



Via E-Mail
Nathan P. Eimer
Eimer Stahl LLP

Mr. Eimer,

Art Carter has forwarded your September 8, 2026, letter wherein Compass, Inc. demands that the California Regional Multiple Listing Service (CRMLS) agree with your client to not enforce rules, which would result in limited competition, force buyers to use Compass agents, force buyer representatives to join Compass to secure access to Compass' hidden for-sale properties, and create rules that assist Compass in committing fraud in the inducement and intentional misrepresentation. Please be advised that on November 24, 2024, your client made an almost identical demand to CRMLS. Since most of the arguments made by Compass are the same as those asserted in 2024, I attach CRMLS' response, dated December 3, 2024.

Since some of the assertions and supporting documentation are different than the earlier communication, I will now respond to those new arguments.

1) CRMLS rules already permit full advertising and marketing of a For-Sale Property without submission to CRMLS for Cooperation.

You define an "Office Exclusive" to be "a listing in which the owner refuses to grant permission for distribution of the listing to the MLS." Based on your stated definition, however, CRMLS Rule 7.9 fully allows for the public marketing and advertising of a property without that property needing to be submitted to the MLS for cooperation. This principle should be clear to Compass. I have had hours of conversations with Robert Reffkin, Kathy Mehrenger, the Compass Designated Officer, and Compass General Counsel on this exact subject over the years.

2) CRMLS does not have any rule that prohibits "Public Marketing."

Your letter's claim that CRMLS rules prohibit public marketing of listings are incorrect. Here is a link to those rules for your convenience: <https://go.crmls.org/crmls-rules-and-policies/>.

CRMLS Rule 7.9 does not prohibit public marketing of a for-sale property. It prevents free riding by an agent that has agreed to cooperate and thereby has access to all the shared MLS listing records contributed by competing brokers. Prior to securing a personal services and commission agreement, agents can create a comparative market analysis using their competitors' contributed MLS listing data, which is then the basis of the agent's opinions of value and recommendations to a seller. Here, the seller also directly benefits from the MLS cooperative by receiving timely and accurate information, including interior photos, property and transactional details for previously sold homes which can be compared to the seller's house. If that agent goes on to secure an exclusive commission agreement where a seller pays a broker fee to that listing agent, even if that agent fails to procure a buyer for the home, then CRMLS rules require that this listing agent contribute the information about the seller's for-sale property to the broker cooperative.

Under CRMLS rules, if both the seller and listing agent benefited from the use of the MLS listing records in establishing a potential sale price and analyzing time-to-market data, they should both agree to participate in sharing their for-sale property with that same group of brokers that also shared their valuable information.

If instead, the seller and broker agree to a non-exclusive agreement, keeping the seller's choices open to use other competing brokers who may have a buyer for the property, then there is no CRMLS rule requiring submission of the for-sale property information for cooperation at any time, including upon full public marketing. Since any buyer agent can have direct access to the seller in this case, such MLS cooperating broker can secure a buyer and participate in a transaction. A seller's broker should not control access to both a seller and a for-sale property by using an exclusive listing agreement, while simultaneously hiding that for-sale property from the cooperating buyer brokers who contributed information to the MLS that the listing broker used to secure the exclusive commission agreement in the first place.

If agents hiding for-sale properties from the cooperative were permitted to free ride off the hard work and contributions of CRMLS' contributing brokers, by not submitting their clients' listings into the MLS, then the cooperative system would break. These are the actual findings of the 1983 FTC Butter report, any reference to which is conspicuously missing from your letter. There, the FTC argues that:

While there may be cases where a seller does not want his or her listing submitted to the MLS, the MLS remains the most efficient method of maximizing exposure of property in large markets. Historically, however, a common problem for sellers and for the MLSs has been "vest pocket" listings. An ability to easily withhold underpriced listings may increase the incentives of some brokers to undervalue listings initially. Thus, one rationale for mandatory listing requirements traditionally has been that it helps in suppressing a practice which can do substantial injury to consumers.

FTC, *The Residential Real Estate Brokerage Industry*, at 130 (Dec. 1983).

In short, it appears that your letter demands that CRMLS implement rules to support and facilitate "Vest Pocket Listings" which the FTC specifically describes as "causing substantial injury to consumers". CRMLS will not enter into any agreement with Compass to create rules that can harm consumers and are antithetical to rules supporting competition through cooperation.

3) Agents may access all CRMLS Listing Records without being subscribers to CRMLS by joining a data share MLS like SDMLS, CLAW, MLS Listings, or BridgeMLS.

CRMLS shares all its MLS listing records with several competing multiple listing services. As a result, it is entirely possible for a Compass agent who does not subscribe to CRMLS (and therefore not subject to the CRMLS rules) to join a separate and distinct MLS and fully retain access to all the CRMLS listing content.

We understand that Mr. Reffkin has visited numerous Compass competitors including several Century 21 and Coldwell Banker franchisees. We have received direct reports about attendees of these meetings being shocked when Mr. Reffkin offered to pay them \$1,000 each if they would leave CRMLS and join SDMLS instead.

Our understanding is that Mr. Reffkin made this offer to pressure CRMLS into abandoning the concepts of cooperation and instead implement rules that favor giant

brokerage firms with significant listing market share. At the same time, I attended the T3 Sixty Leadership Conference in Dallas where Mr. Reffkin appeared virtually and stated to the over 400 attendees that by the end of 2026 CRMLS would lose over 10,000 subscribers to our neighboring MLS competitors. Because the combined CRMLS agent count of both Compass, Inc. and Coldwell Banker Residential is only 4,252 agents, nearly 6,000 agents from competing brokerage firms would need to boycott CRMLS to make Mr. Reffkin's prediction come true.

While CRMLS contemplated litigation against Compass for violations of the antitrust and consumer protection laws, it instead initiated a proposed solution to Compass. This resulted in face-to-face meetings between me, Art Carter, Mr. Reffkin, and Compass General Counsel Ethan Glass. Mr. Reffkin requested that Compass Coming Soon listings be withheld from all portals and IDX websites, with the exception of Redfin.com. He admitted that, because of the size of Compass, he could sell access to these advertised Coming Soon listings to Redfin/Rocket for a substantial monetary gain. However, that value could only be derived if those same listings were excluded from Zillow.com, Homes.com, Realtor.com, and local broker IDX websites. It appears that Mr. Reffkin sought to sell access to the advertising of those for-sale properties to the highest bidder, even though doing so lowered the exposure and removed access to valuable information from potential buyers using competing websites, potentially to the harm of the seller.

CRMLS proposed a modification to its then-current "Coming Soon" status which would provide for additional listing broker options for MLS Listing Record distribution. Messrs. Reffkin and Glass both praised that solution and admitted that it resolved their objections to the CRMLS rules. During this meeting, Mr. Reffkin asserted that he supported rules that would ensure that buyer agents have access in the MLS to any for-sale property that the buyer agent's client could see. Mr. Reffkin said no buyer agent should be embarrassed or lose a buyer client because that buyer saw a for-sale property advertised that the buyer agent had no information about. But receipt of your letter only a couple of months later clearly indicates that none of the representations from Compass leadership were genuine or truthful.

4) CRMLS is a broker cooperative, not a listing platform.

You cite several other MLS entities, and I am aware that these multiple listing services actually operate more like listing platforms, rather than as broker cooperatives with a set of rules that support mandatory cooperation. This list of other MLSs does not influence CRMLS to change its operations from a broker cooperative to a listing platform.

Ample antitrust caselaw supports the proposition that CRMLS may enforce reasonable rules to prevent free riding by agents (and firms) that take the benefits of access to all of the cooperative MLS listing content, but then hide from cooperation and access their own listing content to sell those same listings for public display on portal websites, and use those hidden listings to force buyers to abandon their chosen agent just so they can get access to hidden for-sale properties.

CRMLS rules accommodate numerous opportunities for sellers to choose any number of marketing, advertising, and MLS Listing Record distribution options. See the attached December 3, 2024 email for details.

Only eight days prior to sending this letter to CRMLS, Compass agreed to settle the lawsuit you brought against Northwest MLS (NWMLS) based on similar antitrust claims and arguments you assert against CRMLS here. Based on my review, the NWMLS mandatory submission rules, to which Compass presumably assisted in the creation of as part of the written settlement agreement, are substantially more restrictive than CRMLS Rule 7.9. Specifically, Compass has agreed in NWMLS to submit for cooperation ALL for-sale properties. NWMLS has no "One Business Day" time frame for submission as is included in CRMLS Rule 7.9. NWMLS rules also do not have an equivalent CRMLS Rule 7.9.1 No Cooperation Listing option which you erroneously refer to as an "Office Exclusive". Since Compass presumably either participated in the creation of, or at a minimum, acknowledged as valid to be applied to all NWMLS Compass agents, the updated NWMLS rules, how can Compass now claim that the CRMLS rules which provide additional choices to a Compass agent and their seller violates any antitrust laws or harm any consumers?

Mr. Reffkin said that Compass' "original objective in taking legal action against NWMLS has been fully realized." Is Compass now advocating for CRMLS to remove the one business day grace period before submission to cooperation in CRMLS? Or that CRMLS fully eliminate the existing Rule 7.9.1 No Cooperation Listing option? It is my understanding that the NWMLS rules require submission of non-exclusive listings for cooperation; CRMLS Rule 7.9 only applies to exclusive agreements. As such, any non-exclusive or open listing between a seller and Compass can be publicly marketed and need not be submitted to CRMLS for cooperation. Is removal of the seller's choice of a non-exclusive or open listing agreement, with the ability to publicly market the home without submitting the property information to CRMLS for cooperation, what Compass now wants?

If Compass decides to move forward with any litigation, let there be no confusion that, in addition to CRMLS' vigorous defense of our right to operate a broker cooperative, including the implementation of rules to prevent free-riding subscribers, CRMLS will also assert additional direct claims against Compass including, but not limited to:

- 1) Violation of the Cartwright Act - Per Se Group Boycott (Bus. & Prof. Code §§ 16720, 16726, 16750);
- 2) Violation of the Cartwright Act - Conspiracy and Unreasonable Restraint of Trade (Bus. & Prof. Code §§ 16720, 16726, 16750);
- 3) Violation of the Unfair Competition Law (Bus. & Prof. Code § 17200 Et Seq.);
- 4) Intentional Interference with Prospective Economic Advantage;
- 5) Intentional Interference with Contractual Relations;
- 6) Breach Of Fiduciary Duty and Aiding and Abetting;
- 7) Breach of Contract and Implied Covenant of Good Faith and Fair Dealing.

In light of imminent litigation, Compass, Inc. and Compass International Holdings, its officers, directors, designated officers for any corporate real estate license in California, office managers, real estate licensees operating in California (both salespersons and affiliated brokers), transaction coordinators, assistants, retained business consultants, and employees are hereby placed on notice to suspend all automatic deletion policies and to preserve all documents and electronic data relating to:

- 1) Any property, seller or transaction that participated in any way in the Compass three phase marketing program (3PM) in California in the last three years,
- 2) For any Compass affiliated licensee that has ever used Compass' 3PM or has ever had a CRMLS defined No Cooperation Listing, all listing presentation

- materials that convey any information about that Compass agent's or teams Average Days on Market or average list price to sold price ratio in the last three years.
- 3) Claims or demands for failure to disclose, intentional misrepresentation, fraud or breach of fiduciary duty in California in the last three years.
 - 4) Any requests for information, investigations or inquiries from any governmental body, including but not limited to state departments or commissions of real estate, attorneys general, US Dept. of Justice or Federal Trade Commission, or members of Congress.
 - 5) Proposals, negotiations or agreements with any real estate portal, real estate advertising company or listing platform.
 - 6) Marketing or advertising materials which in any way reference 3PM, including but not limited to materials targeting consumers, agents, or brokerage firms in California.
 - 7) All training and education materials of the 3PM.
 - 8) Payments or offers to pay any non-Compass, Inc. California real estate licensee outside of an ordinary real estate transaction closing, including but not limited to payment to boycott CRMLS.
 - 9) Communications, proposals, negotiations or agreements, including but not limited to the payment of monies, with any multiple listing service not related to a specific listed property.
 - 10) Communication with any non-Compass, Inc. brokerage firm related in any way to MLS rules or NAR MLS policies.
 - 11) Any MLS or association compliance inquiry or violation of any MLS rule in the state of California in the last three years.
 - 12) Any REALTOR® association complaint alleging a violation of any MLS rule or NAR Code of Ethics Article in California in the last three years.
 - 13) Any lawsuit by or against any Compass entity in California in the last three years.
 - 14) Studies, data analysis or the development of any opinions or strategies regarding the impact of off MLS listings, No Cooperation Listings, or financial benefits to brokerages by hiding listing inventory.
 - 15) Financial records, proposals, negotiations and agreements related to the revenue generated by selling Compass for-sale property advertisements exclusively to Redfin/Rocket, and any increase in revenue by hiding those same listings from competing real estate portals and brokers
 - 16) Earning reports, including but not limited to data, financial information, use statistics, records, and any related correspondence or documentation with Wall Street analysts.
 - 17) Competition between brokers, real estate advertising portals, MLSs, and real estate professionals.
 - 18) Compass, Inc., Compass International Holdings, and any other entity affiliated with or owned by Compass, including documents and electronic data relating to Compass business strategy.

Please be advised that CRMLS intends to invite buyers, sellers and buyer agents to share their stories on how they have been harmed and damaged by the hiding of for-sale properties from the MLS. I have personally spoken with agents whose buyers were forced to abandon their representation just to gain access to tour Compass hidden for-sale properties. These buyer agents had access to the list of hidden homes through Compass agents providing them access into the Compass system.

The problem was not in the identification of hidden for-sale properties, it was in the refusal of Compass agents cooperating with them to allow the buyer agent to tour the property. Calls and inquiries would go unanswered until the buyer was forced to abandon their chosen agent and interact with the Compass agent just to get access to see these hidden homes. In the most egregious case, I have discovered a Compass

agent required a potential buyer, that was also selling a home, to hire that Compass agent to list their existing property as a condition to gain access to the desired off-MLS for-sale property.

I have also received reports of agents losing listing presentations to Compass agents that misrepresented the value of the property. In one case, the Compass agent recommended a price 25% over value. After being in the Compass 3-Phased marketing program for weeks, the seller was upset and the property was submitted to the MLS for a more realistic list price. The question remains, did this listing agent in their future listing presentations when stating his list price to sales price ratio use the real original list price 25% overvalue, or does his advertised ratio only use the MLS submitted list price?

I have also spoken with an agent that was so frustrated at not having the ability to show or tour the Compass hidden for-sale properties (this agent also had access into the Compass system through a "friend", so he knew of the properties being for sale) that the agent spoke with a Compass recruiter. The Compass commission split was lower than the current broker, and Compass also demanded that the agent abandon other licensed activity as a condition to join, so the agent now deals with the challenge of not being permitted to show their buyers the hidden Compass for-sale properties.

The harm to competition from hiding listings from cooperation on the MLS set forth in this response, and my previous correspondence are real. CRMLS will assert numerous examples from agents and consumers by inviting them to share their stories with us.

Additionally, to encourage other MLS entities that are being bullied by Compass into modifying their rules out of fear of the cost of defending litigation, CRMLS will start the **MLS Cooperative Legal Defense Fund**. We will raise money from multiple sources that support consumer transparency, equal access to for-sale properties, and open competition in the brokerage-services space. I have already submitted a request to the California Association of REALTORS® Legal Action Fund and to the NAR Legal Action Program. We will also approach consumer advocacy groups, consumer plaintiff attorneys, other MLSs and associations, as well as those in the MLS vendor and real estate portal community.

It is the desire of CRMLS that this matter be resolved in an amicable way that supports broker cooperation and competition. It is CRMLS' aim that its rules support and encourage real estate licensees to fully comply with their existing state-mandated and Code of Ethics-related duties and obligations. CRMLS respectfully requests that Compass abandon its practices of violating its fiduciary duty, as mandated by the Code of Ethics and state law.

Specifically, CRMLS requests that Compass cease and desist from selling access to the advertisements for the for-sale properties that Compass has been hired to sell for an owner to the highest bidder. Additionally, Compass should cease and desist from using exclusive listing agreements to shield their sellers from viable and potential buyers and the agents that those buyers wish to hire. CRMLS requests that Compass cease and desist from placing the Compass generation of revenue above the needs of the sellers that hire your agents.



Ed Zorn
Vice President & General Counsel

It is my sincere hope that cooler heads will prevail, and that there will be no need for litigation between Compass and CRMLS. But let there be no confusion: should Compass assert these frivolous claims against CRMLS, they will be met with an aggressive defense and meaningful counterclaims. The choice of how this process will proceed is now up to the leadership of Compass. I sincerely hope that they make the decision to do the right thing.

I look forward to hearing from you or Compass soon.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed Zorn". The signature is fluid and stylized, with a long horizontal stroke extending to the right.

Edward J Zorn, Esq.
CRMLS Vice President & General Counsel