

1 Charles H. Samel, Bar No. 182019
2 CSamel@perkinscoie.com
3 PERKINS COIE LLP
4 1888 Century Park E., Suite 1700
5 Los Angeles, CA 90067-1721
6 Telephone: 310.788.9900
7 Facsimile: 310.788.3399

8 Susan E. Foster (Pro Hac Vice Application Pending)
9 WSBA Bar No. 18030
10 SFoster@perkinscoie.com
11 PERKINS COIE LLP
12 1201 Third Avenue, Suite 4800
13 Seattle, WA 98199
14 Telephone: 206.359.8846
15 Facsimile: 206.359.9846

16 Attorneys for Plaintiff
17 Trulia, Inc.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO

20 TRULIA, INC.,

21 Plaintiff,

22 v.

23 MOVE SALES, INC.,

24 Defendant.

No. CGC-15-544255

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

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

Hon. Ernest H. Goldsmith

Complaint filed: February 20, 2015
Trial Date: None

25 Case No. CGC-15-544255

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

26 PLAINTIFF'S EX PARTE

1 Plaintiff Trulia, Inc. (“Trulia”), through its undersigned attorneys, applies for a temporary
2 restraining order (“TRO”) to enjoin Defendant Move Sales, Inc. (“Move Sales”) from terminating
3 Trulia’s feeds of MLS-sourced for-sale residential property listing data (collectively “Listings
4 Data”)¹ and all other licensed content and ordering Move Sales to abide by the terms and
5 conditions of the Platform Services Agreement (“Agreement”) between Trulia and Move Sales.
6 Unless Move Sales is restrained and ordered to continue to abide by the terms of the Agreement,
7 Trulia will fail to receive feeds of any new Listings Data as of February 26, 2015.

8 Even if Move Sales believed it had a right to terminate the Agreement, there is no
9 justification for Move Sales to pull the plug on Trulia’s data feeds with only one week’s notice
10 (and the Agreement does not give it the right to do so). To the contrary, the Agreement requires
11 Move Sales to provide Trulia with 30 days’ notice of its intent to terminate, and an opportunity
12 for Trulia to cure any alleged material breach.

13 Notwithstanding the express language of the Agreement, on February 19, 2015, Move
14 Sales notified Trulia that, on February 26, 2015, Move Sales would unilaterally and without
15 justification terminate the Agreement and turn off Trulia’s feeds of Listings Data and all other
16 licensed content which supplies more than 25% of the uniquely accounted for listings displayed
17 on Trulia’s website, Trulia.com.

18 Trulia.com is viewed by 49 million or more unique users each month and used by more
19 than 8,000 real estate brokers and more than 28,000 real estate agents. Move Sales’
20 anticompetitive attempted termination of Trulia’s feeds of Listings Data is a blatant breach of the
21 Agreement and will cause irreparable harm to Trulia and further cause significant disruption to
22 real estate buyers, sellers, MLS organizations, brokers, agents, and home owners who all rely on
23 Trulia’s services.

24 This Application is based upon Code Civ. Proc. §§ 525 *et seq.* and Cal. Rules of Court,
25 Rule 3.1150 and Rules 3.1200 *et seq.*; upon the attached Memorandum of Points and Authorities;

26 _____
27 ¹ “Listings Data” provide information regarding residential and other properties that are listed for
28 sale and includes information such as sales price, address, square footage, lot size, number of
bedrooms, number of bathrooms, and similar information.

1 the Declarations of Paul Levine and Charles H. Samel filed herewith (respectively, the “Levine
2 Decl.” (Exhibit A hereto) and the “Samel Decl.” (Exhibit B hereto)); and upon the Complaint on
3 file herein. There has not been a previous application for the requested relief.

4 Pursuant to Rule 3.1202 of the California Rules of Court, Trulia states the following, as
5 further explained in the Samel Declaration: Trulia is informed and believes that Move Sales will
6 be represented by the following counsel in this action:

7 Mr. Brent Caslin
8 Mr. Richard L. Stone
9 Ms. Amy Gallegos
10 JENNER & BLOCK
11 633 W. Fifth Street, Suite 3600
12 Los Angeles, California 90071
13 Telephone: (213) 239-5100
14 Facsimile: (213) 239-5199
15 Email: bcaslin@jenner.com
16 Email: rstone@jenner.com
17 Email: agallegos@jenner.com

18 Trulia also requests that the Court issue an Order to Show Cause (“OSC”) pursuant to
19 California Rules of Court, Rule 3.1150, affording Move Sales the opportunity to appear and show
20 cause why a preliminary injunction should not issue enjoining it in the same manner for the
21 remainder of this litigation.

22 Initial notice of this Application has been provided to Move Sales as detailed in the Samel
23 Declaration, and any required further notice will be provided promptly.

24 DATED: February 20, 2015

PERKINS COIE LLP

By: 

Charles H. Samel, Bar No. 182019
CSamel@perkinscoie.com
Susan E. Foster, WSBA Bar No. 18030
(Pro Hac Vice Application Pending)

Attorneys for Plaintiff
Trulia, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

Good cause exists for the issuance of a TRO enjoining Defendant Move Sales from terminating Trulia’s feeds of MLS-sourced Listings Data and all other licensed content and ordering Move Sales to abide by the terms and conditions of the Agreement between Trulia and Move Sales. The Agreement has been in effect since June 19, 2012, and, if not renewed, will not expire for approximately another sixteen months, on June 19, 2016.

Moves Sales’ improper attempted termination of the Agreement is intentional and designed to harm Trulia’s ability to compete. Its timing is no accident. Move Sales engages in this egregious behavior in order to provide an unfair and ill-gotten competitive advantage to Move Sales’ sister corporation Move, Inc. (“Move”) because Move Sales, Move, and their parent corporation News Corp are all unhappy that Trulia has become affiliated with Zillow, Inc. (“Zillow”), in a transaction that closed on February 17, 2015 - just two days before Move Sales’ attempted termination of the Agreement. Trulia, Zillow, and Move all compete with one another as operators of on-line real estate media portals, and Move Sales, through its ListHub division, is the principal supplier of an input that is currently an essential to all three businesses: data feeds for up-to-date for-sale residential real estate listings, that is, of Listings Data.

Zillow’s agreement with ListHub is due to expire on April 6, 2015, and Zillow chose not to renew that agreement when it became apparent that ListHub was demanding anticompetitive and onerous terms aimed at securing an unfair advantage for Move at the expense of consumers, Zillow and other real estate media portal competitors. Instead, on January 6, 2015, Zillow arranged to launch the Zillow Data Dashboard to better enable it to secure direct feed agreements.

Trulia, with approximately sixteen months left on the Agreement, is not nearly as well positioned to replace ListHub, and is certainly unable to do so with only 7 days’ notice.

If Move Sales is not enjoined from terminating Trulia’s data feeds, Trulia.com will suffer an immediate and dramatic reduction of 25% of its uniquely accounted for listings, damaging Trulia’s reputation and goodwill.

1 Listings Data is primarily obtained from multiple-listing services organizations (“MLSs”),
2 through which real estate professionals share such data. [Levine Decl., ¶¶ 5, 8] Through its
3 affiliation with the National Association of REALTORS® (“NAR”), Move has access to Listings
4 Data for substantially all of the for-sale residential properties in the United States. [Levine Decl.,
5 ¶ 7] Move Sales acts as a “syndicator” of Listings Data through its ListHub division. ListHub is
6 the primary syndication channel that agents and brokers use to submit their listings for display by
7 the major real estate portals that compete with Move’s Realtor.com, including Trulia.com and
8 Zillow.com. [Levine Decl., ¶ 8] The agents and brokers submit listings to their local multiple
9 listing service (“MLS”) organization, which provides them in a data feed to ListHub, which in
10 turn syndicates the listings to the real estate portal websites. *Id.*

11 In order to obtain Listings Data from Move Sales (through ListHub), Trulia entered into
12 the Agreement. [Levine Decl., ¶¶ 12, 16] Pursuant to the Agreement, Trulia has obtained feeds
13 of Listings Data and other licensed content from Move Sales since the Agreement’s inception in
14 June 2012, and is (absent proper termination of the Agreement pursuant to its terms) entitled to
15 receive such feeds for at least the initial term of the Agreement, that is, until at least June 19,
16 2016. [Levine Decl., ¶¶ 13-14, 19, 24-25; Compl., Ex. A, §§ 7, 12.1, 12.2, 13]

17 On February 17, 2015, Trulia and Zillow closed a transaction first announced on July 28,
18 2014 (the “Transaction”) by which both Trulia and Zillow became wholly-owned subsidiaries of
19 Zillow Group, Inc. (f/k/a Zebra Holdco, Inc.) (“Zillow Group”).² [Levine Decl., ¶ 17; Compl.,
20 Ex. B] Through the Transaction, Zillow Group also acquired all of Trulia’s outstanding stock,
21 with Trulia’s pre-closing stockholders receiving Zillow Group shares in exchange. [Levine Decl.,
22 ¶ 20; Compl., Ex. B] Zillow Group did not, however, acquire any of Trulia’s assets or succeed to
23 Trulia’s rights and obligations under its contracts—rather, since closing of the Transaction, Trulia
24 has continued to operate as a separate entity and to provide the services it has always provided,
25 and to fulfill its obligations under all of its contracts. [Levine Decl., ¶ 20]

26
27 ² Zebra Holdco was formed on July 25, 2014 for purposes of the Transaction. [Levine Decl., ¶
28 18]

1 On February 19, 2015, in an attempt to enhance the competitive position of its sister
2 corporation Move among operators of real estate media portals, Move Sales purported to provide
3 notice to Trulia (the “Notice”) that Move Sales intended to terminate the Agreement, and cut off
4 Trulia’s feeds of Listings Data and all other licensed content, effective February 26, 2015.
5 [Levine Decl., ¶ 21]³ As Trulia has not engaged in any conduct that would permit Move Sales to
6 terminate the Agreement in accordance with the Agreement’s termination provisions—to the
7 contrary, Trulia has fulfilled all of its obligations under the Agreement and is ready and willing to
8 continue to do so until at least June 19, 2016—Move Sales’ termination of the Agreement is a
9 breach of the parties’ contract. [Levine Decl., ¶¶ 13, 17-20, 22-26; Compl., Ex. A, §§ 7, 11,
10 12.2, 13]

11 Although Trulia has been making (and will now accelerate) efforts to obtain Listings Data
12 from sources other than Move Sales, it will not be able to replace the listings from the Move Sales
13 data feeds immediately. [Levine Decl., ¶ 27] This is so particularly since, last year, ListHub
14 acquired ListHub’s largest syndication competitor, Point2, and entered into an agreement with
15 another of Trulia’s syndicators of Listings Data, Systems Engineering, effectively eliminating
16 both as alternative sources of supply. [Levine Decl., ¶ 15] Today, Move Sales’ ListHub is
17 virtually the only remaining syndication provider, *id.*, forcing Trulia to rely almost exclusively on
18 its ability to try to self-supply its own listings through direct agreements with MLS organizations
19 and others to replace Move Sales’ feed of Listings Data—something that is impossible to
20 accomplish immediately, especially because of Move’s close relationship with the NAR and its
21 concerted effort to block Trulia and Zillow from obtaining Listings Data directly from MLS
22 organizations and brokers. [Levine Decl., ¶¶ 7, 16, Compl., ¶¶ 8, 11, 28-33]

23 Move Sales’ improper attempted termination of the Agreement and discontinuance of the
24 feeds of Listings Data and other licensed content will likely have a negative impact on Trulia’s
25 customers and business partners. [Levine Decl., ¶¶ 28-30] As of the date of this filing, the feeds
26 from ListHub supply more than 25% of Trulia’s uniquely accounted for listings. [Levine Decl., ¶

27 _____
28 3 A true and correct copy of the Notice is attached as Exhibit C to the Complaint on file in this
matter and incorporated by reference herein.

1 28] As a consequence, if Move is permitted to terminate the Agreement, the unavailability of
2 complete listings on Trulia's website will likely cause, and may continue to cause, its customers
3 to turn instead to Trulia's competitors' websites, including Move's Realtor.com, and will injure,
4 and will continue to injure, Trulia's goodwill and reputation with its customers—who may or may
5 not return to Trulia once it can replace the Listings Data that Move Sales is required to supply,
6 whenever that may be. [Levine Decl., ¶¶ 28-30]

7 Additionally, the unavailability of complete data will also have a negative impact on
8 Trulia's business partners and their customers, which include real estate agents who rely on the
9 data provided by Trulia to its business partners for lead distribution. [Levine Decl., ¶ 29] These
10 customers, along with Trulia's paying users (including more than 8,000 brokers and more than
11 28,000 real estate agents), will also be negatively impacted by Move Sales' actions and will likely
12 similarly turn away from Trulia or its business partners, further harming Trulia's goodwill and
13 reputation with them and its partners. *Id.*

14 Pending a hearing on a preliminary injunction, Trulia hereby applies for, and submits that
15 the interests of justice require, the issuance of a TRO enjoining Move Sales from terminating the
16 Agreement.

17 ARGUMENT

18 A. Trulia Is Entitled to Temporary Emergency Relief

19 Trulia is seeking immediate emergency relief in the form of a TRO because Move Sales'
20 threatened termination of the Agreement is likely to cause, and will continue to cause, harm to
21 Trulia's business, goodwill, and reputation. Such harm is impossible to quantify in monetary
22 terms and therefore cannot be redressed with any legal remedy. Cal. Civ. Proc. Code § 526; *see*
23 *also Donahue Schriber Realty Grp., Inc. v. Nu Creation Outreach*, 232 Cal. App. 4th 1171 (2014)
24 (harm to business goodwill and reputation is unquantifiable and considered irreparable). The
25 harm to Trulia will commence when and if Move Sales improperly terminates the Agreement and
26 Trulia's feeds of Listings Data and other licensed content, which it intends to do on February 26,
27 2015, and will continue with every day that Trulia's customers and business partners are unable
28

1 to access new and updated Listings Data and all other licensed content to which Trulia is entitled
2 under the Agreement. As a result, Trulia likely will lose the goodwill of more and more of its
3 customers and business partners, and Trulia’s business reputation will be increasingly damaged,
4 commencing on the date of Move Sales’ improper termination and continuing the longer Move
5 Sales’ breach continues.

6 Under the circumstances, it would be unreasonable to allow Trulia to be harmed in that
7 manner until a request for a preliminary injunction can be fully briefed and heard. Trulia’s
8 request for a TRO should therefore be granted.

9 **1. Legal Standards for Emergency Relief**

10 “The granting or denial of a temporary restraining order is discretionary with the trial
11 judge and amounts to a mere preliminary or interlocutory order to keep the subject of the
12 litigation in status quo pending the determination of the action on its merits.” *Gray v. Bybee*, 60
13 Cal. App. 2d 564, 571 (1943); *White v. Davis*, 30 Cal. 4th 528, 554 (2003) (“a preliminary
14 injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its
15 claim To obtain a preliminary injunction, a plaintiff ordinarily is required to present
16 evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued
17 pending an adjudication of the merits.”); *Costa Mesa City Employees’ Ass’n v. City of Costa*
18 *Mesa*, 209 Cal. App. 4th 298, 305 (2012), *as modified* (Oct. 10, 2012) (“The purpose of such an
19 order ‘is to preserve the status quo until a final determination following a trial.’” (citing *Scaringe*
20 *v. J.C.C. Enterprises, Inc.*, 205 Cal. App. 3d 1536, 1542 (1988))).

21 The standards for the issuance of a TRO are similar to those applicable to a preliminary
22 injunction. *See City of S. San Francisco v. Cypress Lawn Cemetery Ass’n*, 11 Cal. App. 4th 916,
23 920 (1992); *San Diego Water Co. v. Pac. Coast S.S. Co.*, 101 Cal. 216, 218 (1894).
24 Consequently, to obtain a TRO, a trial court must evaluate two interrelated factors: “(i) the
25 likelihood that the party seeking the injunction will ultimately prevail on the merits of [its] claim,
26 and (ii) the balance of harm presented, i.e., the comparative consequences of the issuance and
27 nonissuance of the injunction.” *Fleishman v. Superior Court*, 102 Cal. App. 4th 350, 355–56
28 (2002); *see also Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251
Case No. CGC-15-544255

1 (2002). “While the mere possibility of harm to the plaintiff is insufficient to justify a preliminary
2 injunction, the plaintiff is ‘not required to wait until they have suffered actual harm before they
3 apply for an injunction, but may seek injunctive relief against the threatened infringement of their
4 rights.’” *Costa Mesa City Employees’ Ass’n*, 209 Cal. App. 4th at 305 (emphasis omitted).

5 Here, each factor favors granting Trulia’s request for a TRO. As described more fully
6 below, there is a high likelihood that Trulia will prevail on the merits at trial. At the same time, if
7 Move Sales is not immediately enjoined from terminating Trulia’s data feeds, Trulia likely will
8 suffer irreparable and continuing injury to its business and reputation. On the other hand, Move
9 Sales is not likely to suffer any injury at all if it is ordered to merely abide by the Agreement
10 pending a hearing on whether a preliminary injunction should be issued.

11 **2. Trulia Is Likely to Succeed on the Merits**

12 Trulia is likely to succeed on the merits because it only seeks to enforce the precise terms
13 of a valid, enforceable contract. There thus is a strong likelihood that Trulia will succeed on the
14 merits of its breach of contract claim and obtain an order for specific performance. *See Maxwell*
15 *v. Dolezal*, 231 Cal. App. 4th 93, 97-98 (2014); *Real Estate Analytics, LLC v. Vallas*, 160 Cal.
16 App. 4th 463, 472 (2008). The Agreement provides that California law applies to “any claim or
17 dispute of whatever nature arising out of or relating to” the Agreement. [Compl., Ex. A, § 13]

18 “To establish a cause of action for breach of contract, the plaintiff must plead and prove
19 (1) the existence of the contract, (2) the plaintiff’s performance or excuse for nonperformance, (3)
20 the defendant’s breach, and (4) resulting damages to the plaintiff.” *Maxwell*, 231 Cal. App. 4th at
21 97-98. Trulia is entitled to specific performance upon a showing of “(1) the inadequacy of [the
22 plaintiff’s] legal remedy; (2) an underlying contract that is both reasonable and supported by
23 adequate consideration; (3) the existence of a mutuality of remedies; (4) contractual terms which
24 are sufficiently definite to enable the court to know what it is to enforce; and (5) a substantial
25 similarity of the requested performance to that promised in the contract.” *Real Estate Analytics*,
26 160 Cal. App. 4th at 472 (internal quotation marks & citation omitted).

27 The evidence shows that each element is met here. The Agreement is a valid, enforceable
28 written contract between the parties that is both reasonable and supported by consideration—

1 Trulia is entitled to the feeds of Listings Data and other licensed content in return for making
2 payments and providing data and other consideration to Move Sales. [See Compl., Ex. A] As set
3 forth in the Levine Declaration, [at ¶¶ 17-20, 22-26], Trulia has performed its obligations under
4 the Agreement, and is ready and willing to continue to do so.⁴ By its terms, the Agreement
5 clearly and specifically obligates Move Sales to provide the Listings Data and other licensed
6 content until at least June 19, 2016, except in limited circumstances, none of which have
7 occurred. [Compl., ¶¶ 36-48, 50 & Ex. A, §§ 7, 12.1, 12.2, 13; Levine Decl., ¶¶ 13-14, 17-20, 22-
8 26]

9 Move Sales' Notice states that "Trulia was recently acquired by Zillow, Inc.," and
10 purports to terminate "the Agreement pursuant to the provisions of Section 13 thereof . . .
11 effective on February 26, 2015."⁵ [Compl., Ex. D] Section 13 provides, in relevant part, as
12 follows:

13 Except as expressly set forth herein, neither party may assign or otherwise
14 transfer its rights or delegate its obligations under the Agreement, in whole or in
15 part, provided however that . . . [Trulia] may assign its rights or delegate its
16 obligations hereunder to any person or entity that acquires all or substantially all
17 of its assets, provided however that (i) [Trulia] must provide [Move Sales] with
18 written notice of any such assignment or delegation no less than ten (10) days
19 before the effectiveness of any such assignment or delegation, and (ii), in the
20 event that such assignment or delegation is to any of the entities listed on Exhibit
21 E hereto, [Move Sales] shall be permitted, in its sole discretion, to terminate this
22 Agreement at any time within thirty (30) days after receiving such notice,
23 effective immediately upon providing written notice of termination to [Trulia.]

24 In other words, Move Sales can *immediately* terminate the Agreement pursuant to Section 13 *only*
25 *if* Trulia assigns its rights or delegates its obligations under the Agreement to an entity that (a) has
26
27

28 ⁴ Trulia's performance of its obligations under the Agreement also satisfies the "mutuality of
remedy" prerequisite for obtaining an order for specific performance as, with respect to that
element, California law requires merely that "[t]he agreed counterperformance has been
substantially performed or its concurrent or future performance is assured or, if the court deems
necessary, can be secured to the satisfaction of the court." Civ. Code § 3386; *see also Bleacher v.*
Conte, 29 Cal. 3d 345, 353 (1981) (noting that "the California Legislature[, through Section
3386,] discarded the rigid and outdated requirement of mutuality of remedy with respect to
specific performance").

⁵ Throughout the remainder of this memorandum, references to "Sections" are to Sections of the
Agreement.

1 acquired all or substantially all of Trulia's assets, and (b) is listed in Exhibit E to the Agreement.
2 Trulia has done no such thing. [Compl., ¶¶ 43-47 & Ex. A, § 13; Levine Decl., ¶¶ 19-20, 24-25]

3 First, as discussed above, Trulia has not assigned any rights or delegated any obligations
4 under the Agreement to anyone in connection with the Transaction, which ends the analysis. [See
5 also Compl., Ex. B] The Transaction was structured as a "double-dummy" merger, with two
6 separate "reverse triangular mergers." The result of these reverse triangular mergers is that both
7 Trulia and Zillow continue as wholly-owned subsidiaries of Zillow Group. Thus, a reverse
8 triangular merger does not constitute an assignment or transfer as a matter of law because the
9 surviving entity (in this case Trulia, Inc.) retains all the rights and obligations it had prior to the
10 merger; indeed, that is the very purpose of such a merger. *Florey Inst. of Neuroscience &*
11 *Mental Health v. Kleiner Perkins Caufield & Byers*, No. CV 12-6504 SC, 2013 WL 5402093, at
12 *5 (N.D. Cal. Sept. 26, 2013) (applying California law) (holding that reverse triangular merger
13 had not resulted in assignment or transfer as a matter of law; analogizing such mergers to stock
14 sales where "there could be no contention that the corporation's licenses would be extinguished
15 as a matter of law, since the two contracting parties were still extant and in privity").⁶

16 Second, as also discussed above, even if there had been an assignment or transfer, which
17 there was not, no entity has acquired "all or substantially all of [Trulia's] assets." [Compl., Ex.
18 A, § 13] Zillow Group acquired only the outstanding stock of Trulia; Trulia remains the owner of
19 all of its assets. [Levine Decl., ¶ 20; Compl., Ex. B] See also *Florey Institute*, 2013 WL
20 5402093, at *5 (holding that "[i]n a reverse triangular merger, the target corporation continues to
21 own its assets even though the acquiring corporation owns all of the target's stock").
22 Nonetheless, Move Sales apparently takes the position that, as a result of the Transaction, Trulia
23

24
25 ⁶ Trulia is unaware of any California state court decision addressing this issue. Delaware courts
26 have also held that a reverse triangular merger leaves intact the acquired entity (here Trulia) and
27 as a matter of law does not create an assignment or transfer. *E.g.*, *Lewis v. Ward*, No. CIV. A.
28 15255, 2003 WL 22461894, at *4, n.18 (Del. Ch. Oct. 29, 2003), *affd*, 852 A.2d 896 (Del. 2004)
("If a reverse triangular structure is used, the rights and obligations of the target are not
transferred, assumed or affected."); *Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH*,
62 A.3d 62, 83 (Del. Ch. 2013) (same).

1 assigned its rights or delegated its obligations to an entity that acquired all or substantially all of
2 its assets in violation of Section 13 [*see* Compl., Ex. C], which, of course, is not correct.

3 In summary, Trulia has not engaged in any conduct that would permit Move Sales to
4 terminate the Agreement pursuant to Section 13, let alone immediately and without an
5 opportunity to cure any alleged breach. Accordingly, Trulia is likely to succeed on the merits of
6 proving that Move Sales' attempted termination of the Agreement is improper and constitutes a
7 material breach of the Agreement. Moreover, as discussed in more detail below, even a lesser
8 likelihood of success on the merits, or the indisputable existence of serious questions on the
9 merits, would be sufficient here to entitle Trulia to the requested relief because the balance of
10 harms tips so sharply in Trulia's favor.

11 **3. Trulia Will Suffer Irreparable Harm Absent Emergency Relief**

12 The evidence also shows that Trulia is likely to be, and will continue to be, irreparably
13 harmed by Move Sales' conduct, absent emergency relief from this Court.

14 Currently, Trulia's business depends on the feeds of Listings Data and other content
15 licensed in the Agreement. [Levine Decl., ¶¶ 11, 16, 27-30] Without the Listings Data and other
16 licensed content that Trulia has a right to receive under the Agreement until at least June 19,
17 2016, Trulia will, during the remaining term of the Agreement and until it can replace the listings
18 it should obtain from Move Sales, not be able to provide consumers and its business partners with
19 the listings information they have come to expect to receive from Trulia. [Levine Decl., ¶¶ 27-
20 30] As the Listings Data from ListHub currently supplies more than 25% of Trulia's uniquely
21 accounted for listings, the usefulness of Trulia's website will be negatively impacted because
22 neither potential home buyers and seller nor real estate agents can conduct their business and buy
23 and sell houses effectively based on incomplete listings information. *Id.*

24 And although Trulia has arranged, and is continuing to arrange, alternative streams of
25 Listings Data, it will not be able immediately—or within a week—to replace the data feed to
26 which it is entitled under the Agreement. [Levine Decl., ¶ 27] It has taken Trulia nine years to
27 obtain 421 direct feed arrangements from franchises and brokers and 125 from individual MLSs.
28 *Id.* By comparison, ListHub has arrangements with more than 500 MLSs.

1 <https://www.listhub.com/mls-list.html> (last accessed Feb. 20, 2015). This disruption of Trulia's
2 business, and decrease in the Listings Data Trulia can provide, will likely cause, and likely will
3 continue to cause, Trulia's customers to turn to the services of Trulia's competitors that have not
4 been similarly disrupted—including, first and foremost, Realtor.com, the competing website of
5 Move Sales' sister corporation Move. [Levine Decl., ¶¶ 28, 30] Those customers may never
6 return, and the business goodwill and reputation caused by Move Sales' disruption to Trulia's
7 business will be lost. *See Donahue Schriber Realty Grp., Inc. v. Nu Creation Outreach*, 232 Cal.
8 App. 4th 1171, 181 Cal. Rptr. 3d 577, 585 (2014) (evidence of threatened loss of prospective
9 customers or goodwill supported finding of irreparable harm.).

10 The same applies to Trulia's business partners and their customers, including real estate
11 agents, who rely on the data provided by Trulia to its business partners for lead distribution.
12 [Levine Decl., ¶ 29] These customers may similarly turn away from Trulia (or its business
13 partners, thereby negatively impacting those) before Trulia can replace the data feed through self-
14 sourced Listings Data. [Levine Decl., ¶¶ 29-30] As Trulia will likely suffer, and will continue to
15 suffer, irreparable harm if Move Sales does not maintain or immediately reinstate Trulia's data
16 feeds and abide by all other terms and conditions of the Agreement until at least June 19, 2016,
17 this factor favors granting Trulia's request for emergency relief.

18 **4. The Balance of Harms Strongly Favors Trulia**

19 In contrast to the demonstrable and irreparable harm to Trulia, Move Sales will suffer no
20 harm as a result of the issuance of the requested relief, which seeks only to preserve the status quo
21 pending a hearing on whether a preliminary injunction should issue, and to enforce the precise
22 terms of the existing, valid Agreement to which Move Sales is a party. Move Sales would merely
23 be ordered to abide by the terms of the Agreement. Because Trulia faces great potential harm
24 absent relief, and Move Sales faces no harm at all, the balance of hardships tips sharply in favor
25 of granting the requested emergency relief.

26 **5. Issuance of a TRO Is in the Public Interest**

27 Absent a TRO, Move Sales' conduct will have, and will continue to have, a significant
28 negative impact on the public. As discussed above, Move Sales' termination of Trulia's data

1 feeds would prevent Trulia's at least 49 million unique customers from the Listings Data they
2 have come to expect to find at Trulia.com. These 49 million sellers, buyers, agents, and other
3 consumers of Trulia's site, and the more than 8,000 brokers and more than 28,000 real estate
4 agents who subscribe to Trulia's services, will be dramatically affected by the elimination of the
5 Listings Data on which they have come to rely. [Levine Decl., ¶¶ 10, 28-29] The same is true for
6 the customers, including real estate agents, of Trulia's business partners, who similarly rely on the
7 data provided by Trulia to, e.g., CNN and Realogy, to meet their real-estate-information needs or
8 conduct their business. [Levine Decl., ¶¶ 9-10, 29]

9 The only way to prevent this negative impact on millions of consumers and other
10 businesses is for this Court to enjoin Move Sales from terminating the Agreement in order to
11 maintain the status quo pending a preliminary injunction hearing. Thus, the public interest is
12 clearly served by enforcing the Agreement and requiring Move Sales to abide by it. *See, e.g.,*
13 *Egan v. Mut. of Omaha Ins. Co.*, 24 Cal. 3d 809, 820 (1979); *Yue v. Conseco Life Ins. Co.*, 282
14 F.R.D. 469, 484 (C.D. Cal. 2012) ("The public has an interest in valid contracts being upheld.")
15 (quotation omitted). And only enforcing the Agreement will preserve customer choice by
16 allowing Trulia to continue to provide its services without interruption, which also serves the
17 public interest. As, conversely, no public interest would be served by allowing Move Sales to
18 persist in its unlawful conduct, this factor also favors the issuance of the requested TRO.

19 **B. Trulia Has Complied With California Rule of Court, Rule 3.1204**

20 Trulia has complied with the requirements of Rule 3.1204. As set forth in the Samel
21 Declaration [at ¶¶ 3-5], on February 20, 2015, prior to 10:00 a.m., counsel for Trulia informed
22 Move Sales that on February 23, 2015, at 11:00 a.m. in Department 302 of the Superior Court of
23 California for San Francisco County, located at 400 McAllister Street, San Francisco, Trulia will
24 apply *ex parte* for a TRO enjoining Move Sales from terminating Trulia's feeds of Listings Data
25 and all other licensed content and ordering Move Sales to abide by the terms and conditions of the
26 Agreement, pending a preliminary injunction hearing. [Samel Decl., ¶¶ 3-4]

1 **C. No Security Should Be Required Because Move Sales Will Not Be Harmed By A**
2 **Wrongfully Issued TRO**

3 The purpose of the security to be provided by the movant under Code of Civil Procedure
4 section 529 is to ensure “that the applicant will pay to the party enjoined any damages, not
5 exceeding an amount to be specified, the party may sustain by reason of the injunction, if the
6 court finally decides that the applicant was not entitled to the injunction.” Cal. Civ. Proc. Code
7 § 529. Here, even if the TRO were issued wrongfully, Move Sales would face no harm by
8 continuing to abide by the Agreement during the short period of time between February 26, 2015,
9 and the date of the preliminary injunction hearing, especially since the Agreement is not due to
10 expire for another 16 months. Therefore, the Court should not require any security at all or any
11 security required of Trulia should be de minimis.

12 **CONCLUSION**

13 For the reasons stated above, Trulia respectfully requests that the Court issue a TRO
14 enjoining Move Sales from terminating Trulia’s feeds of Listings Data and all other licensed
15 content and to abide by all terms and conditions of the Agreement, and setting an Order to Show
16 Cause hearing for preliminary injunction consistent with this Application.

17 DATED: February 20, 2015

PERKINS COIE LLP

18 By: 

19 Charles H. Samel, Bar No. 182019

20 CSamel@perkinscoie.com

21 Susan E. Foster, WSBA Bar No. 18030

(Pro Hac Vice Application Pending)

22 Attorneys for Plaintiff
23 Trulia, Inc.

EXHIBIT A

1 Charles H. Samel, Bar No. 182019
CSamel@perkinscoie.com
2 PERKINS COIE LLP
1888 Century Park E., Suite 1700
3 Los Angeles, CA 90067-1721
Telephone: 310.788.9900
4 Facsimile: 310.788.3399

5 Susan E. Foster (Pro Hac Vice Application Pending)
WSBA Bar No. 18030
6 SFoster@perkinscoie.com
PERKINS COIE LLP
7 1201 Third Avenue, Suite 4800
Seattle, WA 98199
8 Telephone: 206.359.8846
Facsimile: 206.359.9846

9 Attorneys for Plaintiff
10 Trulia, Inc.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

14 TRULIA, INC.,
15 Plaintiff,
16 v.
17 MOVE SALES, INC.,
18 Defendant.

No. CGC-15-544255

**DECLARATION OF PAUL LEVINE
IN SUPPORT OF PLAINTIFF'S
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

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

Hon. Ernest H. Goldsmith

Complaint filed: February 20, 2015
Trial Date: None

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I, Paul Levine, of full age, declare as follows:

1. I am the President of Trulia, Inc. (“Trulia”). Trulia is a Delaware corporation with its principal place of business in San Francisco, California.

2. I make this declaration based on my own personal knowledge and from information I obtained from individuals with such knowledge who regularly report to me in my capacity as Trulia’s President, which information I believe to be accurate. In carrying out my responsibilities as Trulia’s President, I rely on such information. I would testify competently to the facts set forth herein if called to do so at a hearing. The documents referred to in this declaration constitute business records of Trulia, which are kept and recorded in the ordinary, regular course of business at or about the time of the events that they accurately portray. I have responsibility for and personal knowledge of the maintenance of such business records. Except as where stated, I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters stated herein.

3. Trulia operates a real estate media portal that is a home and real estate marketplace dedicated to helping homeowners, home buyers, sellers, renters, mortgage professionals, landlords, property managers, and real estate professionals find and share vital information about homes, real estate, mortgages and home improvement. One function of these portals is to provide consumers and real estate professionals with up-to-date, current Listings Data. Consumers use that data to assist in their home-buying decisions, and real estate professionals use it in their businesses.

4. There are two principal categories of real estate professionals: “agents” and “brokers.” Agents typically solicit listings, work with homeowners to sell their homes, and show prospective buyers homes. Brokers usually provide agents with training, offices, computers, supplies, and clerical help, advertising and marketing assistance, and other services to support the agents and help them close transactions.

1 5. Brokers may be local, or part of a national or regional chain or franchise, such as
2 Century 21, Coldwell Banker, or Keller Williams. Virtually all brokers participate in multiple
3 listing service (“MLS”) organizations through which they share for-sale residential property
4 listing data (“Listings Data”) in their local area or region. On information and belief, there are
5 approximately 870 MLS organizations across the United States. Listings Data is primarily
6 obtained from MLS organizations.

7 6. The National Association of REALTORS® (“NAR”) is a membership
8 organization comprised of MLS organizations, real estate brokers, and agents. NAR owns the
9 trademark REALTOR®, and only members of NAR or those licensed by NAR are permitted to
10 refer to themselves as “Realtors,” a term that most consumers use generically to refer to any real
11 estate agent.

12 7. Move, Inc. (together with Move Sales, Inc., “Move”) operates a network of real
13 estate web sites for consumers and real estate professionals. Its principal operation is
14 Realtor.com, a real estate media portal which it operates in association with NAR in direct
15 competition to Trulia.com. The official website of NAR is Move’s Realtor.com. On information
16 and belief, through its affiliation with the NAR, Move has access to Listings Data for
17 substantially all of the for-sale residential properties in the United States.

18 8. Move also operates ListHub, which is the dominant platform for online listing
19 syndication, serving approximately 50,000 brokerage firms, and providing listing information
20 from over 500 data sources to more than 150 publishers, including Trulia. Agents and brokers
21 submit listings to their local MLS organization, which provides them in a data feed to ListHub,
22 which in turn syndicates the listings to real estate portals. ListHub is the principal supplier of
23 Listings Data to Trulia and, on information and belief, to other national real estate listings portals
24 that compete with Move’s Realtor.com website to obtain MLS-sourced Listings Data, including
25 Zillow.com.

1 9. The Realtor.com and Trulia.com websites are used by consumers who want to buy
2 or sell a home, and by real estate brokers and agents who want consumers to retain their services
3 to buy or sell a home. These portals provide consumers and real estate professionals with up-to-
4 date, current Listings Data—consumers use that data to assist in their home-buying decisions, and
5 real estate professionals use it in their business.

6 10. Trulia does that by making the Listings Data available directly to consumers
7 through its websites and mobile applications (which we refer to as the Trulia.com website, and
8 which, in the third quarter of 2014, were viewed monthly by 49 million unique viewers), by
9 offering advertising products to real estate professionals who obtain leads relating to each listing,
10 and by entering into relationships with business partners such as CNN and Realogy to market the
11 Listings Data to their users.

12 11. Trulia currently needs accurate and current Listings Data to conduct its business
13 and to compete, including first and foremost with Move and its Realtor.com website. Listings
14 Data is thus the lifeblood that fuels the parties' businesses, and through its ListHub division,
15 Move has obtained almost absolute control over its competitors' (including Trulia's) ability to
16 obtain comprehensive and accurate Listings Data.

17 12. In order to obtain Listings Data from Move Sales (through ListHub), on June 19,
18 2012, Trulia entered into a written Platform Services Agreement (the "Agreement") with Move
19 Sales, Inc. ("Move Sales"). Both Move, Inc. and Move Sales were acquired by News Corp in
20 November 2014.

21 13. The Agreement has an initial term of four years from its effective date, that is,
22 through June 19, 2016.

23 14. A true and correct copy of the public version of the Agreement is attached to the
24 Complaint in this action as Exhibit A and incorporated herein by reference. Under the
25 Agreement, Trulia has a nonexclusive and worldwide license to receive content from Move,
26 including feeds of Listings Data, and to publish the Listings Data on the Trulia.com website.

1 Trulia has been receiving feeds of Listings Data from Move since the parties entered into the
2 Agreement in June 2012 and, prior to Move's acquisition of ListHub, Trulia had received the
3 Listings Data from ListHub under an earlier agreement. As a condition to maintaining the
4 ListHub feeds, Move forced Trulia to agree to the new Agreement which included restrictions in
5 Section 7 that Trulia would not be able to operate its own listings syndicator, directly or
6 indirectly, unless Trulia provided notice to Move Sales, after which Move Sales could
7 immediately terminate the Agreement. Absent proper termination of the Agreement pursuant to
8 its terms, Trulia is entitled to receive such feeds from ListHub for at least the initial term of the
9 Agreement, that is until at least June 19, 2016. The content that Trulia licenses from Move
10 pursuant to the Agreement is, through the term of the Agreement, currently essential to the
11 operation of Trulia's business.

12 15. That is so particularly since, last year, ListHub acquired its largest competitor,
13 Point2, and entered into an agreement with another of Trulia's syndication suppliers, Systems
14 Engineering, effectively eliminating both as alternative sources of supply. Today, ListHub is
15 virtually the only remaining syndication provider, with the other suppliers covering but a small
16 fraction of the market.

17 16. Unlike Move, Trulia does not have a NAR affiliation or an agreement with NAR
18 like that which allows Move to receive direct feeds from all, or nearly all, local and regional MLS
19 organizations affiliated with NAR. Instead, to replace Move's feed of Listings Data, and because
20 ListHub now is virtually the only remaining syndication provider, Trulia must rely almost
21 exclusively on its ability to try to self-supply its own listings from a variety of sources, including
22 through individual agreements to provide listing feeds with listing aggregation companies, MLS
23 organizations, brokers, agents, or software vendors. That has been rendered even more difficult
24 (and time-consuming) because Move has aggressively sought to limit Trulia's ability to access
25 third-party sources of Listings Data and to discourage MLSs, brokers, and agents from sending
26

1 Listings Data to Trulia; more recently, Move has also been seeking to redirect feeds and provide
2 incentives for MLSs and others to work solely with ListHub.

3 17. On February 17, 2015, Trulia and Zillow, Inc. (“Zillow”) (the operator of another
4 real estate media portal and another competitor of Move) closed a transaction first announced on
5 July 28, 2014 (the “Transaction”) by which both Trulia and Zillow became wholly-owned
6 subsidiaries of Zillow Group, Inc. (f/k/a Zebra Holdco, Inc.) (“Zillow Group”).

7 18. Zebra Holdco was formed on July 25, 2014 to facilitate the Transaction.

8 19. Section 13 of the Agreement permits Trulia to assign or delegate its rights under
9 the Agreement to any person or entity that acquires all or substantially all of its assets, and
10 permits Move to terminate the Agreement within 30 days after receiving notice that Trulia has
11 assigned or delegated its rights or obligations under the Agreement to any of the specific entities
12 listed in Exhibit E to the Agreement that acquires all or substantially all of its assets. Exhibit E is
13 confidential pursuant to Section 11 of the Agreement.

14 20. Through the Transaction, Zillow Group acquired all of Trulia’s outstanding stock,
15 with Trulia’s pre-closing stockholders receiving Zillow Group shares in exchange. But the
16 Transaction did not involve an assignment or transfer of Trulia’s rights, or a delegation of its
17 duties, under the Agreement. Furthermore, Zillow Group (or any other party) did not, through the
18 Transaction, acquire any of Trulia’s assets. Rather, since the closing of the Transaction, Trulia
19 has continued to operate as a separate entity and to provide the services it has always provided,
20 and to fulfill its obligations under all of its contracts.

21 21. On February 19, 2015, Move purported to provide unilateral notice of termination
22 of the Agreement effective February 26, 2015 (“Notice”) to Trulia. Move’s purported unilateral
23 termination of the Agreement, and its threat of turning off of Trulia’s data feeds as of February
24 26, 2015, violated the terms and conditions of the Agreement, which is to remain in full force and
25 effect until at least June 19, 2016.

1 22. Trulia has not filed for bankruptcy, become insolvent, or made an assignment for
2 the benefit of its creditors, nor has a receiver been appointed for Zillow or its business.

3 23. Trulia has not breached Section 7 of the Agreement, which deals with prohibited
4 uses by Trulia of MLS-sourced data. Trulia has not materially breached any material term or
5 condition of the Agreement, or received any written notice from Move alleging that it has done
6 so.

7 24. Trulia has not engaged in any conduct that would permit Move to terminate the
8 Agreement.

9 25. Trulia has, since June 19, 2012, performed and executed all of its obligations
10 under the Agreement and materially complied with all of the Agreement's provisions.

11 26. As Move is aware, Trulia is prepared to continue to fulfill its obligations under the
12 Agreement at least through June 19, 2016.

13 27. Although Trulia has been making, and will now accelerate, efforts to obtain
14 Listings Data from sources other than Move, it will not be able to replace the listings from
15 ListHub's data feeds immediately, or even within many months. It has taken Trulia 9 years to
16 obtain 421 direct feed arrangements from franchises and brokers and 125 from individual MLSs.

17 28. As of today, ListHub's data feeds accounted for more than 25% of Trulia's
18 uniquely accounted for listings. If Move is permitted to terminate the Agreement, the usefulness
19 of the Trulia.com website will be negatively impacted because neither potential home buyers and
20 seller nor real estate brokers and agents can conduct their business and buy and sell houses based
21 on incomplete listings information. The unavailability of complete listings on Trulia's website
22 likely will cause, and continue to cause, some of its customers to turn instead to Trulia's
23 competitors' websites, including Moves' Realtor.com, and likely will injure, and will continue to
24 injure, Trulia's goodwill and reputation with its customers—who may or may not return to Trulia
25 once it can replace the Listings Data that Move Sales is required to supply, whenever that may be.
26

1 29. On information and belief, the dramatic and sudden loss of for-sale listings likely
2 would also negatively impact Trulia's business partners, such as Realogy. Trulia's business
3 partners in turn provide this data to their customers and end users, including real estate agents
4 who rely on this data for lead distribution. Trulia's paying users, including more than 8,000
5 brokers and more than 28,000 agents, likely will also be negatively impacted by the results of
6 Move's actions, and Trulia's goodwill and reputation with them (and with its business partners)
7 will be harmed. These brokers and agents may similarly turn away from Trulia's business
8 partners.

9 30. The ongoing harm that Move's improper termination of the Agreement likely will
10 cause to Trulia's business, goodwill, and reputation can be abated only by if Move is prevented
11 from terminating Trulia's data feeds and abides, through at least June 19, 2016, by all other terms
12 and conditions of the Agreement.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed this 19th day of February 2015, at San Francisco, California.

16
17
18 
19
20
21
22
23
24
25
26

Paul Levine

EXHIBIT B

1 Charles H. Samel, Bar No. 182019
CSamel@perkinscoie.com
2 PERKINS COIE LLP
1888 Century Park E., Suite 1700
3 Los Angeles, CA 90067-1721
Telephone: 310.788.9900
4 Facsimile: 310.788.3399

5 Susan E. Foster (Pro Hac Vice Application Pending)
WSBA Bar No. 18030
6 SFoster@perkinscoie.com
PERKINS COIE LLP
7 1201 Third Avenue, Suite 4800
Seattle, WA 98199
8 Telephone: 206.359.8846
Facsimile: 206.359.9846

9 Attorneys for Plaintiff
10 Trulia, Inc.

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

14 TRULIA, INC.,
15
16 Plaintiff,
17 v.
18 MOVE SALES, INC.,
19 Defendant.

No. CGC-15-544255

DECLARATION OF CHARLES H. SAMEL
IN SUPPORT OF PLAINTIFF'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE PRELIMINARY
INJUNCTION

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

Hon. Ernest H. Goldsmith

Complaint filed: February 20, 2015
Trial Date: None

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, CHARLES H. SAMEL, full of age, declare as follows:

1. I am a Partner in the law firm of Perkins Coie LLP, and counsel to Plaintiff in this action, Trulia, Inc. (“Trulia”).

2. I make this declaration based on my own personal knowledge. I would testify competently to the facts set forth herein if called to do so at a hearing.

3. On February 20, 2015, at 9:00 a.m., I sent an email to Celeste Starchild, Vice-President and General Manager, ListHub, and to James S. Caulfield, Executive Vice-President, General Counsel, and Secretary of Move, Inc., stating that I represent Trulia, Inc. in an action filed against Move Sales, Inc., and that pursuant to California Rule of Court 3.1203, I was providing notice to Move Sales, Inc. that on Monday, February 23, 2015, at 11:00 a.m. in Department 302 of the Superior Court of California for San Francisco County, located at 400 McAllister Street, San Francisco, Trulia, Inc. will apply ex parte for a TRO enjoining Move Sales, Inc. from terminating Trulia’s feeds of listings data and all other licensed content, and ordering Move Sales, Inc. to abide by the terms and conditions of the Platform Services Agreement, dated June 19, 2012, pending a preliminary injunction hearing.

4. I asked Ms. Starchild and Mr. Caulfield to please confirm on behalf of Move Sales, Inc. that my notice had been received, and that if I did not receive confirmation by 9:30 a.m. today, I would follow up with a phone call. I also requested in my email that either or both please advise me whether Move Sales, Inc. intends to appear at the hearing and oppose Trulia’s application for a TRO, and who would be representing Move Sales, Inc. as counsel.

5. At 9:10 a.m. I learned that I had sent Mr. Caulfield’s email to an incorrect address. I resent the same email to the correct email address for Mr. Caulfield.

6. I did not receive a response to my email from either Ms. Starchild or Mr. Caulfield.

7. At 9:46 a.m., I telephoned Mr. Caulfield and we spoke. Mr. Caulfield indicated he had been a staff meeting and had not yet read my email, which he then did while we were on the phone. Mr. Caulfield then confirmed that he had received my email, and read it, and confirmed

1 that Move Sales, Inc. had received notice that Trulia will be appearing ex parte to request a
2 temporary restraining order at the time and place indicated in my email to him as set forth in
3 paragraph 3 above. In response to my question, Mr. Caulfield indicated that he had not yet
4 retained counsel to represent Move Sales, Inc. in this matter. Mr. Caulfield also agreed I did not
5 need to follow up my email with a phone call to Ms. Starchild because he was the right person to
6 contact.

7 8. Mr. Caulfield requested a courtesy of the Complaint, which I said I would email to
8 him as soon as I had a conformed copy. Mr. Caulfield also asked when we would be providing a
9 copy of Trulia's application for a TRO, and I said I expected to send him a copy before the close
10 of business today.

11 9. At 10:44 a.m., I received an email from Brent Caslin, of Jenner & Block's Los
12 Angeles office. Mr. Caslin indicated that he and his colleagues Richard Stone and Amy Gallegos
13 will be representing Move Sales, Inc. in this action. Mr. Caslin's email indicated that he had
14 received the email that I sent to Mr. Caulfield providing notice of the hearing on Monday,
15 February 23, 2015, referred to above in paragraphs 3, 4, and 5. Mr. Caslin requested a courtesy
16 copy of the Complaint, which I emailed to him.

17 10. On February 20, 2015, I caused to be served by personal service on Move Sales,
18 Inc.'s legal representative for service of process true and correct copies of Plaintiff's Complaint,
19 and by email and overnight mail to Mr. Caslin true and correct copies of Plaintiff's (1)
20 Complaint, and (2) Application for Temporary Restraining Order, and all supporting exhibits.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 20th day of February 2015, at Los Angeles, California.

24 

25 Charles H. Samel
26