 13:22:36

15 A The goal here was to encourage Compass to 13:22:38  
16 support listing transparency, that listings that 13:22:42  
17 weren't truly private and publicly marketed would 13:22:45  
18 be entered into the Multiple Listing Service. 13:22:49

19 We also wanted to demonstrate to Compass 13:22:52  
20 that if you look at Bullet Point No. 3, we already 13:22:55  
21 do a great deal to benefit Compass, and the 13:22:59  
22 comment was made in the meeting, might be in this 13:23:03  
23 document too, that we think there is more we could 13:23:05  
24 do to help Compass grow, be successful. 13:23:07

25 Our hope is that Mr. Reffkin would see the 13:23:10

HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

Transcript of Errol Samuelson

Conducted on August 28, 2025

154

1	[REDACTED]	13:31:40
2	[REDACTED]	13:31:47
3	[REDACTED]	13:31:48
4	[REDACTED]	13:31:52
5	[REDACTED]	13:31:57
6	[REDACTED]	13:32:01
7	[REDACTED]	13:32:02
8	[REDACTED]	13:32:03
9	[REDACTED]	13:32:04
10	[REDACTED]	13:32:05
11	[REDACTED]	13:32:10
12	[REDACTED]	13:32:13
13	[REDACTED]	13:32:16
14	[REDACTED]	13:32:19
15	[REDACTED]	13:32:21
16	[REDACTED]	13:32:23
17	[REDACTED]	13:32:32
18	[REDACTED]	13:32:35
19	[REDACTED]	13:32:39
20	[REDACTED]	13:32:41
21	[REDACTED]	13:32:47
22	[REDACTED]	13:32:50
23	[REDACTED]	13:32:55
24	[REDACTED]	13:32:58
25	[REDACTED]	13:33:02

# Exhibit 2

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 COMPASS, INC., )  
5 )  
6 Plaintiff, ) Case No.  
7 vs. )  
8 ) 1:25-cv-05201-JAV  
9 ZILLOW, INC., ZILLOW GROUP, )  
10 INC., and TRULIA, LLC, )  
11 Defendants. )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

11 VIDEOTAPED DEPOSITION OF JEREMY HOFMANN

12 August 29, 2025

13  
14 Seattle, Washington

15  
16 HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY  
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Reporter: Teri Simons, CCR, RMR, CRR

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Hofmann

Conducted on August 29, 2025

130

1	place where we could figure out a way to work	12:05:00
2	together rather than be at odds.	12:05:02
3	Q To have him change his private listing	12:05:04
4	network?	12:05:07
5	A I think we had a pretty firm disagreement	12:05:07
6	on what we thought the merits of the private	12:05:13
7	listing network that he was running-- we just	12:05:19
8	don't agree with it. We haven't agreed with it	12:05:22
9	the whole time.	12:05:26
10	But we thought there were ways to work	12:05:27
11	together.	12:05:29
12	Q You respond, "FYI, let's chat on this	12:05:30
13	tomorrow AM," and then you start listing Errol,	12:05:35
14	JW-- is that "Jeremy Wacksman"?	12:05:39
15	A Yes.	12:05:40
16	Q JH, you, Lloyd Frink; is that right?	12:05:41
17	And Brad Owens?	12:05:44
18	A Yes.	12:05:46
19	Q And "meeting Reffkin 4/1 in Seattle," do	12:05:47
20	you see that?	12:05:52
21	So are those the folks that did attend the	12:05:52
22	meeting in Seattle?	12:05:54
23	A Yes.	12:05:55
24	Q And it included Mr. Frink?	12:05:56
25	A It did.	12:05:58

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Hofmann

Conducted on August 29, 2025

131

1	Q And did you chat internally on this	12:05:59
2	tomorrow AM-- so this is March 19th.	12:06:04
3	Do you recall chatting about this	12:06:07
4	internally after you sent this e-mail?	12:06:09
5	A I don't have perfect recall, but if I said	12:06:11
6	"We should chat on this tomorrow morning," I	12:06:18
7	assume we chatted about it.	12:06:20
8	Q And this is with Ms. Berroth?	12:06:22
9	A Yes.	12:06:24
10	Q Did you chat with Mr. Frink about the	12:06:24
11	pre-meeting at all?	12:06:29
12	A About the pre-meeting?	12:06:30
13	Q Sorry, this is called a Zoom pre-meeting	12:06:32
14	with Reffkin, this chain--	12:06:36
15	A Got it.	12:06:37
16	Q So I'm just wondering, did you ever have	12:06:38
17	discussions with Mr. Frink about a pre-meeting	12:06:42
18	with Mr. Reffkin?	12:06:45
19	A I don't remember.	12:06:45
20	Q Did you have any conversations with	12:06:46
21	Mr. Frink about Compass's private listing network?	12:06:47
22	A We had conversations with-- yeah.	12:06:51
23	Q In what context?	12:06:56
24	A He was-- you know, as we were developing	12:06:57
25	the listing standards, it was obviously a topic	12:07:01

## HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Hofmann

Conducted on August 29, 2025

132

1	that was important to the company, so he would get	12:07:04
2	briefed from time to time.	12:07:06
3	Q "Time to time" meaning--	12:07:07
4	A Hard to be super specific.	12:07:09
5	Q Weekly? Daily?	12:07:13
6	A Definitely not daily.	12:07:15
7	I don't think weekly.	12:07:17
8	There was that industry meeting that we	12:07:19
9	had on a pretty much weekly basis that he gets	12:07:21
10	invited to but doesn't always attend.	12:07:25
11	Q Why would he be involved in a meeting with	12:07:27
12	Mr. Reffkin?	12:07:30
13	A I think we felt like-- I think Robert felt	12:07:30
14	like he was at the wrong altitude of relationship	12:07:40
15	with Zillow, so he was interfacing with,	12:07:42
16	primarily, TG Gaullaudet.	12:07:45
17	When Robert requested the meeting, we	12:07:49
18	wanted to make sure that he knew we were serious,	12:07:51
19	and he had, from the highest levels of the	12:07:55
20	organization, that we were looking to figure out a	12:07:58
21	way to partner, and Lloyd is included in that.	12:08:00
22	[REDACTED]	12:08:04
23	[REDACTED]	12:08:07
24	[REDACTED]	12:08:11
25	[REDACTED]	12:08:12



## HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Hofmann

Conducted on August 29, 2025

139

1 A Yeah, I mean, "national" is a shorthand  
2 for just "not in a few markets," so that's why I  
3 say "broader national partnership."

4 It's "Hey, can we figure out something to  
5 do that is broader than a few markets," that he  
6 had talked about a week or two ago.

7 Q And you forward the e-mail internally to  
8 Rich Barton.

9 Who is that?

10 A Rich is another co-executive chairman and  
11 cofounder.

12 Q And Lloyd Frink as well?

13 Why did you forward this e-mail to Rich  
14 Barton and Lloyd Frink?

15 A To keep them up to speed on what we were  
16 doing.

17 Rich and Lloyd, over the past year-plus,  
18 had started to step back in day-to-day operations  
19 as Jeremy Wacksman became the CEO, so our forms of  
20 communication, they were just less operationally  
21 involved, but we would find points in time where  
22 we thought it was relevant for them, to make sure  
23 they understood what was going on, and this was  
24 one of those.

25 Q Why was this one of those?

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMPASS, INC., )  
)  
Plaintiff, )  
) Case No.  
vs. )  
) 1:25-cv-05201-JAV  
ZILLOW, INC., ZILLOW GROUP, INC., )  
and TRULIA, LLC, )  
)  
Defendants. )  
)

HIGHLY CONFIDENTIAL - OUTSIDE COUNSELS' EYES ONLY

VIDEOTAPED DEPOSITION OF JEREMY WACKSMAN

August 26, 2025

Seattle, Washington

Reporter: Teri Simons, CCR, RMR, CRR

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Wacksman

Conducted on August 26, 2025

9

1 A We began formulating those standards 09:04:01  
2 probably as early as January of 2025. 09:04:07

3 Q And other than yourself, who in your group 09:04:10  
4 was working on those standards? 09:04:13

5 A A variety of folks in our leadership team 09:04:15  
6 were working on those standards. 09:04:18

7 Errol Samuelson, our chief industry 09:04:19  
8 development officer-- 09:04:19

9 (Court Reporter asks for clarification.) 09:04:19

10 A A variety of folks. 09:04:26

11 Most specifically, Errol Samuelson, who is 09:04:28  
12 our chief industry development officer; Jeremy 09:04:32  
13 Hofmann, who is our chief financial officer; Katie 09:04:35  
14 Berroth, who leads corporate strategy; and a 09:04:41  
15 handful of folks on their teams. 09:04:45

16 [REDACTED] 09:04:47

17 [REDACTED] 09:04:50

18 [REDACTED] 09:04:53

19 [REDACTED] 09:04:55

20 [REDACTED] 09:04:57

21 [REDACTED] 09:05:00

22 [REDACTED] 09:05:03

23 [REDACTED] 09:05:05

24 [REDACTED] 09:05:07

25 [REDACTED] 09:05:09

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Wacksman

Conducted on August 26, 2025

42

1	[REDACTED]	09:43:19
2	[REDACTED]	09:43:22
3	[REDACTED]	09:43:26
4	[REDACTED]	09:43:27
5	[REDACTED]	09:43:27
6	[REDACTED]	09:43:30
7	[REDACTED]	09:43:33
8	[REDACTED]	09:43:35
9	[REDACTED]	09:43:38
10	[REDACTED]	09:43:40
11	[REDACTED]	09:43:41
12	[REDACTED]	09:43:43
13	[REDACTED]	09:43:45
14	[REDACTED]	09:43:48
15	[REDACTED]	09:43:50
16	[REDACTED]	09:43:51
17	[REDACTED]	09:43:52
18	[REDACTED]	09:43:58
19	[REDACTED]	09:44:00
20	[REDACTED]	09:44:01
21	[REDACTED]	09:44:03
22	[REDACTED]	09:44:07
23	[REDACTED]	09:44:09
24	[REDACTED]	09:44:10
25	[REDACTED]	09:44:15

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## HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Wacksman

Conducted on August 26, 2025

55

1	Q And is that by phone?	09:58:17
2	A Yeah, sometimes over Zoom, sometimes over	09:58:19
3	phone.	09:58:21
4	Q Okay. So before the April 10th	09:58:22
5	announcement of the access standards, did you have	09:58:26
6	a Zoom or a phone call with Mr. Frink about the	09:58:28
7	standards?	09:58:31
8	A You know, I honestly don't remember.	09:58:31
9	He wasn't part of the decision body, so it	09:58:35
10	was more of an FYI, so I don't know when I talked	09:58:43
11	to him about it.	09:58:45
12	[REDACTED]	09:58:45
13	[REDACTED]	09:58:46
14	[REDACTED]	09:58:49
15	[REDACTED]	09:58:51
16	[REDACTED]	09:58:55
17	[REDACTED]	09:58:57
18	[REDACTED]	09:59:01
19	[REDACTED]	09:59:03
20	[REDACTED]	09:59:06
21	[REDACTED]	09:59:07
22	[REDACTED]	09:59:10
23	[REDACTED]	09:59:12
24	[REDACTED]	09:59:14
25	[REDACTED]	09:59:15

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Wacksman

Conducted on August 26, 2025

107

1	[REDACTED]	11:25:43
2	[REDACTED]	11:25:49
3	[REDACTED]	11:25:50
4	[REDACTED]	11:25:52
5	[REDACTED]	11:25:53
6	[REDACTED]	11:26:00
7	[REDACTED]	11:26:01
8	[REDACTED]	11:26:01
9	[REDACTED]	11:26:03
10	[REDACTED]	11:26:05
11	[REDACTED]	11:26:08
12	[REDACTED]	11:26:11
13	[REDACTED]	11:26:13
14	[REDACTED]	11:26:18
15	[REDACTED]	11:26:22
16	[REDACTED]	11:26:25
17	[REDACTED]	11:26:27
18	[REDACTED]	11:26:29
19	[REDACTED]	11:26:34
20	[REDACTED]	11:26:37
21	[REDACTED]	11:26:41
22	[REDACTED]	11:26:45
23	[REDACTED]	11:26:48
24	[REDACTED]	11:26:52
25	[REDACTED]	11:26:58

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HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

Transcript of Jeremy Wacksman

Conducted on August 26, 2025

108

1	[REDACTED]	11:26:59
2	[REDACTED]	11:26:59
3	[REDACTED]	11:27:00
4	[REDACTED]	11:27:03
5	[REDACTED]	11:27:06
6	[REDACTED]	11:27:10
7	[REDACTED]	11:27:11
8	[REDACTED]	11:27:12
9	[REDACTED]	11:27:14
10	[REDACTED]	11:27:14
11	[REDACTED]	11:27:17
12	[REDACTED]	11:27:21
13	[REDACTED]	11:27:24
14	[REDACTED]	11:27:29
15	[REDACTED]	11:27:32
16	[REDACTED]	11:27:34
17	[REDACTED]	11:27:37
18	[REDACTED]	11:27:38
19	[REDACTED]	11:27:47
20	[REDACTED]	11:27:50
21	[REDACTED]	11:27:54
22	[REDACTED]	11:27:57
23	[REDACTED]	11:27:57
24	[REDACTED]	11:27:59
25	[REDACTED]	11:28:04

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# Exhibit 4



September 11, 2025

**Via CM/ECF**

The Honorable Jeannette A. Vargas  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**Re: Compass, Inc. v. Zillow, Inc. et al., Case No. 1:25-cv-05201-JAV (S.D.N.Y.)**

Dear Judge Vargas:

Plaintiff Compass, Inc. (“Plaintiff” or “Compass”) and Defendants Zillow, Inc., Zillow Group, Inc., and Trulia, LLC (collectively, “Defendants” or “Zillow”) respectfully submit this joint letter regarding the deposition of Lloyd Frink, Co-Founder, President, and Co-Executive Chairman of the Board of Directors of Zillow Group. The Parties previously raised this issue with the Court, ECF 71 at 3-5, and believe the issue is now ripe for the Court to resolve. This letter sets forth the Parties’ respective positions as to whether Mr. Frink should be deposed. The Parties have reserved September 24, 2025 as the date for Mr. Frink’s deposition should it go forward.

**Plaintiff’s Position**

The Court should allow Compass to depose Mr. Frink because despite Zillow’s recent claims to the contrary, both the depositions of Zillow’s executives and Zillow’s documents have shown that Mr. Frink is not an apex witness, and even if he was, Mr. Frink has unique and important information that no other witness can provide.

Mr. Frink has relevant information. Discovery has demonstrated that Mr. Frink is not entitled to any additional protection from a deposition as compared to any other corporate executive. As courts have stated, “[w]hen considering whether to allow the deposition of a corporate executive, the Court must ‘begin with the proposition that plaintiffs have no burden to show that the deponents have any relevant knowledge.’” *Scott v. Chipotle Mexican Grill, Inc.*, 306 F.R.D. 120, 122. (S.D.N.Y. 2015) (quoting *In re Garlock*, 463 F. Supp. 2d 478, 481 (S.D.N.Y. 2006)). Rather, the court must consider “the likelihood that the individual possesses relevant knowledge, whether another source could provide identical information, the possibility of harassment, and the potential disruption of business.” *Scott*, 306 F.R.D at 122. Corporate executives are only excused from testimony “in compelling circumstances.” *Id.*

There is no such compelling circumstance here. Zillow does not contest that Mr. Frink has knowledge relevant to Compass’s claims. Zillow cannot reasonably claim that there is a possibility of harassment. Nor has Zillow explained what potential disruption of business would occur if Mr. Frink were deposed. Multiple Zillow witnesses have testified that Mr. Frink does not run Zillow’s day-to-day operations anymore, meaning that Mr. Frink is not an apex witness that is entitled to additional protection from discovery. *See* Ex. 1 Samuelson Dep. 119:22-120:1

The Honorable Jeannette A. Vargas  
 September 11, 2025  
 Page 2

(stating that both Mr. Frink “and his cofounder have stepped back quite a bit from the business”); Ex. 2 Hofmann Dep. 139:12-24 (explaining that Mr. Hofmann copied Mr. Frink on an email regarding negotiations with Compass the day before Zillow announced the Zillow Ban because Mr. Frink “over the past year-plus, had started to step back in day-to-day operations . . . but we would find points in time where we thought it was relevant for [him], to make sure [he] understood what was going on, and this was one of those”). Indeed, the burden argument cuts in the opposite direction—given that Mr. Frink no longer runs Zillow’s day-to-day operations, Mr. Frink sitting for a four-hour deposition is *less* burdensome on Zillow than getting discovery from another source that may be heavily involved in Zillow’s day-to-day operations.

Zillow’s only argument is about the uniqueness of the information known by Mr. Frink as compared to the other witnesses already deposed. Discovery thus far<sup>1</sup> has demonstrated that the information possessed by Mr. Frink is unique and important to the core issues of the case, particularly given Mr. Frink’s knowledge of the company as one of the co-founders, and his specific knowledge of the industry.

First, the record shows that Mr. Frink was a unique leadership figure regarding Zillow’s Listing Access Standards strategy well before it was developed, and Zillow executives and employees frequently went to him for his unique perspective on that issue. For example:

- One of the central Zillow strategy documents includes an important comment relaying Mr. Frink’s larger strategic view on shifting industry dynamics, [REDACTED]. According to the comment bubble input by Zillow executive Curt Beardsley, Mr. Frink told Mr. Beardsley at an event [REDACTED]. See ZG-00026158 at -59; see also Ex. 1 Samuelson Dep. 119:9-122:5.<sup>2</sup>
- Mr. Wacksman testified that Mr. Frink was involved in Zillow’s strategy for its listing access standards; that he and Mr. Frink had conversations about such issues; and that he and Mr. Frink had discussed strategies for how to get other industry players to align with Zillow. Ex. 3 Wacksman Dep. 107:9-16 and 108:7-19.
- Mr. Hofmann testified that he discussed the development of Zillow’s Listing Access Standards with Mr. Frink “from time to time” and that Mr. Frink was invited to attend an “industry meeting that we had on pretty much weekly basis” which he would indeed attend on occasion. Ex. 2 Hofmann Dep. 131:20-132:10.

<sup>1</sup> The parties have negotiated to considerably limit the amount of discovery for purposes of the Preliminary Injunction, including limits to date ranges. The number of documents produced by Mr. Frink is not commensurate with his knowledge of facts and information highly relevant to the claims in this case.

<sup>2</sup> Notably, Mr. Beardsley was not a custodian for purposes of expedited discovery and is not scheduled to be deposed in advance of the PI, prohibiting Compass to explore with Mr. Beardsley what else he and Mr. Frink discussed related to the Listing Access Standards, Compass, and the issues in this case.

The Honorable Jeannette A. Vargas  
 September 11, 2025  
 Page 3

In short, Mr. Frink was providing guidance and strategy to Zillow's executives and employees, including verbally, about how [REDACTED]. These discussions related to the strategy surrounding and ultimate adoption of Zillow's Listing Access Standards [REDACTED].

Mr. Frink's strategic view—in addition to establishing the tone at the top related to pre-marketing and Compass—is highly relevant to Compass's PI motion in two respects. First, it speaks directly to Zillow's economic and strategic incentives to conspire and adopt the ZLAS, with Mr. Frink explaining that [REDACTED].

[REDACTED]. Second, Mr. Frink's views and statements speak directly to Zillow's [REDACTED].

No other witness can testify regarding all the particular pieces of strategy and guidance Mr. Frink provided to various Zillow executives and employees, to others in the industry, and *why* exactly Mr. Frink held such views. Compass thus should be permitted to take testimony as to how Mr. Frink shaped and guided Zillow's strategy with regard to the issues in this case.

Second, the record shows that Mr. Frink was an integral part of Zillow's negotiations with Compass over whether Compass and Zillow could come to an agreement regarding Zillow's Listing Access Standards. For example, the documents and testimony show that:

- Mr. Frink was having separate conversations with former Zillow executives Susan Daimler and Matt Daimler—conversations that no other Zillow witness was party to—in an attempt to influence Compass and facilitate the negotiations between Compass and Zillow. *See, e.g.*, ZG-00009648 (March 5, 2025 texts between Mr. Wacksman to Mr. Frink asking for an update on conversations Mr. Frink was having with the Daimlers to coordinate a meeting with Mr. Reffkin); ZG-00009656 (screenshot of text message between Mr. Frink and the Daimlers, thanking them for “both facilitating the meeting” between Zillow and Mr. Reffkin); CZ\_COMP\_000105855 (text messages between Mr. Reffkin and the Daimlers where Mr. Daimler notes that “Lloyd [Frink] got back to me and said they are open to having a more strategic conversation (e.g. with Jeremy CEO etc) and that you could set it up by reaching out to Errol or Jeremy”);
- Mr. Frink was involved in planning and strategizing for Zillow's negotiations with Compass, *see, e.g.*, ZG-00014437 (March 28, 2025 calendar invite from Mr. Frink to Zillow Chief Executive Officer Jeremy Wacksman to discuss Compass negotiations) and ZG-00008183 (April 11, 2025 e-mail from Frink to others discussing negotiations with Compass); and
- Mr. Frink attended a key meeting between Zillow and Compass executives, *see, e.g.*, Ex. 1 Samuelson Dep. 146:17-147:7 (Zillow's Chief Industry Development Officer stating that Zillow brought Mr. Frink to an April meeting with Compass to “demonstrate [] how

The Honorable Jeannette A. Vargas  
 September 11, 2025  
 Page 4

serious we were about trying to find a solution and reach agreement”); Ex. 2 Hofmann Dep. 130:19-25.

In light of this evidence, Compass should be permitted to depose Mr. Frink given his unique understanding of the issues, including, for example, (1) his individual conversations with the former Zillow executives and potentially other industry participants regarding Compass or Zillow’s Listing Access Standards; (2) guidance or strategy Mr. Frink gave to others at Zillow; (3) Mr. Frink’s perspective on the Compass negotiations; and (4) what Mr. Frink meant when he said [REDACTED].

Finally, it would not be inequitable for Plaintiff to take the deposition of Mr. Frink, particularly since the same four-hour time cap on the deposition would apply to Mr. Frink as it did to the other depositions of Zillow executives and employees. Defendants have taken six depositions of Plaintiff’s executives, including depositions of its senior-most executives such as Compass’s Chief Executive Officer Robert Reffkin; Neda Navab, Co-President, East & Brokerage Operations; and Rory Golod, Co-President, West & Growth, Communications, and Events. Plaintiff has currently only taken the depositions of four of Defendants’ witnesses, and Plaintiff is scheduled to depose one more of Defendants’ employees on September 11th<sup>3</sup>—for a total of five depositions. As noted above, the Parties have already reserved September 24, 2025 as an available and acceptable deposition date for Mr. Frink.

### **Defendants’ Position**

The Court should deny Compass’s renewed request to depose Lloyd Frink, Zillow’s Co-Founder, President, and Co-Executive Chairman of the Board of Directors. By this Thursday, Compass will have already deposed *five* Zillow witnesses: Zillow’s Chief Executive Officer (“CEO”) (Jeremy Wacksman), Chief Financial Officer (“CFO”) (Jeremy Hofmann), Chief Industry Development Officer (“CIDO”) (Errol Samuelson), Vice President of Strategic Operations and Partnerships (Katie Berroth), and Senior Director of Strategy and Partnerships (Steve Lake). Compass has not shown that deposing Mr. Frink—a *sixth* Zillow witness—will elicit unique information pertinent to Compass’s motion for a preliminary injunction (“PI Motion”).

#### ***I. The Apex Doctrine Applies to Mr. Frink, a Current Zillow Executive***

Compass’s argument that Mr. Frink is not subject to the protections of the apex doctrine misstates the facts and law. The apex doctrine applies to “senior corporate executives.” *Harapeti v. CBS TV Stations Inc.*, 2021 WL 3932424, at \*2 (S.D.N.Y. Sept. 2, 2021); *see also Shiber v. Centerview Partners LLC*, 2023 WL 3071554, at \*3-4 (S.D.N.Y. Apr. 25, 2023) (quashing deposition of current executive where plaintiff failed to show “personal and *unique* knowledge of the relevant facts.”).

---

<sup>3</sup> Compass agreed to take these depositions outside of the Court’s schedule as a compromise to accommodate the Zillow witnesses’ schedules.

The Honorable Jeannette A. Vargas  
 September 11, 2025  
 Page 5

There is no dispute that Mr. Frink is a current “senior corporate executive” in light of his dual roles as Zillow’s President and the Co-Executive Chairman of its Board of Directors. That Mr. Frink now focuses more on setting overall product strategy and leading Zillow’s Board than day-to-day operations does not mean that the apex doctrine does not apply. *See Treppel v. Biovail Corp.*, 2006 WL 468314, at \*1-3 (S.D.N.Y. Feb. 28, 2006) (quashing deposition of board of directors’ member based on apex doctrine). Indeed, while Mr. Frink is still an executive with significant current demands on his time, the apex doctrine extends even to former executives who no longer hold roles at a company. *See Harapeti*, 2021 WL 3932424, at \*2; *Morrison v. Scotia Cap. (USA) Inc.*, 2024 WL 3316086, at \*2-3 (S.D.N.Y. June 7, 2024) (quashing deposition of former executive). As courts in this district have found, the apex doctrine “is animated by broader principles” and “reflects the reality that depositions of high-profile or high-ranking busy individuals with exceptional demands on their schedules present a heightened risk of abuse or harassment, of the sort that Rule 26 expressly guards against.” *Mark Anthony Int’l SRL v. Prime Hydration, LLC*, 2025 WL 2055998, at \*2 (S.D.N.Y. July 23, 2025) (applying apex doctrine to celebrity soccer player). Simply put, Compass provides no reasonable basis to conclude that Mr. Frink is not protected by the apex doctrine.

## ***II. Compass Has Not Established That Mr. Frink Has Unique Information Relevant to the PI Motion***

Nor has Compass carried its burden to establish that Mr. Frink has unique information relevant to the narrow scope of Compass’s PI Motion. It is well settled that “[a]bsent a showing that the executive ‘has unique evidence, personal knowledge of the claims at issue,’ and ‘other witnesses [are] incapable of providing testimony about the conduct alleged,’ the executive is safeguarded from being deposed.” *Morrison*, 2024 WL 3316086, at \*2 (quashing deposition where apex witness lacked unique knowledge). That principle should apply with heightened force here, where the Court has authorized only narrowly targeted discovery relevant to Compass’s PI Motion. *See, e.g.*, Jul. 1, 2025 Hearing Tr. 6:24-7:03 (“some expedited discovery is warranted, [but] it really needs to be focused.”); Jul. 21, 2025 Hearing Tr. 27:02-05 (“there should be expedited discovery, but the world should be somewhat narrow”); Aug. 15, 2025 Hearing Tr. 8:02-13 (“while I’m permitting depositions they are supposed to be narrowed and targeted”). None of Compass’s laundry list of arguments in support of deposing Mr. Frink holds water.

First, Compass is wrong that Mr. Frink was a “unique leadership figure” regarding Zillow’s Listing Access Standards (“LAS”). Zillow’s CEO Mr. Wacksman and CISO Mr. Samuelson each testified that Mr. Frink was *not* part of the working team developing LAS. *See* Ex. 4 Wacksman Dep. 9:3-15<sup>4</sup> (listing members of the team that developed LAS, which did not include Mr. Frink); 42:13-16 (Mr. Frink “was not” part of the “working team” at Zillow developing relevant strategy); Ex. 1 Samuelson Dep. 125:24-25 (explaining that Mr. Frink was “not tremendously active in a lot of the discussions that we have”). Nor was Mr. Frink a relevant

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<sup>4</sup> Excerpts of the relevant depositions are attached as Exhibit A (Wacksman), Exhibit B (Samuelson), and Exhibit C (Hofmann).

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decision maker on LAS. Ex. 4 Wacksman Dep. 55:4-11 (“[Mr. Frink] wasn’t part of the decision body” on LAS); Ex. 1 Samuelson Dep. 125:24-126:21 (testifying that decisions were made by “the senior leadership team,” that Mr. Frink only “occasionally” attended such meetings, and that Mr. Samuelson did not expect LAS was previewed to Zillow’s Board of Directors, which Mr. Frink co-chairs). Tellingly, Compass does not identify a single substantive question regarding LAS that a deponent was not able to answer or deferred to Mr. Frink. The production also does not indicate that there are unique issues where Mr. Frink’s knowledge is relevant: Mr. Frink is a custodian of only 136 responsive documents out of the thousands of documents produced by Zillow. Messrs. Wacksman, Hofmann, and/or Samuelson, all of whom Compass has already deposited, are also custodians on all but 22 of those documents.

Compass’s arguments to the contrary rely on misleading characterizations of the deposition testimony. For example, Compass asserts that “Mr. Wacksman testified that Mr. Frink was involved in Zillow’s strategy for its listing access standards,” but the cited deposition testimony merely shows that Mr. Wacksman understood that he and Mr. Frink were “aligned philosophically” on Zillow’s goals regarding listing transparency, not that Mr. Frink was involved. *See* Ex. 4 Wacksman Dep. 107:9-108:25. Compass also contends that “Mr. Frink was providing guidance and strategy to Zillow’s executives and employees,” but cites only deposition testimony that has nothing to do with Mr. Frink. Further, that Mr. Frink was “briefed from time to time” by Mr. Hofmann (who has already been deposited), or invited to attend (but rarely attended) meetings with other executives, similarly fails to show that Mr. Frink has any unique knowledge. *See* Ex. 2 Hofmann Dep. 131:20-132:10.

Second, Compass’s reliance on a single “comment bubble” relaying a brief conversation with Mr. Frink about a *possible* strategy is insufficient to compel his deposition because Compass does not even attempt to explain how that conversation is relevant to the PI Motion. To prevail on its motion, Compass must show that Zillow’s actual strategy (not proposed or hypothetical ones) will cause irreparable harm absent an injunction. Regardless, whatever Mr. Beardsley took away from his conversation with Mr. Frink was reduced to writing and produced to Compass; that is more than sufficient for purposes of expedited discovery.<sup>5</sup> *Cf. Scott v. Chipotle Mexican Grill, Inc.*, 306 F.R.D. 120, 122. (S.D.N.Y. 2015) (granting limited apex deposition where “no documents had been produced” on a key issue).

Third, Compass points to an April 1 meeting attended by Zillow and Compass’s own executives. However, Compass omits that it has already deposited the three senior Zillow executives who attended that meeting and who, unlike Mr. Frink, continued to participate in ongoing discussions with Compass. Deposing a fourth witness about a meeting that Compass executives also attended is plainly cumulative and lays bare Compass’s apparent effort to harass Zillow by depositing yet another senior executive. Moreover, Zillow’s witnesses have already testified that Mr. Frink attended the April 1 meeting simply to demonstrate “how serious [Zillow

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<sup>5</sup> Compass’s claim that it was prohibited from depositing Mr. Beardsley because he was not a custodian for purposes of expedited discovery is unfounded. Compass deposited Katie Berroth, who also was not a custodian. Nothing prevented Compass from seeking to depose Mr. Beardsley as one of its five witnesses, but Compass chose not to.



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was] about trying to find a solution and reach agreement with them and work together” with Compass, and not because Mr. Frink was actually involved in strategy or decision-making related to the Listing Access Standards. *See, e.g.,* Ex. 1 Samuelson Dep. 146:23-147:7.<sup>6</sup>

Finally, Compass’s suggestion that it should be allowed to depose Mr. Frink because Zillow deposed six witnesses is inconsistent with the apex doctrine, which protects senior corporate executives from deposition irrespective of other discovery considerations such as numeric parity. Compass also ignores that its prior position before this Court was that each party should be limited to five depositions during expedited discovery. ECF No. 71. When Zillow requested a sixth deposition, Compass ultimately agreed given the witness’s unique and central role,<sup>7</sup> despite Zillow having expressly maintained its objection to Mr. Frink’s deposition. Moreover, Compass has advanced five witnesses in support of its PI Motion, through declarations and/or live testimony, whereas Zillow is relying on only three in opposition. Consequently, Zillow has only deposed one witness beyond those Compass put forward, whereas Compass has already deposed two additional witnesses—and Mr. Frink would be the third.

In sum, Mr. Frink does not have any unique, relevant knowledge warranting a sixth deposition on this expedited PI schedule, and the Court should deny his apex deposition.

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<sup>6</sup> Compass identifies only one unique communication between Mr. Frink and former Zillow executives Susan and Matt Daimler, but offers no explanation why this conversation has any relevance to its PI motion. Instead, the evidence reveals that Mr. Frink was merely coordinating a meeting with Compass and referred the Daimlers to Messrs. Wacksman and Samuelson.

<sup>7</sup> Unlike Mr. Frink, the sixth witness Zillow deposed had unique knowledge directly relevant to the PI Motion. Rory Golod is Compass’ President of Growth and has repeatedly spoken publicly on behalf of Compass about this litigation and the impact of LAS (or lack thereof) on Compass’s business, and was thus uniquely positioned to address Compass’s claims of irreparable harm.

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