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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

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7 RONALD CHINITZ, et al.,

8 Plaintiffs,

9 v.

10 INTERO REAL ESTATE SERVICES,

11 Defendant.

Case No. 18-cv-05623-BLF

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM NON-
DISPOSITIVE PRETRIAL ORDER OF
MAGISTRATE JUDGE**

[Re: ECF No. 259]

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13 Before the Court is Defendant Intero Real Estate Services' motion for relief from a non-
14 dispositive pretrial order of Magistrate Judge Nathanael M. Cousins, pursuant to Local Civil Rule
15 72-2. *See* ECF No. 259 ("Motion"). Intero takes issue with Judge Cousins' denial of its request to
16 serve subpoenas on non-party Zillow Group, Inc., which Intero claims are necessary to show that
17 Plaintiffs took steps in connection with selling their homes. *Id.* at 1. Intero argues that the request
18 is proportional to the needs of the case, and that Judge Cousins' finding to the contrary is clearly
19 erroneous. *Id.*

20 A magistrate judge's non-dispositive pretrial order may be modified or set aside if it is
21 "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). "[T]he magistrate's factual
22 determinations are reviewed for clear error, and the magistrate's legal conclusions are reviewed to
23 determine whether they are contrary to law." *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348
24 (N.D. Cal. 2010). After reviewing Judge Cousins' order and Intero's Motion, the Court finds no
25 clear error and that his legal conclusions are not contrary to law. Judge Cousins found that Intel
26 failed to demonstrate "good cause" for the request, as required by Rule 16, and that the request
27 was a "fishing expedition" rather than proportional to the needs of the case because Intel should be
28 able to obtain the requested information itself. ECF No. 245 at 1-2. Judge Cousins applied the

1 correct legal standard, and the Court finds no clear error in his consideration of the factors related
2 to proportionality of the discovery request or untimeliness of the request under Rule 16.

3 Accordingly, Intero's Motion is DENIED.

4 **IT IS SO ORDERED.**

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6 Dated: September 8, 2021



BETH LABSON FREEMAN
United States District Judge

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United States District Court
Northern District of California