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15 APR 13 AM 9:00

KING COUNTY
SUPERIOR COURT CLERK
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CASE NUMBER: 14-2-07669-0 SEA

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THE HONORABLE JOHN CHUN
Noted For Consideration: April 21, 2015
[MOTION TO SHORTEN TIME PENDING]

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

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

Defendants.

No. 14-2-07669-0 SEA

**ZILLOW'S MOTION TO SEAL THE
DECLARATION OF DAVID SINGER
FILED BY PLAINTIFFS ON APRIL 10,
2015**

ZILLOW'S MOTION TO SEAL SINGER
DECLARATION

56920-0025/LEGAL125638816.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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I. RELIEF REQUESTED

Zillow requests that the Court seal Exhibit A to the Declaration of David R. Singer in Support of Plaintiffs’ Notice of Supplemental Support for: (1) Motion to Revise the Special Master’s Order Quashing Key Portions of the Documents Subpoena to Trulia and (2) Motion to Revise the Special Master’s Order re Subpoenas to Goldman Sachs and J.P. Morgan (“Singer Declaration” and “Supplemental Motion”). Exhibit A is a letter sent to Plaintiffs by a bitter, terminated employee who had confidentiality obligations to Zillow. Sent as an anonymous letter, it is full of gross mischaracterizations and false and misleading statements about Zillow’s operations; the writer did not have a full understanding of Zillow’s technical operations and either intentionally or mistakenly misrepresented them. Regardless, the document seeks to reveal Zillow’s highly confidential and proprietary information. Despite Zillow’s request to seal the document, Plaintiffs have refused. Zillow does not seek to seal the Supplemental Motion itself, which contains allegations of misconduct, but does request that the Court order that Exhibit A to the Singer Declaration filed on April 10, 2015, be sealed immediately and that a redacted version, redacting the three full paragraphs on the second page of Exhibit A and the personal contact information on the first page, be filed in the public record instead.

II. FACTS

Plaintiff Move, Inc. (“Move”) and Zillow are direct competitors in the online real estate market. Both parties and their respective counsel are aware of and have acknowledged in the course of this litigation the need to zealously protect confidential information. For this reason there is a detailed multi-layered protective order in place to ensure that the confidentiality of such information is maintained, including by filing it under seal. *See No. 328A ¶¶ 3, 7* (Second Amended Protective Order requiring that each party “will mark as

1 ‘CONFIDENTIAL,’ ‘ATTORNEYS’ EYES ONLY,’ or ‘OUTSIDE COUNSEL EYES
2 ONLY’ another party’s materials containing trade secret information” or “information
3 protected by a written non-disclosure or confidentiality agreement.)” Both parties have filed
4 such materials under seal.
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9 Exhibit A to the Singer Declaration is an anonymous letter apparently written by a
10 Zillow employee. It contains many inaccuracies and false statements, but it also discusses
11 various proprietary systems and business information of Zillow that are highly sensitive and
12 qualify as Zillow’s trade secrets. Notably, this information was not publicly known prior to
13 Plaintiffs’ failure to file it under seal. Public disclosure of this information will cause
14 significant competitive harm to Zillow. (See Coningsby Decl. ¶¶ 3-6.)
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21 The programs described in the third to last paragraph reveal Zillow’s strategies and
22 efforts to ensure quality listing data on its website. The details of how it does so, even
23 though inaccurately stated in the letter, have been kept highly confidential by Zillow because
24 they would enable competitors to compete more effectively against Zillow. Indeed, some of
25 the specific programs mentioned are known to little more than a handful of individuals within
26 Zillow. (Coningsby Decl. ¶¶ 3-4.)
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33 Similarly, the information about Zillow’s sales strategies in the penultimate
34 paragraph, though again containing inaccuracies, is similarly highly confidential information
35 of Zillow that, if publicly known, could have a significant impact on Zillow’s sales efforts
36 and ability to compete. (*Id.* ¶ 5.)
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41 The last paragraph of the letter contains information about Zillow’s strategy to
42 compete with Move. Once again, it is not fully accurate and is highly misleading, but the
43 information revealed is highly sensitive information of Zillow’s regarding current efforts that
44 are directly related to Zillow’s confidential strategy to compete with Move. (*Id.* ¶ 6.)
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1 Making matters worse, Exhibit A also contains the personal e-mail and telephone
2 number for a former Zillow employee, Jessica Manni. By filing Exhibit A in the public
3 record, unredacted, Plaintiffs have inexcusably failed to protect the private, personal
4 information of a third party.
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8 After discovering that Plaintiffs' counsel had publicly filed the Singer Declaration,
9 including Exhibit A, Zillow's counsel contacted Plaintiffs' counsel to advise them that it
10 should have been submitted under seal and to request their agreement to a stipulation to file
11 the Singer Declaration under seal immediately. Zillow circulated a stipulation to the parties
12 but Plaintiffs' counsel refused to agree. Over the course of more than two hours—when time
13 was of the essence to remove a document that Plaintiffs intentionally put in the public
14 domain—Plaintiffs would not stipulate and instead asked Zillow to identify both the
15 inaccuracies and the proposed redactions. (Declaration of Susan E. Foster, Ex. 1.)
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18 Plaintiffs' refusal to agree to file under seal was at best disingenuous. The issue that
19 needed immediate resolution was that the entire Singer Declaration, *which was already in the*
20 *record*, needed to be sealed immediately. A redacted copy would have to be filed separately
21 with the Court anyway, so there was plenty of time to figure out redactions in a thoughtful
22 manner afterwards. While Plaintiffs delayed their agreement, 4:30 p.m. passed and Zillow
23 lost an opportunity to have the Singer Declaration removed from the public record
24 immediately. *See id.* Fortunately, it is not yet available on the Court's electronic filing
25 system but time is of the essence to ensure that the confidential information contained in
26 Exhibit A is removed from the public record.¹ Zillow's counsel advised Plaintiffs' counsel
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¹ Given the publicity surrounding this lawsuit, essentially every filing has the potential to generate attention, and this one was no different. Media sources have already reported on Friday's filing, but not because it appeared on the Court's docket. Instead, Plaintiffs themselves almost certainly sent the filings to the media to preempt Zillow's attempts to seal its trade secret information.

1 that Zillow would move to seal the Singer Declaration, and that Zillow ask the Court to
2 consider this request on an expedited basis. Declaration of Mary Gaston in Support of
3 Zillow’s Motion to Seal Singer Declaration, Ex. 1.
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7 **III. ISSUE**
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9 Whether the Court should seal the Declaration of David R. Singer in Support of
10 Plaintiffs’ Notice of Supplemental Support for: (1) Motion to Revise the Special Master’s
11 Order Quashing Key Portions of the Documents Subpoena to Trulia and (2) Motion to Revise
12 the Special Master’s Order re Subpoenas to Goldman Sachs and J.P. Morgan and the exhibit
13 attached thereto filed on April 10, 2015.
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17 **IV. EVIDENCE RELIED UPON**
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19 In support of this motion, Zillow relies upon GR 15, the Second Amended Protective
20 Order, the Declaration of Erin Coningsby, the Declaration of Susan Foster, and the files and
21 records herein.
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25 **V. LEGAL ARGUMENT**
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27 **A. GR 15 Permits the Court to Seal Confidential Documents.**
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29 Pursuant to GR 15, a court has discretion to seal files and records. *See, e.g., Woo v.*
30 *Fireman’s Fund Ins. Co.*, 137 Wn. App. 480, 486-87 (2007), *reversed in part on other*
31 *grounds* by 161 Wn.2d 43 (2008). GR 15 sets forth the “uniform procedure for
32 the . . . sealing . . . of court records.” GR 15(a). “Court records” include “[a]ny document,
33 information, exhibit, or other thing that is maintained by a court in connection with a judicial
34 proceeding.” GR 31(c)(4); GR 15(b)(2). Thus, GR 15 controls the analysis of whether a
35 particular court record should be sealed regardless of when and under what circumstances the
36 document entered the court record.
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39 Sealing of records is appropriate “if the court makes and enters written findings that
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1 the specific sealing or redaction is justified by identified compelling privacy or safety
2 concerns that outweigh the public interest in access to the court record.” GR 15(c)(2).
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4 “Sufficient privacy or safety concerns that may be weighed against the public interest”
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6 include, *inter alia*, findings that the sealing or redaction furthers a compelling circumstance.
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8 *Id.*
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11 Courts nationwide subscribe to the view that confidential records can be sealed where
12 there is a compelling interest to do so. For example, in *Rufer v. Abbott Labs*, 154 Wn.2d 530
13 (2005), and *Dreiling v. Jain*, 151 Wn.2d 900, 913-15 (2004), the Washington Supreme Court
14 ruled that court records may be sealed if there is “a compelling interest which overrides the
15 public’s right to the open administration of justice” in maintaining the confidentiality of the
16 document. *Rufer*, 154 Wn.2d at 549; *cf.* GR 15(c)(2); *see also* CR 26(c) (allowing entry of a
17 protective order stating that “a trade secret or other confidential research, development, or
18 commercial information not be disclosed or be disclosed only in a designated way”).
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22 Courts have long held that protection of a company’s trade secrets and confidential
23 company information can serve as a compelling interest justifying the sealing of court
24 documents and records. *See Metavante Corp. v. Emigrant Sav. Bank*, 2008 WL 4722336, at
25 *10 (E.D. Wis. Oct. 24, 2008) (granting motion to seal “nonpublic financial and business
26 information, including pricing, business plans and strategies”); *Network Appliance, Inc. v.*
27 *Sun Microsystems Inc.*, 2010 WL 841274, at *3-5 (N.D. Cal. Mar. 10, 2010) (finding
28 compelling interest to seal documents discussing company’s “detailed business and
29 marketing information” and “future business plans” that outweighed public interest in access
30 to court record); *In re Zyprexa Prods. Liability Litig.*, 2009 WL 791540, at *2 (E.D.N.Y.
31 Mar. 23, 2009) (sealing documents because disclosure of “marketing strategies . . . would
32 cause competitive harm to Lilly in its current business”); *Joint Stock Soc. v. UDV N. Am.*,

1 *Inc.*, 104 F. Supp. 2d 390, 408-09 (D. Del. 2000) (affirming special master order sealing
2 “strategic plans, and marketing information” and recognizing that “[t]he competitive harm to
3 the defendants [from public disclosure] is obvious” because “[o]nce competing
4 firms . . . obtained this information, they could incorporate it into their own strategic plans
5 and, thus, better position their products in the marketplace to the defendants’ detriment”);
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11 **B. The Singer Declaration Should Be Filed Under Seal Because It Contains Highly**
12 **Confidential Information of Zillow.**

13 The Court should grant this motion and enter an immediate order sealing the Singer
14 Declaration with Exhibit A pursuant to the standard set forth in GR 15, *Rufer*, and *Dreiling*,
15 for several reasons. First, as in the cases cited above, and despite the fact that it also contains
16 false and misleading information, Exhibit A contains and references confidential information
17 about Zillow’s sensitive business practices and plans. (*See Coningsby Decl.* ¶ 3-6.) Zillow
18 treats this business information as highly confidential and the information is disclosed only
19 on a limited, need-to-know basis. It is strategically important to Zillow’s ability to compete
20 in the marketplace. (*Id.*) Zillow took immediate steps to try to maintain the confidentiality
21 of the confidential information in the letter as soon as it learned it had been publicly filed.
22 (Foster Decl., Ex. 1.) Second, disclosing this information would cause Zillow significant
23 harm. (*See Coningsby Decl.* ¶ 3-6.))
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33 Under GR 15(c)(2), a sufficient “compelling privacy or safety concern” that
34 outweighs the public interest in access to the court record warrants the sealing of particular
35 documents. Although also riddled with inaccuracies, Exhibit A to the Singer Declaration
36 contains sufficiently confidential and sensitive information that Zillow’s interest in
37 maintaining its confidentiality, and avoiding the competitive harm from its disclosure,
38 outweighs the public interest in access to this document. Disclosing this information would
39 give the public—including the parties’ competitors—access to their proprietary information,
40 thereby placing Zillow at a competitive disadvantage. As outlined above, this is the sort of
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1 proprietary and confidential business information that courts regularly allow to be filed under
2 seal.
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4 Further, the public interest in the contents of the letter is adequately protected here
5 because Zillow seeks only to redact the personal contact information in paragraph one and
6 the three full paragraphs on the second page of Exhibit A. Zillow's request is thus narrowly
7 tailored to protecting the information that is truly competitively sensitive while making the
8 majority of the document available to the public. The public interest is further protected
9 because Plaintiffs can always move the Court if it disagrees with the redaction. In addition,
10 Zillow is not seeking to seal the Supplemental Motion which contains allegations of
11 misconduct. Since Zillow is asking for limited relief and because the privacy interests of
12 Zillow in its confidential business information outweigh the public's interest in accessing this
13 information, Zillow's motion should be granted.
14

15 Notably, Plaintiffs are aware that Zillow employees are subject to nondisclosure and
16 confidentiality agreements and that Exhibit A contains proprietary information of Zillow.
17 They had an obligation to designate it as Confidential Information under the Second
18 Amended Protective Order and move to file it under seal in the first instance. Dkt No. 328A,
19 ¶¶ 3, 17. In sum, publishing this confidential information of Zillow subjects Zillow to
20 unnecessary and significant harm, while serving no countervailing public interest in
21 transparency. The balancing test of GR 15 favors sealing these documents.
22

23 VI. CONCLUSION

24 Accordingly, Zillow respectfully requests that the Court file the Declaration of David
25 R. Singer in Support of Plaintiffs' Notice of Supplemental Support for: (1) Motion to revise
26 the Special Master's Order Quashing Key Portions of the Documents Subpoena to Trulia and
27 (2) Motion to Revise the Special Master's Order re Subpoenas to Goldman Sachs and J.P.
28 Morgan and the exhibit attached thereto filed on April 10, 2015 under seal.
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DATED: April 13, 2015

/s/Susan E. Foster

Susan E. Foster, WSBA No. 18030
SFoster@perkinscoie.com
Kathleen M. O’Sullivan, WSBA No. 27850
KOSullivan@perkinscoie.com
David J. Burman, WSBA No. 10611
DBurman@perkinscoie.com
Judith B. Jennison, WSBA No. 36463
JJennison@perkinscoie.com
Mary P. Gaston, WSBA No. 27258
MGaston@perkinscoie.com
Katherine G. Galipeau, WSBA No. 40812
KGalipeau@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Defendant
Zillow, Inc.

CERTIFICATE OF SERVICE

On April 13, 2015, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document: **ZILLOW’S MOTION TO SEAL THE DECLARATION OF DAVID SINGER FILED BY PLAINTIFFS ON APRIL 10, 2015**

<p>Jack M. Lovejoy, WSBA No. 36962 Lawrence R. Cock, WSBA No. 20326 Cable, Langenbach, Kinerk & Bauer, LLP Suite 3500, 1000 Second Avenue Building Seattle, WA 98104-1048 Telephone: (206) 292-8800 Facsimile: (206) 292-0494</p> <p>jlovejoy@cablelang.com LRC@cablelang.com kalbritton@cablelang.com jpetersen@cablelang.com</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>
<p>Clemens H. Barnes, Esq., WSBA No. 4905 Esteria Gordon, WSBA No. 12655 K. Michael Fandel, WSBA No. 16281 Miller Nash Graham & Dunn LLP Pier 70 2801 Alaskan Way, Suite 300 Seattle, WA 98121-1128 Telephone: (206) 624-8300 Facsimile: (206) 340-9599</p> <p>clemens.barnes@millernash.com connie.hays@millernash.com estera.gordon@millernash.com michael.fandel@millernash.com robert.mittenthal@millernash.com</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>

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<p>Brent Caslin, WSBA No. 36145 Richard Lee Stone , (<i>Pro Hac Vice</i>) Nick G. Saros, (<i>Pro Hac Vice</i>) Jennifer Wagman Njathi, (<i>Pro Hac Vice</i>) Ethan A. Glickstein, (<i>Pro Hac Vice</i>) Jeffrey A. Atteberry, (<i>Pro Hac Vice</i>) Jenner & Block LLP 633 West 5th Street, Suite 3600 Los Angeles, CA 90071 Telephone: (213) 239-5150</p> <p>bcaslin@jenner.com rstone@jenner.com nsaros@jenner.com JNjathi@jenner.com eglickstein@jenner.com jatteberry@jenner.com dsinger@jenner.com drozansky@jenner.com avanhoesen@jenner.com</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>
<p>James P. Savitt, WSBA No. 16847 Duffy Graham, WSBA No. 33103 Ryan Solomon, WSBA No. 43630 Savitt Bruce & Willey LLP Joshua Green Building 1425 Fourth Avenue, Suite 800 Seattle, WA 98101-2272</p> <p>jsavitt@sbwllp.com dgraham@sbwllp.com rsolomon@sbwllp.com clein@sbwllp.com</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of April, 2015.

s/ Vicki Lynn Babani

Vicki Lynn Babani, Legal Secretary

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THE HONORABLE JOHN CHUN
Noted For Consideration: April 21, 2015
[MOTION TO SHORTEN TIME PENDING]

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

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

Defendants.

No. 14-2-07669-0

**[PROPOSED] ORDER GRANTING
ZILLOW'S MOTION TO SEAL THE
DECLARATION OF DAVID SINGER
FILED BY PLAINTIFFS ON APRIL 10,
2015**

**[PROPOSED] ORDER GRANTING
ZILLOW'S MOTION TO SEAL – 1**

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4 THIS MATTER came before the Court on Zillow, Inc.'s Motion to Seal the
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6 Declaration of David Singer Filed by Plaintiffs on April 10, 2015. The Court considered the
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8 motion, Plaintiffs' response to the motion, if any, and the reply to the motion, if any,
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10 together with the pleadings and records in this matter.

11
12 The Court has discretion to seal files and records pursuant to GR 15. *See Woo v.*
13
14 *Fireman's Fund Ins. Co.*, 137 Wn. App. 480, 486-87 (2007), *reversed in part on other*
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16 *grounds*, 161 Wn.2d 43 (2008). Sealing of records is appropriate "if the court makes and
17
18 enters written findings that the specific sealing or redaction is justified by identified
19
20 compelling privacy or safety concerns that outweigh the public interest in access to the court
21
22 record." GR 15(c)(2); *see also Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30 (1982).
23
24 "Sufficient privacy or safety concerns that may be weighed against the public interest"
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26 include, *inter alia*, findings that the sealing or redactions furthers a compelling
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28 circumstance. *Id.*

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30 Being duly advised, the Court FINDS, for the reasons stated below, that there is a
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32 compelling interest to seal specific portions of the court record that outweighs the public
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34 interest in access to those records:

35
36 1. Exhibit A to the Declaration of David R. Singer in Support of Plaintiffs'
37
38 Notice of Supplemental Support for: (1) Motion to revise the Special Master's Order
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40 Quashing Key Portions of the Documents Subpoena to Trulia and (2) Motion to Revise the
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42 Special Master's Order re Subpoenas to Goldman Sachs and J.P. Morgan ("Singer Decl.")
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44 contains highly confidential, trade secret information regarding the proprietary systems that
45
46 Zillow uses. Public disclosure of this information could cause substantial harm to Zillow.
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[PROPOSED] ORDER GRANTING
ZILLOW'S MOTION TO SEAL – 2

56920-0025/LEGAL125639058.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 Specifically, the third to last paragraph of Exhibit A reveal Zillow's confidential strategies
2 to ensure quality listing data on its website; the penultimate paragraph contains confidential
3 information about Zillow's sales strategies; and the last paragraph contains information
4 about Zillow's strategy to compete with Move, Inc. Additionally, Exhibit A contains the
5 personal contact information of a former Zillow employee.
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11 2. The Court finds, under GR 15, that Zillow has a compelling interest in
12 maintaining the confidentiality of Exhibit A to the Singer Declaration, which references and
13 discusses sensitive business information.
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17 3. As this document was already filed publicly with the Court on April 10,
18 2015, the entire Singer Declaration must be sealed in order to protect Zillow's confidential
19 information. The Court finds that sealing the Singer Declaration, followed by the separate
20 filing of a redacted version, is the least restrictive means available to protect the interests at
21 stake and that the public's interest in disclosure is not greater than the parties' interests in
22 maintaining the confidentiality of these materials.
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29 **THEREFORE IT IS ORDERED:**

30
31 1. Zillow, Inc.'s Motion to Seal the Declaration of David Singer Filed by
32 Plaintiffs on April 10, 2015 is GRANTED; and
33

34
35 2. The Clerk shall file under seal the Declaration of David R. Singer in Support
36 of Plaintiffs' Notice of Supplemental Support for: (1) Motion to revise the Special Master's
37 Order Quashing Key Portions of the Documents Subpoena to Trulia and (2) Motion to
38 Revise the Special Master's Order re Subpoenas to Goldman Sachs and J.P. Morgan and the
39 exhibit thereto, which were electronically filed not under seal on April 10, 2015.
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44 3. Within two business days of this order, Zillow shall provide to Plaintiffs a
45 redacted copy of Exhibit A to the Singer Declaration, redacting the three full paragraphs on
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1 the second page and the personal contact information for Jessica Manni. Plaintiffs shall then
2
3 file a copy of the Singer Declaration with the redacted Exhibit A in the public record.
4

5
6 ENTERED this _____ day of _____, 2015.
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12 _____
13 HONORABLE JOHN CHUN
14

15 _____
16 Presented by:

17 **PERKINS COIE LLP**

18 By s/ Susan Foster

19 Susan E. Foster, WSBA No. 18030

20 SFoster@perkinscoie.com

21 Kathleen M. O'Sullivan, WSBA No. 27850

22 KOSullivan@perkinscoie.com

23 David J. Burman, WSBA No. 10611

24 DBurman@perkinscoie.com

25 Judith B. Jennison, WSBA No. 36463

26 JJennison@perkinscoie.com

27 Mary P. Gaston, WSBA No. 27258

28 MGaston@perkinscoie.com

29 Katherine G. Galipeau, WSBA No. 40812

30 KGalipeau@perkinscoie.com

31 **Perkins Coie LLP**

32 1201 Third Avenue, Suite 4900

33 Seattle, WA 98101-3099

34 Telephone: 206.359.8000

35 Facsimile: 206.359.9000
36
37

38 Attorneys for Defendant Zillow, Inc.
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[PROPOSED] ORDER GRANTING
ZILLOW'S MOTION TO SEAL – 4

56920-0025/LEGAL125639058.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

CERTIFICATE OF SERVICE

On April 13, 2015, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document: [PROPOSED] ORDER GRANTING ZILLOW’S MOTION TO SEAL THE DECLARATION OF DAVID SINGER FILED BY PLAINTIFFS ON APRIL 10, 2015.

Jack M. Lovejoy, WSBA No. 36962 Via Hand Delivery
Lawrence R. Cock, WSBA No. 20326 Via U.S. Mail, 1st Class, Postage
Cable, Langenbach, Kinerk & Bauer, Prepaid
LLP Via Overnight Delivery
Suite 3500, 1000 Second Avenue Via Facsimile
Building Via E-filing
Seattle, WA 98104-1048 Via E-mail
Telephone: (206) 292-8800
Facsimile: (206) 292-0494

jlovejoy@cablelang.com
LRC@cablelang.com
kalbritton@cablelang.com
jpetersen@cablelang.com

Clemens H. Barnes, Esq., WSBA No. Via Hand Delivery
4905 Via U.S. Mail, 1st Class, Postage
Estera Gordon, WSBA No. 12655 Prepaid
K. Michael Fandel, WSBA No. 16281 Via Overnight Delivery
Miller Nash Graham & Dunn LLP Via Facsimile
Pier 70 Via E-filing
2801 Alaskan Way, Suite 300 Via E-mail
Seattle, WA 98121-1128
Telephone: (206) 624-8300
Facsimile: (206) 340-9599

clemens.barnes@millernash.com
connie.hays@millernash.com
estera.gordon@millernash.com
michael.fandel@millernash.com
robert.mittenthal@millernash.com

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Brent Caslin, WSBA No. 36145 Via Hand Delivery
Richard Lee Stone , (*Pro Hac Vice*) Via U.S. Mail, 1st Class, Postage
Nick G. Saros, (*Pro Hac Vice*) Prepaid
Jennifer Wagman Njathi, (*Pro Hac Vice*) Via Overnight Delivery
Ethan A. Glickstein, (*Pro Hac Vice*) Via Facsimile
Jeffrey A. Atteberry, (*Pro Hac Vice*) Via E-filing
Jenner & Block LLP Via E-mail
633 West 5th Street, Suite 3600
Los Angeles, CA 90071
Telephone: (213) 239-5150

bcaslin@jenner.com
rstone@jenner.com
nsaros@jenner.com
JNjathi@jenner.com
eglickstein@jenner.com
jatteberry@jenner.com
dsinger@jenner.com
drozansky@jenner.com
avanhoesen@jenner.com

James P. Savitt, WSBA No. 16847 Via Hand Delivery
Duffy Graham, WSBA No. 33103 Via U.S. Mail, 1st Class, Postage
Ryan Solomon, WSBA No. 43630 Prepaid
Savitt Bruce & Willey LLP Via Overnight Delivery
Joshua Green Building Via Facsimile
1425 Fourth Avenue, Suite 800 Via E-filing
Seattle, WA 98101-2272 Via E-mail

jsavitt@sbwllp.com
dgraham@sbwllp.com
rsolomon@sbwllp.com
clein@sbwllp.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of April, 2015.

s/ Vicki Lynn Babani
Vicki Lynn Babani, Legal Secretary