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10
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13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

14
15 COSTAR GROUP, INC., and
16 COSTAR REALTY
INFORMATION,
17 INC.,

18 Plaintiffs,

19 v.

20 COMMERCIAL REAL ESTATE
EXCHANGE, INC.,

21 Defendant.
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CASE NO. 2:20-cv-8819

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs CoStar Group, Inc. (“CoStar Group”) and CoStar Realty
2 Information, Inc. (“CoStar Realty”) (collectively, “CoStar”), by and through its
3 undersigned counsel, bring this Complaint against Commercial Real Estate
4 Exchange, Inc. (“CREXi”) and allege as follows:

5 **PRELIMINARY STATEMENT**

6 1. CoStar brings this suit to redress CREXi’s flagrant and widespread
7 theft of CoStar’s intellectual property and its unlawful scheme to build a
8 competing business on the back of that stolen content, and through the
9 unauthorized use of CoStar’s services.

10 2. CoStar is the nation’s leading provider of commercial real estate
11 information, analytics, and online property marketplaces. CoStar offers a
12 password-protected subscription service used by brokers and other entities that
13 require comprehensive commercial real estate data. CoStar also owns a number of
14 digital marketplaces containing listings of real estate for sale and for lease.
15 CoStar’s LoopNet.com website (“LoopNet”) is the leading digital marketplace for
16 commercial real estate in the United States. Every day buyers, sellers, lessors,
17 lessees, owners, and brokers access and use the marketplace at www.loopnet.com
18 in order to list, buy, sell, lease, rent, or browse commercial real estate. In addition,
19 CoStar runs a commercial real estate auction platform, known as Ten-X.com
20 (“Ten-X”).

21 3. CREXi is attempting to build its own online commercial real estate
22 marketplace and auction platform by free-riding on CoStar’s billions of dollars of
23 investments and the thirty-plus years of hard work by CoStar’s employees. CREXi
24 covertly harvests content, including broker directories, from CoStar’s subscription
25 database without authorization by using passwords issued to other companies.
26 CREXi also accesses LoopNet on a systematic basis to steal content, including
27 property listing data, new listing alerts, and CoStar-copyrighted photographs, all in
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1 breach of contract and in violation of state and federal law.¹ After copying content
2 from multiple CoStar sources, CREXi proudly and knowingly displays the stolen
3 content on its rival platform, and tells the world that it is organically and rapidly
4 growing a successful business. Put simply, CREXi is ripping off CoStar, CoStar's
5 employees, and CoStar's shareholders, and lying to its customers and the industry.

6 4. CREXi's wrongdoing is remarkable in its scope. User accounts and
7 IP addresses affiliated with CREXi have impermissibly accessed LoopNet *more*
8 *than a million times*—at least—even though such high-volume competitor access
9 is forbidden by CoStar's terms of use. CREXi's unauthorized access continued
10 even after CoStar implemented blocking technology and sent CREXi thousands of
11 notices stating that its access was unauthorized. Undeterred, CREXi switched IP
12 addresses and continued using CoStar's services to build a competitive product,
13 and continued harvesting CoStar's content on a wholesale basis.

14 5. Indeed, based on a review of CREXi's website through July 30, 2020,
15 CoStar has identified well over *ten thousand* copyrighted CoStar photographs,
16 copied and displayed by CREXi without permission. (To give a sense of the harm
17 inflicted and scale of wrongdoing, recent federal judgments have placed a value of
18 \$50,000 on each CoStar image infringed.) These photographs almost certainly
19 constitute a mere fraction of the total infringement present in CREXi's systems, as
20 CREXi's public facing website only displays photographs associated with listings
21 CREXi has decided to publish.

22 6. Although CREXi is a relative newcomer, it is large and well-funded,
23 and could compete fairly with CoStar if it so chose. CREXi has purportedly
24 already raised \$60 million, including a \$30 million Series B funding announced in
25 January 2020. But CREXi has chosen to build out its business on the cheap by
26 stealing from CoStar.

27 ¹ For the avoidance of doubt, CoStar's allegations related to LoopNet in this case refer solely to
28 CoStar's LoopNet marketplace and not to broker websites powered by CoStar's LoopLink
product.

1 7. The rot permeates the company. CREXi account executives,
2 including Samuel Hamlin and Ross Padfield, obtained access to CoStar’s
3 password-protected database by using passwords issued to CoStar customers, and
4 then downloaded CoStar’s broker directories to build a clone directory on CREXi,
5 using the stolen data to generate customer leads. Meanwhile, CREXi’s
6 employees—as well as low-paid “researchers” in India working on CREXi’s
7 behalf—routinely access LoopNet. Once there, CREXi copies CoStar’s content,
8 including copyrighted photographs, real estate listing data, and broker information,
9 to populate its website. Multiple CREXi managers and employees have even
10 created LoopNet accounts, many using non-CREXi email addresses and
11 pseudonyms to cover their tracks. For example, Nick Hanna, CREXi’s senior
12 product manager, created a LoopNet account registered to “Hank Mardukas” at
13 itsnotnick08@aol.com. Hank Mardukas is a fictional character from the 2009
14 movie, “I Love You, Man.” The use of fake names helps CREXi employees make
15 use of LoopNet, in violation of the terms of use barring competitive access,
16 without being caught.

17 8. Beyond the improper use of CoStar’s subscription service to generate
18 broker directories, and the direct theft of content from LoopNet, senior employees
19 at CREXi unabashedly use LoopNet as a key tool to compete against CoStar.
20 Several CREXi employees have set up “saved searches” on LoopNet so that they
21 receive an email notification at a non-CREXi address whenever LoopNet publishes
22 a listing that matches their identified criteria. For example, Michael Rosenfeld, a
23 CREXi account executive for the mid-Atlantic region, has created saved searches
24 that send notifications to “Mike Rose” at his personal gmail account whenever
25 LoopNet posts certain property listings in that region. CREXi is using the efforts
26 of a competing online marketplace, LoopNet, in order to identify new listings to
27 add to its site, rather than relying solely on its own efforts.

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1 9. CREXi’s attempt to clone CoStar’s business is brazen. It has gone so
2 far as to infringe CoStar’s copyrighted photographs in the marketing materials it
3 uses to promote itself. Over the last several months, senior CREXi leadership—
4 including Mr. Rosenfeld and Paul Cohen, CREXi’s National Sales Director—have
5 hosted a number of virtual presentations to introduce CREXi in markets across the
6 country. During the presentations, CREXi claims that it has more listings than its
7 competitors, and purports to showcase its platform and display property listings.
8 What CREXi does not advertise, however, is that it is taking that listing content
9 from CoStar. Indeed, even the sample listings shown in these virtual marketing
10 campaigns contain infringing content copied from CoStar.

11 10. There is no question that CREXi knows that its conduct is wrongful.
12 It is widely known in the industry that CoStar does not permit competitors to
13 piggyback on its business. CoStar’s subscription service is password-protected.
14 And CoStar has sent thousands of notices to CREXi specifically stating that it may
15 not access LoopNet. CREXi itself has admitted that it is *not* allowed to copy
16 CoStar’s listing content from LoopNet. But the evidence shows that this is
17 precisely what CREXi does. CREXi accesses a property listing on CoStar’s
18 services. Shortly thereafter, the same property listing is added *by CREXi* on its
19 website with CoStar’s copyrighted photographs. And in order to hide its copying
20 of CoStar images featured in those listings, CREXi appears to be cropping out the
21 CoStar watermark from CoStar-copyrighted photographs before adding them to
22 CREXi. Even worse, CREXi often goes a step further and adds its own watermark
23 to CoStar-copyrighted photographs, affirmatively passing them off as its own.

24 11. There is also no question that CREXi itself uploads the stolen CoStar
25 content, including copyrighted images, onto CREXi’s site. That is the reason
26 CREXi harvests the content from LoopNet. Indeed, in many cases, the listing
27 brokers have never even heard of CREXi—they contact CoStar to ask why their
28 listings are appearing on CREXi’s site. And even when CREXi does contact a

1 listing broker, CREXi offers to post the listing itself, without revealing its illicit
2 source.

3 12. As CREXi must know, CoStar has brought several successful lawsuits
4 against rivals who seek to compete unfairly by covertly accessing CoStar's
5 websites, copying listings, and stealing CoStar's copyrighted photographs. Like
6 CREXi, Xceligent, Inc. copied real estate listings, including CoStar's copyrighted
7 images and other CoStar content, from LoopNet, and, like CREXi, used data from
8 CoStar's password-protected subscription service to build and expand its rival
9 business. Also like CREXi, Xceligent ignored LoopNet's "access denied" notices
10 and rotated the IP addresses that it used in order to circumvent CoStar's
11 technological protections. And, like CREXi, Xceligent utilized low-paid labor in
12 India so that it could access LoopNet on the cheap and around the clock. In a
13 highly publicized lawsuit, CoStar sued Xceligent for copyright infringement and
14 unfair competition, leading to a permanent injunction and a \$500 million judgment,
15 the largest in history for the infringement of copyrighted photographs. That
16 judgment valued each unlawfully copied real estate listing and each infringed
17 CoStar image at \$50,000. CREXi was undeterred. Instead, it simply adopted
18 Xceligent's playbook.

19 13. CREXi is a repeat offender. CREXi's co-founder and CEO, Michael
20 DeGiorgio, and co-founder, Luke Morris, both of whom previously worked for
21 Ten-X—the commercial real estate auction site that is now part of CoStar—were
22 caught red-handed with highly-confidential trade-secret customer lists they took
23 from Ten-X to establish CREXi. In 2016, a California state court entered a
24 preliminary injunction prohibiting CREXi from using the customer lists that it had
25 misappropriated from Ten-X. To end the litigation, CREXi made a seven-figure
26 damages payment, and Mr. DeGiorgio stated: "I regret my conduct at the time I
27 departed Ten-X." Clearly not. Mr. DeGiorgio, CREXi, and its employees have
28 continued to steal to get ahead, now on an even greater scale.

1 19. CoStar goes to significant lengths to protect the copyrighted
2 photographs and data that it makes available. For instance, use of both CoStar’s
3 subscription service and LoopNet are subject to binding terms of use that prohibit
4 high-volume competitive use by rivals, such as CREXi, and any unauthorized
5 copying of content. This restriction is industry standard.

6 20. CREXi was founded in 2015 by Michael DeGiorgio, Luke Morris,
7 Erek Benz, and Ben Widhelm. The founders had all worked at Ten-X, the auction
8 site that is now part of CoStar. CREXi describes itself on its website as “a
9 commercial real estate marketplace that simplifies transactions for brokers with a
10 suite of easy-to-use tools to manage the entire process from listing to closing.”
11 CREXi’s website (www.crexi.com) allows users to view commercial real estate
12 listings in markets across the country. CREXi also runs an online auction
13 marketplace, similar to Ten-X, and in its auction marketing materials trumpet over
14 \$100 billion dollars in closed deals.

15 21. Outwardly, CREXi claims to be rapidly expanding under its own
16 steam and gaining market share from rivals like LoopNet to become the biggest
17 commercial real estate marketplace in the industry. During recent marketing
18 presentations, CREXi claimed that it was now the “number one commercial
19 marketplace in the country,” “really the place where all the listings are,” and that it
20 has “far more listings than the competitors out there.” CREXi proclaims in its
21 marketing emails that it is already “the most active CRE platform,” while
22 simultaneously claiming to be “the fastest growing CRE marketplace.” And in a
23 May 4, 2020 podcast, CREXi boasted that it is adding “thousands of properties a
24 week” to its website with the goal of “building up the whole marketplace side of
25 things.” Along similar lines, CREXi describes its recently-launched broker
26 directory as “the only place” with “every commercial broker in the country.”

27 22. To the extent CREXi has grown in the past five years, purportedly to
28 become “the number one” in the industry, it has not grown by investing the time

1 (decades) or money (billions) that CoStar has. Instead, CREXi's growth is
2 attributable, at least in significant part, to free-riding on CoStar, by willfully and
3 systematically accessing CoStar services without authorization, using them to
4 compete against CoStar, and stealing CoStar's intellectual property.

5 23. For instance, CREXi account executives unlawfully accessed CoStar's
6 password-protected subscription database using log-in credentials they received
7 while working at other companies who are CoStar clients. They did so in order to
8 copy CoStar's data, including thousands of broker directory and property records
9 from CoStar's systems. Upon information and belief, CREXi has used these
10 directory records to build its rival directory and find potential customers for
11 CREXi's marketplace.

12 24. Sam Hamlin, for example, quit his job at Colliers in 2019, then joined
13 CREXi as an account executive, but continued to use his Colliers account
14 credentials without authorization to access CoStar's subscription service more than
15 a hundred times, accumulating over fifty thousand product hits and downloading
16 nearly four thousand CoStar Professional Directory records, which would assist in
17 generating customer leads.

18 25. This competitive access and use of unauthorized credentials is a
19 breach of CoStar's Terms of Use, to which Mr. Hamlin (and fellow CREXi
20 account executive Ross Padfield) agreed on behalf of CREXi. CREXi's disregard
21 for CoStar's proprietary data fits a pattern: As noted above, CREXi made a seven-
22 figure payment to Ten-X in 2017 after it had been caught misappropriating
23 substantially similar confidential customer information.

24 26. At the same time it was accessing CoStar's subscription service,
25 CREXi has accessed LoopNet more than a million times—at least—in breach of
26 binding terms and conditions. Once there, CREXi has copied, en masse, property
27 listings containing CoStar's copyrighted photographs and proprietary content.
28 CREXi IP addresses have continued to hit CoStar's marketplaces despite CoStar's

1 technological blocking efforts and repeated written notice—displayed to CREXi
2 literally thousands of times—that such conduct is contractually prohibited.

3 27. CREXi employees have also created accounts on LoopNet—often
4 using non-CREXi email addresses and pseudonyms to mask their connection to
5 their employer. They set up “saved searches” to track when LoopNet adds
6 property listings fitting specified criteria. When CREXi speaks of “building up the
7 whole marketplace side of things,” CREXi means that it is monitoring LoopNet for
8 new listings to copy and pass off as the fruit of CREXi’s own labor.

9 28. CREXi often simply copies listings from LoopNet without any
10 contact with the broker representing the listings. Other times, CREXi contacts the
11 listing broker and asks vaguely whether the broker would like the listing to appear
12 for free on CREXi, without specifying where CREXi will obtain the relevant
13 listing information. CREXi then copies the listing from LoopNet, which is far
14 cheaper, faster, and easier than generating a new property listing.

15 29. For example, and as discussed in Section D.5, *infra*, on May 14, 2020,
16 CREXi viewed a listing for an Alabama property on LoopNet, and the next day the
17 same property appeared on CREXi with a CoStar copyrighted photograph:

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LoopNet Listing

(accessed by CREXi on May 14, 2020)

73,434 SF | Office Building [REDACTED] \$750,000 (\$10/SF)

EXECUTIVE SUMMARY

Three and a half story building with a loading dock. Building was formerly a technical college and several classrooms as well as executive area. Convenient to I-65 interchange in a mature neighborhood. Close to restaurants, shopping, and medical facilities.

PROPERTY FACTS

Sole Type	Investment or Owner User	Price	\$750,000	Typical Floor Size	24,478 SF
Property Type	Office	Price Per SF	\$10	Slab To Slab	0'
Building Size	73,434 SF	Tenancy	Single	Building FAR	0.57
Building Class	B	Building Height	3 Stories	Land Area	2.97 AC
Year Built	1972				
Zoning	C1				
Parking	128 Spaces (1.74 Spaces per 1,000 SF Leased)				
Opportunity Zone	No				

Date Created: 5/17/2017 Last Updated: 7/15/2020

[Contact](#)

CREXi Listing

(posted by CREXi on May 15, 2020)

CREXi For Lease Search for Commercial Properties

For Sale For Lease Comps Products Request a Demo Add Listings Sign Up or Log In

Office | Space Available | 74,400 Sq Ft - 74,400 Sq Ft

Address

Date Added: 15 May 2020 Days on Market: 86 days Time Since Last Update: 2 months

Building Details

Property Type	Office	Subtype	Professional
Tenancy	Multiple	Total Building SQFT	74,400
Minimum Divisible SQFT	20,000	Max Contiguous SQFT	74,400
Vacant SQFT	74,400	Lot Size (acres)	2.97
Class	B	Year Built	1971
Stories	4	Total Parking Spaces	3/1000sqft
Zoning	C1	County	Jefferson County

Building Description

Three and a half story building with a loading dock. Building was formerly a technical college and several classrooms as well as executive area. Convenient to I-65 interchange in a mature neighborhood. Close to restaurants, shopping, and medical facilities.

Listing Contacts

Rate	
Nearly Rate	\$13.50/SF/YR
Monthly Rate	\$13/SF/MO

Is there information that looks off? Report

1 30. Likewise, on May 15, 2020, CREXi viewed a LoopNet listing for a
2 property in Nevada, and only three days later the same property appeared on
3 CREXi with a CoStar copyrighted photograph:

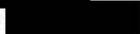
4 **LoopNet Listing**

5 (accessed by CREXi on May 15, 2020)

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9 C6 
10 1,801 SF of Office Space Available in 

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21 ALL AVAILABLE SPACE(1)

SPACE	SIZE	TERM	RATE	SPACE USE	CONDITION	AVAILABLE
Tot Ft-Sce 120	1,801 SF	3-5 Yrs	\$19.32/SF/YR	Office	Full Build-Out	Now

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CREXi Listing

(posted by CREXi on May 18, 2020)

The screenshot shows a CREXi listing for an office space. The main image displays a modern office building with a parking lot. To the right, a table provides the following details:

Building Details	
Property Type	Office Subtype Professional
Tenancy	Multiple Total Building SQFT 4,400
Vacant SQFT	1,801 Class B
Year Built	2006 Stories 1
Total Parking Spaces	8 Zoning C-P
County	Clark County

Below the table, the 'Building Description' section states: 'Great Location, Very Busy Street and New Growing Area!'. At the bottom, a 'Request Info' button is present.

31. Many brokers are not even aware that their listings appear on CREXi. And even *if* CREXi had asked the brokers for permission to copy the listings from LoopNet, brokers cannot provide permission to infringe CoStar’s copyrighted images, or to breach the terms and conditions applicable to CoStar’s services, which prohibit the type of high-volume competitive use seen here. CREXi knows this. Indeed, as described in more detail below, when CREXi talks with brokers, CREXi is careful not to mention LoopNet. And if CoStar’s site comes up in conversation, CREXi maintains appearances and says that it may not copy from LoopNet. But behind closed doors, it does so anyway.

32. Recognizing the unlawful nature of its scheme, CREXi has taken numerous steps to attempt to conceal its actions. These include rotating its IP addresses to avoid technological blocking measures imposed by CoStar, using passwords issued to other companies in order to access CoStar’s subscription service, and adopting fake identities when registering for accounts on LoopNet.

1 And in order to hide its copying of CoStar images, CREXi appears to be removing
2 the CoStar watermark from CoStar copyrighted photographs before displaying the
3 derivative work on CREXi, as seen here:

4 **CoStar Copyrighted Photograph on**
5 **LoopNet**

6 **CoStar Copyrighted Photograph on**
7 **CREXi**



26 33. As if the removal of watermarks were not enough, CREXi cannot help
27 but take credit in an even more explicit manner. CREXi takes some of the CoStar-
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1 copyrighted cropped images and adds its own CREXi watermark to them, as the
2 examples below demonstrate:

3 **CoStar Copyrighted Photograph on**
4 **LoopNet**

3 **CoStar Copyrighted Photograph on**
4 **CREXi**



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21 34. However, CREXi is not always careful in making sure that CoStar's
22 watermark has been removed before adding the CREXi watermark. These images
23 taken from CREXi's website show that CREXi's watermark even appears on
24 images that still have the CoStar watermark:

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35. CREXi’s violations of law are willful, egregious, and in bad faith. CREXi’s unlawful free-loading has harmed CoStar in ways that cannot be measured or remedied fully by monetary damages. As a consequence of CREXi’s unlawful and unfair conduct, CoStar is entitled to millions of dollars in damages as well as injunctive relief to prevent continued irreparable harm to its business.

JURISDICTION AND VENUE

36. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201, *et seq.* The Court has federal question jurisdiction over claims arising under those statutes pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court has supplemental jurisdiction over claims arising under state law pursuant to 28 U.S.C. § 1367 because these claims are so related to the federal-law claims that they form part of the same case or controversy.

37. The Court has personal jurisdiction over CREXi because, among other reasons, CREXi is headquartered and has its principal place of business in Marina Del Ray, California. The business transacted by CREXi bears a substantial nexus to CoStar’s claims. Through its acts, CREXi has invoked the benefits and

1 protections of California's laws and purposefully availed itself of the privilege of
2 conducting activities with California.

3 38. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and
4 1400(a) because CREXi resides in this judicial district, and a substantial part of the
5 events or omissions giving rise to CoStar's claims occurred in this judicial district.

6 **THE PARTIES**

7 39. Plaintiff CoStar Group, Inc. is a corporation organized and existing
8 under the laws of the State of Delaware with its principal place of business and
9 corporate offices located at 1331 L Street, NW, Washington, District of Columbia,
10 20005.

11 40. Plaintiff CoStar Realty Information, Inc. is a corporation organized
12 and existing under the laws of the State of Delaware with its principal place of
13 business and corporate offices located at 1331 L Street, NW, Washington, District
14 of Columbia, 20005. It is a wholly owned subsidiary of CoStar Group.

15 41. Defendant CREXi is a corporation organized and existing under the
16 laws of the state of Delaware with its principal place of business and corporate
17 offices located at 4086 Del Rey Ave, Marina Del Rey, California, 90292.
18 CREXi's California Registration Statement lists its Entity Address as 13360 Beach
19 Avenue, Marina Del Rey, CA 90292.

20 **FACTUAL ALLEGATIONS**

21 **A. CoStar Invests Significant Time and Money to Maintain the**
22 **Nation's Most Comprehensive and Most Visited Commercial Real**
23 **Estate Services**

24 42. Like many innovative technology companies, CoStar's business began
25 in its founder's basement with a simple idea: empower commercial real estate
26 brokers with professionally researched, unbiased commercial property information.
27 Since its founding, and as a result of investments in excess of \$5 billion dollars and
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1 the efforts of thousands of employees, CoStar and its affiliates have become the
2 leading provider of commercial real estate information.

3 43. CoStar's core product is its subscription database of real estate
4 information, which includes verified information about commercial real estate,
5 integrated with millions of copyrighted photographs and other imagery. The
6 database is part of a suite of online services that include resources and tools for the
7 real estate industry. CoStar generates, updates, and curates the database's content
8 at a cost of hundreds of millions of dollars each year.

9 44. CoStar's marketing research team has more than 1,200 trained
10 professionals who update, curate, and maintain the database every minute of every
11 working day and beyond. These marketing researchers make millions of changes
12 to the database each year, canvass commercial real estate properties, and have
13 taken, on average, over one million photographs annually in recent years.

14 45. CoStar licenses its subscription database content for a monthly fee.
15 Those fees, which vary according to the scope of access the user seeks, generate
16 significant revenue for CoStar.

17 46. CoStar provides this comprehensive commercial real estate
18 intelligence to professionals throughout the economy, including real estate brokers
19 and brokerage firms, owners and investors, property managers, lenders,
20 developers, valuation professionals, as well as retailers, vendors, and corporations.
21 The leading commercial real estate brokerages in the United States, as well as a
22 significant number of smaller brokerages, property owners, banks, retailers, real
23 estate investment trusts (REITs), and other professionals are subscribers. For
24 example, brokers and brokerages use CoStar in their day-to-day business to
25 identify available spaces for lease and evaluate potential sales. Pursuant to
26 licenses, these users utilize CoStar's professional, copyrighted photographs to
27 market their listings.

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1 47. Federal, state, and local government agencies rely on CoStar’s data
2 for a variety of purposes. For example, government agencies use CoStar’s data to
3 value commercial properties for tax purposes. CoStar’s investment in accurate
4 information also benefits the banking sector. CoStar’s forecasts, risk modeling, or
5 advisory services are used by nearly all of the top twenty “Systemically Important
6 Financial Institutions,” as well as federal regulators involved in stress testing those
7 banks. CoStar’s census of the commercial real estate environment and daily data
8 updates allow these banks and regulators to better manage the systemic risks that
9 led to the 2008 financial crisis, thereby benefitting the economy.

10 48. CoStar’s database powers digital marketplaces owned and operated by
11 CoStar. One such marketplace is LoopNet. LoopNet is a digital platform where
12 users can easily post and search commercial real estate listings. LoopNet provides
13 information on more than 650,000 for-lease and for-sale listings at any point in
14 time and is a key revenue generator for CoStar.

15 49. LoopNet is the most heavily trafficked commercial real estate
16 marketplace, with more than seven million unique users per month. LoopNet’s
17 users rely on the platform’s content being up-to-date, unbiased, and trustworthy.

18 50. Together, CoStar’s subscription database, LoopNet, and CoStar’s
19 other digital marketplaces provide broad access to vast commercial real estate data,
20 helping to level the playing field in a \$43 trillion per year U.S. industry.

21 Ultimately, CoStar’s investment in its services provides enormous benefits to
22 CoStar’s customers, other participants in the commercial real estate market, and
23 the economy at large. CoStar delivers value not only by bringing together parties
24 that are looking to transact, but also by ensuring the reliability of the information
25 that is shared across its services. By supplying comprehensive data to the
26 marketplace, CoStar helps reduce transaction- and search-related costs, leading to
27 efficiency gains that benefit potential buyers, sellers, lessees, and lessors, as well
28 as third-party consumers of CoStar’s information, such as banks and government

1 agencies. And because one of the key drivers of CoStar’s value is ensuring that its
2 services are trusted and up-to-date, CoStar is incentivized to invest in creating and
3 updating in real time a highly reliable database.

4 51. The important role that CoStar plays in the commercial real estate
5 market is demonstrated by the extent to which its users interact with its services.
6 Each day, users conduct over nine million searches for commercial real estate
7 using CoStar services. CoStar estimates that its services play a part in supporting
8 trillions of dollars of commercial real estate transactions in the United States each
9 year.

10 52. Although CoStar has a number of competitors in each of its
11 businesses, including its digital marketplaces, it has fought to outwork and
12 outperform the competition through constant innovation and reinvestment over
13 three decades. More than thirteen thousand CoStar researchers have contributed to
14 the subscription database since its creation, adding millions of properties, shooting
15 millions of professional photos and drone videos, and driving and flying millions
16 of miles per year.

17 53. The benefits that CoStar’s services provide to its customers and the
18 economy at large, and CoStar’s ability to continue generating job opportunities, are
19 a direct result of the company’s relentless efforts to research, collect, and create
20 proprietary content. The protection of CoStar’s intellectual property—and
21 CoStar’s ability to vindicate its rights therein—is therefore critically important.

22 **B. CoStar Goes to Significant Lengths to Protect Its Intellectual**
23 **Property**

24 54. CoStar’s intellectual property is at the root of the CoStar database and
25 therefore is central to its business. CoStar protects its intellectual property in three
26 primary ways. First, CoStar registers its photographs with the United States
27 Copyright Office. Second, users must assent to CoStar’s binding terms in order to
28 use any of the CoStar services. Third, CoStar employs anti-piracy technology.

1 **1. Copyright Protection**

2 55. A key element of CoStar’s intellectual property is its repository of
3 photographs of commercial real estate. CoStar owns the largest library of
4 commercial real estate images in the world, including millions of photographs of
5 commercial real estate taken by professional photographers employed by CoStar.
6 As discussed above, these copyrighted photographs are used in CoStar’s services,
7 including its subscription database and LoopNet marketplace.

8 56. As CoStar adds photographs to its services, it routinely registers them
9 with the Copyright Office. CoStar is currently registering tens of thousands of
10 photographs per month.

11 57. CoStar watermarks the images it owns with a logo in the bottom right
12 hand corner, as shown in multiple examples above. This watermark, which
13 publicly identifies CoStar’s ownership of the images and protects CoStar’s
14 property, constitutes copyright management information.

15 58. CoStar watermarks its copyrighted photographs to police infringement
16 and has used its watermarks to identify infringers in the past, including rivals such
17 as Xceligent. Moreover, the presence of watermarks helps law-abiding third
18 parties, including other companies in the commercial real estate industry,
19 recognize and remove infringing images.

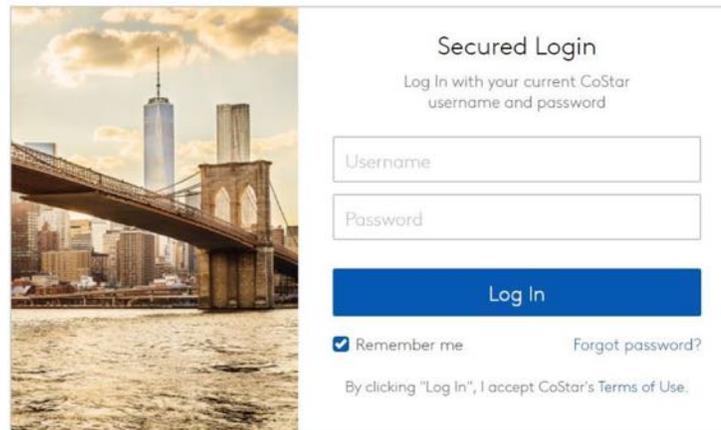
20 59. Users may provide their own photographs to CoStar for use on their
21 listings in all CoStar services. CoStar does not claim ownership or copyright in
22 user-uploaded photos.

23 **2. Terms of Use Protection**

24 60. CoStar requires users of its services, including CoStar’s subscription
25 database and LoopNet, to agree to binding terms and conditions.

26 61. Use of CoStar’s website, including its subscription database, is subject
27 to CoStar’s Terms of Use (“CoStar’s Terms of Use”). A genuine copy of CoStar’s
28 Terms of Use is attached hereto as **Exhibit A**.

1 62. In order to log into the CoStar subscription database, users must enter
2 their username and password on a login page. Below the “Log In” button, users
3 are reminded that “By clicking ‘Log In’, I accept CoStar’s Terms of Use.” The
4 text includes a conspicuous hyperlink to CoStar’s Terms of Use:



13 63. In addition, before users first log into CoStar’s subscription database,
14 CoStar sends them an email reminding them that their use of Costar’s database is
15 subject to CoStar’s Terms of Use. The email states, “Use is subject to the CoStar
16 Terms of Use. By logging in, you agree to be bound by such terms.”

17 64. Further, after initially logging into CoStar’s database, users are
18 periodically required to agree (again) to CoStar’s Terms of Use. Every 30 days, a
19 pop-up window appears that displays CoStar’s Terms of Use and requires the user
20 to affirmatively agree to the terms before proceeding to the database. Thus, for
21 example, if a user has not logged into CoStar’s database for 45 days, the next time
22 the user logs in and tries to access information, the pop-up window will appear,
23 and the user must re-accept the terms in order to gain access. The text at the top of
24 the pop-up window states: “YOUR USE OF THIS WEBSITE CONSTITUTES
25 YOUR AGREEMENT TO BE BOUND BY THESE TERMS OF USE.” Users
26 who decline are redirected to the homepage.

27 65. CoStar’s users are also reminded of their obligation to abide by
28 CoStar’s Terms of Use throughout their interactions with the database. For

1 example, when a user attempts to export data from the database, text above the
2 “Export” button informs users: “Exported data subject to restrictions. See Terms
3 of Use.” As with the login page, clicking the words “Terms of Use” displays
4 Costar’s Terms of Use.



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9 66. Moreover, when users view results in the subscription database, the
10 bottom of results pages advises: “By using this site, you agree to our Terms of
11 Use.” This text also includes a hyperlink to CoStar’s Terms of Use.

12 67. As a result of these numerous and conspicuous notices, CREXi and its
13 employees and agents are well aware that their use of CoStar’s subscription
14 database is subject to CoStar’s Terms of Use.

15 68. Likewise, CREXi and its employees and agents are aware that
16 CoStar’s Terms of Use form a binding contract. CoStar’s Terms of Use make clear
17 that they form a binding contract, stating: “By accessing or using this Site (or any
18 part thereof), you agree to be legally bound by the terms and conditions that follow
19 They constitute a legal contract between you and CoStar”

20 69. CoStar’s Terms of Use, provided to and made available to users on
21 multiple occasions as they interact with the database, provide that only
22 “Authorized Users” may access CoStar’s password protected services.
23 “Authorized User” is defined as:

24 [A]n individual (a) employed by a CoStar Client or an
25 Exclusive Contractor (as defined below) of a CoStar
26 Client at a site identified in the License Agreement, and
27 (b) who is specified in the License Agreement as a user
28 of a specific Passcode Protected Service and represented
by the Client to be an employee or Exclusive Contractor

1 of the Client. An “Exclusive Contractor” is defined as an
2 individual person working solely for the CoStar Client
3 and not another company with real estate information
4 needs or for themselves and performing substantially the
5 same services for such CoStar Client as an employee of
6 such CoStar Client.

6 70. Under CoStar’s Terms of Use, an Authorized User “may not share
7 his/her Passcodes with any other person, nor may an Authorized User allow any
8 other person to use or have access to his/her Passcodes.”

9 71. Further, CoStar’s Terms of Use expressly forbid competitors from
10 accessing, using, or transmitting any portion of CoStar’s content in the subscription
11 database service:

12 [Y]ou shall not . . . (2) Access or use any portion of the
13 Product if you are a direct or indirect competitor of
14 CoStar, nor shall you provide, disclose or transmit any
15 portion of the Product to any direct or indirect competitor
16 of CoStar (by way of example, a "direct or indirect
17 competitor" of CoStar includes, but is not limited to,
18 Internet listing services or other real estate information
19 services and employees, independent contractors and
20 agents of such services)

20 72. In other words, an individual may not use CoStar log-in credentials
21 obtained through a previous employer to access or use the CoStar subscription
22 product once that person has left the employer (because they are no longer
23 “employed by a CoStar Client”) or if they are acting as a “direct or indirect
24 competitor of CoStar” (even if also employed simultaneously by a CoStar Client).
25 Nor may the person use those credentials (even of a current employer) at any time
26 to “provide, disclose, or transmit” information to CoStar’s competitors.

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1 73. Similarly, use of LoopNet is subject to LoopNet’s Terms and
2 Conditions (“LoopNet’s Terms and Conditions”). A genuine copy of LoopNet’s
3 Terms and Conditions is attached hereto as **Exhibit B**.

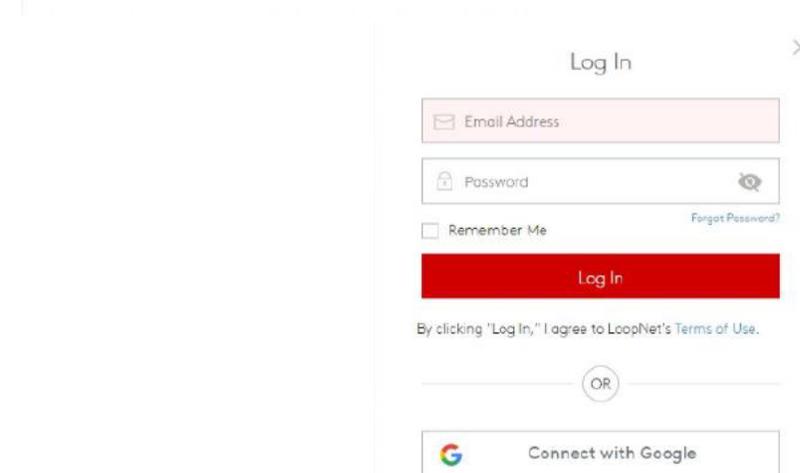
4 74. LoopNet’s Terms and Conditions are available to all users and are
5 accessible via a hyperlink displayed on the landing page and, as shown below, at
6 the bottom of every subsequent page of LoopNet’s website:



10 75. As shown at Paragraph 84 below, users like CREXi that excessively
11 access LoopNet are also served with notices that prominently state that use of
12 LoopNet is subject to those terms and conditions, which again are hyperlinked.

13 76. In addition, CoStar sends an email to users who sign up for a LoopNet
14 account, as many CREXi executives have done, before they first log into their
15 account, which also contains references to LoopNet’s Terms and Conditions.

16 77. Furthermore, in order to log into their LoopNet account, users must
17 enter their username and password on a login page. Below the “Log In” button,
18 users are reminded that “By clicking ‘Log In’, I agree to LoopNet’s Terms of
19 Use.” The text includes a conspicuous hyperlink to the terms.



1 78. CREXi is well aware of LoopNet’s Terms and Conditions. As is
2 standard in the industry, LoopNet’s Terms and Conditions make clear that they
3 form a binding contract with those who use the website, stating: “By viewing,
4 using or accessing the Service, You agree that these Terms and Conditions are a
5 binding legal agreement between You and LoopNet.”

6 79. LoopNet’s Terms and Conditions also expressly prohibit competitors
7 from accessing and using the website. Specifically, LoopNet’s Terms and
8 Conditions state, in part:

9 No employee, independent contractor, agent, or affiliate
10 of any competing real estate information, analytics or
11 listings service is permitted to be a User or a Customer or
12 to view, use, or access the LoopNet website without
13 express written permission from LoopNet. By viewing,
14 using, or accessing the Service, You represent and
15 warrant that You are not a competitor of LoopNet,
16 CoStar Realty Information, Inc. or any of its affiliates,
17 including, without limitation, any company owned or
18 operated by CoStar Group, Inc. (collectively, “LoopNet”
19 or the “Company”) or acting on behalf of a competitor of
20 LoopNet in registering for or accessing the Service.

21 80. LoopNet’s Terms and Conditions also strictly prohibit competitive use
22 of the LoopNet content, including reproducing any information copied from
23 LoopNet:

24 You . . . shall not use any information obtained from the
25 Service for further distribution, publication, public
26 display, or preparation of derivative works or facilitate
27 any of these activities in any way. You shall not use or
28 reproduce any Content that is obtained from the Service,
or that is otherwise made available to You in the Service,
for or in connection with any other listing service or
device. You further shall not use the Service in any other
manner for or in connection with any other listing service

1 or device. You shall not use the LoopNet Service as part
2 of any effort to compete with LoopNet, including,
3 without limitation, using the LoopNet Service to provide,
4 alone or in combination with any other product or
5 service, any database services to any third party or any
6 use that causes a reduction or loss from an existing or
7 potential LoopNet customer, nor shall You remove,
8 erase, or tamper with any copyright or other proprietary
9 notice printed or stamped on, affixed to, or encoded or
10 recorded in the LoopNet Service. You shall not use any
11 robot, spider or other automated process to submit
12 listings, monitor, data mine or copy LoopNet products,
13 services or information; decompile, decode or reverse
14 engineer LoopNet software; or use LoopNet products or
15 services in an unlawful manner, such as for offensive,
16 abusive, tortious, libelous, defamatory or other illegal
17 purposes.

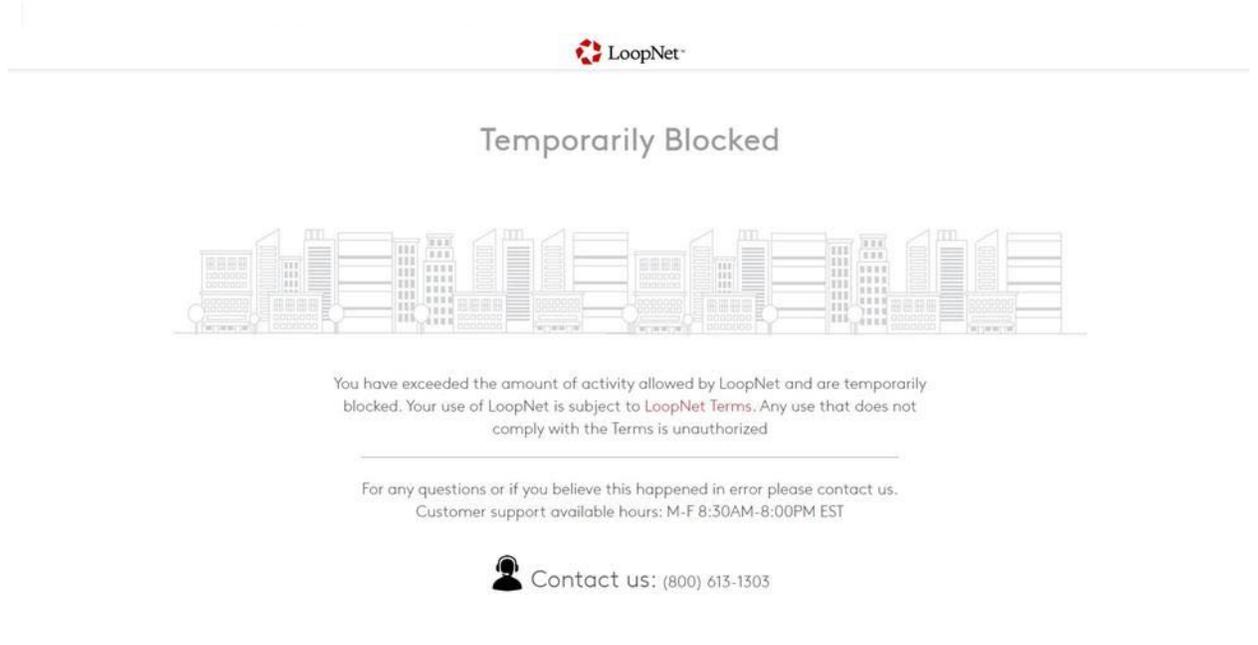
18 81. CoStar protects its intellectual property through binding terms and
19 conditions in part because the market for commercial real estate information is
20 intensely competitive. Competitors to CoStar spring up on a regular basis, and
21 CoStar's terms and conditions help ensure that CoStar is able to protect the fruits
22 of its labors from unscrupulous competitors and continue to make the large
23 investments that benefit its customers.

24 82. CoStar also separately licenses its copyrighted photographs and
25 content to commercial real estate brokerages for use on their own websites and in
26 their own marketing material subject to various contractual restrictions that, among
27 other things, preclude those brokerages from providing CoStar copyrighted
28 photographs or other CoStar-owned content to platforms that compete with CoStar.
29 Brokerages remain free to provide their own photographs and information to such
30 competing platforms.

1 **3. Technological Protection**

2 83. In addition to protecting its intellectual property through copyright
3 registration and binding terms and conditions, CoStar takes technological steps to
4 protect against unauthorized access to CoStar’s services for competitive purposes.

5 84. First, CoStar services, including LoopNet, employ an abuse monitor.
6 If a single IP address views an excessive number of listings or executes an
7 excessive number of searches on the site—consistent with data or content mining
8 operations, automated bots, or other illegitimate users—that IP address is
9 temporarily blocked from accessing the site. On LoopNet, for example, if this
10 abuse monitor is tripped, the user receives an unauthorized access notice, also
11 known as an “Error & Abuse” notice. The notice provides a conspicuous
12 hyperlink to LoopNet’s Terms and Conditions, and explains that use of LoopNet is
13 subject to such terms, and that use that does not comply with the terms is
14 unauthorized:



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25 85. Second, CoStar’s services, including LoopNet, use firewall blocking,
26 which enables CoStar to prevent certain IP addresses from accessing the content on
27 CoStar’s websites. When this type of block is triggered, the user receives the
28 following notice:

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Access Denied

You do not have permission to access this site.

Reference ID: 18.755832b8.1576543074.4962de90

86. CoStar services, including LoopNet, also employ third-party bot managers to identify and block bots, a type of automated software program, from accessing CoStar’s services.

87. Additionally, CoStar’s services, including LoopNet, employ a number of other third-party protections to guard against improper use, including firewalls and IP reputation blocking, as well as anti-virus and anti-malware programs.

C. CREXi Has Grown at CoStar’s Expense By Free-Riding on CoStar’s Investment and Misappropriating CoStar Content

88. CREXi’s business model is founded on adding large numbers of listings to its commercial real estate marketplace. CREXi recognizes that having a large supply of listings allows it to attract buyers, sellers, and brokers, which in turn facilitates its ability to sell advertisements, conduct successful auctions, and generate revenue. In a podcast interview on September 8, 2020, Eli Randel, CREXi’s Chief Strategy Officer (and former Director of Capital Markets at Cohen Financial), explained why CREXi needs to collect and publish real estate listings: “[s]upply begets demand, and then the second half of that recipe or equation is that demand begets monetization. So first and foremost, nobody wants to shop in an empty store, so you better stock the shelves with supply.”

1 89. CREXi touts both the volume of its listings vis-à-vis its competitors
2 and its ability to add thousands of new listings each week. For instance, in a May
3 4, 2020 podcast, Matthew Cors, CREXi’s Regional Director for the Western
4 United States Sales Team, represented that CREXi had “over 100,000 for-sale
5 properties” and “over 200,000 for-lease properties” active on the CREXi website
6 on that day, and that CREXi is adding “thousands of properties a week on here on
7 both sides of the marketplace.” Mr. Cors stated that CREXi’s “whole goal is to
8 continue just building up the whole marketplace side of things.”

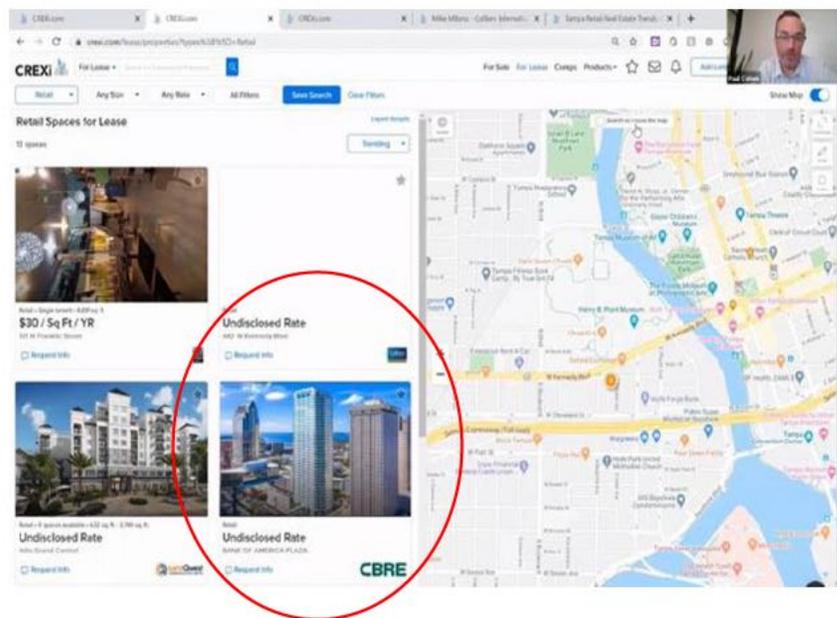
9 90. Similarly, during a May 15, 2020 virtual marketing event called, “The
10 Baltimore Market Report,” Paul Cohen, CREXi’s National Sales Director, boasted
11 that CREXi has “more listings in most markets across the USA” than CREXi’s
12 competitors, which include LoopNet. And during a June 19, 2020 virtual
13 marketing event called, “Welcome to CREXi: Richmond’s New CRE
14 Marketplace,” Mr. Cohen claimed that CREXi was the “place where all the listings
15 are.” That same day, during another virtual event, “Welcome to CREXi: Tampa’s
16 New CRE Marketplace,” Mr. Cohen stated, “We have all the listings for the
17 market—they’re already in there.”

18 91. CREXi’s purported meteoric rise to become the “place where all the
19 listings are” on its face raises serious questions, given that it does not appear that
20 CREXi has invested a fraction of the time or resources into developing its
21 commercial real estate database that CoStar has. For instance, CREXi employs
22 approximately 150 individuals and has stated that it has raised “just under 60
23 million” dollars from investors. By contrast, CoStar currently employs over four
24 thousand individuals and invests hundreds of millions of dollars *annually* just to
25 maintain its listings database.

26 92. CREXi purports to have become the “number one commercial
27 marketplace in the country,” thereby displacing LoopNet. What CREXi omits
28 from its marketing materials, videos, and podcasts is that its purported expansion

1 and rapid accretion of market share is made possible not just by investing its own
2 resources, but by repeatedly accessing CoStar's products and stealing CoStar's
3 content. Indeed, in the very promotional videos in which CREXi brags that it has
4 more listings than its competitors, CREXi displays CoStar-copyrighted
5 photographs in the listings it touts. The screenshots below contain examples of the
6 copyrighted photographs, along with an image of the CREXi presenter, Paul
7 Cohen, in the top right corner of the first example:

CREXi Marketing Video

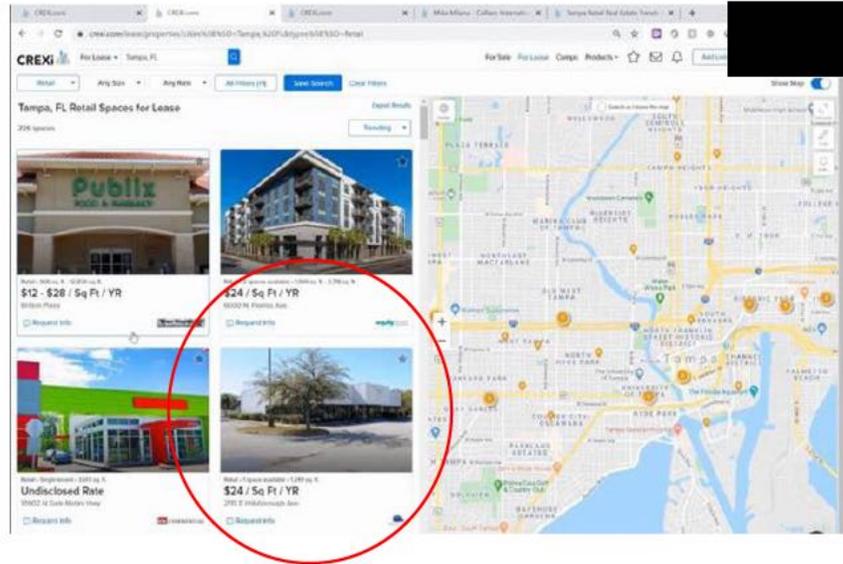


CoStar's Copyrighted Photograph



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CREXi Marketing Video



CoStar's Copyrighted Photograph



1 93. In other words, rather than making its own investments and competing
2 fairly, CREXi is displaying and thereby infringing CoStar’s intellectual property to
3 market itself to brokers and claim superiority over CoStar.

4 94. Copying and publishing content from CoStar makes it easier for
5 CREXi to reach a critical mass of listings and thereby attract buyers, sellers, and
6 brokers to its website. This enables CREXi to sell advertisements in competition
7 with CoStar—which diverts revenue streams and growth opportunities from
8 CoStar and reduces CoStar’s market share—all while avoiding the hard work and
9 resources that CoStar has invested over the past three decades.

10 95. CREXi knows that listings—and real estate images specifically—are
11 critical to attracting users. Indeed, as Eli Randel, CREXi’s Chief Strategy Officer,
12 has admitted, “images matter.” This helps explain why CREXi is infringing on
13 such a widespread scale. Rather than spend the time and effort to develop an
14 image library on their own, CREXi steals CoStar’s photographs and uses them to
15 attract buyers, sellers, and brokers. And in order to ensure that the buyers, sellers,
16 and brokers attribute the high-quality images to CREXi’s efforts, CREXi goes so
17 far as to add its own watermark to some of those CoStar-copyrighted images.

18 96. Brokers and other industry participants also readily rely on companies
19 like CoStar and CREXi to provide “comps”—i.e., comparisons of similar
20 properties in order to determine, for example, the market rate for rent. The
21 provision of comps is a much sought-after and highly valued service in the world
22 of real estate. CREXi places this valuable service behind a password as part of its
23 subscription product. Based upon publicly available information, CoStar has
24 learned that CREXi is also using CoStar’s copyrighted images in its comps
25 product. CREXi has not only piggybacked on CoStar to build out listings, but also
26 to generate and sell comps.

27 97. CREXi’s misuse of CoStar products and misappropriation of CoStar
28 intellectual property has also enabled CREXi’s auction platform to grow at the

1 expense of, divert revenue from, and compete unfairly with Ten-X, now part of
2 CoStar. By stealing content from CoStar, including CoStar’s copyrighted images,
3 in order to attract potential buyers and other customers, CREXi is able to drive
4 interest in its auctions and divert opportunities and income from one of its main
5 rivals, Ten-X. CREXi thereby dilutes Ten-X’s market share through lost
6 transaction opportunities and diminishes the value of Ten-X’s auction business.

7 **D. CREXi Is Repeatedly Accessing and Repackaging CoStar’s**
8 **Content to Unfairly Compete With CoStar, in Violation of the**
9 **Terms of Use Associated with CoStar’s Services**

10 98. Although the full breadth of CREXi’s unlawful misconduct cannot be
11 known until discovery is complete, CoStar already has evidence that CREXi and
12 its employees and agents are repeatedly accessing CoStar services—in direct
13 violation of the services’ respective terms of use—in order to access and steal vast
14 quantities of copyrighted photographs and real estate information, for the purposes
15 of repackaging and integrating that same information into CREXi’s competing
16 platform, and in order to build out its broker directory and customer lead lists.

17 **1. CREXi Employees Unlawfully Access CoStar’s**
18 **Subscription Database Using Log-In Credentials Issued to**
19 **Other Companies in Order to Obtain Content to Compete**
20 **Against CoStar**

21 99. CREXi routinely hires its employees from CoStar’s customers. Some
22 CREXi employees, like Sam Hamlin, stop working for the CoStar customer, but
23 take with them to CREXi, without permission, CoStar credentials issued under
24 their ex-employer’s CoStar license, in order to perform CREXi job duties. In other
25 instances, CREXi employees, like Ross Padfield, maintain their employment with
26 the CoStar customer but use their employer’s CoStar login credentials to benefit
27 CREXi, again without authorization.

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1 100. Mr. Hamlin has worked at CREXi as an account executive since June
2 2019. In November 2019, CoStar discovered that Mr. Hamlin was logging into
3 CoStar's subscription database using credentials issued to Colliers International,
4 his former employer, and a current CoStar client. Mr. Hamlin had left Colliers
5 months before, in May 2019.

6 101. Between June 2019, when he joined CREXi, and November 2019, Mr.
7 Hamlin used Colliers credentials to conduct more than a hundred sessions on
8 CoStar's subscription database, logging *tens of thousands* of hits without
9 authorization, including from CREXi IP addresses. Some of Mr. Hamlin's logins
10 were also from IP addresses used by one or more WeWork locations in New York
11 City that were housing CREXi operations, further demonstrating that Mr. Hamlin
12 was working on behalf of CREXi while abusing Colliers's CoStar license. Several
13 of the property listings that Mr. Hamlin viewed in CoStar subsequently began to
14 appear on CREXi's website with CoStar's copyrighted photographs.

15 102. After discovering Mr. Hamlin's misuse of Colliers's license and
16 unauthorized access to the CoStar subscription database, CoStar terminated Mr.
17 Hamlin's account on December 3, 2019. Later that day, Mr. Hamlin called CoStar
18 customer support, which informed him that he would need to speak with someone
19 in CoStar's legal department. He declined. Instead, CoStar initiated several
20 attempts to contact Mr. Hamlin to discuss his account status. When CoStar finally
21 connected with Mr. Hamlin and inquired about the status of his employment with
22 Colliers, Mr. Hamlin abruptly hung up.

23 103. Mr. Padfield, one of Mr. Hamlin's colleagues, has worked as a
24 CREXi account executive since February 2020. Mr. Padfield also simultaneously
25 leads commercial brokerage efforts for Rubin [+] Morr at Douglas Elliman Real
26 Estate. Between April and June 2020, Mr. Padfield exported 1,561 broker
27 directory records from the CoStar subscription database using his Douglas Elliman
28 account. As explained in Paragraph 65, before Mr. Padfield exported the data,

1 CoStar reminded him that the exports were subject to CoStar’s Terms of Use.
2 Prior to joining CREXi, Mr. Padfield had *never* exported these types of records.
3 Nearly all of the broker contacts he exported are located in South Florida, the
4 market he covers in his role at CREXi. Thus, it is clear that Mr. Padfield’s access
5 and downloading of these records was on behalf of CREXi.

6 104. Between October and November 2019, during his time at CREXi, Mr.
7 Hamlin also exported *thousands* of CoStar broker directory records for brokers
8 across the country, after being reminded that exporting the data was subject to
9 CoStar’s Terms of Use. Paul Cohen, CREXi’s National Sales Director,
10 subsequently boasted in a marketing video that CREXi had “created a broker
11 directory with all brokers in America.” “Created” would appear to be a
12 euphemism.

13 105. Mr. Hamlin and Mr. Padfield were well aware of CoStar’s Terms of
14 Use when they made use of the CoStar database on behalf of CREXi, and agreed to
15 be bound by those terms. Indeed, they both affirmatively accepted the Terms.
16 CoStar’s records indicate that Mr. Hamlin last accepted the Terms on November 4,
17 2019, and Mr. Padfield accepted the Terms on September 20, 2020. Those Terms
18 provide that any user of the service “shall not: . . . (2) [a]ccess or use any portion of
19 the Product if you are a direct or indirect competitor of CoStar, nor shall you
20 provide, disclose or transmit any portion of the Product to any direct or indirect
21 competitor of CoStar”

22 106. As CREXi employees, working on behalf of CREXi, Mr. Hamlin and
23 Mr. Padfield are both “direct or indirect competitor[s]” of CoStar. CREXi thus
24 violated CoStar’s Terms of Use by accessing and using CoStar’s subscription
25 database though these employees for its benefit.

26 107. Furthermore, CoStar’s Terms of Use clearly state that an “authorized
27 user” is an individual who is “employed by a CoStar Client.” Although both Mr.
28 Hamlin and Mr. Padfield may have been authorized users while working for

1 CoStar clients, they were both unauthorized when using CoStar in furtherance of
2 their CREXi work. CREXi, through these employees, directly violated CoStar’s
3 Terms of Use provisions relating to authorized users.

4 108. Mr. Hamlin’s wrongdoing was not limited to misusing his former
5 employer’s credentials and mass downloading CoStar records to unfairly compete.
6 Once Mr. Hamlin joined CREXi, he shared the Colliers CoStar credentials with at
7 least one senior colleague, Zachary Zlotnick, who at the time was the head of
8 CREXi’s New York office. In doing so, Mr. Hamlin separately violated the strict
9 prohibition on sharing passcodes contained in CoStar’s Terms of Use.

10 **2. CREXi Repeatedly Accesses LoopNet Using Multiple IP**
11 **Addresses to Evade Anti-Piracy Efforts—Sometimes Using**
12 **Fake Identities or Through Foreign Subcontractors—for**
13 **Competitive Purposes**

14 109. CREXi’s unauthorized access is not limited to CoStar’s subscription
15 database. Rather, direct evidence shows that CREXi employees also repeatedly
16 access and use CoStar’s LoopNet website for competitive purposes. IP addresses
17 and user accounts affiliated with CREXi have impermissibly accessed LoopNet
18 more than a million times—at least.

19 110. For example, Paul Cohen, CREXi’s National Sales Director,
20 immediately began accessing LoopNet after he joined CREXi. He did so using a
21 variety of IP addresses routed through third-party services—such as Hurricane
22 Electric, Digital Ocean, LeaseWeb, and the aptly named “IPVanish”—which
23 anonymized his activity. Remarkably, just one month after joining CREXi, Mr.
24 Cohen had accessed LoopNet using at least *eighty* different IP addresses and had
25 already received more than *ninety* Error & Abuse notices from LoopNet blocking
26 his access and reminding him that his use of LoopNet was subject to LoopNet’s
27 Terms and Conditions. That initial activity set the course for Mr. Cohen’s covert
28 efforts to access LoopNet through today. During the entirety of his time at CREXi,

1 he has accessed LoopNet using (at least) *more than two hundred* different IP
2 addresses, most of which are associated with third party anonymizer services,
3 including those reportedly associated with high levels of unlawful activity.

4 111. CREXi employees also access LoopNet using IP addresses registered
5 specifically to CREXi. Just one such IP address, 76.81.37.146 (the “76. IP
6 address”), accessed LoopNet in stunningly high volume. After the 76. IP address
7 first tripped the LoopNet abuse monitor, it was temporarily blocked from accessing
8 LoopNet, and CoStar displayed the Error & Abuse notice described above. The
9 notice provides a hyperlink to LoopNet’s Terms and Conditions and warns the user
10 that use that does not comply with the terms of use is unauthorized. Despite this
11 warning, CREXi continued to access LoopNet. Indeed, from January 1, 2019,
12 through November 13, 2019, the 76. IP address registered *hundreds of thousands*
13 of hits on LoopNet.

14 112. On November 14, 2019, upon learning of this continued and repeated
15 access, CoStar implemented a permanent LoopNet abuse monitor block on the 76.
16 IP address, which again displayed the Error & Abuse notice.

17 113. CREXi, yet again, was undeterred. On November 14, 2019—the very
18 same day that CoStar implemented the abuse monitor block on the 76. IP
19 address—CREXi switched to using a variety of third-party IP addresses from
20 LeaseWeb, one of the IP address anonymizers utilized by Mr. Cohen. In the first
21 month after CoStar implemented the block, CREXi logged hundreds of hits on the
22 LoopNet website using the LeaseWeb IP addresses, despite knowing that such
23 access was prohibited. This tactic to circumvent blocking, known as “rotating” IP
24 addresses, is a hallmark of online piracy. Xceligent, for example, also rotated IP
25 addresses as part of its unlawful scheme to harvest real estate listings and
26 copyrighted images from CoStar.

27 114. Meanwhile, CREXi continued periodically to test LoopNet’s defenses
28 by attempting to access LoopNet using the blocked 76. IP address. Indeed, after

1 CoStar implemented the permanent LoopNet abuse monitor block on November
2 14, 2019, the 76. IP address triggered the Error & Abuse notice almost one
3 thousand more times. On December 16, 2019, CoStar implemented a permanent
4 firewall block on CREXi's 76. IP address, which implements a wider block of
5 CoStar's services. This block generates an "Access Denied" message, as shown
6 above at Paragraph 85. The .76 address triggered four hundred such "Access
7 Denied" notices.

8 115. In response, CREXi simply stepped up its circumvention efforts.
9 After CoStar had permanently blocked CREXi's 76. IP address at the firewall
10 level, CREXi registered a new IP address, and continued accessing LoopNet
11 without authorization. This new address, 45.59.255.42 (the "45. IP address"), was
12 registered to CREXi's headquarters at 4086 Del Rey Avenue, Marina Del Rey,
13 California. Between March 11 and August 12, 2020, the 45. IP address
14 accumulated over *one hundred thousand* hits to LoopNet alone.

15 116. The more than one million hits—at least—on LoopNet from CREXi
16 IP addresses is just one of the indicia of CREXi's misuse of LoopNet and
17 harvesting of LoopNet content. In addition, several CREXi employees have
18 registered for LoopNet accounts using thinly-veiled pseudonyms or personal email
19 addresses. Those CREXi employees accessed LoopNet on a regular basis,
20 including, not coincidentally, prior to participating in public marketing videos in
21 which they brag about the extent of CREXi's efforts to "build out" certain
22 geographical markets.

23 117. For instance, CREXi's mid-Atlantic account executive, Michael
24 Rosenfeld, repeatedly visited LoopNet in June 2020 under the account name "Mike
25 Rose" with the personal email address "rosenfeldm911@gmail.com." He used the
26 LoopNet website for competitive purposes, specifically to identify real estate
27 listings in the mid-Atlantic area. On June 19, 2020, Mr. Rosenfeld appeared in
28 marketing videos focused on markets in that area, specifically Baltimore and

1 Richmond. In the Richmond presentation, Mr. Rosenfeld explained that CREXi’s
2 “Paul [Cohen], I, and a few others are building out the East Coast for CREXi.”

3 118. Unsurprisingly, therefore, Mr. Cohen also has and uses a LoopNet
4 account registered to a non-CREXi email address: pcohen@cohenfinancial.com.
5 Cohen Financial is a real estate capital services company whose leadership team
6 includes Brent Hansen, a former executive at Xceligent who was instrumental in
7 Xceligent’s scheme to steal intellectual property from CoStar.²

8 119. Cohen’s current relationship with Cohen Financial is unclear, but in
9 recent months he has been using his pcohen@cohenfinancial.com LoopNet
10 account as part of his work for CREXi. For example, Mr. Cohen accessed
11 LoopNet on multiple occasions in late May 2020 to run searches for “for-sale”
12 properties in Florida, North Carolina, and Ohio. Shortly thereafter, in June 2020,
13 Mr. Cohen appeared in several CREXi promotional videos boasting about
14 CREXi’s coverage in the same three states. The Florida marketing video,
15 described in Paragraph 92 above, contained multiple CoStar-copyrighted images.

16 120. Similar to Rosenfeld and Cohen, CREXi’s Sam Hamlin created a
17 LoopNet account registered to “Sam H” with the personal email address
18 sdhamlin08@yahoo.com.³ He did so on June 27, 2019, immediately after he began
19 working at CREXi. Like Mr. Rosenfeld and Mr. Cohen, Mr. Hamlin has used this
20 account to access LoopNet listings.

21 121. As well as registering LoopNet accounts to non-CREXi email
22 addresses, CREXi employees also use fake identities. For example, Nick Hanna,
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24 ² According to a lawsuit filed by Xceligent’s bankruptcy trustee, Hansen, who was Xceligent’s
25 Vice President of Marketing Research, “instruct[ed] Xceligent employees to use TOR browsers
26 (which anonymize an Internet user) as part of the ‘game plan to get Xceligent’s [IP] address
27 hidden in order that the [marketing researchers] can update listings’ when rival Costar’s website
28 ‘LoopNet blocked them.’” Similarly, according to the Xceligent trustee, Hansen allegedly
“worked directly with Xceligent’s IT department to set up a VPN for [Xceligent’s offshore]
marketing researchers to use to circumvent CoStar’s security and access CoStar websites.”

³ Other CREXi employees to register for LoopNet accounts using personal email addresses
include Courtney Gaylord, who registered using cgaylord11@yahoo.com.

1 CREXi's senior product manager, signed up for two LoopNet accounts under false
2 names. One account is registered to "Hank Mardukous" at
3 hankmardukus@gmail.com. The other is registered to "Hank Mardukas" at
4 itsnotnick08@aol.com. Hank Mardukas is a fictional character from the 2009
5 movie, "I Love You, Man." As another example, Mr. Zlotnick, the former head of
6 CREXi's New York office, registered a LoopNet account under the name "Michael
7 Korenthough" at zackdz11@gmail.com.

8 122. One of the many ways in which CREXi executives use LoopNet for
9 competitive purposes is to set up "saved searches" for property listings. This
10 enables CREXi to use LoopNet to identify new property listings as they come on
11 the market, rather than spending time and money conducting their own research.
12 LoopNet allows users to save property search criteria, and new property listings
13 that match the saved criteria automatically appear whenever the user logs into
14 LoopNet. Users can also opt to receive email notifications whenever LoopNet has
15 new listings that fit the saved search criteria.

16 123. For example, Mr. Rosenfeld (a.k.a. "Mike Rose"), the CREXi account
17 executive for the mid-Atlantic region, has created a variety of saved searches for
18 properties in the mid-Atlantic states of Delaware, Maryland, Virginia, and the
19 District of Columbia. He receives instant email notifications to his personal gmail
20 account whenever new property listings matching his search criteria appear on
21 LoopNet.

22 124. Likewise, Mr. Cohen has created several saved searches on LoopNet,
23 including properties for sale and for lease in Florida and Georgia. Mr. Cohen also
24 created a saved search for industrial properties for lease in all states, and he
25 receives instant notifications to his pcohen@cohenfinancial.com email address
26 whenever new property listings matching the search criteria are added to LoopNet.

27 125. Similarly, Mr. Hamlin has created saved searches for LoopNet
28 property listings across the northeast United States, including Connecticut, Maine,

1 New Hampshire, New Jersey, Rhode Island, and Vermont, consistent with
2 CREXi's national expansion efforts.

3 126. The use of LoopNet to compete against LoopNet is not confined to
4 CREXi senior managers and employees. CREXi also accesses LoopNet through
5 an Indian BPO, or business process outsourcing, contractor called Arcgate.
6 Arcgate describes its services as "data collection & cleansing [and] data
7 enrichment." Arcgate employees apparently specialize in "Data Mining & Data
8 Analysis" and data "cleaning." CoStar has identified at least ten Arcgate
9 employees associated with CREXi.

10 127. CREXi's use of an Indian contractor that accesses LoopNet and
11 "collect[s]" and "clean[s]" data is reminiscent of Xceligent's mass piracy scheme.
12 In CoStar's lawsuit against Xceligent, discovery revealed that Xceligent used an
13 Indian BPO to access LoopNet and copy content, while trying to hide the
14 wrongdoing.

15 128. CREXi's LoopNet access is repeated and widespread. Indeed, it is
16 consistent with automated scraping emanating from both India and the United
17 States. Just since the end of 2019, IP addresses affiliated with CREXi's main
18 office in California, CREXi's temporary space at WeWork locations in New York
19 and Miami, and CREXi's subcontractor in India, have triggered thousands upon
20 thousands of "bot warnings" from a third-party security application that monitors
21 activity on CoStar sites, including LoopNet. These warnings are indicative of
22 systematic access to LoopNet to harvest content en masse.

23 **3. CREXi's LoopNet Access And Use Violates LoopNet's**
24 **Terms and Conditions**

25 129. CREXi is prohibited from repeatedly accessing and using LoopNet to
26 compete. That is plain from the industry standard LoopNet Terms and Conditions.
27 The type of widespread competitive LoopNet access in which CREXi has engaged
28

1 has also been permanently enjoined by multiple federal courts, including in
2 CoStar’s cases against Xceligent in Kansas City and RE Back Office in Pittsburgh.

3 130. By accessing LoopNet more than a million times and using the
4 website for competitive purposes despite this bar, CREXi was simultaneously
5 entering into and violating a binding contract with CoStar.

6 131. CREXi was on notice that use of LoopNet was subject to LoopNet’s
7 Terms and Conditions. IP addresses and user accounts affiliated with CREXi have
8 triggered thousands of Error & Abuse notices that contain a conspicuous hyperlink
9 to LoopNet’s Terms and Conditions and warn that use of LoopNet that does not
10 comply with the terms is prohibited. There is no doubt whatsoever that CREXi
11 and its senior management are on notice of their repeated contractual breaches.
12 Indeed, CoStar has served Mr. Cohen, CREXi’s National Sales Director, an Error
13 & Abuse notice with the hyperlink to LoopNet’s Terms and Conditions no fewer
14 than 94 times.

15 132. In addition to violating CoStar’s contractual prohibition on competitor
16 access, when CREXi routinely accessed and used LoopNet, it falsely warranted
17 that it was not a competitor of CoStar.

18 133. Nor is CREXi permitted to access LoopNet through Arcgate, its
19 Indian contractor. LoopNet’s Terms and Conditions expressly prohibit access by
20 competitors like CREXi, as well as “any company . . . acting on behalf of a
21 competitor of LoopNet”

22 **4. CREXi Steals Copyrighted Photographs from CoStar and**
23 **Publishes Them on Its Competing Website**

24 134. CREXi’s wrongdoing is not limited to covertly accessing CoStar’s
25 services using passwords issued to other companies, or setting up saved searches
26 on LoopNet under fake names in lieu of conducting research, or downloading
27 CoStar’s broker directory information to create customer lead lists and a cloned
28 directory product, or hand selecting and copying a few CoStar photographs to

1 improve its marketing presentations. Rather, CREXi is infringing CoStar’s
2 copyrighted photographs on a massive scale. A preliminary review has revealed
3 more than *ten thousand* copyrighted CoStar images on CREXi’s website through
4 July 30, 2020.

5 135. As noted above, these instances of infringement are almost certainly
6 the tip of the iceberg, as they relate only to those property listings that CREXi has
7 chosen to display. Discovery will be required to determine how many CoStar
8 copyrighted images reside in CREXi’s systems. Past lawsuits indicate that the
9 number is likely a multiple of those on public display.

10 136. Attached as **Exhibit C** are 100 examples of the more than ten
11 thousand CoStar-copyrighted images found on crexi.com. Attached as **Exhibit D**
12 is a chart summarizing information about those infringing images, including the
13 crexi.com URL where each image was publicly displayed by CREXi. Set forth
14 below are some of the images CREXi has infringed, as they appear(ed) on
15 loopnet.com and as they appear(ed) on crexi.com. The photographs have been
16 produced side-by-side for purposes of comparison:

17 **CoStar Copyrighted Photograph**



CREXi Listing Photograph



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CoStar Copyrighted Photograph



CREXi Listing Photograph



137. As the images above show, CoStar’s copyrighted images displayed on CREXi’s website have been cropped to remove the CoStar watermark. In an effort to conceal and disguise its copying, CREXi appears to have removed the watermarks from CoStar’s images and generated cropped images—thereby improperly creating derivative works—to publish and display on its competing website without CoStar’s permission.

1 138. As described in more detail below, CREXi routinely accessed the
2 copyrighted photographs on LoopNet only a few days before the infringing
3 photographs appeared—without watermarks—on CREXi’s website.

4 139. CoStar’s watermarks on its copyrighted photographs undoubtedly
5 served as a red flag that put CREXi on notice that these images belonged to
6 CoStar. The removal or alteration of CoStar’s watermark conceals CREXi’s
7 infringement of CoStar’s copyrighted images. Indeed, CoStar has used the
8 presence of the watermark to identify infringement in prior lawsuits, such as the
9 Xceligent litigation. CREXi must also have been aware, simply as a matter of
10 common sense, that removing the watermark would enable, facilitate, and indeed
11 induce the infringement of CoStar’s copyrighted materials because it was
12 publishing sought after copyrighted photographs to the world with the indicia of
13 copyright removed.

14 140. The extent and consistency of the cropping demonstrates that CREXi
15 is responsible for this deliberate attempt to hide its infringement.

16 **5. CREXi Copies Real Estate Listings from LoopNet and Posts**
17 **Them on CREXi.com without Authorization and without**
18 **Broker Knowledge**

19 141. CREXi has admitted that it is not allowed to copy listings from
20 LoopNet. But that is exactly what it does, often without contacting the relevant
21 broker. And even when it does contact the listing broker, CREXi is careful not to
22 discuss copying from LoopNet, other than to acknowledge its impermissibility.

23 142. Recently, CoStar was contacted by bewildered brokers, asking
24 whether CoStar was in business with CREXi because the brokers’ listings—
25 including CoStar’s copyrighted materials—were appearing without the brokers’
26 authorization on CREXi’s site.

27 143. For example, one brokerage alerted CoStar after noticing that one of
28 its Florida property listings appeared on CREXi with CoStar’s images. The broker

1 confirmed that it never gave CREXi authorization to list the property on CREXi’s
2 website, and that the broker did not upload CoStar’s photographs to CREXi.

3 144. CREXi’s listing of the broker’s Florida property contained several
4 copyrighted CoStar photographs. The photographs had been cropped, but poorly,
5 as CoStar’s watermark was still partially visible on a number of the infringing
6 photographs:

7 **CREXi Listing Photographs**



1 145. This same story played out across the country. Brokers who learned
2 that their listings were posted on CREXi were puzzled because they had never
3 even heard of CREXi or sent CREXi any information about their properties, much
4 less given CREXi any permission to copy their property listings from LoopNet.

5 146. By way of another example, a broker who listed a Nevada property on
6 LoopNet was surprised to learn that her listing also appeared on CREXi. She had
7 never heard of CREXi and never gave CREXi permission to post her listing.
8 Nevertheless, CREXi posted her property on its website and infringed CoStar's
9 copyrighted photographs in the process:

10 **LoopNet Listing Photograph**



CREXi Listing Photograph



19 147. Notably, CREXi added this Nevada broker's listing on May 19, 2020.
20 On May 15, 2020—only four days earlier—an IP address attributable to CREXi
21 viewed the same property on LoopNet. In other words, CREXi accessed LoopNet
22 without authorization, viewed the individual's LoopNet listing, and then four days
23 later, the individual's listing appeared without her permission and with CoStar's
24 copyrighted photographs on CREXi's website. The obvious explanation:
25 deliberate copying and publication by CREXi.

26 148. CREXi's practice of copying listings wholesale without broker
27 involvement is causing havoc in the marketplace. A representative property owner
28 in Long Island started to receive multiple calls inquiring about the potential

1 purchase of a property that had already sold. When she questioned a caller, it
2 turned out that the property was listed for sale on CREXi. The owner-
3 representative tracked down the listing broker featured on CREXi. The broker was
4 unaware that the listing was even on CREXi, and said that he had certainly not
5 posted it.

6 149. This pattern repeated across the country. In Arkansas, a brokerage
7 received multiple calls about a property that had already sold. One of the callers
8 revealed that the property was listed as for sale on CREXi. As in the New York
9 example above, the brokerage had not added the listing to CREXi and was
10 unaware that the listing was even on CREXi. The brokerage contacted CoStar
11 asking if CREXi was a CoStar subsidiary and if CoStar would remove the listing.
12 The upshot: CREXi obtains and posts listings without broker involvement, and
13 causes confusion for buyers, sellers, and brokers.

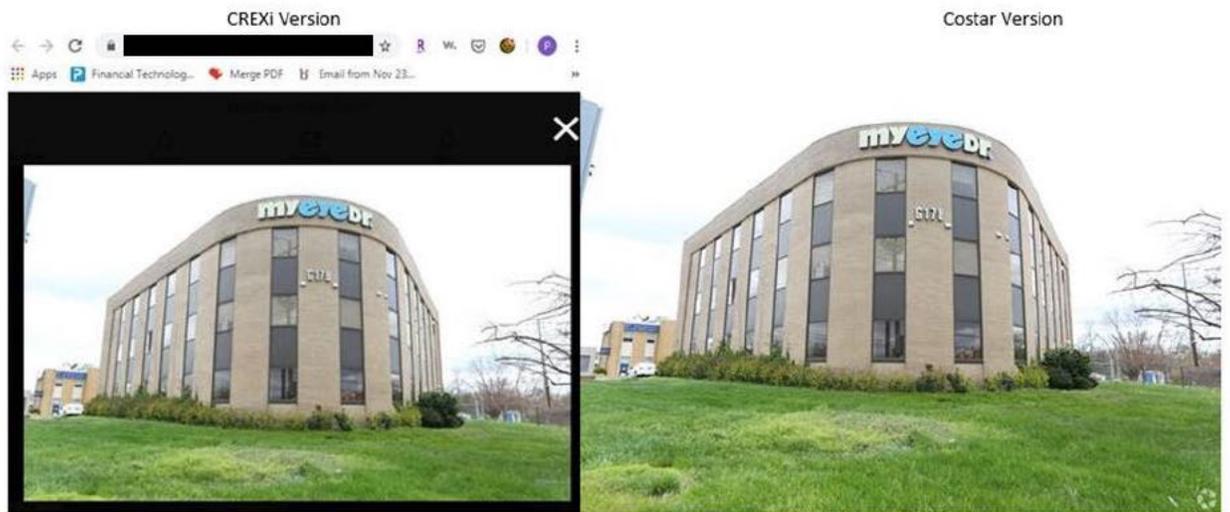
14 150. In some instances, CREXi did at least contact the listing broker and
15 offer to place the listing on CREXi free of charge. But CREXi was deliberately
16 vague regarding how CREXi planned to obtain the listing and did not disclose that
17 it intended to copy from LoopNet. For example, a CREXi representative, Nick
18 DeGiorgio—CEO Michael DeGiorgio’s cousin—contacted a marketing manager at
19 a brokerage and offered to post one of the brokerage’s property listings in
20 Maryland. The brokerage accepted, but was not asked to provide, and did not
21 provide, CREXi with any information, photographs, or marketing material for the
22 property. Neither did the brokerage upload any CoStar images to CREXi.
23 Nevertheless, CREXi posted the listing on its website.

24 151. Subsequently, CREXi’s Mr. Rosenfeld called the marketing manager
25 and tried to sell him a subscription to CREXi’s platform. The manager asked Mr.
26 Rosenfeld where CREXi had obtained the marketing material that it used to list the
27 property on its website, since the brokerage never provided CREXi with any such
28 material. Mr. Rosenfeld replied vaguely that CREXi had various partnerships with

1 companies that allowed CREXi to get the information. When the manager asked
2 which companies, Mr. Rosenfeld would not provide that information.

3 152. The marketing manager then contacted Mr. Rosenfeld again, asking
4 whether CREXi had a partnership with CoStar, because the CREXi listing
5 contained exactly the same information as the brokerage’s listing on LoopNet. Mr.
6 Rosenfeld admitted that CREXi did not have a partnership with CoStar. He stated
7 that once CREXi received the brokerage’s permission to post their listing, CREXi
8 copied the information “off the internet.”

9 153. The manager notified CoStar of Mr. Rosenfeld’s suspicious
10 statements and provided a side-by-side comparison of photographs from the
11 CoStar and CREXi listings. As the manager pointed out, the photograph that
12 CREXi posted exactly matches CoStar’s copyrighted photograph, with the
13 exception that CoStar’s watermark had been fully cropped out of the lower right-
14 hand portion of the photograph. The side-by-side comparison that the manager
15 sent to CoStar appears below:



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25 154. These photographs make clear that when Mr. Rosenfeld told the
26 manager that CREXi pulled the listing “off the internet,” he really meant that
27 CREXi copied the listing—including the copyrighted photograph—from LoopNet,
28 even though CREXi was not authorized to do so. (Of course, had CREXi’s

1 Rosenfeld believed that CREXi was permitted to copy from LoopNet, then he
 2 would have readily admitted that LoopNet, and not “the internet,” was the source.)
 3 Once the brokerage indicated it was interested in seeing the listing on CREXi,
 4 CREXi simply lifted the relevant information and copyrighted photograph from
 5 LoopNet, rather than spend the time and money to take its own photographs of the
 6 property and conduct its own research (or even ask the brokerage to send its own
 7 information). When the brokerage learned that pulling the information “off the
 8 internet” meant copying from LoopNet, the brokerage ended its relationship with
 9 CREXi.

10 155. As another example, on June 17, 2020, Mr. Rosenfeld accessed
 11 LoopNet and viewed another property listing in Maryland, as well as the listing
 12 broker’s profile on LoopNet. CREXi subsequently contacted the broker and
 13 offered to post the listing for free on CREXi. The broker agreed. However, there
 14 was no discussion of where CREXi would obtain the listing information. The
 15 broker never gave CREXi permission to copy from LoopNet. On June 19, 2020—
 16 only two days after Mr. Rosenfeld viewed the broker’s listing on LoopNet—the
 17 listing appeared on CREXi with CoStar’s copyrighted photograph:

18 **LoopNet Listing Photograph**



CREXi Listing Photograph



26 156. Similarly, on April 2, 2020, Mr. Rosenfeld accessed LoopNet and
 27 created a saved search for properties in Washington, D.C., that met certain criteria,
 28 including a minimum price of \$1 million. Mr. Rosenfeld named the search “DC

1 1M+.” That same day, Mr. Rosenfeld viewed two listings on LoopNet that met the
2 search criteria.

3 157. Unsurprisingly, shortly after Mr. Rosenfeld accessed these two
4 listings on LoopNet, they appeared on CREXi with CoStar’s copyrighted
5 photographs. Indeed, one of the photographs on CREXi still featured CoStar’s
6 watermark:

7 **LoopNet Listing Photograph**

8 **CREXi Listing Photograph**



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26 158. Although brokers are free to list their properties anywhere, brokers
27 know—not least because of industry knowledge about CoStar’s efforts to protect
28 its intellectual property—that they do not have the right to permit CREXi to copy

1 from a CoStar site. For instance, CREXi contacted a brokerage in Alabama and
2 offered to list its properties on CREXi for free. The brokerage agreed. But the
3 brokerage and CREXi never discussed where the information for the listings would
4 come from, and there was no mention of CREXi copying from LoopNet. (In fact,
5 the broker later acknowledged that he would not have the right to give CREXi
6 permission to use CoStar’s copyrighted content.) Nevertheless, the CREXi listing
7 of the brokerage’s property contains CoStar’s copyrighted photographs, cropped to
8 remove the CoStar watermark:

9 **LoopNet Listing Photograph**



CREXi Listing Photograph



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18 159. CREXi posted the brokerage’s listing on its website on May 15, 2020.
19 The day before the listing appeared on CREXi, an IP address associated with
20 CREXi visited the same listing on LoopNet. In other words, CREXi visited a
21 listing on LoopNet, and then one day later, the listing appeared on CREXi’s
22 website with CoStar’s copyrighted material. Again, the obvious explanation is that
23 CREXi copied the listing from LoopNet, without authorization.

24 160. As can be seen, there is no question that even when it is not simply
25 copying and pasting from LoopNet without broker involvement, CREXi routinely
26 posts listings, rather than simply being a passive forum for uploads, when it makes
27 contact with brokers. Indeed, CREXi trumpets the fact that it is actively involved
28 in creating the listings on its site. Eli Randel, CREXi’s Chief Strategy Officer,

1 explained during a webinar that CREXi users can send property information to
2 CREXi, and CREXi will “build your listings for you.” And during a June 19, 2020
3 video conference titled, “Welcome to CREXi: Richmond’s New CRE
4 Marketplace,” CREXi’s Paul Cohen stated to his broker audience: “If we don’t
5 have your listings on CREXi, send them to us today, and *we’ll add them.*”

6 161. Given CREXi’s active role in “build[ing]” or “add[ing]” listings, it is
7 unsurprising there are CREXi listings that display CoStar-copyrighted photographs
8 that do not appear anywhere in the listing broker’s marketing materials. It would
9 be illogical for brokers to upload their CoStar-copyrighted photographs to
10 CREXi—an action that CoStar prohibits—while excluding those photographs from
11 their own marketing materials—a use that CoStar permits. The obvious
12 explanation (and the one consistent with CREXi’s offers to build listings on behalf
13 of brokers) is that CREXi *itself* took the CoStar-copyrighted photographs directly
14 from LoopNet and added those photographs to CREXi.

15 162. For example, a cropped version of the CoStar-copyrighted photograph
16 of the commercial property shown below appears on CREXi. However, the
17 broker’s marketing brochure contains different, non-CoStar copyrighted
18 photographs, indicating that CREXi took this image directly from CoStar.

19 **CoStar’s Copyrighted Photograph**



CREXi Listing Photograph



Photographs from Broker's Marketing Brochure



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163. CREXi fully understood that copying the images from LoopNet infringed on CoStar's intellectual property rights. In one instance, a broker who agreed to list properties on CREXi's website asked if CREXi could pull the listing information from LoopNet. Tellingly, CREXi said no and explained that it was not allowed to pull information from LoopNet. But time and again, as the above examples indicate, CREXi nevertheless did copy CoStar's copyrighted photographs and real estate information from LoopNet, despite knowing that it was not permitted to do so.

164. CREXi knowingly and willfully infringed on CoStar's copyrights to build out its own business and compete unfairly with CoStar.

6. CREXi Knows Full Well That CoStar Does Not Permit Competitors to Copy Content from Its Website

165. Even putting aside CREXi's conversations with brokers described above, including the acknowledged prohibition on copying from LoopNet, there can be no doubt that CREXi is aware that CoStar does not permit competitors to use its websites or subscription database, or to infringe its copyrighted

1 photographs, and that CoStar protects and vindicates its intellectual property and
2 contractual rights though many methods, including—when the copying is on a
3 huge scale and clearly deliberate—litigation.

4 166. The trade and national press have extensively covered CoStar’s prior
5 lawsuits against infringers and content thieves, such as Xceligent, Apartment
6 Hunters, and RealMassive, and against those who access its databases without
7 authorization, or enable others to do so.⁴ CoStar has litigated across the country,
8 from New Jersey to Kansas City, from Austin to Los Angeles, to protect its
9 intellectual property, and has obtained judgments and injunctions that value its
10 copyrighted images and real estate listings most recently at \$50,000 per
11 photograph, and \$50,000 per real estate listing.

12 167. CREXi is well aware of CoStar’s judgments protecting its intellectual
13 property and contractual rights, including the record-breaking half billion dollar
14 judgment against Xceligent based on harvesting content from LoopNet. Indeed,
15 CREXi replaced Xceligent as the National Association of Realtors (“NAR”)
16 commercial technology partner following Xceligent’s highly publicized
17 bankruptcy during that case.

18 168. Nevertheless, CREXi has engaged in the very same illegal behavior as
19 Xceligent: appropriating thousands of images and listings from LoopNet, free-
20 riding on CoStar’s investment in order to build a competing service, and accessing
21 CoStar’s services without authorization.

22 169. Moreover, CREXi is, or should be, aware that federal courts around
23 the country have issued injunctions barring competitors from accessing LoopNet,

24 ⁴ See e.g., CoStar Takes Off the Gloves in Battle Against Xceligent Over Alleged Data Theft
25 (available at <https://www.wsj.com/articles/costar-takes-off-the-gloves-in-battle-against-xceligent-over-alleged-data-theft-1513080000>); Real Estate Data Dispute Yields \$500 Million
26 Judgment (available at <https://finance-commerce.com/2020/01/real-estate-data-dispute-yields-500-million-judgment/>); Apartment Hunters Found Liable in CoStar Copyright Infringement
27 Dispute (available at <https://therealdeal.com/la/2017/03/29/apartmenthunterz-com-found-liable-in-costar-copyright-infringement-dispute/>); CoStar Starts Going After Password-Sharing Users
28 in Latest Legal Blitz (available at <https://www.bisnow.com/national/news/technology/costar-starts-going-after-password-sharing-users-in-latest-legal-blitz-93586>).

1 CoStar’s website. For example, the Western District of Missouri permanently
2 enjoined Xceligent from “accessing CoStar Websites or CoStar Databases for the
3 purposes of competitive use, including without limitation for the purposes of
4 copying CoStar Data, verifying broker-sourced data using CoStar Data, or
5 generating leads from CoStar Data.” Judgment and Permanent Injunction, *CoStar*
6 *Group Inc. v. Xceligent*, Case 4:16-cv-01288-FJG (W.D. MO. Dec. 3, 2019) (ECF
7 No. 204).

8 170. This Court required another CoStar competitor, Apartment Hunters,
9 specifically to “abide by the terms of use applicable to . . . LoopNet.com” which,
10 as explained above, expressly prohibit competitor access. Judgment at 5, *CoStar*
11 *Realty Information, Inc. v. Apartment Hunters, Inc.*, Case No. 8:15-cv-02111-JLS-
12 KES (C.D. CA Mar. 27, 2017) (ECF No. 62). CREXi, undeterred, has accessed
13 LoopNet at least more than a million times.

14 171. Similarly, federal courts have vindicated CoStar’s right to prohibit
15 unauthorized persons from accessing its subscription service or facilitating such
16 unauthorized access. For example, the District of New Jersey permanently
17 enjoined a brokerage from “sharing any username, password, passcode or other
18 access credential for any CoStar Database with any individual or entity that is not
19 authorized by CoStar to utilize such username.” Amended Judgment and
20 Permanent Injunction, *CoStar Group Inc. v. SandBox Real Estate and*
21 *Development LLC*, No. 2:18-cv-14611-JLL-SCM (D. N.J. Jan. 1, 2019) (ECF No.
22 13). CREXi employees, nevertheless, used credentials issued to other companies
23 in order to access CoStar’s subscription service on a widespread basis, collect data,
24 and use them to compete against CoStar.

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1 **E. CREXi’s Illegal Behavior Is Consistent with Its Prior Willful**
2 **Misconduct**

3 172. This is not the first time that CREXi has improperly profited from
4 another company’s investment and intellectual property. Indeed, CREXi sought to
5 establish itself based on content misappropriated from Ten-X, now part of CoStar.

6 173. CREXi’s co-founder and CEO, Michael DeGiorgio, and co-founder
7 Luke Morris previously worked for Ten-X and were engaged in a scheme to
8 misappropriate highly-confidential trade-secret customer lists from Ten-X to
9 launch CREXi. Ten-X uncovered the theft and brought suit against CREXi and
10 Mr. DeGiorgio, immediately securing a preliminary injunction. In the course of
11 litigation, CREXi admitted that that it used Ten-X customer reports to create a
12 master list of customer contacts, and used the master customer list to market its
13 website and services.

14 174. The California state court that entered the preliminary injunction
15 against CREXi found that Ten-X was highly likely to succeed on the merits of its
16 claims for misappropriation of trade secrets, breach of the duty of loyalty, breach
17 of a proprietary information and inventions agreement, and breach of a
18 confidentiality agreement. The court barred the operation of CREXi to the extent
19 it operated online real estate auctions, and prohibited CREXi’s use of Ten-X’s
20 customer lists and all documents and information derived therefrom. The court
21 also ordered that the misappropriated materials be returned or purged.

22 175. Seeing the writing on the wall, CREXi paid \$1.6 million in damages,
23 issued a public apology, and—according to a press release issued by CREXi—
24 agreed to certain ongoing restrictions, including a prohibition on any further use of
25 the misappropriated information. In a public statement, Michael DeGiorgio
26 “apologize[d] to Ten-X for the actions which led to this lawsuit” and stated, “I
27 regret my conduct at the time I departed Ten-X.”
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1 without limitation those copyrighted works identified in **Exhibit C** hereto—
2 without the consent or authority of CoStar, thereby infringing CoStar’s copyrights.

3 183. Further, CREXi has created derivative works based on CoStar’s
4 copyrighted images by cropping and manipulating CoStar’s registered images.
5 Examples appear on **Exhibit C**. CREXi has gone as far as to add its own
6 watermark to some of the cropped CoStar-registered images in order to re-brand
7 them as their own. Examples appear at Paragraphs 33–34, *supra*.

8 184. CoStar owns the exclusive rights in each of the photographs detailed
9 in **Exhibit C**. Prior to the filing of this suit, CoStar has validly registered each of
10 the photographs detailed in **Exhibit C** with the United States Copyright Office.
11 CREXi copied, reproduced, distributed, and publicly displayed on CREXi’s
12 website without authorization each of the copyrighted photographs detailed in
13 **Exhibit C**.

14 185. Upon information and belief, CREXi’s unlawful copying,
15 reproducing, distributing, and public displaying of these CoStar photographs
16 occurred on or around April 21 to July 30, 2020, as set forth in **Exhibit D**. On
17 information and belief, a valid registration was obtained by CoStar for each
18 photograph detailed in **Exhibit C** prior to CREXi’s first infringement of the
19 photograph.

20 186. CREXi’s copies, reproductions, distributions, and displays are
21 identical and/or substantially similar to CoStar’s photographs. Further, CoStar,
22 which owns an exclusive right to prepare derivative works of its copyrighted
23 images, did not give CREXi permission to create any derivative works.

24 187. CREXi is directly liable for these acts of infringement in violation of
25 17 U.S.C. §§ 106 and 501.

26 188. The infringement of CoStar’s rights in each of its copyrighted
27 photographs constitutes a separate and distinct act of infringement.

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1 189. CREXi’s acts of infringement have been willful, intentional,
2 purposeful, and in disregard of CoStar’s rights under the Copyright Act. CREXi
3 knew its acts were infringing and intentionally or recklessly disregarded the law by
4 its conduct.

5 190. CoStar did not authorize CREXi’s acts.

6 191. CoStar believes that additional instances of CREXi’s infringement of
7 its copyrighted photographs will be revealed during the discovery process.

8 192. As a result of CREXi’s willful copyright infringement, CoStar has
9 been and will continue to be damaged as a direct and proximate result of the
10 infringing acts set forth above, and CREXi has profited and will continue to profit
11 as a result of its unlawful infringement of CoStar’s copyrighted photographs in an
12 amount to be proven at trial.

13 193. CREXi’s conduct also has caused irreparable and incalculable harm
14 and injuries to CoStar and is ongoing. Unless enjoined, CREXi’s conduct will
15 cause further irreparable and incalculable injury, for which CoStar has no adequate
16 remedy at law.

17 **SECOND CLAIM FOR RELIEF**

18 **Violation of the Digital Millennium Copyright Act (“DMCA”)**

19 **Removal of Copyright Management Information, 17 U.S.C. §§ 1202(b)(1)**

20 194. CoStar repeats and realleges each and every allegation set forth above,
21 and incorporates them herein by reference.

22 195. With respect to the more than ten thousand copyrighted CoStar
23 images referenced above having been found on CREXi, and additional CoStar
24 copyrighted photographs infringed by CREXi to be identified in the course of
25 discovery, CoStar’s watermark constitutes copyright management information
26 (“CMI”), as it identifies CoStar as the copyright owner of such photographs.

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1 196. In many such photographs, including several specifically identified
2 above as examples, CREXi intentionally and systematically cropped out CoStar’s
3 watermark from CoStar-copyrighted photographs.

4 197. CREXi removed CoStar’s CMI while knowing, having reasonable
5 grounds to know, and with the intent that it would induce, enable, facilitate, and/or
6 conceal infringement of CoStar’s copyrights, in violation of 17 U.S.C. § 1202(b).

7 198. CoStar has suffered damage and loss as a result of these violations.

8 199. CoStar has suffered and will continue to suffer irreparable harm as a
9 result of CREXi’s continued removal of CoStar CMI on CoStar-copyrighted
10 photographs, and, as such, CoStar has no adequate remedy at law.

11 **THIRD CLAIM FOR RELIEF**

12 **Violation of the Digital Millennium Copyright Act (“DMCA”)**

13 **Distribution of Works with Removed or Altered Copyright Management**
14 **Information, 17 U.S.C. §§ 1202(b)(3)**

15 200. CoStar repeats and realleges each and every allegation set forth above,
16 and incorporates them herein by reference.

17 201. CoStar’s watermark constitutes CoStar’s protected CMI.

18 202. CREXi has distributed and is distributing CoStar’s protected works, or
19 copies of works, knowing that protected CMI has been removed or altered without
20 CoStar’s authority.

21 203. CREXi distributed CoStar’s CMI while knowing, having reasonable
22 grounds to know, and with the intent that it would induce, enable, facilitate, and/or
23 conceal infringement of CoStar’s copyrights, in violation of 17 U.S.C. §
24 1202(b)(3).

25 204. CoStar has suffered damage and loss as a result of these violations.

26 205. CoStar has suffered and will continue to suffer irreparable harm as a
27 result of CREXi’s continued distribution of CoStar’s protected works, or copies of
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1 works, knowing that protected CMI has been removed or altered without CoStar's
2 authority, and, as such, CoStar has no adequate remedy at law.

3 **FOURTH CLAIM FOR RELIEF**

4 **Common Law Misappropriation**

5 206. CoStar repeats and realleges each and every allegation set forth above,
6 and incorporates them herein by reference.

7 207. CoStar has invested substantial time, labor, skill, and financial
8 resources into the creation and maintenance of CoStar's services, its computer
9 systems and servers, including system and server capacity, as well as the content
10 on CoStar's subscription service and the LoopNet website. CoStar goes to great
11 lengths, in terms of time, number of research personnel and invested dollars, to
12 locate, manage, update, and curate its verified listings and provide a seamless, up-
13 to-date user experience that constitutes a substantial portion of CoStar's value
14 proposition.

15 208. CoStar's verified listings are time-sensitive. CoStar's content,
16 including the content on the LoopNet website, is updated in real time, an
17 indispensable feature of the website that attracts users to the website and
18 contributes to its value. For example, a potential buyer or lessee needs to be able
19 to rely on the fact that a property that she is viewing is actually still for sale or
20 lease, and that the price or rental cost is accurate and up-to-date.

21 209. Without authorization, CREXi wrongfully accessed and appropriated
22 CoStar's services, computer systems and servers, and its content without having to
23 make the substantial investment in time, labor, skill, and financial resources made
24 by CoStar. CREXi is in direct competition with CoStar and has made CoStar's
25 content available to CREXi's users. As such, CREXi's use of CoStar's computer
26 systems and servers, including system and server capacity, as well as CoStar's
27 content, constitutes free-riding on CoStar's substantial investment of time, effort,
28 and expense. CREXi is reaping where it has not sown.

1 content therein, including broker directory information, and disclose that content to
2 its employees.

3 225. Further, in direct violation of CoStar’s Terms of Use, CREXi’s
4 employee and agent, Mr. Hamlin allowed at least one unauthorized person—
5 namely, the head of CREXi’s New York office—to use his CoStar credentials.

6 226. CREXi also had actual and/or constructive knowledge that access to
7 LoopNet was subject to LoopNet’s Terms and Conditions. As described above, a
8 hyperlink to LoopNet’s Terms and Conditions were displayed on every page of the
9 LoopNet website. CREXi employees who registered for LoopNet accounts also
10 received an email before signing in for the first time that contained multiple
11 references to the Terms and Conditions. The LoopNet Terms and Conditions also
12 appear directly below the log-in button for the LoopNet website. Moreover,
13 CREXi received *thousands* of Error & Abuse notices that all contained a
14 conspicuous hyperlink to LoopNet’s Terms and Conditions and explained that use
15 of LoopNet was subject to the terms.

16 227. LoopNet’s Terms and Conditions prohibit competitors from viewing,
17 using, or accessing LoopNet, including using LoopNet for or in connection with
18 any other listing service.

19 228. LoopNet’s Terms and Conditions prohibit using or reproducing any
20 content obtained from LoopNet for or in connection with any other listing service.

21 229. In direct violation of LoopNet’s Terms and Conditions, CREXi
22 accessed LoopNet despite being its competitor, in order to steal intellectual
23 property, data, and other content, including copyrighted photographs, and use such
24 content on CREXi.com, a listing service.

25 230. CREXi’s breaches of these terms have been material, willful,
26 repeated, and systematic.

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- 1 officers, agents, servants, and employees from accessing CoStar
2 websites and the databases that power them;
- 3 6. For a finding that CREXi's access to CoStar's websites and databases
4 is unauthorized;
- 5 7. For an award of damages arising from CREXi's breaches of CoStar's
6 and LoopNet's binding terms and conditions;
- 7 8. For an order permanently enjoining and restraining CREXi and its
8 officers, agents, servants, and employees and all those in active
9 concert or participation with them from breaching CoStar's and
10 LoopNet's binding terms of service;
- 11 9. For an award of damages arising from CREXi's misappropriation of
12 data and content from CoStar's computers and servers;
- 13 10. For an order permanently enjoining and restraining CREXi and its
14 officers, agents, servants, and employees and all those in active
15 concert or participation with them from directly committing, aiding,
16 encouraging, enabling, inducing, causing, materially contributing to,
17 or otherwise facilitating the misappropriation of CoStar data and
18 information;
- 19 11. For an order granting all available relief under California Business
20 and Professions Code Section 17203, including without limitation
21 restitution for CREXi's wrongful gains for its unfair competition;
- 22 12. For an order permanently enjoining and restraining CREXi and its
23 officers, agents, servants, and employees and all those in active
24 concert or participation with them from directly committing, aiding,
25 encouraging, enabling, inducing, causing, materially contributing to,
26 or otherwise facilitating CREXi's unfair competition;
- 27 13. For further permanent injunctive relief as deemed necessary by the
28 Court, including without limitation for an order pursuant to 17 U.S.C.

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§503(b) or otherwise requiring the purging and destruction of all CoStar content from CREXi’s database(s) and system(s) by an independent source that reports to CoStar and the Court and monitors CREXi’s future compliance with the Court’s orders;

- 14. For an award of CoStar’s costs, including its reasonable attorneys’ fees;
- 15. For pre-judgment and post-judgment interest according to law;
- 16. For exemplary and punitive damages to the extent available; and
- 17. For such further and additional relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Civil L.R. 38-1, CoStar hereby demands a trial by jury.

Dated: September 25, 2020

Respectfully submitted,

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