

1 JENNER & BLOCK LLP
Richard L. Stone (SBN 110022)
2 rstone@jenner.com
3 Brent Caslin (SBN 198682)
bcaslin@jenner.com
4 Amy M. Gallegos (SBN 211379)
agallegos@jenner.com
5 633 West 5th Street
Suite 3600
6 Los Angeles, CA 90071
7 Telephone: 213 239-5100
Facsimile: 213 239-5199

8 Attorneys for Defendant,
9 MOVE SALES, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 TRULIA, INC.,

13 Plaintiff,

14 v.

15 MOVE SALES, INC.,

16 Defendant.

Case No. CGC-15-544255

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION**

Date: February 23, 2015
Time: 11:00 a.m.
Department 302

Hon. Ernest H. Goldsmith

Complaint filed: February 20, 2015
Trial date: None set

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
02/23/2015
Clerk of the Court
BY:VANESSA WU
Deputy Clerk

1 **TABLE OF CONTENTS**

2 I. INTRODUCTION.....1

3 II. STATEMENT OF FACTS.....3

4 A. Zillow Violated A Court Order And Created A Competing Listing Platform

5 Using Move’s Stolen Trade Secrets.....3

6 B. Zillow Acquired Trulia, The Second-Largest Online Real Estate Company,

7 And Publicly Gloated That The New Zillow/Trulia Entity Does Not Need

8 Or Want Move’s Listing Data.....5

9 C. Move Exercised Its Contractual Right To Terminate The Trulia Agreement

10 Due To The Zillow Acquisition.5

11 III. THE TRO MUST BE DENIED6

12 A. Injunctions Are Not Available For Breach Of Contract Unless

13 The Contract Is Specifically Enforceable, Which The Trulia

14 Agreement Is Not.....7

15 B. Trulia’s Claim That Its Business Will Suffer Irreparable Harm Without

16 Move’s Listings Is Unsupported And Contradicted By Its Own Public

17 Statements, Admissions, And Evidence.9

18 C. Trulia Is Unlikely To Succeed On The Merits.....10

19 D. The Balance of Harms Does Not Support An Injunction12

20 E. Trulia’s Public-Policy Argument Fails12

21 IV. CONCLUSION13

TABLE OF AUTHORITIES

Page(s)

CASES

Am. Passage Media Corp. v. Cass Commc'ns, Inc.,
750 F.2d 1470 (9th Cir. 1985)10

Ancora-Citronelle Corp. v. Green,
41 Cal. App. 3d 146 (1974)12

Choice-in-Education League v. L.A. Unified Sch. Dist.,
17 Cal. App. 4th 415 (1993)7

Con West Resources, Inc. v. Playtime Novelties, Inc.,
No. 06-5304, 2006 WL 3346226 (N.D. Cal. Nov. 17, 2006)8

Davenport v. Blue Cross of Cal.,
52 Cal. App. 4th 435 (1997)7

Dotster, Inc. v. Internet Corp. for Assigned Names & Numbers,
296 F. Supp. 2d 1159 (C.D. Cal. 2003)10

Florey Inst. v. Kleiner Perkins Caufield & Byers,
No. 12-6504, 2013 WL 5402093 (N.D. Cal. Sept. 26, 2013)12

Golden W. Baseball Co. v. City of Anaheim,
25 Cal. App. 4th 11 (1994)8

iCall, Inc. v. Tribair, Inc.,
No. 12-2406, 2012 WL 5878389 (N.D. Cal. Nov. 21, 2012)10

Intel Corp. v. Hamidi,
30 Cal. 4th 1342 (2003)9

Netbula, LLC v. BindView Dev. Corp.,
516 F. Supp. 2d 1137 (N.D. Cal. 2007)12

Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara Cnty. Transit Dist.,
65 Cal. App. 3d 121 (1976)8

SQL Solutions, Inc. v. Oracle Corp.,
No. 91-1079, 1991 WL 626458 (N.D. Cal. Dec. 18, 1991)11

Tahoe Keys Prop. Owners' Ass'n v. State Water Res. Control Bd.,
23 Cal. App. 4th 1459 (1994)8

1	<i>Teachers Ins. & Annuity Ass'n v. Furlotti,</i>	
2	70 Cal. App. 4th 1487 (1999)	7
3	<i>Telephia Inc. v. Cuppy,</i>	
4	No. 04-3508, 2005 WL 588441 (N.D. Cal. Mar. 11, 2005)	8
5	<i>Thayer Plymouth Ctr., Inc. v. Chrysler Motors Corp.,</i>	
6	255 Cal. App. 2d 300 (1967)	8
7	<i>Ticketmaster Corp. v. Tickets.com, Inc.,</i>	
8	No. 99-7654, 2000 WL 1887552 (C.D. Cal. Aug. 10, 2000), <i>aff'd</i> , 2 F. App'x 741 (9th Cir.	
9	2001)	8
10	<i>Triple A Machine Shop, Inc. v. State of California,</i>	
11	213 Cal. App. 3d 131, 138 (1989)	7
12	<i>Trubowitch v. Riverbank Canning Co.,</i>	
13	30 Cal. 2d 335 (1947)	11, 12
14	<i>White v. Davis,</i>	
15	30 Cal. 4th 528 (2003)	7
16	<i>WPIX, Inc. v. ivi, Inc.,</i>	
17	691 F.3d 275, 288 (2d Cir. 2012)	13
18	STATUTES	
19	Cal. Civ. Code § 3423(e)	7

1 **I. Introduction.**

2 Move operates the Realtor.com website owned by National Association of Realtors. In addition
3 to operating Realtor.com, Move, through its ListHub division, aggregates real estate listing data available
4 from Multiple Listing Services (MLSs) and brokers, and has contracted to provide that aggregated data to
5 other online real estate portals, such as Zillow and Trulia. Zillow is the largest online real estate portal
6 by far, with over 76 million page views per month. Zillow is followed by Trulia and then
7 Move/Realtor.com. On February 17, 2015, Zillow consummated its acquisition of Trulia and Trulia
8 became a subsidiary within the Zillow Group, Inc. Move's ListHub contract with Trulia specifically
9 contemplated such a transaction and expressly reserved for Move the ability to immediately terminate if
10 Trulia's rights were assigned via an acquisition whereby Trulia became a subsidiary or affiliate of Zillow
11 — which it indisputably did. Move's exercise of its contractual right to terminate is fully justified and
12 could have surprised no one.

13 Trulia's application fails to inform the Court that prior to acquiring Trulia, Zillow effectively
14 declared war on Move, and is currently on the verge of being sanctioned by another court for violating an
15 injunction barring it from using trade secrets it stole from Move. In a related litigation between Move
16 and Zillow, *Move, Inc., et al. v. Zillow, Inc., et al.*, Washington Superior Court Case No. 14-2-07669-0,
17 the Honorable Barbara Linde found that a former Move Executive Officer, hired away by Zillow, stole
18 Move's trade secrets, including trade secrets relating to its listing data service ListHub, shared them with
19 Zillow, and destroyed evidence. See Declaration of Richard L. Stone ("Stone Decl."), Ex. A. In that
20 litigation, Judge Linde preliminarily enjoined Zillow and Move's former Executive Officer from using
21 Move's stolen trade secrets, and specifically enjoined defendants' "efforts to circumvent ListHub"
22 including through "efforts to obtain direct feeds of listing data from [MLSs and brokers]." *Id.* Zillow
23 ignored the injunction and is now facing an order to show cause re contempt. *Id.*, Ex. B. Neglecting to
24 mention this wasn't an oversight: Zillow is represented by the same lawyer and firm who represents
25 Trulia here.

26 Trulia is not entitled to a TRO. There is no emergency facing Trulia, and losing the real estate
27 listing data provided by Move creates no existential threat to Trulia's business. To be clear, the data
28 Move provides is not exclusive to Move; that data is available from other sources, including from other

1 syndicators and/or directly contracting with the MLSs and brokers. Just *two days* before Trulia filed this
2 motion, the CEO of Trulia’s parent company, the Zillow Group, publicly bragged that Zillow and Trulia
3 did not need or want Move’s listings because they were “inferior” and Trulia and Zillow were having
4 amazing success securing direct listings feeds from MLSs on their own. *See* Stone Decl., Ex. C. Zillow
5 called breaking ties with Move “liberating” and gloated that it was finally “freed from the constraint of
6 being reliant on a competitor for listings.” *Id.* Indeed, Zillow and Trulia could not have been more clear
7 that they believed that losing the listings provided by Move posed *no threat whatsoever and in fact*
8 *benefitted them.*

9 Ironically, Trulia now asks this Court to shackle Move to an ongoing business relationship with
10 the Zillow Group’s subsidiary, Trulia, and order it to continue providing Trulia with its supposedly
11 “inferior” listings for the next 16 months. This makes no sense and is transparently just an attempt by the
12 now-merged first (Zillow) and second-place (Trulia) online real-estate conglomerates to bully their
13 smaller competitor, Move, into providing them with listings until the competing platform they developed
14 using Move’s stolen trade secrets gets off the ground. This is not the type of situation where the Court
15 can or should exercise its equitable powers to grant extraordinary relief. TROs and injunctions on
16 contract claims are disfavored to begin with. Courts typically do not enter TROs or injunctions forcing a
17 party to participate in an ongoing contractual relationship — especially with an entity that has openly
18 declared war on it.

19 Setting aside the larger litigation context, none of the requirements for injunctive relief are met
20 here. Trulia is not entitled to a TRO as a matter of law because a showing of irreparable harm is *required*
21 for an injunction to issue, and the admissions of Trulia and Zillow establish that there is no irreparable
22 harm. Moreover, injunctions on contract claims are rare and can only be issued if the underlying contract
23 is enforceable by specific performance. Move’s agreement with Trulia does not meet this requirement.
24 Quite to the contrary, the contract identifies \$50,000 as the *maximum* and *exclusive* remedy for a breach
25 — a fact that both undercuts Trulia’s claim that a breach would irreparably harm its business, and proves
26 that there is an adequately legal remedy for breach *which the parties identified in the contract.* Indeed,
27 the limitation of liability provision memorialized that “the parties agree that [it] reflect[s] a reasonable
28

1 allocation of risk and that each party would not enter into the Agreement without these limitations on
2 liability.” Glass Decl., Ex. A, p. 9.

3 And even if these essential prerequisites for injunctive relief were met — which they aren’t —
4 Trulia would *still* not be entitled to a TRO because it is not likely to succeed on the merits: Under
5 California law, which applies here, Move’s right to terminate the agreement under the no-assignment
6 clause was triggered by Zillow’s acquisition of Trulia notwithstanding the form of merger Zillow elected
7 to use. Accordingly, as discussed in detail below, Trulia has not shown that it is entitled to a TRO.
8 Move respectfully requests that Trulia’s motion be denied.

9 **II. Statement Of Facts.**

10 **A. Zillow Violated A Court Order And Created A Competing Listing Platform Using**
11 **Move’s Stolen Trade Secrets.**

12 Zillow is the 800-pound gorilla of the online real estate industry, controlling a portfolio of the
13 largest real estate and home-related brands on the Internet and mobile platforms. Stone Decl., Ex. D.
14 Over *seventy-six million* unique viewers visit Zillow’s mobile applications and websites per month. *Id.* at
15 p. 4. In addition to Zillow’s database of over 100 million homes, accessible on Zillow.com, Zillow also
16 owns and operates Zillow Mobile, a suite of home-related mobile applications, Zillow Mortgages, where
17 borrowers can connect with lenders and shop for mortgages, Zillow Digs, a home improvement
18 marketplace, and Zillow Rentals. *Id.* at p. 4. Last year, Zillow raked in record revenues of over \$325
19 million dollars. *Id.* at p. 5.

20 Move is a provider of online real estate services that competes with Zillow. Move operates
21 www.realtor.com, a website owned by the National Association of Realtors (“NAR”), which provides
22 consumers with real estate listings and information about home buying and home ownership. Over the
23 years, Move has entered agreements with Multiple Listing Services and real estate brokerages around the
24 country that allow Move direct access to those entities’ listings of properties for sale or rent. Move also
25 syndicates aggregated real estate listing data to online services through its ListHub platform.

26 Zillow used to license listings data from Move. However, Zillow decided to develop its own
27 listing-data platform using trade secrets and confidential information stolen from Move. Zillow hired
28 away Errol Samuelson, the Move executive officer who was Move’s primary contact with NAR and who

1 was deeply involved in all of Move’s high-level strategy, budgeting, and planning including, specifically,
2 highly sensitive strategies and planning relating to Move’s relationship with NAR and Move’s listing
3 data platform ListHub. Stone Decl., Ex. A (PI Findings ¶ 8). As confirmed by the Washington Court’s
4 factual findings, in the days and weeks while he was secretly planning to leave Move for Zillow,
5 Samuelson deliberately elicited additional confidential information from his colleagues and business
6 contacts, for example, by rekindling conversations with NAR about a secret strategy for an NAR
7 initiative at Move. *Id.* at ¶¶ 18-19. He also stole electronic data and presentations from Move, and
8 copied his computer data to a USB drive. *Id.* at ¶¶ 20-21. During this time, Samuelson was also working
9 hard to cover his tracks: He lied to the telephone company to switch his Move phone number from Move
10 to him personally, and destroyed data saved on his Move-issued iPhone, iPad, and Apple computer. *Id.*
11 at ¶¶ 16-17. Then, after he resigned without notice, Samuelson refused to return his company laptop to
12 Move. When Move demanded that he return it, he had a third-party vendor copy information from the
13 Move-issued laptop. *Id.* at ¶ 23.

14 Move sued Samuelson and Zillow. On June 30, 2014, the Washington state court ruled that
15 Samuelson misappropriated Move’s trade secret information. Stone Decl., Ex. A (Conclusion of Law,
16 p.11, ¶¶ 1-2). The court also found that “circumstantial evidence supports a conclusion that Samuelson
17 disclosed trade secret information to Zillow.” *Id.* at p.11, ¶ 30. Samuelson was preliminarily enjoined
18 from disclosing any of Move’s or NAR’s confidential or trade secret information. *Id.* at ¶ 1. Zillow was
19 preliminarily enjoined from obtaining Move’s trade secrets or confidential information and, specifically,
20 from using any of the trade secrets Samuelson had already disclosed to it. *Id.* at ¶ 2. Samuelson was also
21 expressly enjoined from engaging in specific activities, including direct or indirect efforts to encourage
22 data feeds from Multiple Listing Services, real estate brokers, franchisors, and others. *Id.* at p.13, ¶ 4-5.
23 And, he was enjoined from making any efforts to “influence, interrupt, or prevent the agreements,
24 relationships, or data feeds between Multiple Listings Services, real estate brokers, franchisors,
25 associations and ListHub” or making any efforts to circumvent ListHub. *Id.* at p.15, ¶ 6(j)-(k).
26 Samuelson and Zillow *ignored* the court order. On February 11, 2015, the Washington Court issued an
27 order to show cause why they should not be held in contempt and sanctioned. Stone Decl., Ex. B, at 2.

1 In January 2015, Zillow announced that it was ending its agreement with Move as of April 2015
2 because it had developed its own proprietary listings-data platform, called the Zillow Data Dashboard.
3 Stone Decl., Ex. F. Zillow told the press that it expected only “a few hundred thousand” of the millions
4 of listings on Zillow to be affected when the ListHub agreement ends. *Id.*

5 **B. Zillow Acquired Trulia, The Second-Largest Online Real Estate Company, And**
6 **Publicly Gloated That The New Zillow/Trulia Entity Does Not Need Or Want**
7 **Move’s Listing Data.**

8 On February 17, 2015, Zillow consummated its 2.5 billion dollar acquisition of Trulia, the
9 nation’s second-largest online real-estate company. This merger of the industry’s largest and second
10 largest entities created a combined operation so vast and potentially anti-competitive that the FTC
11 conducted a six-month investigation into whether or not to permit the acquisition. Stone Decl., Ex. G.

12 The day after the acquisition closed, Zillow’s CEO Spencer Rascoff discussed the deal in a
13 conference call with market analysts. On the call, Rascoff bragged about Zillow’s recently-announced
14 decision to cut ties with Move. Likening Zillow’s relationship with Move to bondage, Rascoff described
15 the termination of Zillow’s ListHub agreement as a “liberating moment,” because Zillow was “freed
16 from the constraint of being reliant on a competitor for listings.” Stone Decl., Ex. C, p. 6. He then
17 gloated that the combined Zillow/Trulia did not need Move’s “inferior” listings anymore because they
18 had been successful getting direct feeds from MLSs and brokers. Specifically, Rascoff explained that
19 Zillow had spent “the last several months going — getting direct listing feeds from MLS after MLS” and
20 that they had “dozens” more in the “deal pipeline.” *Id.* Rascoff also highlighted Trulia’s own years of
21 success in obtaining listings from sources other than Move, bragging that “*Trulia has 125 listings feeds*
22 *direct from MLS’s.* They have been at this for about a year longer than Zillow. So the addition of Trulia’s
23 audience scale and *the momentum that Trulia has in terms of acquiring these listings feeds bodes very*
24 *well for our MLS direct initiative.*” *Id.* (emphasis added).

25 **C. Move Exercised Its Contractual Right To Terminate The Trulia Agreement Due To**
26 **The Zillow Acquisition.**

27 At the time Trulia was acquired by Zillow, it was receiving listing data from Move through
28 ListHub pursuant to a Platform Services Agreement (the “Trulia Agreement”) — although a substantial

1 majority (75%) of the listing data Trulia uses is from *other* sources. See Declaration of Paul Levine in
2 Support of Trulia’s Ex Parte Application, ¶ 27. The Trulia Agreement allows Move to terminate the
3 Agreement in the event Trulia is acquired by one of Move’s most significant competitors. Declaration of
4 Luke Glass (“Glass Decl.”), ¶ 5. Section 13 of the Trulia Agreement states, in relevant part:

5 Except as expressly set forth herein, neither party may assign or otherwise
6 transfer its rights or delegate its obligations under the Agreement, in whole or in
7 part, provided however that: . . . Partner [i.e., Trulia] may assign its rights or
8 delegate its obligations hereunder to any person or entity that acquires all or
9 substantially all of its assets, provided however that (i) Partner must provide MSI
10 [Move] with written notice of any such assignment or delegation no less than ten
11 (10) days prior to any such assignment or delegation, and (ii), in the event that
12 such assignment or delegation is to any of the entities listed on Exhibit E hereto,
13 MSI shall be permitted, in its sole discretion, to terminate this Agreement at any
14 time within thirty (30) days after receiving such notice, effective immediately
15 upon providing written notice of termination to Partner.

16 *Id.*, Ex. A, pp. 9-10.

17 Exhibit E is a list of Move’s most significant competitors; it includes Zillow as well as “any
18 subsidiary, parent company, or affiliate” of Zillow. Glass Decl., ¶ 6, Ex. A, p. 19. Because the real-
19 estate industry is very competitive, and competitors who obtain Move’s listing data can use it to compete
20 with Move, Move is careful to ensure that its competitors not gain access to Move’s data without first
21 negotiating an agreement with Move. *Id.*, ¶ 4. Thus, Move retains the right to control (i) which entities
22 can access and use Move’s real estate listings data, and (ii) the terms on which these entities can access
23 and use this data. *Id.* The No-Assignment provision in the Trulia Agreement was intended to ensure that
24 Move’s most significant competitors could not gain back-door access to the ListHub data by acquiring or
25 otherwise obtaining control over Trulia. *Id.*, ¶ 6. Accordingly, on February 19, 2015, two days after
26 Zillow acquired Trulia, Move gave Trulia notice that it was terminating the agreement under Section 13.

1 **III. The TRO Must Be Denied.**

2 Trulia has not come close to satisfying the heavy burden required to justify emergency relief.
3 Trulia is seeking a mandatory injunction: It is asking the Court to compel Move to continue providing
4 listings data to Trulia, even though Move has formally terminated its relationship with Trulia. See
5 *Davenport v. Blue Cross of Cal.*, 52 Cal. App. 4th 435, 446-47 (1997). The fact that Trulia phrased its
6 proposed injunction in the negative (“refrain from terminating”) does not change the fact that the
7 injunction is mandatory. *Id.* at 445-47 (explaining that “the substance of the injunction, not the form,
8 determines whether it is mandatory or prohibitory” and holding that an order “prohibiting” Blue Cross
9 from “denying, refusing, excluding, limiting, or discontinuing” specified medical benefits was actually a
10 mandatory injunction compelling payment). Mandatory injunctions are “rarely granted” and are “not
11 permitted except in extreme cases where the right thereto is clearly established.” *Teachers Ins. &*
12 *Annuity Ass’n v. Furlotti*, 70 Cal. App. 4th 1487, 1493 (1999).

13 Even if Move were not seeking a mandatory injunction, its showing still falls far short of
14 satisfying the requirements for emergency relief. To obtain an injunction, the applicant must
15 “demonstrate a real threat of immediate and irreparable injury due to the inadequacy of legal remedies.”
16 *Choice-in-Education League v. L.A. Unified Sch. Dist.*, 17 Cal. App. 4th 415, 422 (1993) (quoting *Triple*
17 *A Machine Shop, Inc. v. State of California*, 213 Cal. App. 3d 131, 138 (1989)); see also *White v. Davis*,
18 30 Cal. 4th 528, 554 (2003) (“To obtain a preliminary injunction, a plaintiff ordinarily is required to
19 present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued
20 pending an adjudication of the merits.”). In deciding whether to issue an injunction, the trial court
21 considers the interim harm the applicant is likely to sustain if the injunction is denied as compared to the
22 harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial.
23 *Choice-in-Education League*, 17 Cal. App. 4th at 422.

24 **A. Injunctions Are Not Available For Breach Of Contract Unless The Contract Is**
25 **Specifically Enforceable, Which The Trulia Agreement Is Not.**

26 Trulia is not entitled to a TRO because the contract at issue is not enforceable by an injunction.
27 California law prohibits courts from issuing injunctions to prevent contract breaches unless the
28 underlying contract would be enforceable by specific performance. Cal. Civ. Code § 3423(e) (“An

1 injunction may not be granted . . . [t]o prevent the breach of a contract the performance of which would
2 not be specifically enforced[.]”); *Golden W. Baseball Co. v. City of Anaheim*, 25 Cal. App. 4th 11, 49-50
3 (1994) (“An injunction to enforce the terms of a contract may only be issued if the contract is specifically
4 enforceable.”). Injunctions forcing parties to perform under contracts are very rare. *See, e.g.*,
5 *Ticketmaster Corp. v. Tickets.com, Inc.*, No. 99-7654, 2000 WL 1887552, at *5 (C.D. Cal. Aug. 10,
6 2000) (“[A] preliminary injunction to prevent a breach of contract is an almost unheard of thing, being
7 the equivalent of specific enforcement by preliminary injunction.”), *aff’d*, 2 F. App’x 741 (9th Cir.
8 2001); *Con West Resources, Inc. v. Playtime Novelties, Inc.*, No. 06-5304, 2006 WL 3346226, at *8
9 (N.D. Cal. Nov. 17, 2006) (“[A] preliminary injunction will not issue based on a breach of contract
10 claim.”); *Telephia Inc. v. Cuppy*, No. 04-3508, 2005 WL 588441, at *3 (N.D. Cal. Mar. 11, 2005) (“[A]
11 claim for breach of contract can be compensated by money damages, and does not warrant the issuance
12 of a preliminary injunction.”).

13 The Trulia Agreement is not enforceable by specific performance because Trulia has an adequate
14 remedy of law for any claimed breach by Move. The parties contractually agreed that in the event of a
15 breach, each party’s liability would be limited to a *maximum* of \$50,000. This broad provision states:
16 “IN NO EVENT SHALL EITHER PARTY’S TOTAL AGGREGATE LIABILITY FOR ANY AND
17 ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED FIFTY
18 THOUSAND DOLLARS (\$50,000).” Glass Decl., Ex. A, pp. 8-9. This is not all: the provision then
19 goes on to state: “The parties agree that (i) *the mutual agreements made in this section reflect a*
20 *reasonable allocation of risk*, and (ii) *that each party would not enter the Agreement without these*
21 *limitations on liability.*” *Id.*, Ex. A, p. 9 (emphasis added).

22 Thus, Trulia plainly has an adequate remedy for Move’s alleged breaches, namely damages of up
23 to \$50,000 — the precise remedy the parties mutually agreed was not only *adequate* but *exclusive*. Glass
24 Decl., Ex. A, pp. 8-9. *See Thayer Plymouth Ctr., Inc. v. Chrysler Motors Corp.*, 255 Cal. App. 2d 300,
25 306-07 (1967) (“Specific performance of a contract will not be compelled when an adequate remedy
26 exists at law, and if monetary damages afford adequate relief and are not extremely difficult to ascertain,
27 an injunction cannot be granted.”); *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara Cnty. Transit*
28 *Dist.*, 65 Cal. App. 3d 121, 133 (1976); *see also Tahoe Keys Prop. Owners’ Ass’n v. State Water Res.*

1 *Control Bd.*, 23 Cal. App. 4th 1459, 1471-72 (1994) (affirming trial court’s denial of a preliminary
2 injunction where the plaintiffs could be compensated by money damages, and so had failed to show
3 irreparable harm).

4 **B. Trulia’s Claim That Its Business Will Suffer Irreparable Harm Without Move’s**
5 **Listings Is Unsupported And Contradicted By Its Own Public Statements,**
6 **Admissions, And Evidence.**

7 Trulia is also not entitled to a TRO or preliminary injunction for the independent reason that it has
8 failed to show any irreparable harm. The California Supreme Court has decreed that “the extraordinary
9 remedy of an injunction cannot be invoked without showing the likelihood of irreparable harm.” *Intel*
10 *Corp. v. Hamidi*, 30 Cal. 4th 1342, 1352 (2003) (internal quotation marks omitted).

11 *First*, Trulia’s claim that its reputation and goodwill will be harmed if Move is not forced to
12 continue providing it with listings is obviously untrue. As detailed above, literally *two days* before this
13 motion was filed, Zillow’s CEO was criticizing Move’s listings and touting Trulia’s “momentum . . . in
14 terms of acquiring these listing feeds.” Stone Decl., Ex. C, p. 6. If Zillow and Trulia believed that
15 ending a relationship with Move would harm a company’s reputation and goodwill then Zillow’s CEO
16 would not have been out publicly celebrating his “liberation” from Move.

17 *Second*, Trulia’s *own declaration* confirms that Trulia is not reliant on Zillow for listings —
18 Trulia’s President Paul Levine admits that Trulia has hundreds of other sources of listings, including 421
19 direct-feed agreements from franchises and brokers and 125 from individual MLSs. Levine Decl., ¶ 27.
20 Levine also admits that these other sources account for a substantial majority — 75% — of Trulia’s
21 listings. *Id.* ¶ 28.

22 *Third*, Trulia’s claim of irreparable harm is even further undercut by the “Limitation of Liability”
23 provision in the Trulia Agreement which, as noted above, limits the parties to the exclusive remedy of up
24 to \$50,000 for a breach of the Agreement. If Trulia believed it would suffer irreparable harm if Move
25 breached the Agreement and stopped providing its listings data, then Trulia would not have agreed to
26 limit liability for a breach to the relatively small sum of \$50,000. Of course, this small amount makes
27 sense in light of Trulia’s admission that it gets the majority of its listing data *not* from Move but from
28 hundreds of *other* sources. Levine Decl., ¶ 27.

1 *Fourth*, the only evidence Trulia submitted to support its highly questionable claim that the
2 goodwill and reputation of its business hinges on the Move listings is the self-serving statement of one
3 Trulia executive, Paul Levine, who speculates that if Trulia cannot offer access to Move’s listings it will
4 lose “some” internet traffic to other sites. Levine Decl., ¶ 28. Mr. Levine provides no foundation for this
5 statement. He does not explain how consumers would become aware of the absence of Move listings on
6 Trulia, why this would cause them to abandon Trulia, or why Trulia could not just replace Move with its
7 sister-company Zillow’s new listing platform. As a matter of law, Mr. Levine’s unsubstantiated say-so is
8 not sufficient to justify a finding of irreparable harm. *Dotster, Inc. v. Internet Corp. for Assigned Names*
9 *& Numbers*, 296 F. Supp. 2d 1159, 1163 n.2 (C.D. Cal. 2003) (“conclusions of [a company’s] own
10 executives . . . cannot support a finding of irreparable injury for the issuance of a preliminary
11 injunction.”); *see also Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir.
12 1985) (conclusory declarations of plaintiff’s executives could not support the issuance of a preliminary
13 injunction); *iCall, Inc. v. Tribair, Inc.*, No. 12-2406, 2012 WL 5878389, at *14 (N.D. Cal. Nov. 21,
14 2012) (the “conclusory declaration” of the plaintiff’s CEO was insufficient to show that it would lose
15 business or goodwill absent a preliminary injunction).

16 *Finally*, even if there were some risk that Trulia would lose traffic to other sites, as Mr. Levine
17 claims, any such losses could be readily quantified — although damages would be limited to \$50,000
18 under the Agreement — because websites like Trulia track page views. For example, the press release
19 announcing Zillow’s merger with Trulia states that in a single month, “Trulia reported a record 54
20 million monthly unique users across its sites and mobile apps.” Stone Decl., Ex. F.

21 **C. Trulia Is Unlikely To Succeed On The Merits.**

22 For the reasons discussed above, Trulia would not be entitled to an injunction even if its breach of
23 contract claim were likely to succeed on the merits. But it isn’t. Trulia contends that Move’s termination
24 notice breached the Agreement because Trulia did not assign any rights or delegate any obligations in the
25 “reverse triangular merger” pursuant to which it merged with Zillow and became a wholly-owned
26 subsidiary of the Zillow Group. As a preliminary matter, Trulia presented no evidence, such as merger
27 documents, that would allow the parties or the Court to confirm the veracity of this statement. More
28 importantly, the technicalities of how Zillow and Trulia effected their merger are beside the point. When

1 Zillow acquired Trulia, Trulia went through a fundamental change in its form of ownership, becoming a
2 wholly-owned subsidiary of Zillow Group. “California courts have consistently recognized that an
3 assignment or transfer of rights does occur through a change in the form of ownership of a business.”
4 *SQL Solutions, Inc. v. Oracle Corp.*, No. 91-1079, 1991 WL 626458, at *3 (N.D. Cal. Dec. 18, 1991)
5 (citing *Trubowitch v. Riverbank Canning Co.*, 30 Cal. 2d 335, 344-45 (1947)). Indeed, the California
6 Supreme Court has expressly recognized that an assignment can result “merely from a change in the legal
7 form of ownership of the business.” *Trubowitch*, 30 Cal. 2d at 344.

8 *SQL Solutions* is on point. In that case, one of the plaintiff’s licensees merged with a wholly
9 owned subsidiary of a direct competitor of the licensor. 1991 WL 626458, at *2-3. After the merger, the
10 original licensee remained as the surviving corporation (though it changed its name). *Id.* at *2. The
11 United States District Court for the Northern District of California held that this reverse-triangular
12 merger resulted in an impermissible transfer of the licensee’s rights under a non-exclusive software
13 license which had a clause requiring the licensor’s permission to assign. *Id.* at *3-4. The court
14 specifically rejected the defendant’s argument that no transfer occurred because the same entity, albeit
15 under different ownership, held the license. *Id.* at *3. Applying California law, the Court held that the
16 reverse-triangular merger resulted in assignment of the license as a matter of law, because the licensee
17 had undergone a “fundamental change in its form of ownership” by becoming a wholly-owned subsidiary
18 of another company. *Id.* This is exactly what happened here: Although Trulia continues to exist post-
19 merger, it has undergone a fundamental change in the legal form of ownership because, following the
20 transaction, it became a subsidiary of Zillow. Under California law, this caused an assignment of
21 Trulia’s rights to Zillow as a matter of law and triggered Move’s right to terminate the agreement. *See*
22 *Glass Decl.*, ¶ 5, Ex. A.

23 This is the legally and logically correct result, and is consistent with *Trubowitch*’s holding that an
24 assignment that occurs as an operation of law violates a No-Assignment clause if it affects the rights of
25 the party protected by the clause. *Trubowitch*, 30 Cal. 2d at 344-45. Here, the Agreement says,
26 specifically, that Trulia cannot assign its rights to an “affiliate or subsidiary” of Zillow. *Glass Decl.*, Ex.
27 A, p. 19. Due to the merger, Trulia *is now itself an affiliate and subsidiary of Zillow*. This is precisely
28 the circumstance contemplated by the No-Assignment provision, and precisely what the termination right

1 was designed to avoid. *See* Glass Decl., ¶¶ 4-6. To pretend that this fundamental change did not occur
2 due to the form of merger Zillow chose would be not only wrong but absurd — it would result in Move
3 being forced to provide its data to an entity on the list of entities Trulia was expressly *not* permitted to
4 assign its rights to, which entity has declared war on Move, publicly denigrated its data, stolen its trade
5 secrets, and announced that cutting ties with Move was “liberating.”

6 Trulia’s cases do not compel a different conclusion. The Delaware cases Trulia relies on are
7 irrelevant because the Trulia Agreement is governed by California law. *See* Glass Decl., Ex. A, p. 10;
8 *Netbula, LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1149 (N.D. Cal. 2007) (in determining
9 whether a transfer or assignment of a license has occurred in a reverse-triangular merger, the “weight of
10 authority” provides that the court should apply the law governing the license agreement, “rather than the
11 state law that governs the merger agreement”). The *Florey Institute* case Trulia cites is unpersuasive
12 because the court started from the “presumption” that a reverse-triangular merger could not transfer
13 rights as a matter of law because it leaves intact the acquired corporation. *Florey Inst. v. Kleiner Perkins*
14 *Caufield & Byers*, No. 12-6504, 2013 WL 5402093, at *5 (N.D. Cal. Sept. 26, 2013). This
15 “presumption” runs afoul of the California Supreme Court’s pronouncement that an assignment *can*
16 occur from a change in the legal form of ownership of a business. *Trubowitch*, 30 Cal. 2d at 244.

17 Because Trulia is not likely to prevail on the merits, it is not entitled to a TRO. “To issue an
18 injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if
19 ever, should it be exercised in a doubtful case.” *Ancora-Citronelle Corp. v. Green*, 41 Cal. App. 3d 146,
20 148 (1974) (internal alteration omitted).

21 **D. The Balance of Harms Does Not Support An Injunction.**

22 Trulia is not entitled to an injunction because it has demonstrated no irreparable harm or any
23 harm at all, is seeking an injunction to enforce an agreement that is not specifically enforceable, and is
24 not likely to succeed on the merits. With these requirements unmet, the court cannot issue an injunction
25 regardless of balancing. Nonetheless, Trulia’s blithe assertion that Move would face no harm at all if
26 ordered to continue supplying Trulia with listings is off the mark. Trulia is controlled by Zillow, which
27 is a significant threat to Move not just because of its size and resources, but because it has already
28 demonstrated, *and a court has already found*, that Zillow will trample Move’s rights, steal Move’s

1 property, and even ignore court orders in order to maintain its competitive advantage. *See* Stone Decl.,
2 Ex. A. Forcing Move to provide its listings to Trulia and Zillow would make Move even more
3 vulnerable to anticompetitive and illegal conduct by Zillow and would plainly be very detrimental to
4 Move and the industry as a whole.

5 **E. Trulia's Public-Policy Argument Fails.**

6 Finally, Trulia contends that a TRO forcing Move to provide its data to Trulia would benefit the
7 public because consumers of Trulia's website "will be dramatically affected by the elimination of the
8 Listings Data on which they have come to rely." Mot. at 12. But Trulia is far from being the only
9 website offering real estate listings. As the FTC found when it approved the Zillow/Trulia merger, there
10 are many Internet sites on which consumers can obtain real estate listings, including Trulia's sister-
11 company Zillow, Realtor.com, Redfin, and other consumer-facing online real-estate products. Stone
12 Decl., Ex. G, p. 2. Trulia is confusing the public interest in obtaining real-estate listing data over the
13 Internet, which is valid, with the public interest in obtaining real-estate listing data *from Trulia*, which is
14 nonexistent. *See WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 288 (2d Cir. 2012) (public interest in access to
15 broadcast television would not be disserved by enjoining the defendant's service, which streamed
16 broadcast television over the Internet, because the content was accessible by other means).

17 **IV. Conclusion.**

18 As explained above, none of the legal requirements for a TRO are met here. Move respectfully
19 requests the Court deny Trulia's request for a TRO.

20
21 Dated: February 22, 2015

JENNER & BLOCK LLP

22 By: 

23 RICHARD L. STONE
24 BRENT CASLIN
25 AMY M. GALLEGOS

26 Attorneys for Defendant,
27 MOVE SALES, INC.
28