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HONORABLE SEAN P. O' DONNELL
KING COUNTY
Noted for consideration: June 5, 2015
SUPERIOR COURT CLERK

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CASE NUMBER: 14-2-07669-0 SEA

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

MOVE, INC., et al.,

Plaintiffs,

v.

ZILLOW, INC. et al.,

Defendants.

No. 14-2-07669-0

MOTION FOR AN ORDER
PERMITTING LIMITED
INTERVENTION BY ALLIED DAILY
NEWSPAPERS OF WASHINGTON,
WASHINGTON STATE
ASSOCIATION OF BROADCASTERS,
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND
WASHINGTON NEWSPAPER
PUBLISHERS ASSOCIATION

I. INTRODUCTION AND RELIEF REQUESTED

Allied Daily Newspapers of Washington, Washington State Association of Broadcasters, Reporters Committee for Freedom of the Press and Washington Newspaper Publishers Association seek to intervene in this case for the limited purpose of unsealing whistleblower allegations. Portions of the Crocker Letter, described by plaintiffs as whistleblowing by a former Zillow vice president, were sealed without participation by representatives of the media or general public. Under GR 15(e) and Washington case law, third parties may intervene at any time for the purpose of bringing a motion to unseal. In order to further the purposes of Article 1, Section 10 of the Washington Constitution, requiring open administration of justice so as to foster public understanding and trust in

1 our system of justice, this Court should permit media intervention to determine if
2 continued sealing is justified.

3 II. FACTS

4 Allied Daily Newspapers of Washington (“Allied”) is a statewide trade association
5 representing 25 daily newspapers in Washington. Its members regularly use court records
6 to report on matters of public interest. Allied is an independent, nonpartisan organization
7 dedicated to promoting open government, including open courts. Allied regularly
8 participates as amicus curiae in cases affecting public access to court records. *See, e.g.,*
9 *Hundtofte v. Encarnacion*, 181 Wn.2d 1 (2014); *State v. Chen*, 178 Wn.2d 350 (2013);
10 *State v. Richardson*, 177 Wn.2d 351 (2013).
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13 The Washington State Association of Broadcasters (WSAB) is a statewide trade
14 association representing approximately 250 local radio and television stations serving
15 communities through the state of Washington. Many of the Association’s members are
16 involved in news gathering and reporting, including investigative reporting. The
17 Association regularly joins amicus briefs and other pleadings on behalf of the news
18 departments of the Association’s member stations to assist them in bringing to their
19 viewers and listeners news of significant public importance. *See* Declaration of Katherine
20 George, Exhibit 1 (WSAB mission and board members).
21

22 The Reporters Committee for Freedom of the Press is a voluntary, unincorporated
23 association of reporters and editors that works to defend the First Amendment rights and
24 freedom of information interests of the news media. Based in Washington, D.C., the
25 Reporters Committee has provided representation, guidance and research to thousands of
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1 journalists around the country since 1970. *See* George Dec., Exhibit 2 (mission and
2 history).

3 The Washington Newspaper Publishers Association (WNPA) is a trade association
4 representing 130 weekly community newspapers throughout Washington. It actively
5 advocates for public access to government records, including court records. *See* George
6 Dec., Exhibit 3 (“About WNPA”).

7
8 On April 15, 2015, this Court issued an Order Granting in Part and Denying in Part
9 Zillow’s Motion to Seal, stating that portions of the Crocker Letter are trade secrets and
10 sealing those portions. Docket 71. On May 12, 2015, this Court issued an Order Re:
11 Crocker Letter granting the Plaintiffs’ motion to unseal the sealed portions of the Crocker
12 Letter only as to Sentence 8 and denying the motion as to all other portions. Docket 144.

13
14 On May 19, 2015, Special Master Bruce Hilyer issued a Revised Order Granting
15 Defendant Zillow Inc.’s Motion to Compel Compliance With The Second Amended
16 Protective Order. George Dec., Exhibit 4. That order requires the Plaintiffs to notify the
17 Defendants of the “known and identifiable recipients of the Crocker Letter,” inform those
18 persons of the protective order, “take all reasonable steps to obtain the return or removal of
19 such information” from recipients, and “make every reasonable effort to prevent further
20 disclosure.” *Id.*

21
22 This case has attracted media attention. George Dec., Exhibit 5 (examples of press
23 coverage). The Special Master’s May 19, 2015 order appears designed in part to prevent
24 the media from reporting whistleblower allegations which, if made public, would
25 illuminate the issues in the case and help the public understand this Court’s decisions.
26
27 George Dec., Exhibit 4.

1 III. ARGUMENT

2 A. Washington Courts Allow Media Entities to Intervene For Unsealing Purposes.

3 It is well recognized that news organizations have standing to intervene as third
4 parties for purposes of bringing motions to unseal. *See, e.g., Dreiling v. Jain*, 151 Wn.2d
5 900, 918 (2004) (holding that the Seattle Times was entitled to a constitutional
6 presumption of openness when moving as a third-party intervener to unseal records in a
7 shareholder derivative suit); *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775,
8 801 (2011) (holding that limited intervention by a newspaper was a proper procedure for
9 seeking to unseal records in a criminal case). In Washington, public access to court
10 records such as the Crocker Letter is a constitutional right. Article 1, Section 10 (“Justice
11 in all cases shall be administered openly”); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37
12 640 P.2d 716 (1982) (allowing sealing only when there is a serious and imminent threat to
13 a compelling interest which overrides the public’s right to open administration of justice).
14 The public’s constitutional right of access applies to records filed in civil actions such as
15 this one. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 535, 114 P.3d 1182 (2005) (“documents
16 filed with the court will presumptively be open to the public unless compelling reasons for
17 closure exist”). The right of access ensures that the public will be informed about the
18 operations of our courts, and protects the integrity of the judicial process. *Dreiling*, 151
19 Wn.2d at 903-04 (“Justice must be conducted openly to foster the public’s understanding
20 and trust in our judicial system and to give judges the check of public scrutiny. Secrecy
21 fosters mistrust”).

22 *Ishikawa* requires that “anyone present” at a hearing on sealing “must be given an
23 opportunity to object.” *Ishikawa*, 97 Wn.2d at 38. “At a minimum, potential objectors
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1 should have sufficient information to be able to appreciate the damages which would result
2 from free access to the proceeding and/or records.” *Id.* Here, the media entities seeking to
3 intervene did not know about the defendant’s motion to seal the whistleblower allegations
4 before it was decided on short notice, and therefore did not have an opportunity to evaluate
5 the interests at stake and object to the sealing. Granting intervention would help this Court
6 carry out the *Ishikawa* test and serve the important purposes of Article 1, Section 10, by
7 enabling the media entities to evaluate defendant’s interests in secrecy and articulate the
8 public’s countervailing interests.

10 Moreover, the media’s interest in unsealing has been heightened by the Special
11 Master’s May 19 order to tell journalists or others who may have lawfully obtained the
12 Crocker Letter that they cannot publish it and must give it back. In sum, the *Ishikawa* line
13 of cases including *Dreiling* and *Yakima Herald-Republic* establish a right of the media to
14 intervene for purposes of determining whether continued sealing of records is justified.
15 The media’s interest is especially compelling here where continued sealing is the basis for
16 an unconstitutional prior restraint on use of the whistleblower letter. *JJR Inc. v. City of*
17 *Seattle*, 125 Wn.2d 1, 6, 891 P.2d 720 (1995) (under Article 1, Section 5 of the
18 Washington Constitution, “[p]rior restraint of constitutionally protected expression is per
19 se unconstitutional”).

22 B. Courts Liberally Grant Intervention to Effectuate GR 15(e).

23 Courts have applied GR 15(e), the unsealing rule, rather than CR 24, the
24 intervention rule, in deciding whether third parties may intervene in a case for purposes of
25 bringing a motion to unseal. *Yakima Herald-Republic*, 170 Wn.2d at 800-801. GR
26 15(c)(1) provides that any party in a civil case may request a hearing to seal a court record.
27

1 GR(e)(3) provides for unsealing records in civil cases “upon motion and written notice to
2 all parties.” Courts have suggested that formal intervention is necessary to enable non-
3 parties to bring unsealing motions in civil cases under GR 15(e). *State v. Mendez*, 17
4 Wn.App. 565, 577 (Div. 3 2010) (stating, in dicta, that “the interested party must formally
5 intervene”).
6

7 In *State v. Richardson*, 177 Wn.2d 351, 356 (2013), radio host Mike Siegel
8 intervened in a criminal case to seek unsealing of court records after the defendant
9 Matthew Richardson ran for election to the state Senate. The records in question had been
10 filed in 1993 and sealed in 2002; intervention was granted in 2010. *Id.* The trial court had
11 no trouble finding intervention proper, but denied the motion to unseal. *Id.* On direct
12 review, the Supreme Court remanded the case for application of the constitutional
13 *Ishikawa* test and GR 15(e). *Id.* at 359. The Court also held that third-party interveners
14 such as Mr. Siegel have a right to appeal denial of unsealing motions in closed criminal
15 cases. *Id.* at 365. The Court said that the right to appeal GR 15(e) denials is necessary to
16 safeguard the right to the open administration of justice enshrined in Article 1, Section 10.
17 *Id.* Applying the same principle here, intervention should be granted to safeguard the right
18 of the media and public to object to continued sealing on constitutional grounds as
19 authorized by GR 15(e).
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22 IV. CONCLUSION

23 For the foregoing reasons, this Court should grant permission for Allied, WSAB,
24 the Reporters Committee for Freedom of the Press and WNPA to intervene for the limited
25 purpose of moving to unseal the Crocker Letter.
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1 SUBMITTED this 26th day of May 2015 by:

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11 CERTIFICATE OF SERVICE

12 On May 26, 2015, I sent a true and correct copy of the Motion for an Order
13 Permitting Limited Intervention, Declaration of Katherine George with exhibits, Proposed
14 Order and Note for Motion, by e-mail, per agreement for e-mail service, to the following:

15 Rick Stone
16 Jeffrey Atteberry
17 Brent Caslin
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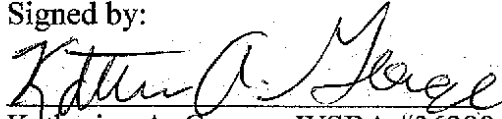
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Signed by:



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

Move, Inc. et al.,
vs.
Zillow, Inc., et al.

**CASE NO. 14-2-07669-0
NOTICE OF COURT DATE (Judges)
(NOTICE FOR HEARING)
SEATTLE COURTHOUSE ONLY
(Clerk's Action Required) (NTHG)**

TO: THE CLERK OF THE COURT and to all other parties per list on Page 2:
PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: June 5, 2015 **Day of Week:** Friday

Nature of Motion: Motion to Intervene

CASES ASSIGNED TO INDIVIDUAL JUDGES – SEATTLE
If oral argument on the motion is allowed (LCR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice. Working Papers: The judge's name, date and time of hearing <u>must</u> be noted in the upper right corner of the Judge's copy. Deliver Judge's copies to Judges' Mailroom at C203
<input checked="" type="checkbox"/> Without oral argument (Mon - Fri) <input type="checkbox"/> With oral argument Hearing Date/Time: June 5, 2015 Judge's Name: O' Donnell Trial Date:
CHIEF CRIMINAL DEPARTMENT – SEATTLE (E1201)
<input type="checkbox"/> Bond Forfeiture 3:15 pm, 2 nd Thursday of each month <input type="checkbox"/> Extraordinary Writs from criminal or infraction (Show Cause Hearing) LCR 98.40(d) 3:00 p.m. Mon-Thurs. <input type="checkbox"/> Certificates of Rehabilitation- Weapon Possession (Convictions from Limited Jurisdiction Courts) 3:30 First Tues of each month
CHIEF CIVIL DEPARTMENT – SEATTLE (Please report to E863 for assignment)
Deliver working copies to Judges' Mailroom, Room C203. In upper right corner of papers write "Chief Civil Department" or judge's name and date of hearing <input type="checkbox"/> Extraordinary Writs (Show Cause Hearing) (LCR 98.40) 1:30 p.m. Thurs/Fri -report to Room E863 <input type="checkbox"/> Supplemental Proceedings/ Judicial Subpoenas (1:30 pm Thurs/Fri)(LCR 69) <input type="checkbox"/> Motions to Consolidate with multiple judges assigned (LCR 40(a)(4) (without oral argument) M-F <input type="checkbox"/> Structured Settlements (1:30 pm Thurs/Fri)(LCR 40(2)(S))
Non-Assigned Cases:
<input type="checkbox"/> Non-Dispositive Motions M-F (without oral argument). <input type="checkbox"/> Dispositive Motions and Revisions (1:30 pm Thurs/Fri). <input type="checkbox"/> Certificates of Rehabilitation (Employment) 1:30 pm Thurs/Fri (LR 40(a)(2)(B))

You may list an address that is not your residential address where you agree to accept legal documents.

Sign: s/ Katherine A. George Print/Type Name: Katherine A. George
WSBA # 36288 (if attorney) Attorney for: Proposed Media Interveners
Address: 2101 4th Ave. Ste 1900 City, State, Zip Seattle, WA 98121
Telephone: cell 425 802-1052 Email Address: kgeorge@hbslegal.com Date: May 26, 2015

DO NOT USE THIS FORM FOR FAMILY LAW OR EX PARTE MOTIONS.

NOTICE OF COURT DATE – SEATTLE COURTHOUSE ONLY
JUDGESSEA05/19/14

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IMPORTANT NOTICE REGARDING CASES

Party requesting hearing must file motion & affidavits separately along with this notice. List the names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than six court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The SEATTLE COURTHOUSE is in Seattle, Washington at 516 Third Avenue. The Clerk's Office is on the sixth floor, room E609. The Judges' Mailroom is Room C203.