

HONORABLE JOHN CHUN
Noted for Hearing: April 20, 2015
Oral Argument Requested at a Time
to be Determined By the Court

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

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

Plaintiffs,

vs.

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

Defendants.

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL SUPPORT FOR:**

- (1) MOTION TO REVISE THE
SPECIAL MASTER'S ORDER
QUASHING KEY PORTIONS OF
THE DOCUMENT SUBPOENA TO
TRULIA, AND**
- (2) MOTION TO REVISE THE
SPECIAL MASTER'S ORDER RE
SUBPOENAS TO GOLDMAN
SACHS AND J.P.MORGAN**

1 The plaintiffs submit the following supplemental support to their (1) Motion to Revise
2 the Special Master’s Order Quashing Key Portions of the Document Subpoena to Trulia, and (2)
3 Motion to Revise the Special Master’s Order re Subpoenas to Goldman Sachs and J.P. Morgan
4 (the “Motions”), which were filed on April 6, 2015. The plaintiffs bring this supplemental
5 support to the attention of the Court now because only yesterday, April 9, 2015, the plaintiffs
6 received a letter from a whistleblower at Zillow. Pursuant to Local Rule 7(b)(4)(G), the
7 plaintiffs respectfully request that the following supplemental support be considered in support
8 of their motions to revise because the information contained herein did not come to the plaintiffs’
9 attention until three days after the motions were filed.

9 **BACKGROUND AND ARGUMENT**

10 **A. Plaintiffs’ Counsel Receives a Letter from a Whistleblower**

11 Yesterday afternoon, the plaintiffs received an anonymous letter that appears to have
12 been written by a Zillow employee concerned about his or her colleagues’ unlawful conduct.
13 Declaration of David Singer (“Singer Decl.”), Ex. A. The two-page letter confirms the
14 defendants stole multiple documents and entire databases, are using the stolen information, and
15 are hiding evidence on non-Zillow electronic services. The plaintiffs have complained for
16 months that the defendants are systematically hiding evidence in secret non-Zillow email
17 accounts and file-sharing services. The defendants have denied the claims, deriding them as
18 “silly” conspiracy theories and claim they have produced everything. The whistleblower’s letter
19 appears to confirm, however, the plaintiffs’ worst fears. The whistleblower identifies specific
20 individuals, specific documents, and specific locations to search for evidence of the defendants’
21 unlawful conduct.

22 The anonymous letter appears to have been written by a whistleblower at Zillow with
23 knowledge of its internal practices as well as the behavior of its CEO and other high-level
executives. The letter thoroughly confirms several points that the plaintiffs have maintained for
months, including the defendants’ brazen violations of the Court’s Preliminary Injunction.

1 Discussing Mr. Samuelson, the author writes: “Was he working while on injunction? yes,
2 absolutely.” Ex. A. at 1. “Was he careful so you couldn’t catch him, yes, absolutely.” *Id.* The
3 letter goes on to outline several sources of evidence and potential witnesses who could
4 corroborate the writer’s conclusions. *Id.*

5 The writer also explains that the other individual defendant, Curt Beardsley, “has copies
6 of Move’s private MLS contact database, listing count database and other databases stolen from
7 Move.” *Id.* Mr. Beardsley “uses a google docs account to keep them off of his work computer.
8 He has accessed it from work and Many other employees have witnessed him using this database
9 and he is using it to benefit Zillow’s efforts as Zillow’s database is inferior. Employee Will
10 Hebbard works on this and has seen Curt using it. Will is the keeper of Zillow’s database which
11 is now supplemented by the data Curt stole from Move.” *Id.* at 1-2. This statement – which is
12 entirely consistent with the plaintiffs’ assertions in this case – reveals profoundly unlawful
13 conduct. It is a worst-case scenario for the plaintiffs, who have for more than a year feared that
14 the defendants stole key information for Zillow. It appears the information, including entire
15 databases, were indeed stolen and are still being used by the defendants and stored in a Google
16 docs application that is being used “for work” at Zillow. *Id.* at 2.

15 **B. The Whistleblower Letter Confirms the Need for Third-Party Discovery**

16 The whistleblower letter is further evidence that the defendants have been systematically
17 engaged in an ongoing misappropriation of Move’s trade secret information. The letter also
18 supports the inference that the defendants continue to hide evidence from the plaintiffs and this
19 Court about their unlawful activities. The details in the letter concerning the use of Google Docs
20 to store and use Move’s own databases reveals the lengths to which the defendants will go to
21 conceal their illegal activities. Indeed, the plaintiffs are very concerned about the real possibility
22 that the whistleblower letter will result in yet more spoliation of evidence and have sought an
23 emergency preservation order from the Special Master. This is not an ordinary case with
ordinary defendants. After all, the Court has already held they destroyed evidence and experts

1 have confirmed their evidence destruction. *See* Caslin Decl. ISO Pls. 4-6-15 Mot. for Entry of a
2 New Discovery Plan, Ex. 9 at 8.

3 Under such circumstances, discovery from third-parties is critical. The defendants
4 simply cannot be trusted to be the sole source of evidence in this case regarding their conduct.
5 Nor should the defendants be permitted to limit the scope of discovery sought by the plaintiffs
6 from third parties. Unfortunately, third parties may prove to be the only reliable sources of
7 discovery available to the plaintiffs regarding the defendants' misconduct. The whistleblower
8 letter further supports the plaintiffs' argument that their third-party subpoenas are appropriate
9 and that the Special Master's Order should be revised so necessary third-party discovery can take
10 place.

11 DATED April 10, 2015, in Seattle, Washington.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on April 10, 2015, I electronically filed the foregoing with the Clerk
3 of the Court using the Court's CM/ECF System which will send notification of such filing to the
4 following individuals registered to receive electronic notices by email transmission at the email
5 addresses provided thereto.

6 **CM/ECF Participants:**

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13 I further certify that I served a copy of the foregoing to the following non-registered
14 CM/ECF attorneys via electronic mail:

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

DATED at Seattle, Washington on April 10, 2015.

/s/ Janet Petersen
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