

KING COUNTY
SUPERIOR COURT CLERK

HONORABLE BARBARA RAE LINDE

NOTED FOR HEARING: CASE NUMBER 14-2-07669-0 SEA
APR 4, 2014, 2:30 p.m.

WITH ORAL ARGUMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

MOVE, INC., a Delaware corporation,
REALSELECT, INC., a Delaware
corporation, TOP PRODUCER SYSTEMS
COMPANY, a British Columbia unlimited
liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
Illinois non-profit corporation, and
REALTORS® INFORMATION
NETWORK, INC., an Illinois corporation,

Plaintiffs,

vs.

ZILLOW, INC., a Washington corporation,
ERROL SAMUELSON, an individual, and
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

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I. INTRODUCTION

A court should intervene to stop threatened misappropriation of trade secrets when an officer of a company abruptly defects to the company's chief rival and erases data along the way.

1. Errol Samuelson was Move, Inc.'s Chief Strategy Officer; he knew all Move's strategic plans and those of its strategic partner, the National Association of Realtors (NAR).

2. Move's primary competitive advantage is its relationships with the real estate industry. While an officer of Move, Samuelson took a job at rival Zillow. Zillow hired Samuelson, and his chief lieutenant Curt Beardsley, to recreate Move's industry strategy at Zillow.

3. In the days before their departures, Beardsley dumped most of his Move stock. Samuelson erased emails from Beardsley, transferred his Move-issued phone number into his own name, and wiped the memory from two Move laptops, an iPad, and an iPhone.

Samuelson and Zillow have put Move's trade secrets in jeopardy, necessitating an injunction.

II. FACTS

Move and Zillow are direct rivals in the online real estate market.

The real estate market is old and the internet is new. As the two have met over the last two decades, competing forces have emerged. Members of the real estate industry—agents, brokerages, listing services—have tried to use the internet to promote their businesses, while some consumers have tried to use the internet to limit the professionals' roles. Move and Zillow have come to embody these competing forces.

Since 1996, Move has had a strategic partnership agreement with NAR, the largest trade association for real estate professionals, which allows Move to operate NAR's website, realtor.com®. *Berkowitz* ¶3-4. Because realtor.com is NAR's website, it has always aimed to support NAR's members. On the other hand, Zillow has, since its inception in 2005, catered to consumers rather than the real estate industry. *Id.* ¶8.

Move has parlayed its alliance with NAR into relationships with Multiple Listing Services and brokers that allow Move unmatched direct access to listing data. This, in turn, gives

1 Move a content advantage over its competitors, which has allowed Move to consistently generate
2 the highest annual revenue in the online real estate market. Zillow has become Move’s chief
3 competitor primarily because of its ability to generate consumer traffic on its website. *Id.* ¶5-7, 9.

4 **As head of realtor.com and CSO, Samuelson knows the crown jewel trade secrets.**

5 Over 13 years at Move, Samuelson led or was involved with every Move business line.
6 He knows how each product and service—whether directed at real estate professionals,
7 consumers, or publishers of real estate market information—is powered by the content Move
8 gets from the industry. He was head of sales for three years, then Chief Revenue Officer for four
9 years, and then in 2013, became Chief Strategy Officer, responsible for all strategy and business
10 development. As an officer and member of Move’s executive team, Samuelson had continuous
11 access to Move’s most sensitive financial and strategic information. *Id.* ¶10-27; *Hanauer Sealed*
12 ¶6.¹ He knows Move’s new budget, advertising spend, marketing plan, and product pipeline. He
13 continued receiving Move’s weekly financials and daily technical reports until his resignation.

14 Since 2007, Samuelson has been President of realtor.com and the primary steward of
15 Move’s strategic partnership with NAR. Samuelson was responsible for the acquisition and
16 management of ListHub™, the service that aggregates data from MLSs and brokers and
17 syndicates it to approximately 130 publishers. Samuelson led a team from Move who have
18 travelled the country maintaining and developing Move’s contracts and relationships with the
19 MLSs and brokers who supply ListHub. He personally negotiated some of ListHub’s most
20 significant customer contracts, including the contract with Zillow. *Berkowitz* ¶10-27. Between
21 the content it gets directly from ListHub and content it gets through third parties who source
22 from ListHub, Zillow depends on ListHub for about 50% of its listings. *Glaser* ¶5.

23 _____
24 ¹ Since 2006, Samuelson has been a “Section 16” officer. See Securities and Exchange Act of 1934, 15 U.S.C. § 78a.

1 **Samuelson participated in developing numerous strategies that are not yet launched.**

2 Samuelson took part, in the last several months, in Move’s strategic plans for new
3 consumer functionality and the modification of a major product. Both of these projects are
4 confidential and the final projects have not yet launched. *Hanauer sealed* ¶3-5. Samuelson
5 knows of NAR and Move’s ongoing effort and plans to make specific competitive content
6 enhancements to realtor.com; he knows of NAR’s ongoing and time-sensitive strategy for
7 acquiring, or keeping Zillow away from, a cluster of competitive assets; and he knows of an
8 existing pipeline of data opportunities, the NAR strategy that created that pipeline, and the time
9 it will take NAR to use that data. He also knows how Zillow could disrupt Move and NAR’s
10 uncompleted strategic initiatives. *Branton* ¶3-14; *Kabati* ¶3-16; *Goldberg sealed* ¶2-11.

11 **Move and NAR took ample steps to protect trade secret information.**

12 Both NAR and Move maintain secure workplaces, including password-protected
13 computer and voicemail systems. *Brummer* ¶24-28; *Goldberg* ¶16-17. And provisions in Move’s
14 handbook, insider trading policy, and Code of Conduct—which Samuelson certified quarterly—
15 prohibit disclosing or misusing Move and NAR confidential information. *Brummer* ¶29.

16 **In the days before resigning, Samuelson deleted and destroyed evidence.**

17 Move issued a cell phone number, iPhone, iPad, PC laptop, and two Apple laptops to
18 Samuelson. In the two days before he resigned, Samuelson convinced a Move customer care
19 employee to authorize the service provider to transfer the cell phone number to Samuelson
20 personally; using Move’s business license number he completed the transfer; he deleted the
21 emails related to acquiring the phone number; ported the phone number to a new handset; erased
22 and reformatted the iPhone’s memory; erased and reformatted the iPad’s memory; removed data
23 from the first Apple laptop; and erased the memory of the second Apple laptop. He has never
24

1 returned the PC laptop. *Brummer* ¶ 11-12; *Hernandez* ¶4-9; *Mann* ¶3-21; *Krishan* ¶3-25; *Green*
2 ¶2-6; *Cree* ¶2-14. Samuelson did copy some business files from the second Apple laptop and
3 leave them with a Move employee. *Cree* ¶6-13. But Move has no way to know what other files
4 the laptop contained or whether Samuelson downloaded files from the laptop to another device.

5 When Samuelson logged on to begin erasing information from the laptops, he knew there
6 were litigation holds in place. *Berkowitz* ¶35. And he was confronted with the same warning
7 page he saw every time he logged onto a Move computer. It required him to confirm his
8 understanding that the computer and the data on it belonged to Move. *Brummer* Ex. 2.

9 **Knowing he was leaving, Samuelson continued to receive Move and NAR trade secrets.**

10 Samuelson's resignation was sudden for Move, but not for him. He met with everyone on
11 the executive team at Zillow as well as the executive chairman and his co-founder before
12 resigning. *Lovejoy* Ex.1. On February 11, 2014, Samuelson sent several emails Carol Brummer,
13 head of Move Human Resources, asking to see a copy of his confidentiality agreement with
14 Move. *Brummer* ¶6. On February 19 and 25, he spoke with an employment litigator in Seattle.

15 In the month before Samuelson resigned, his close friend and colleague at Move, Curtis
16 Beardsley, (who had never exercised a stock option) exercised and sold 33,775 shares for over
17 \$450,000. *El-Khoury* ¶3. That same month, Samuelson missed an easy opportunity to promote
18 Move over Zillow and even seemed to defend Zillow to a group of MLSs; missed a quarterly
19 business review; missed a meeting with the CEO without notice to the CEO; and cancelled an
20 interview with a job candidate. *Graham* ¶12-14; *Greenspan* ¶6-8; *Berkowitz* ¶32. For weeks, he
21 allowed time-sensitive joint strategic initiatives with NAR to stall. *Kabati* ¶8; *Graham* ¶9-11.
22 Then, the day before resigning, he reached out to NAR looking for updated information on an
23 unfinished project. *Goldberg sealed* ¶10, see also *Kabati* ¶8.

1 All the while, Samuelson continued to engage in every step of Move's process of setting
2 its 2014 budget, its one- and three-year strategic plans for product development, and its
3 technology development plan for 2014. That process continued until the week before he
4 resigned. He continued to discuss strategy and possible merger/acquisition transactions with
5 Move's leadership up to two days before he left. *Berkowitz* ¶26; *Glaser* ¶3; *Hanauer sealed* ¶7.

6 **Samuelson's resignation was timed to inflict maximum damage on Move.**

7 On March 4, the day he deleted Move's data, Samuelson told Carol Brummer he would
8 call her at 9 a.m., March 5. Samuelson knew Move's CEO would be in meetings with significant
9 investors. *Brummer* ¶7; *Berkowitz* ¶33. During the phone call, he resigned. He was in Zillow's
10 headquarters minutes later. *Brummer* ¶15. Zillow announced Samuelson's transition at 1:00 p.m.,
11 right in the middle of Move's investor meetings. *Berkowitz* ¶34. Later that afternoon, Samuelson
12 asked Brummer if he was the most hated person north of the Rio Grande. *Brummer* ¶18.

13 **Zillow hired Samuelson to replicate Move's strategy.**

14 Zillow created a new role within its organization for Samuelson: Chief Industry
15 Development Officer in charge of Zillow's industry relations strategy. The week after he joined
16 Zillow, Samuelson explained in a blog that the "Zillow team is emphatic about their desire to
17 build deeper, more collaborative and enduring relationships with the industry, including with
18 MLSs, real estate associations and franchisors." Samuelson's job will be

19 managing Zillow's partnerships with brokerages, MLSs, trade associations and
20 franchisors across the country in addition to overseeing Zillow's real estate
business-to-business products and tools.

21 *Lovejoy* Ex. 1. Put differently, his job is to take the strategy he developed and employed with
22 success at Move and bring it to Zillow. He will also manage Zillow's Customer Relationship
23 Management (CRM) software team, as he did at Move for several years. *Lovejoy* ¶3.

1 V. ARGUMENT AND AUTHORITIES

2 A. By authorizing injunctions for threatened misappropriation, the Trade Secrets Act
3 proactively prohibits use or disclosure of trade secret information.

4 The Trade Secrets Act broadly defines “trade secret” as “any information” that derives
5 independent economic value from not being generally known to others and is subject to
6 reasonable efforts to keep it secret.² An opinion can be trade secret information.³ Information
7 developed by and exchanged between a company’s top executives is trade secret.⁴ “Internal facts
8 of a business, while kept exclusively within the organization, are of great value, importance, and
9 benefit; but when they are discovered by or revealed to a competitor, they operate to the
10 disadvantage, and possibly the ruin, of the business.”⁵ Move and NAR describe their trade
11 secrets in declarations. The information is the plaintiffs’ crown jewels: strategies, developed and
12 directed by Samuelson, many yet to be launched, which are fundamental to future success.

13 As an ex-corporate officer with fiduciary duties, a repeat signatory to Move’s Code of
14 Conduct, and an employee with a duty of loyalty, Samuelson has legal duties to not disclose, use,
15 or rely on Move and NAR’s trade secrets.⁶ “Generally speaking, trade secret misappropriation is
16 either (1) the acquisition of a trade secret by improper means or (2) the unauthorized disclosure
17 or use of a trade secret.”⁷ Simple disclosure or use suffices to create UTSA liability.⁸

18 ² RCW 19.108.010(4); Calif. Civ. Code § 3426.1(d); 765 ILCS 1065/2(d); Restatement (Third) of Unfair
19 Competition § 39.

20 ³ *National Football Scouting, Inc. v. Rang*, 2012 WL 6444226 *9 (W.D. Wash. 2012).

21 ⁴ *Elm City Cheese Co., Inc. v. Federico*, 251 Conn. 59, 752 A.2d 1037, 1046 (finding Elm City’s “business
22 operations” were trade secrets and affirming three year injunction prohibiting defendants from “selling any cheese
23 product made like Elm City”); *BIEC Int’l, Inc. v. Global Steel Services, Ltd.*, 791 F.Supp. 489, 546 (E.D. Pa. 1992)
(business plans, financial projections, and marketing strategies were trade secrets; enjoining defendants for one
24 year); Restatement (Third) of Unfair Competition § 39, comm. d; *John Davis & Co. v. Miller*, 104 Wash. 444, 447,
177 P. 323 (1918) (“secrets, prospects, and plans” of a real estate leasing company were secrets).

⁵ R. Callmann, 2 *The Law of Unfair Competition, Trademarks, and Monopolies* § 14:22 (CBC 1991).

⁶ *Imi-Tech Corp. v. Galiani*, 691 F.Supp. 214, 230 (S.D. Calif. 1986) (enjoining former managers from disclosing
trade secret information); *Avery Dennison Corp. v. Finkle*, 2002 Conn. Super Lexis 329 *13, 2002 WL 241284
(Conn. Sup. Ct. 2002) (finding threatened misappropriation and enjoining former Director of Product Development
because “it seems virtually impossible” that new job would not be affected by trade secret information).

⁷ A. Davis, et al., *Guide to Protecting and Litigating Trade Secrets* at p. 25, ABA Section of Litigation (2012).

1 A trial court has broad discretion to fashion an injunction.⁹ “There is no question but that
2 equity will always protect against the unwarranted disclosure of trade secrets, confidential
3 information, and the like, and we do not understand this proposition to be controverted.”¹⁰
4 Indeed, because damages can be impossible to prove or completely inadequate, the Trade Secrets
5 Act provides: “actual *or threatened* misappropriation may be enjoined.”¹¹

6 **B. Samuelson’s conduct and words threaten trade secret misappropriation.**

7 Courts enjoin executives who leave abruptly for a similar job with a competitor and fail
8 to be fully above board. In *Xantrex Technology, Inc. v. Advanced Energy Industries*, Advanced
9 Energy (“AE”), while developing a new product, hired Chris Thompson, Xantrex VP,
10 Engineering and Development, to develop AE’s strategy.¹² Thompson’s conduct threatened
11 misappropriation: he rapidly accessed documents before resigning, analyzed AE’s product using
12 information in his head, and was AE’s “point person” for the new product. His new position
13 threatened misappropriation: “Thompson does not have to transmit the information to anyone at
14 AE for AE to use Xantrex’s trade secrets.”¹³ In *Bimbo Bakeries USA, Inc. v. Botticella*, a VP of
15 Operations did not immediately disclose acceptance of a very similar job with a competitor,
16 continued receiving trade secret information, and copied documents from his laptop to an
17 external device.¹⁴ The Third Circuit affirmed an injunction, due to the “solid evidentiary basis”
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19 ⁸ *Morlife, Inc. v. Perry*, 66 Ca.Rptr.2d 731, 56 Cal.App.4th 1514, 1527 (Cal. Ct. App. 1997) (affirming permanent
20 injunction against doing business with thirty-two entities); *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 51, 738
P.2d 665 (1987) (affirming permanent injunction).

21 ⁹ *Sunnyside Valley Irrigation District v. Dickie*, 111 Wn.App. 209, 220, 43 P.3d 1277 (2002).

22 ¹⁰ *John Davis & Co. v. Miller*, 104 Wash. 444, 447, 177 P. 323 (1918) (reversing the failure to enjoin manager of
real estate company who quit and formed a competitor). “[W]here an employee, after severing his connection with his
former employer, makes use of trade secrets or confidential information, which he acquired during his employment,
in a competitive business, it results in what is called ‘unfair competition,’ and will be restrained.” *Id.* at 448.

23 ¹¹ RCW 19.108.020(1); Calif. Civ. Code 3426.2(a); 765 ILCS 1065/3(a).

24 ¹² 2008 U.S. Dist. Lexis 41206 *11, 2008 WL 2185882 (D. Colo. 2008).

¹³ 2008 U.S. Dist. Lexis 41206 *52.

¹⁴ 613 F.3d 102, 118 (3rd Cir. 2010).

1 for a likelihood or substantial threat that Botticella intended to use trade secrets.¹⁵

2 Courts also infer threatened misappropriation from words. *Technical Indus. v. Banks*
3 involved a pipe inspection business.¹⁶ Technical hired Banks, who designed modifications. When
4 Banks left, he said he would continue working in the industry but would use “different computer
5 code to come up with the same pipe inspection data.” His words threatened misappropriation:
6 “Regardless of whether Banks seeks to use a different computer code, he seeks to combine the
7 same data collection method as Technical developed and embodied in Visonic... Accordingly,
8 Banks has engaged in a threatened misappropriation of Technical’s trade secret.”¹⁷ The court
9 enjoined Banks from competitive employment because a person threatens misappropriation when
10 they intend to replicate the strategy comprising their ex-employer’s trade secret.¹⁸

11 At Zillow, Samuelson can misappropriate without telling anyone Move’s or NAR’s trade
12 secrets. His description of his role establishes a threat because he is going to replicate the
13 strategy for which he was responsible at Move: “I’ll take on managing Zillow’s partnerships with
14 brokerages, MLSs, trade associations and franchisors across the county.” Second, in the days
15 before he left, after weeks of inactivity, Samuelson suspiciously checked-up on competitively
16 sensitive future initiatives. Third, just before resigning, he wiped data from four devices. Fourth,
17 he failed to return a Move laptop. Fifth, using deception and Move’s business license, he
18 transferred a phone number from Move’s name to his own. Sixth, he met over days or weeks
19 with Zillow and negotiated a new position as Chief Industry Development Officer. But he failed

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¹⁵ 613 F.3d 102, 114, 118.

22 ¹⁶ 419 F.Supp.2d 903, 906 (W.D. La. 2006).

23 ¹⁷ 419 F.Supp.2d 903, 913.

24 ¹⁸ 419 F.Supp.2d 903, 916. *Cf. Computer Assoc., Int’l v. Quest Software, Inc.*, 333 F.Supp.2d 688, 697 (N.D. Ill. 2004) (granting preliminary injunction against ex-employees because their new product’s “similarities, combined with the unfettered access of defendants to plaintiff’s source code, give strong support to plaintiff’s claims of trade secret misappropriation.”)

1 to tell Move, gave Move no notice, and commenced employment with Zillow immediately.¹⁹
2 Samuelson's words and conduct threaten misappropriation of trade secret information.²⁰

3 **C. Samuelson's new job will inevitably cause him to rely on Move and NAR's trade**
4 **secret information.**

5 The doctrine of "inevitable disclosure" is a form of threatened misappropriation.²¹ The
6 doctrine infers threatened misappropriation from opportunity and the likelihood of
7 misappropriation. "In general, the inevitable disclosure doctrine allows courts to enjoin an
8 employee from working for his employer's competitors because of the threat of
9 misappropriation."²² When deciding whether to enjoin an ex-employee, courts evaluate the end
10 of employment, the importance of the employee's position, the type of work, the kind and value
11 of the information or the need of the competitor for it, and the former employee's lack of
12 forthrightness.²³ In *Pepsico, Inc. v. Redmond*, the Seventh Circuit affirmed a six-month plus
13 injunction against a General Manager who failed to reveal his decision to resign for two days and
14 took a similar job with a major competitor.²⁴ In *Fountain v. Hudson Cush-N-Foam Corp.*, the
15 court prohibited a Chief Production Supervisor from working for a competitor: "his knowledge
16 of the trade secrets would be so entwined with his employment as to render ineffective an
17 injunction directed only toward a prevention of disclosure."²⁵ The court in *La Calhene, Inc. v.*
18 *Spolyar* enjoined a former President for eight months: given his "intimate knowledge, he could

19 ¹⁹ Similarly, in *John Davis & Co.*, the court expressed concern that a business manager with trade secret information
20 began competing "immediately after leaving." 104 Wash. 444, 445.

21 ²⁰ Although plaintiffs have submitted evidence that the potential harm is irreparable, authority establishes that a
Trade Secrets Act injunction, because specifically authorized by statute, does not require proof of irreparable harm.
Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 62, 738 P.2d 665 (1987); see also, *Lucini Italia Co. v. Grappolini*,
2003 WL 1989605 *54 (N.D. Ill. 2003).

22 ²¹ *Merck & Co., Inc. v. Lyon*, 941 F.Supp. 1443, 1457 (M.D. N.C. 1996).

23 ²² R. Wiesner, "A State-By-State Analysis of Inevitable Disclosure: A Need for Uniformity and a Workable
Standard," 16:1 Marquette Intellectual Property Law Review 211, 214 (2012)

24 ²³ *Merck & Co., Inc. v. Lyon*, 941 F.Supp. 1443, 1460-61 (M.D. N.C. 1996); see also *Nucor v. Bell*, 2008 U.S. Dist.
Lexis 119952 * 60-61 (D. S.C. 2008) (enjoining former General Manager).

25 ²⁴ 54 F.3d 1262, 1270 (7th Cir. 1995) (applying Illinois law).

26 ²⁵ 122 So.2d 232, 234 (Fla. Dist. Ct. App. 1960).

1 not compete “without inevitably relying on his knowledge of plaintiff’s trade secrets.”²⁶

2 Washington substantive law will apply to this dispute because Washington’s choice of
3 law principles apply Restatement (Second) of Conflicts of Law § 145.²⁷ In trade secret
4 misappropriation cases, section 145 applies the substantive law of the “principal location of
5 defendant’s conduct” or the place where the defendant obtained the benefit of
6 misappropriation.²⁸ Zillow is based in Washington, Samuelson was served process at Zillow’s
7 Seattle offices, and hence Washington is the principal location of defendants’ conduct. Still,
8 although two judicial opinions have evaluated whether Washington law embraces the doctrine of
9 “inevitable disclosure,” neither is citable authority.²⁹ Thus, this court must determine whether
10 Washington law interprets RCW 19.108.020(1) to include inevitable disclosure.

11 Trade secret protection promotes standards of commercial ethics and fair dealing.³⁰
12 Employees (particularly corporate officers) are in a confidential relationship with employers,³¹
13 and employers have a property interest in information developed at their expense.³² Also,
14 Washington’s seminal trade secrets case, *Ed Nowogrowski Ins., Inc. v. Rucker*, rejected a lenient
15 standard proposed by the Restatement (Second) of Agency.³³ *Nowogrowski* held that the Trade
16 Secrets Act prohibits an ex-employee, even in the absence of a restrictive covenant agreement,
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18 ²⁶ 938 F.Supp. 523, 531 (W.D. Wis. 1996).

19 ²⁷ *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976) (applying Washington substantive law
to tort claim).

20 ²⁸ Restatement (Second) Conflict of Laws § 145, comment f; *Fujitsu Ltd. v. Tellabs Operations, Inc.*, 2013 WL
5587086 *3 (N.D. Ill. 2013); see also *Edifecs, Inc. v. TIBCO Software, Inc.*, 756 F.Supp.2d 1313, 1319 (W.D.
Wash. 2010) (because alleged misappropriator did business in California, California law applied).

21 ²⁹ R. Wiesner, “A State-By-State Analysis of Inevitable Disclosure: A Need for Uniformity and a Workable
Standard,” 16:1 *Marquette Intellectual Property Law Review* 211, 228 n. 111 (2012); RCW 2.06.040; Fed. R. App.
Proc. 32.1(a)(ii).

22 ³⁰ *Boeing Company v. Sierracin Corp.*, 108 Wn.2d 38, 58, 738 P.2d 665 (1987) (affirming injunction); *Island Air,
Inc. v. LaBar*, 18 Wn.App. 129, 144, 566 P.2d 972 (1977) .

23 ³¹ *Ed Nowogrowski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 439, 971 P.2d 936 (1999).

24 ³² *Columbia College of Music v. Tunberg*, 64 Wash. 19, 23, 116 P. 280 (1911) (“a person who has engaged to
support the good will of a business will not be permitted to destroy it by unfair means.”)

³³ 137 Wn.2d 427, 444, 971 P.2d 936 (1999).

1 from using or disclosing *memorized* trade secret information.³⁴ Third, in RCW 7.40.020, the
2 legislature authorized injunctions when a defendant is “about to” invade a right. Fourth,
3 Washington courts have reversed superior court decisions that fail to protect ex-employers’
4 competitive interests.³⁵ Finally, most courts have embraced inevitable disclosure.³⁶ For these
5 reasons, Washington will likely follow “most courts interpreting the UTSA [and] recognize that
6 the inevitable disclosure doctrine is a specific example of threatened misappropriation.”³⁷

7 This is a paradigm inevitable disclosure case. Everything Samuelson is going to do for
8 Zillow, Move’s primary competitor, he did for Move. Knowing he was going to leave,
9 Samuelson continued receiving additional trade secret information in breach of his fiduciary duty
10 as a Section 16 officer. To cover up, he wiped data from several computer devices. He left
11 without notice. His new role is to deploy an industry-focused strategy, which is precisely what he
12 developed and deployed as Move’s Chief Strategy Officer. To facilitate that strategy, Zillow
13 hired the key subordinate, who had been promoted to take Samuelson’s industry relations role.
14 Because his new position is so entwined with the role he had at Move, Samuelson cannot work
15 for Zillow without relying upon trade secret information. Hence, the court should enjoin him
16 from employment or consulting with Zillow.

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³⁴ 137 Wn.2d 427, 449.

20 ³⁵ *Columbia College of Music v. Tunberg*, 64 Wash. 19, 24, 116 P. 280 (1911) (reversing superior court, stating that
21 “an injunction should issue,” and finding that damages would be “irreparable, in the sense they could estimate only
22 by conjecture”); *Wood v May*, 73 Wash.2d 307, 314, 438 P.2d 587 (1968) (reversing superior court’s refusal to
enjoin ex-employee); *Emerick v. Cardiac Study Center, Inc., P.S.*, 170 Wn.App. 248, 286 P.3d 689, 692 (2012)
(reversing summary judgment in favor of ex-employee); *Alexander & Alexander, Inc. v. Wohlman*, 19 Wn.App. 670,
687-88, 578 P.2d 530 (1978) (reversing superior court’s refusal to enforce covenant).

23 ³⁶ *Nucor Corp. v. Bell*, 2008 U.S. Dist. Lexis 119952 *51 (D. S.C. 2008) (deciding that South Carolina would
recognize inevitable disclosure doctrine and enjoining former General Manager from any involvement in
manufacturing or preparing to manufacture IF/ULC steel).

24 ³⁷ C. Shilling, “The Inevitable Disclosure Doctrine, A Necessary and Precise Tool for Trade Secret Law, Business
Torts Journal 11, no. 2 (Winter 2004).

1 Respectfully submitted this 27th day of March, 2014.

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3 /s/Jack M. Lovejoy

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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on March 27, 2014, I electronically filed the foregoing
3 with Clerk of the Court utilizing the King County Superior Court E Filing system and served a
4 true and correct copy of the same, in the manner described below, to:

5
6 VIA LEGAL MESSENGER:

7 Bruce M. Cross
8 James Sanders
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10 1201 Third Ave., Suite 4900
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12 Attorney for Zillow, Inc.

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18
19 VIA EMAIL AND MAIL:

20
21 I declare under penalty of perjury that the foregoing is true and correct.

22
23 DATED at Seattle, Washington on March 27, 2014.

24
/s/Katy M. Albritton
Katy M. Albritton