UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	
CoStar Group, Inc., a corporation	Docket No. 9398
and	REDACTED PUBLIC VERSION
RentPath Holdings, Inc., a corporation.	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents CoStar Group, Inc. ("CoStar") and RentPath Holdings, Inc. ("RentPath") have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. NATURE OF THE CASE

1. CoStar proposes to acquire its chief competitor for apartment internet listing services ("ILSs"), RentPath. If consummated, the acquisition will eliminate price and quality competition that benefits renters and property managers today, resulting in higher prices for the internet listing services relied upon by managers of large apartment buildings. RentPath has summarized the effect of this transaction in simple terms: "Prices WILL NOT stay the same, it will almost be a monopoly."

2. Both Respondents operate ILSs, which are websites such as Apartments.com, ForRent.com, Rent.com, and ApartmentGuide.com that match prospective renters with available apartments. For prospective renters, ILSs provide zero price, user-friendly interfaces to search for a place to live from a database of available units. For apartment owners and managers, ILSs help to fill apartments by creating and targeting advertisements of vacant units to interested

prospective renters. Millions of U.S. consumers rely on ILSs each year to gather information about rental properties, or to contact property managers about leasing an apartment. According to RentPath, "86% of renters use an ILS during their search."

3. A significant number of prospective renters use ILSs because they provide renters with a free and efficient apartment search experience. ILSs enable prospective renters to quickly search and filter a large quantity of rental listings to identify only listings that satisfy relevant criteria, such as number of bedrooms, monthly rent, available move-in date, and amenities like swimming pools or exercise rooms. Without leaving the ILS website, prospective renters can then obtain detailed information to compare the units they are considering, often including floor plans, real-time vacancy information, and high-quality photos or video tours. In the words of CoStar's Vice President of Product, ILSs thus allow prospective renters "to get a sense of [each] community without actually being there." According to a 2019 Confidential Information Presentation prepared by RentPath, renters plainly value this convenient and data-rich search experience: "Among recent renters, [redacted]% say an ILS was the most helpful resource—more than 3x the next best resource."

4. Respondents are able to provide free ILS search services to prospective renters because they charge fees to property managers to display rental properties on the ILS websites. CoStar and RentPath use a subscription-based business model, typically charging property managers a monthly, per-complex fee for ILS advertising and certain additional services. Property managers benefit from appearing on ILSs because ILSs attract significant numbers of prospective renters and provide a way for the prospective renters to contact a property directly to express interest in a rental unit. Such contacts are referred to as "leads," and allow the property manager to direct further marketing activity to prospective renters who are already known to be promising customer targets.

5. The primary source of ILS revenues is the fees paid by property management companies ("PMCs"). PMCs manage marketing activity for one or more apartment buildings, either as third-party contractors or as owner-operators.

6. For many PMCs, ILSs provide an attractive form of advertising because they generate a significant volume of quality leads. Leads generated by ILSs are particularly useful to PMCs because they come from prospective renters who have gained a significant amount of information about a unit from the ILS—including whether the unit meets their key criteria—and thus are more likely to want to rent the unit.

7. In addition to requiring a high volume of quality leads, PMCs that manage large apartment complexes have specific needs that Respondents' ILSs are uniquely well placed to satisfy. Respondents' ILSs employ a comparatively large and geographically dispersed sales force to maintain client relationships and promptly address PMC customers' needs and concerns. Respondents' ILS advertising subscription packages include various features beyond the simple posting of a property listing, such as HD video and 3D virtual tour production, generation of 2D or 3D floorplans, on-site photo shoots, display and social retargeting advertisements, and access to analytics to help customers better understand the efficacy of their marketing and refine their competitive strategies. These features of Respondents' ILS offerings help maximize the

proportion of visitors to Respondents' ILSs who will contact a property for further information, or in other words, submit a "lead."

8. Reflecting these distinctive needs, PMCs managing large apartment complexes use Respondents' ILSs heavily. Nationally, approximately 70 percent of apartment complexes with 200 or more units, and approximately 50 percent of apartment buildings with 100 to 199 units, advertise on one or both of the Respondents' ILSs.

9. For years, CoStar and RentPath have competed fiercely with one another to sell ILS advertising to PMCs in metropolitan areas across the United States. For example, CoStar's internal documents reflect that in 2019, CoStar launched a sales campaign to "[c]ompet[e] directly and powerfully with RentPath for the business of our duplicative clients and those unique properties using RentPath but not Apartments.com." In preparing its sales staff for this campaign, CoStar informed them that RentPath itself had "severely cut [its] prices in an effort to compete." The Acquisition will eliminate this competition, leading to increased prices for the PMCs that advertise large apartment complexes on ILSs. Indeed, RentPath's CEO acknowledged in a 2019 e-mail to the company's Board of Directors that the Acquisition may lead to "more stable pricing and fewer promotions in the long term."

10. These higher prices will not be counterbalanced by benefits for PMCs or for prospective renters. To the contrary, the Acquisition will eliminate significant head-to-head competition to attract and engage prospective renters. By way of illustration, CoStar and RentPath monitor each other's consumer-facing websites, and may adjust their content if they see something they like on the other company's website. For example, in March 2020, RentPath created a set of best practices to help its PMC customers create high-quality, virtual apartment-tour videos to post on its ILS websites. RentPath emphasized in communications to the PMCs that "it is extremely important for communities to be able to show [prospective renters] impactful virtual tours of their propert[ies.]" Internal e-mails reflect that when CoStar learned of RentPath's effort to improve [redacted], CoStar quickly developed its own [redacted] to "counter" RentPath. The Acquisition would eliminate this sort of competition in consumer-facing content and features, and thus reduce the quality of ILS search services.

11. New entry would not be timely, likely, or sufficient to counteract the anticompetitive effects of the Acquisition. Significant barriers exist for potential new entrants, due in part to the network effects that characterize ILS platforms. Network effects occur where the value of a product depends in part on the number of users. More specifically, indirect network effects arise in multi-sided platforms (like ILSs) when the value of the product to users on one side of the platform depends on the participation of users on another side. In the ILS context, indirect network effects give rise to a classic "chicken and egg" problem: an ILS cannot provide a significant number of leads to PMCs unless it can attract a large number of prospective renters to the ILS. However, an ILS cannot attract prospective renters unless it lists a sufficient number of properties. Such network effects and other barriers hinder both entry by new competitors and expansion by Respondents' existing rivals.

12. Respondents cannot show cognizable, merger-specific efficiencies that would offset the likely and substantial competitive harm resulting from the Acquisition.

II. JURISDICTION

13. Respondents are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

14. The Acquisition constitutes a merger subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. RESPONDENTS

15. CoStar is a publicly traded corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1331 L Street, N.W., Washington, D.C. 20005. CoStar is a top provider of data, analytics, and ILSs for the real estate industry in the United States. CoStar earned revenues of approximately $1.4 billion in 2019, with just over $490 million derived from its network of ILSs.

16. CoStar's ILS network includes Apartments.com, ApartmentFinder.com, and ForRent.com. The company assembled this network through a series of acquisitions, beginning with the purchase of Apartments.com in 2014 and more recently with the acquisition of ForRent.com in 2018.

17. RentPath is a privately held corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 950 East Paces Ferry Rd N.E. #2600, Atlanta, Georgia 30326. RentPath's primary business is an ILS network that includes Rent.com and ApartmentGuide.com. RentPath generated approximately [redacted] in revenue in 2019, with about [redacted] derived from RentPath's ILSs.

IV. THE ACQUISITION

18. On February 12, 2020, CoStar agreed to acquire RentPath for $587.5 million (the "Merger Agreement"). As a condition of the acquisition offer, RentPath filed for bankruptcy protection and reorganization under Chapter 11 of the United States Bankruptcy Code the same day.

V. RELEVANT MARKETS

19. Respondents compete to provide residential rental ILSs, which are two-sided platforms that bring together (i) purchasers of ILS advertising (i.e., PMCs and rental properties), and (ii) consumers of ILS search services (i.e., prospective renters). The relevant line of commerce in which the Acquisition will lead to anticompetitive effects is ILS advertising for large apartment complexes. The relevant geographic markets in which the Acquisition will lead to anticompetitive effects are individual metropolitan areas within the United States.

A. Relevant Product Market: ILS Advertising for Large Apartment Complexes

20. Most PMCs that manage large apartment complexes rely on ILS advertising because it satisfies their distinctive requirements in ways that other methods of advertising do not. ILS advertising allows PMCs to market available units to an enormous number of prospective renters. Other methods of advertising are unable cost-effectively to scale up to provide the same volume and quality of leads as ILS advertising. Recognizing the unique value of ILS advertising, ILSs assign great weight to the pricing of other ILS advertising providers when they determine their own prices; no other form of advertising plays as significant a role.

21. Large apartment complexes, and the PMCs that manage them, are a distinct set of customers for ILS advertising. These customers' advertising requirements differ from the requirements of other purchasers of ILS advertising such that they are uniquely dependent on ILS advertising to meet their needs. The larger an apartment complex, the more likely it is to have a consistently high number of vacancies. To fill these vacancies, a substantial majority of large apartment complexes (and the PMCs that manage them) rely on ILSs as an efficient and high-volume source of quality leads.

22. Most large apartment complexes could not cost-effectively replace the volume of leads generated by ILS advertising through non-digital forms of advertising, such as on-site advertising, real estate brokers, or print advertising for two reasons. First, many other forms of advertising do not reach the same number of potential renters as ILS advertising. For example, real estate brokers and locator services—while generating high-quality leads—do not have as big of a footprint as ILSs and are cost-prohibitive to use on a large scale. Second, other types of advertising may reach a relatively large audience but do not generate sufficient volume of high-quality leads. For example, community signage, while relatively inexpensive, typically cannot deliver high-quality leads in the volumes needed to fill a large apartment complex's vacancies.

23. Nor could these customers economically replace ILS advertising with other forms of digital advertising, such as search engine marketing and search engine optimization, because these forms of advertising cannot cost-effectively generate the high volume of quality leads that ILS advertising customers require for large apartment complexes. Search engine marketing involves bidding on keywords to appear in the sponsored results for relevant searches on search engines like Google and Bing. Search engine marketing offers the potential to reach a broader pool of prospective renters but is too expensive for most PMCs to use on a scale that could replace the leads obtained through ILS advertising. Moreover, property websites compete with ILSs for paid search traffic, bidding against Respondents on the most critical search engine marketing keywords. This competition with ILSs for paid traffic makes it prohibitively expensive for many large properties to turn to this advertising tool to replace the volume of leads they currently receive through ILS advertising. As a result, if the price of ILS advertising increased by a small but significant amount, customers would not substitute away from ILS advertising for large apartment complexes in sufficient volumes to render such a price increase unprofitable. The same is true for other forms of online marketing, including search engine optimization and social media advertising.

24. Search engine optimization is the process of designing website structure and content to increase the likelihood that the website will appear closer to the top of organic search

results for relevant keywords. Although certain PMCs that manage large apartment complexes engage in some amount of search engine optimization in addition to search engine marketing, few could increase their reliance on these tools as a cost-effective substitute for ILS advertising. It is difficult for individual properties to compete with highly optimized, content-rich ILS websites to appear prominently in organic search results; at most, only a few property websites can secure the coveted but scarce front-page page ranking necessary to attract meaningful organic traffic. For this reason, and because of the high cost of search engine marketing, ILS advertising is the most cost-effective way for many large properties to gain large scale exposure to prospective renters who begin their apartment search on search engines.

25. Some ILSs offer access to unique benefits that differentiate their advertising services from other forms of digital advertising. For example, many ILSs offer optional ancillary services to improve their advertising customers' property listings, including data and analytics services, sending professional photographers to on-site photo shoots, generating floorplans, and creating 3D virtual tours. In addition, ILSs often simplify PMCs' use of other forms of online marketing, by coordinating and optimizing PMCs' advertising strategies across other channels including search engine marketing, social media advertising, and other online display advertising. These ancillary services enhance the performance of ILS advertising for PMCs and can improve both the quantity and quality of leads the PMCs receive.

26. Respondents recognize that PMCs' demand for ILS advertising for large apartment complexes is relatively inelastic. As CoStar CEO Andrew Florance remarked on a July 2019 earnings call, "[W]hen you think about what's at stake for them as they launch a $200 million community in the lease-up, they don't really care if our ad cost[] $1,000 or $10,000. They're in a nine-month lease-up period and we are the source for the majority of their communities."

27. Respondents know which of their customers' properties are large apartment complexes, because PMCs disclose the number of units in each apartment complex when advertising their properties through an ILS. This makes large apartment complexes readily identifiable for purposes of differential pricing.

28. Respondents can and do vary advertising pricing based on the number of units in an apartment complex, whether in their standard rate cards or in individually negotiated contracts with PMC customers. A hypothetical monopolist similarly could implement a targeted price increase on ILS advertising for large apartment complexes.

29. Customers of ILS advertising for large apartment complexes could not avoid a targeted price increase through arbitrage because ILS advertising is inherently property-specific. Many PMCs make decisions about whether to use ILS advertising, and which ILS to use, on a complex-by-complex basis. PMCs (and in some cases, individual properties) must engage directly with ILSs to opt in to advertising services and to update listings for each discrete property.

30. A hypothetical monopolist of ILS advertising profitably could impose a small but significant increase in price to customers seeking to fill vacancies for large apartment complexes. These customers would not switch to an alternative source of leads in sufficient volume to render

the price increase unprofitable. Because the hypothetical monopolist test is satisfied, ILS advertising for large apartment complexes is a relevant product market.

B. Relevant Geographic Markets: Individual Metropolitan Areas

31. ILSs provide geographically-filtered listings to renters seeking apartments in specific metropolitan areas. A renter seeking an apartment in Tampa, Florida, for example, will only use an ILS that contains listings for apartments in Tampa to find an apartment. Such a renter would be unwilling to use an ILS that did not include a sufficient number of quality Tampa-area listings even if the ILS did maintain listings for other areas, like Los Angeles. Likewise, a PMC with properties in Tampa, Florida, must attract renters who have decided to live in or around Tampa. That PMC would have no use for an ILS that is successful at generating leads from renters interested in living in Los Angeles, but that fails to generate leads from renters interested in living in the Tampa area.

32. In the event of a small but significant price increase, a PMC with properties in one metropolitan area could not substitute away from its current ILS to an ILS that only operates effectively in a different metropolitan area. A PMC with properties in Tampa, Florida could not, for example, switch to an ILS that is only available or attractive to renters seeking apartments in Los Angeles.

33. ILSs compete to supply advertising services to PMCs within individual metropolitan areas. This competition includes competition on region-specific price, which varies based on the location of the customers' properties, and competition on region-specific quality, including an ILS's ability to provide internet traffic and leads.

34. ILSs also compete on the quality and breadth of their local sales forces in each metropolitan area. For example, Respondents maintain geographically dispersed sales organizations to compete locally by means of regular property visits and other relationship-building initiatives with customers and prospects. Respondents' ordinary-course documents demonstrate the competitive significance of their local sales staff: RentPath notes that its "[l]arge local sales force allows RentPath to tap into apartment inventory which competitors may not have access to." Similarly, CoStar's local sales representatives are able to "actually visit, in a reasonable amount of time and distance, [CoStar's] customers in person."

35. It is appropriate to analyze the proposed Acquisition's competitive effects in these local, metropolitan area markets. Because ILS advertising customers can only turn to ILSs with a local presence, a hypothetical monopolist of ILS advertising for large apartment complexes in a given metropolitan area profitably could impose a small but significant price increase. Individual metropolitan areas thus constitute the relevant geographic markets in which to analyze the Acquisition's impact on competition for ILS advertising for large apartment complexes.

36. Appendix A identifies 49 of the local markets in which the Acquisition would lead to anticompetitive effects with respect to ILS advertising for large apartment complexes. Most of these local geographic markets also include Zillow Group, Inc. ("Zillow") and a fringe of pay-for-performance ILSs that are active nationwide, including Apartment List, Inc. ("Apartment List"), and Zumper Inc. ("Zumper"). Some of the relevant local geographic

markets may feature additional local competitors, but most of these local competitors are quite small, or participate in the market only tangentially (e.g., only as an add-on to other products).

37. Though Respondents compete within individual metropolitan areas across the United States, competitive conditions are substantially similar across many of these local markets. The proposed acquisition is likely to lead to anticompetitive effects in a large number of local metropolitan areas nationwide.

38. PMCs that manage large apartment complexes in more than one region of the country often negotiate master contracts to provide common terms for their full portfolios of managed properties, with the same ILSs and under similar competitive conditions for all of their complexes.

39. Accordingly, while the relevant geographic markets in which to analyze the Acquisition include at least the 49 metropolitan areas identified in Appendix A, national information is relevant and useful for analyzing the effect of the Acquisition.

VI. OTHER ILS ADVERTISING FIRMS

40. Zillow is a publicly traded company headquartered in Seattle, Washington. Zillow offers real estate platforms and products, including a network of rental listing sites under its own brand name, as well as the Trulia, HotPads, and Street Easy (which is focused on New York City) brands. Zillow's primary business is an advertising-supported search portal for homes for sale. [redacted] Zillow offers ILS advertising to PMCs at prices based on the number of leads, leases, clicks, or listings provided. [redacted]

41. Apartment List is a privately held company headquartered in San Francisco, California. Apartment List operates using its brand name [redacted]. Apartment List offers ILS advertising to PMCs on a pay-for-performance basis. [redacted]

42. Zumper is a privately held company headquartered in San Francisco, California. Zumper operates using its brand name and provides ILS advertising to properties of all sizes, [redacted]. Zumper offers ILS advertising to PMCs on a pay-for-performance basis. [redacted]

43. In addition to Zillow, Apartment List, and Zumper, some metropolitan areas feature local competitors. Alone or in combination, local competitors generally operate on too

[1] For purposes of this Complaint, we estimate market shares based on ILS advertising revenues from properties with over 100 units, but this unit threshold is not dispositive. The Acquisition is also presumptively illegal when market shares are calculated using higher or lower unit counts.

small a scale to constrain a post-Acquisition price increase, even in their respective local markets.

VII. THE ACQUISITION IS PRESUMPTIVELY ILLEGAL

44. The Acquisition would lead to a significant increase in market concentration in already highly concentrated local markets for ILS advertising for large apartment complexes. The concentration levels in no fewer than 49 local markets, identified in Appendix A, exceed the thresholds for presumptive illegality.

45. The 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") employ a metric known as the Herfindahl-Hirschman Index ("HHI") to assess market concentration. The Merger Guidelines explain that an acquisition is presumptively unlawful if it leads to (i) a post-acquisition HHI above 2500 points and (ii) an HHI increase of more than 200 points.

46. Although the appropriate geographic markets are individual metropolitan areas, it is directionally informative to consider the Respondents' aggregate market shares across the nation. In 2019, CoStar and RentPath accounted for the vast majority of ILS revenues derived from advertising for large apartment complexes. On a nationwide basis, CoStar recognized approximately [redacted] in ILS advertising revenue from large apartment complexes; RentPath was a strong second with approximately [redacted] in revenue. [redacted]

47. In each of the 49 local markets identified in Appendix A, the Acquisition would similarly lead to sufficient concentration and change in concentration to give rise to a presumption of illegality. Both the post-Acquisition concentration and the increase in concentration would far exceed the presumptive thresholds for illegality identified by the Merger Guidelines.

VIII. THE ACQUISITION IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

48. The Acquisition will eliminate significant head-to-head competition in the relevant markets. CoStar and RentPath are one another's closest competitors for ILS advertising for large apartment complexes, and the competition between them has benefited customers in metropolitan areas across the United States.

49. Respondents are easily the top two providers—whether measured by ILS revenue or by leads delivered—of ILS advertising to large apartment complexes. Respondents' ILSs closely resemble one another, and the similarity extends to their advertising business models; CoStar and RentPath are the only two major ILSs that charge monthly subscription fees to their customers, rather than relying primarily on pay-for-performance packages. Each Respondent on its own generates far more leads for large apartment complexes than the [redacted] largest pay-for-performance ILSs combined. For example, in 2019, CoStar and RentPath each generated

approximately [redacted] leads for large apartment complexe[redacted].

50. Respondents' own executives recognize that they are each other's closest competitors. CoStar's CEO has described RentPath as CoStar's "primary competitor" during public earnings calls with CoStar's investors. RentPath's Senior Vice President of Customer and Industry Relations put a finer point on the same sentiment, writing internally: "[O]ur only true ILS competitor is CoStar." Industry analysts likewise view Respondents as close competitors, and have observed that if CoStar's acquisition of RentPath is allowed to proceed, despite "antitrust issues," it would remove the "risk" that RentPath might improve "its competitive position against http://Apartments.com."

51. This close competition has benefited Respondents' customers, including in the form of lower advertising prices. In recent years, CoStar has aggressively targeted properties that advertise on RentPath, running sales campaigns referred to internally as [redacted]. Through these initiatives, CoStar has offered significant discounts to RentPath's customers as well as financial incentives to spur its sales representatives to win more business from these customers.

52. Similarly, RentPath prices aggressively against CoStar. For example, in the summer of 2019, RentPath responded to CoStar's attempts to woo RentPath customers by brainstorming a [redacted] that would include [redacted] to protect its existing customer relationships from CoStar's advances. According to RentPath's [redacted]: "We want them to see this." RentPath ultimately decided to offer [redacted]. RentPath expressly shaped this offer as a competitive response to the terms of CoStar's discounts: [redacted]

53. The harm that the Acquisition will cause on the ILS advertising side of the market is not outweighed by countervailing effects on consumers of ILS search services. To the contrary, the Acquisition will harm these consumers by eliminating close competition between Respondents to win their attention and engagement. Today, CoStar and RentPath compete fiercely to attract prospective renters through their marketing efforts and by improving their ILS websites' features, ease of use, and quality of information. These improvements make it faster and easier for consumers to find the most relevant and user-friendly information to aid in their apartment search. The Acquisition will eliminate this head-to-head rivalry and reduce competitive pressure on the ILSs to improve their offerings to renters, leading to lower quality and forgone innovation.

IX. LACK OF COUNTERVAILING FACTORS

54. Respondents cannot demonstrate that entry or repositioning would be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition in each relevant market.

55. Existing smaller ILSs will not reposition or expand to replace the ILS advertising competition lost should the Acquisition proceed. It is expensive and time-consuming to overcome the barriers to entry and expansion facing ILSs, particularly those associated with network effects. No existing player is poised quickly to muster the necessary scale to deliver significant numbers of leads while maintaining near-term hopes of profitability.

56. [redacted] Accordingly, Zillow would not be likely to provide sufficient competitive discipline on the merged firm to eliminate or substantially offset the harm from the Acquisition. Other, smaller ILSs lack the capital, scale, and ability to timely restore the competition that the Acquisition would destroy, whether nationally or in the relevant local markets.

57. New entry is unlikely for the same reasons. By way of illustration, the most recent entrant of significance, the mobile-based Zumper, was founded in 2012, but has failed to expand to become a meaningful competitive constraint on Respondents. [redacted] As acknowledged by RentPath in a 2019 draft Confidential Information Presentation: "RentPath's platform offers a wide moat providing protection against market entrants."

58. Google, LLC ("Google") does not, and will not, exert sufficient competitive discipline to eliminate or substantially offset the competitive harm associated with the Acquisition. Respondents cannot demonstrate that Google competes with Respondents in the relevant markets, let alone that it will prevent the Acquisition from resulting in competitive harm.

59. Respondents cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to rebut the presumption and evidence of the Acquisition's likely anticompetitive effects.

X. VIOLATION

Count I: Illegal Agreement

60. The allegations of Paragraphs 1 through 59 above are incorporated by reference as though fully set forth.

61. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Count II: Illegal Acquisition

62. The allegations of Paragraphs 1 through 61 above are incorporated by reference as though fully set forth.

63. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the first day of June 2021, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the

Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as CoStar and RentPath were offering and planning to offer prior to the Acquisition.

2. A prohibition against any transaction between CoStar and RentPath that combines their businesses in the relevant markets, except as may be approved by the Commission.

3. A requirement that, for a period of time, CoStar and RentPath provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the Acquisition or to restore RentPath as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this thirtieth day of November 2020.

By the Commission, Commissioner Wilson dissenting.

April J. Tabor
Acting Secretary

SEAL:

APPENDIX A

DMA	Post-Merger HHI[2]	Delta HHI[3]
Atlanta, GA	> 6500	> 2100
Austin, TX	> 6500	> 1800
Baltimore, MD	> 6500	> 3300
Boston, MA	> 6000	> 2400
Buffalo, NY	> 8500	> 3300
Charlotte, NC	> 6500	> 2400
Chicago, IL	> 6000	> 2300
Cincinnati, OH	> 7000	> 3500
Cleveland, OH	> 7500	> 3700
Columbus, OH	> 8000	> 3200
Dallas, TX	> 6500	> 2000
Denver, CO	> 5000	> 1400
Detroit, MI	> 8000	> 3700
Houston, TX	> 6500	> 1900
Indianapolis, IN	> 7000	> 3500
Jacksonville, FL	> 6000	> 2700
Kansas City, MO	> 7000	> 2200
Las Vegas, NV	> 6000	> 2100
Los Angeles, CA	> 5500	> 2100
Louisville, KY	> 7500	> 3300
Madison, WI	> 8000	> 2900
Memphis, TN	> 7500	> 3600
Miami, FL	> 6500	> 2400
Milwaukee, WI	> 8000	> 2800
Minneapolis-St. Paul, MN	> 6500	> 2800
Nashville, TN	> 6500	> 2800
New Haven, CT	> 7000	> 3200
Norfolk, VA	> 7500	> 3600
Oklahoma City, OK	> 7000	> 3100
Omaha, NE	> 7500	> 3500
Orlando, FL	> 6500	> 2400
Philadelphia, PA	> 6500	> 3000
Phoenix, AZ	> 6000	> 2200
Pittsburgh, PA	> 7000	> 3100
Portland, OR	> 5000	> 1100
Providence, RI	> 6500	> 2500
Raleigh, NC	> 6500	> 2700

[2] HHIs are calculated for buildings with over 100 units within particular DMAs for the purposes of the Complaint.
[3] "Delta HHI" is the difference between the pre-merger HHI and the post-merger HHI.

APPENDIX A

Richmond, VA	> 7000	> 3300
Rochester, NY	> 8000	> 3000
Sacramento, CA	> 6500	> 2000
Salt Lake City, UT	> 7000	> 2800
San Antonio, TX	> 6500	> 1500
San Diego, CA	> 5500	> 1900
San Francisco, CA	> 5000	> 1400
Seattle, WA	> 5000	> 1400
St. Louis, MO	> 7000	> 2700
Tampa, FL	> 6500	> 2600
Tucson, AZ	> 7000	> 3300
Washington, DC	> 6000	> 2500