

KING COUNTY
THE HONORABLE JOHN CHUN
SUPERIOR COURT CLERK
Noted For Consideration: May 27, 2015
E-FILED
ORAL ARGUMENT REQUESTED
CASE NUMBER: 14-2-07669-0 SEA

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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
CURT BEARDSLEY, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**DECLARATION OF JACK M. LOVEJOY
IN SUPPORT OF PLAINTIFF'S MOTION
TO REVISE THE SPECIAL MASTER'S
ORDER ON THEIR SIXTH SET OF
DOCUMENT REQUESTS TO ZILLOW**

ATTACHMENTS ARE FILED UNDER
SEAL PER COURT ORDER DATED

DECLARATION OF JACK M. LOVEJOY IN SUPPORT OF PLAINTIFF'S
MOTION TO REVISE THE SPECIAL MASTER'S ORDER ON THEIR
SIXTH SET OF DOCUMENT REQUESTS TO ZILLOW

CABLE, LANGENBACH,
KINERK & BAUER, LLP
1000 SECOND AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98104-1048
(206) 292-8800

1 Jack M. Lovejoy declares:

- 2 1. I am one of the attorneys for plaintiffs in this action. I am over the age of eighteen
3 and competent to testify to the facts stated herein on personal knowledge.
- 4 2. In accord with Section 10 of this Court's October 10, 2014 Order Appointing a
5 Special Master for Discovery, this declaration attaches true and correct copies of the
6 following records of the proceedings before the Special Master in connection with the
7 Special Master Order that Plaintiffs are seeking to revise:

8 SM 1024-25 Plaintiffs' February 26, 2015, Note for Motion;

9 SM 1026-33 Plaintiffs' February 26, 2015, Motion to Compel Zillow to Produce
10 Documents Regarding its Acquisition of Trulia;

11 SM 1034-79 February 26, 2015, Declaration of Jack M. Lovejoy, with exhibits;

12 SM 1080-81 Plaintiffs' February 26, 2015, Proposed Order;

13 SM 1082-96 Zillow's March 4, 2015, Opposition;

14 SM 1097-1115 March 4, 2015, Declaration of Susan Foster, with exhibit;

15 SM 1116-19 Zillow's March 4, 2015, Proposed Order;

16 SM 1120-26 Plaintiffs' March 5, 2015, Reply;

17 SM 1127-1232 Transcript of the March 11, 2015, hearing before Special Master Hon.
18 Bruce Hilyer (Ret.);

19 SM 1233-34 March 30, 2015, Special Master Order on Plaintiffs' Motion to
20 Compel;

21 SM 1235-36 Zillow's April 6, 2015, Note for Motion;

22 SM 1237-45 Zillow's April 6, 2015, Motion for Reconsideration of the Special
23 Master's March 30, 2015 Order Compelling Zillow to Produce
Documents Regarding its Acquisition of Trulia;

SM 1246-1331 April 6, 2015, Declaration of Katherine G. Galipeau, with exhibits;

SM 1332-35 Zillow's April 6, 2015, Proposed Order;

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SM 1336-44 Plaintiffs' April 16, 2015, Opposition to Zillow's Motion;
SM 1345-51 April 16, 2015, Declaration of Nick Saros, with exhibits;
SM 1352-53 Plaintiffs' April 16, 2015, Proposed Order;
SM 1354-59 Zillow's April 20, 2015, Reply;
SM 1360-1466 Transcript of the April 20, 2015, hearing before Special Master Hon.
Bruce Hilyer (Ret.); and
SM 1467-69 May 12, 2015, Special Master Order on Zillow's motion for
reconsideration.

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

/s/Jack M. Lovejoy
Jack M. Lovejoy

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

MOVE, INC.

vs.

ZILLOW, INC. and ERROL SAMUELSON

**NO. 14-2-07669-0 SEA
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: March 6, 2015 **Day of Week:** Friday

Nature of Motion: Plaintiffs' Motion to Compel Zillow to Produce Documents Re Acquisition of Trulia

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 <u>judge's name</u> , 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
Date/Time: March 6, 2015	
Judge's Name: Special Master: Hon. Bruce Hilyer	Trial Date: October 26, 2015
CHIEF CRIMINAL DEPARTMENT – SEATTLE (E1201)	
<input type="checkbox"/> Bond Forfeiture 3:15 pm, 2 nd Thursday of each month	
<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: <u>s/Jack M. Lovejoy</u>	Print/Type Name: <u>Jack M. Lovejoy</u>
WSBA # <u>36962</u> (if attorney)	Attorney for: <u>Plaintiffs</u>
Address: <u>1000 Second Avenue, Suite 3500</u>	City, State, Zip: <u>Seattle, WA 98104</u>
Telephone: <u>206.292.8800</u>	Date: <u>February 26, 2015</u>

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

LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE

Clemens H. Barnes
Estera Gordon
Daniel J. Oates
MILLER NASH GRAHAM & DUNN, PC
Pier 70, Alaskan Way, Suite 300
Seattle, WA 98121

Susan E. Foster
Kathleen M. O'Sullivan
Katherine G. Galipeau
Judith B. Jennison
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

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.

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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' MOTION TO COMPEL
ZILLOW TO PRODUCE DOCUMENTS
REGARDING ITS ACQUISITION OF
TRULIA**

**Contains information protected by
Protective Order**

Page 2, lines 12-14 and 17-18 and Page 3,
Lines 22-23 are OCEO (Don't show Zillow)

1 **I. INTRODUCTION**

2 Zillow refuses to produce documents regarding its acquisition of Trulia on the grounds
3 that the Plaintiffs’ discovery requests are untimely, even though those requests were served
4 seven months before the September 8, 2015 close of discovery. Zillow’s objection is baseless.
5 The Court entered an order amending the case schedule pursuant to a stipulation filed by the
6 parties to extend the trial date to October 26, 2015. That stipulation also included an agreement
7 to amend the discovery schedule. Despite the binding Court order, and Zillow’s agreement to a
8 new case schedule, Zillow relies on the Special Master’s outdated discovery plan even though
9 that discovery plan states it is based on the obsolete May 11, 2015 trial date. This is yet another
10 blatant attempt by Zillow to try to summarily adjudicate the Plaintiffs’ claims during discovery
11 proceedings—this time by willfully violating the Court’s scheduling order. Accordingly, the
12 Plaintiffs request an order compelling Zillow to produce the responsive documents.

13 **II. STATEMENT OF FACTS**

14 The Court’s original case schedule included a trial date of May 11, 2015. Dkt. 2. In light
15 of that trial date, the Special Master set a discovery plan with suggested dates for a few discovery
16 events, such as service of written discovery (Oct. 31, 2014), a deadline for document production
17 to be substantially completed (Dec. 1, 2014), disclosure of primary witnesses (Dec. 8, 2014),
18 disclosure of additional witnesses (Jan. 20, 2015), a discovery cutoff (Mar. 23, 2015), and dates
19 for the first day to notice fact and expert depositions. November 10, 2014 Special Master Order
20 Regarding Initial Discovery Conference and Discovery Plan. The Special Master’s discovery
21 plan states that it is “[i]n light of the May 11, 2015 trial date currently scheduled.” *Id.*

22 On February 3, 2015, the parties submitted a Stipulation to continue the trial date.
23 Declaration of Jack M. Lovejoy, Ex. 1. In that Stipulation, the parties not only agreed to

1 continue the trial date until October 26, 2015, but also to (i) modify the Preliminary Injunction
2 such that particular provisions prohibiting Zillow's and Mr. Samuelson's activities expire earlier
3 than they otherwise would have; (ii) to withdraw Zillow's appeal of the preliminary injunction;
4 (iii) to exonerate Move's bond on the Preliminary Injunction; and (iv) to modify the case
5 schedule in accord with the new trial date. *Id.* Judge Chun entered an order on February 4, 2015,
6 consistent with the parties' Stipulation, setting a new trial date of October 26, 2015, and resetting
7 the case schedule. Ex. 1 to Plaintiffs' February 5, 2015, Supplemental Materials re: Zillow's
8 Motion to Compel. That amended case schedule, now operative in the case, includes a discovery
9 cutoff date of September 8, 2015. *Id.*

10 The Plaintiffs served requests for production February 3, 2015 relating to Zillow's
11 acquisition of Trulia. Lovejoy Dec. Ex. 2. The Plaintiffs claim that while still an officer at Move,
12 Mr. Samuelson tipped Zillow to a potential Move/Trulia merger, which caused Zillow to
13 abruptly act on Mr. Samuelson's tip and swoop in to acquire Trulia before Move could complete
14 its deal. The documents sought are directly relevant to that claim.

15 Zillow recognizes that its acquisition of Trulia is a relevant issue in this litigation. Not
16 two weeks ago Zillow inquired about the completeness of Move's document production
17 regarding "Move's consideration of an acquisition of Trulia and negotiations with Trulia"—the
18 very same subject matter at issue in this motion. Lovejoy Dec. Ex. 3 (K. O'Sullivan Feb. 12
19 Letter). Move responded by acknowledging this relevant line of discovery, and suggesting a date
20 for mutual exchange of each party's complete production of documents on this issue. Lovejoy
21 Dec. Ex. 4 (N. Saros Feb. 13 Letter). Zillow responded with a flat refusal to produce the relevant
22 Trulia acquisition documents based on an objection that the Plaintiffs' requests are "untimely" as
23

1 the date in the Special Master’s discovery plan for written discovery, which was based on the
2 now obsolete trial date, has passed. Lovejoy Dec., Ex. 5 (K. O’Sullivan Feb. 20 Letter).

3 The Plaintiffs now submit this motion to compel Zillow to produce the documents
4 responsive to its document requests because Judge Chun’s amended case schedule calls for a
5 close of discovery on September 8, 2015, and because Zillow agreed that a change in the trial
6 date would result in a new case schedule.

7 **III. STATEMENT OF ISSUES**

8 Zillow has refused to produce documents it acknowledges are relevant on the grounds
9 that Plaintiffs’ document requests are untimely. With the Court’s Order Amending Case
10 Schedule setting the close of discovery to be September 8, 2015, should Zillow’s objection that
11 discovery served seven months before the close of discovery is “untimely” be overruled, and
12 Zillow compelled to produce the responsive documents?

13 **IV. ARGUMENT**

14 **A. Zillow Must Comply With the Court’s Order Amending Case Schedule and 15 Produce the Requested Documents.**

16 The Court’s February 4, 2015 “Order Amending Case Schedule” sets the discovery cutoff
17 as *September 8, 2015*. Despite the fact that Move served its discovery requests over seven
18 months before that discovery cutoff, Zillow refuses to produce responsive documents. Zillow’s
19 refusal to produce documents is simply a willful violation of the Court’s Order. The Plaintiffs’
20 document requests are well within the discovery period provided in the Court’s Order. On this
21 basis alone, The Plaintiffs’ motion should be granted.¹

22 ¹ Zillow admits the requested documents are relevant. Zillow challenged whether Move’s
23 document production is sufficient on the issue of “Move’s consideration of an acquisition of
Trulia and negotiations with Trulia.” Lovejoy Dec. Ex. 3 (K. O’Sullivan Feb. 12 Letter). Thus,
Zillow recognizes those documents are relevant to Move’s claims, wants Move to produce its

1 Zillow’s attempt to rely on the Special Master’s prior discovery plan has no merit. That
2 discovery plan, dated November 10, 2014, plainly states that it is “[i]n light of the May 11, 2015
3 trial date currently scheduled.” (Nov. 10, 2014 Order Regarding Initial Discovery Conference
4 and Discovery Plan). The May 11, 2015 trial date no longer applies, and neither does the
5 discovery plan derived from that trial date.

6 Notably, Zillow is not complying with any of the six other dates in the November
7 discovery plan. It recognizes that those dates do not apply in light of the new trial date and case
8 schedule. For example, the discovery plan required document productions to be substantially
9 complete by December 1, 2014, but the parties continue to produce documents and expect further
10 productions to occur. Lovejoy Dec. Ex. 6 (K. Galipeau Feb. 4 email agreeing to Plaintiffs’
11 proposal that the parties try to complete document production for existing discovery requests by
12 February 27). The discovery plan required disclosure of witnesses on December 8, 2014 and
13 additional witnesses on January 20, 2015, but the parties have each recently disclosed additional
14 expert witnesses after those dates. Lovejoy Dec. Exs. 7 and 8. Yet, Zillow improperly cherry-
15 picks one date from the outdated discovery plan to try to unfairly prevent Move from gathering
16 key evidence.²

17 **B. Zillow’s Objection that Discovery is “Untimely” is Belied by the Fact that it**
18 **Agreed to the Revised Case Schedule by Stipulation.**

19 _____
20 documents on that issue, but wants to withhold production of its documents on the same issue so
21 that Move cannot pursue its claim.

21 ² In addition, the discovery plan Zillow relies on contains provisions recognizing that the
22 October 31, 2014 deadline was flexible and not meant to be a firm deadline. It provides that
23 discovery may be served beyond the deadline “for liberal good cause shown,” and states that
“liberal good cause includes new subjects.” November 10, 2014 Special Master Order. Even if
the previous discovery plan was in force, which it is not, Move’s discovery requests are
appropriate.

1 The parties February 3, 2015 Stipulation memorialized several provisions that the parties
2 had agreed upon regarding the trial date, the expiration of the preliminary injunction, the
3 withdrawal of the appeal of that injunction, and a new case schedule. Indeed, the Stipulation
4 contains numerous provisions where Zillow acknowledged further discovery would occur under
5 a new case schedule:

- 6 • “the parties have agreed that the case is complex and that *further discovery appears*
7 *appropriate* to address the various claims and defense asserted in the case”;
- 8 • “the parties have also agreed [] to a modification in the expiration of the Preliminary
9 Injunction for *the purpose of reaching an agreement on a case schedule*”;
- 10 • The trial date is to be continued with “*the case schedule*, beginning with the deadline
11 for possible primary witness disclosures, *to be reset* based on the new trial date”; and
- 12 • “The Clerk is directed to enter a *new case schedule*.”

13 Lovejoy Dec. Ex. 1(emphasis added). Zillow agreed to be bound by a new schedule, and in
14 return received relief from the Preliminary Injunction so that it would expire on March 22
15 instead of after the adjudication of this matter. Zillow’s agreement to be bound by a new case
16 schedule allowing additional discovery further disproves its current position that the outdated
17 discovery plan should still apply.

18 **C. Zillow Again Improperly Tries to Limit Plaintiffs’ Claim Through the**
19 **Special Master.**

20 Zillow has continually tried to use the Special Master to decide key issues in this case in
21 a dispositive manner. It tried to use the Special Master to decide the merits of Move’s claim
22 with respect to the Trulia acquisition during the motion practice on Move’s subpoena to Trulia.
23 It tried to limit the Plaintiff’s trade secret claims through its Motion to Compel regarding
Interrogatory No. 4 on Zillow’s misappropriation. And now Zillow again tries to win
adjudication of Move’s claims regarding the Trulia acquisition through discovery objections that

1 it knows would end up before the Special Master. Zillow's attempts are brazen. For instance,
2 Zillow even informed the Court that it is "seeking clarification through the special master as to
3 the scope of Plaintiffs claims." Ex. 5 to Move's February 5, 2015 Supplemental Materials (S.
4 Foster Feb. 2, 2015 email). Zillow's repeated attempts should be rejected once and for all as it is
5 inappropriate to seek essentially dispositive rulings from the Special Master.

6 * * * *

7 The Plaintiffs served document requests well within the September 8, 2015 discovery
8 cutoff. Zillow's refusal to produce responsive documents is in violation of the Court's binding
9 order setting that discovery cutoff. Zillow's attempt to hold Move to an inapplicable discovery
10 plan cannot be justified. That discovery plan states that it is based on the old trial date, and flies
11 in the face of Zillow's agreement that a new case schedule will be entered and further discovery
12 necessary in conjunction with the Stipulation it submitted to the Court. Accordingly, the Special
13 Master should issue an Order compelling Zillow to produce the responsive documents.

14 DATED February 26, 2015, at Seattle, Washington.

15 s/ Jack M. Lovejoy

16 Jack M. Lovejoy, WSBA No. 36962

17 Lawrence R. Cock, WSBA No. 20326

18 Attorneys for Plaintiffs

19 CABLE, LANGENBACH, KINERK & BAUER, LLP

20 Suite 3500, 1000 Second Avenue Building

21 Seattle, Washington 98104-1048

22 (206) 292-8800 phone

23 (206) 292-0494 facsimile

jlovejoy@cablelang.com

LRC@cablelang.com

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2015, I served a true and correct copy of the foregoing document by email transmission to the individuals listed below:

Susan E. Foster sfoster@perkinscoie.com
Kathleen M. O’Sullivan kosullivan@perkinscoie.com
Katherine G. Galipeau kgalipeau@perkinscoie.com
Judith B. Jennison jjennison@perkinscoie.com
PERKINS COIE LLP
Counsel for Zillow, Inc.

Clemens H. Barnes clemens.barnes@millernash.com
Estera Gordon estera.gordon@millernash.com
Daniel Oates dan.oates@millernash.com
MILLER NASH GRAHAM & DUNN LLP
Counsel for Errol Samuelson

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 February 26, 2015.

/s/ Katy Albritton
Katy Albritton, Legal Assistant
CABLE, LANGENBACH, KINERK & BAUER, LLP
1000 Second Avenue, Suite 3500
Seattle, Washington 98104-1048
(206) 292-8800 phone
(206) 292-0494 facsimile
kalbritton@cablelang.com

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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**DECLARATION OF JACK M. LOVEJOY
IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL ZILLOW TO PRODUCE
DOCUMENTS REGARDING ITS
ACQUISITION OF TRULIA**

**Contains information protected by
Protective Order**

**Ex. 3, first bullet point is OCEO (Don't
show Zillow)**

Ex. 4 is OCEO (Don't show Zillow)

1 Jack M. Lovjeoy declares:

- 2 1. I am over the age of eighteen and competent to testify to the facts stated herein on
3 personal knowledge.
4 2. I am one of the attorneys for plaintiffs in this lawsuit.
5 3. Attached are true and correct copies of the following documents:

6 Ex. 1: A stipulation the parties submitted to the Court on February 3, 2015;

7 Ex. 2: Move's Sixth Discovery Requests to Zillow;

8 Ex. 3: A February 12, 2015, letter from Zillow's attorney Kathleen O'Sullivan;

9 Ex. 4: A February 13, 2015, letter from Move's attorney Nick Saros;

10 Ex. 5: A February 20, 2015, letter from Zillow's attorney Kathleen O'Sullivan;

11 Ex. 6: A February 4, 2015, email from Zillow's attorney Katherine Galipeau
(including the February 3, 2015 email and letter from Move's attorney Charles
12 Abbott, to which Ms. Galipeau responded);

13 Ex. 7: A February 17, 2015, email and letter from Zillow's attorney Judy
Jennison; and

14 Ex. 8: A January 30, 2015, letter from my office.

15
16 I declare under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true.

18 DATED February 26, 2015, at Seattle, Washington.

19
20 /s/ Jack M. Lovejoy
21 Jack M. Lovejoy

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2015, I served a true and correct copy of the foregoing document by email transmission to the individuals listed below:

Susan E. Foster sfoster@perkinscoie.com
Kathleen M. O'Sullivan kosullivan@perkinscoie.com
Katherine G. Galipeau kgalipeau@perkinscoie.com
Judith B. Jennison jjennison@perkinscoie.com
PERKINS COIE LLP
Counsel for Zillow, Inc.

Clemens H. Barnes clemens.barnes@millernash.com
Estera Gordon estera.gordon@millernash.com
Daniel Oates dan.oates@millernash.com
MILLER NASH GRAHAM & DUNN LLP
Counsel for Errol Samuelson

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 February 26, 2015.

/s/ Katy Albritton
Katy Albritton, Legal Assistant
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HONORABLE JOHN CHUN

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

**[PROPOSED] STIPULATION AND
ORDER RE EXTENSION OF TRIAL
DATE AND EXPIRATION OF JUNE 30
PRELIMINARY INJUNCTION**

[CLERK'S ACTION REQUIRED]

[PROPOSED] STIPULATION AND ORDER RE
TRIAL DATE AND PRELIMINARY INJUNCTION

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. STIPULATION

WHEREAS, this civil action was commenced by Move, Inc., Real Select, Inc., Top Producers Systems Company, the National Association of Realtors, and Realtors Information Network (“the plaintiffs”) on March 17, 2014 alleging, among other things, violations of fiduciary duty and the misappropriation of trade secrets by defendants Errol Samuelson and Zillow, Inc. (“the defendants”);

WHEREAS, the defendants dispute the plaintiffs’ claims in this matter and assert that their conduct has been lawful;

WHEREAS, following an application from the plaintiffs, the Court entered Findings of Fact, Conclusions of Law and Preliminary Injunction [Dkt. No. 201] on June 30, 2014, (“the Preliminary Injunction”) enjoining the defendants from certain conduct through the adjudication of this matter;

WHEREAS, the defendants filed a notice of appeal relating to the Preliminary Injunction and a Court of Appeals Commissioner granted Discretionary Review on October 28, 2014 (No. 72534-3-I and No. 72534-1-I) (“the Appeal”);

WHEREAS, the plaintiffs and the defendants are presently briefing the Appeal and oral argument has not yet been scheduled;

WHEREAS, the plaintiffs filed a Motion to Modify Case Schedule on January 23, 2015 [Dkt. No. 333], requesting an extension of the schedule, and the motion was opposed by the defendants [Dkt. No. 342];

WHEREAS, with the goal of narrowing the issues for presentation to the Superior Court, the parties have agreed that the case is complex and that further discovery appears appropriate to address the various claims and defenses asserted in this case;

[PROPOSED] STIPULATION AND ORDER RE TRIAL
DATE AND PRELIMINARY INJUNCTION – 2

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

1
2 WHEREAS, the parties have also agreed, subject to the Court's approval, to a
3 modification in the expiration of the Preliminary Injunction for the purpose of reaching
4 agreement on a case schedule; and
5

6
7 WHEREAS, the plaintiffs and defendants make this stipulation subject to and
8 conditioned upon approval of this stipulation by the Superior Court.
9

10
11 In light of the foregoing, the plaintiffs and defendants hereby stipulate as follows:
12

13
14 1. The trial date in this action is continued to October 26, 2015 or a date after
15 October 26, 2015 that is set by the Superior Court in light of the Superior Court's schedule,
16 with the case schedule, beginning with the deadline for possible primary witness disclosures,
17 to be reset based on the new trial date.
18

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20
21 2. The Parties shall file a joint stipulated Voluntary Withdrawal of Review
22 pursuant to Rule 18.2 of the Rules of Appellate Procedure within three (3) business days of
23 entry of the Order requested by this joint stipulation. The stipulated Voluntary Withdrawal
24 of Review will provide that each side will bear its own costs and attorneys' fees in
25 connection with the Appeal.
26
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29
30 3. The Preliminary Injunction entered by the Court on June 30 2014 (Dkt. No.
31 201) shall be construed so that Paragraphs 1, 2, 3, 6, and 9 expire when this matter is
32 adjudicated, or on March 22, 2015, whichever date occurs first. The plaintiffs agree they
33 will not submit another request for preliminary injunctive relief in this matter unless the
34 request is based on newly discovered information or unless the relief is in connection with
35 ongoing contempt proceedings.
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39 4. The Parties request that the Court enter an order exonerating the bond on the
40 Preliminary Injunction and directing the bond to be returned to the plaintiffs. The
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[PROPOSED] STIPULATION AND ORDER RE TRIAL
DATE AND PRELIMINARY INJUNCTION – 3

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

1
2 defendants will forgo any further request for a bond or security related to the Preliminary
3
4 Injunction.
5

6
7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
9

10
11
12 **CABLE, LANGENBACH, KINERK & BAUER LLP**

PERKINS COIE LLP

13
14 By: s/ Lawrence R. Cock

By: s/ Susan E. Foster

15 Jack M. Lovejoy, WSBA No. 36962
16 Lawrence R. Cock, WSBA No. 20326

Susan E. Foster, WSBA No. 18030
Kathleen M. O'Sullivan, WSBA No. 27850
Katherine G. Galipeau, WSBA No. 40812

17
18 Attorneys for Plaintiffs

Attorneys for Defendant Zillow, Inc.

19
20
21 **JENNER & BLOCK LLP**

MILLER NASH GRAHAM & DUNN LLP

22
23 By: s/ Brent Caslin

By: s/ Clemens H. Barnes

24 Brent Caslin, WSBA No. 36145
25 Richard Stone (*pro hac vice*)

Clemens H. Barnes, WSBA No. 4905

26
27
28 Attorneys for Plaintiffs

Attorneys for Defendant Errol Samuelson

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[PROPOSED] STIPULATION AND ORDER RE TRIAL
DATE AND PRELIMINARY INJUNCTION – 4

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II. ORDER

THIS MATTER came before the Court on the above stipulation of the parties. The Court has reviewed the stipulation and the records and files herein. The Court is fully advised. NOW THEREFORE, it is ORDERED, consistent with the above stipulation:

1. The trial date in this action is continued to _____ [enter date after October 26, 2015] in light of the complexities of the case and the Superior Court’s schedule.
2. The Clerk is directed to enter a new case schedule. Deadlines in the case schedule, beginning with the deadline for possible primary witness disclosures, are to be reset based on the new trial date.
3. The Parties shall file a joint stipulated Voluntary Withdrawal of Review pursuant to Rule 18.2 of the Rules of Appellate Procedure within three (3) business days of entry of this Order. The stipulated Voluntary Withdrawal of Review will provide that each side will bear its own costs and attorneys’ fees in connection with the Appeal.
4. The Preliminary Injunction entered by the Court on June 30 2014 (Dkt. No. 201) is hereby amended so that Paragraphs 1, 2, 3, 6, and 9 expire when this matter is adjudicated or on March 22, 2015, whichever is earlier.
5. The bond filed by Plaintiffs, in part on July 1, 2014 and in part on January 30, 2015, is hereby exonerated. The Clerk is directed to return the bond in full to the plaintiffs or their attorneys without delay. No further bond or security of any type will be required in connection with the Preliminary Injunction.

ENTERED this ____ day of February 2015.

THE HONORABLE JOHN CHUN

[PROPOSED] STIPULATION AND ORDER RE TRIAL
DATE AND PRELIMINARY INJUNCTION – 5

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
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1 Presented by:
2
3

4
5 **CABLE, LANGENBACH, KINERK & BAUER LLP**

PERKINS COIE LLP

6
7 By: s/ Lawrence R. Cock

By: s/ Susan E. Foster

8 Jack M. Lovejoy, WSBA No. 36962
9 Lawrence R. Cock, WSBA No. 20326

Susan E. Foster, WSBA No. 18030
Kathleen M. O'Sullivan, WSBA No. 27850
Katherine G. Galipeau, WSBA No. 40812

10
11 Attorneys for Plaintiffs

Attorneys for Defendant Zillow, Inc.

12
13
14 **JENNER & BLOCK LLP**

MILLER NASH GRAHAM & DUNN LLP

15
16 By: s/ Brent Caslin

By: s/ Clemens H. Barnes

17 Brent Caslin, WSBA No. 36145
18 Richard Stone (*pro hac vice*)

Clemens H. Barnes, WSBA No. 4905

19
20
21 Attorneys for Plaintiffs

Attorneys for Defendant Errol Samuelson

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[PROPOSED] STIPULATION AND ORDER RE TRIAL
DATE AND PRELIMINARY INJUNCTION – 6

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

CERTIFICATE OF SERVICE

On February 3, 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 forgoing document.

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

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via E-filing
- Via E-mail

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

Clemens H. Barnes, Esq., WSBA No. 4905
Estera Gordon, WSBA No. 12655
Daniel Oates, WSBA No. 39334
Miller Nash Graham & Dunn LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Telephone: (206) 624-8300
Facsimile: (206) 340-9599

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via E-filing
- Via E-mail

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robert.mittenthal@millernash.com

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Brent Caslin, WSBA No. 36145
Richard Lee Stone , (*Pro Hac Vice*)
Nick G. Saros, (*Pro Hac Vice*)
Charles H. Abbott III, (*Pro Hac Vice*)
Jeffrey A. Atteberry, (*Pro Hac Vice*)
Samuel D. Green, (*Pro Hac Vice*)
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- Via Hand Delivery
- Via U.S. Mail, 1st Class,
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- Via E-filing
- Via E-mail

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

DATED this 3rd day of February 2015.

s/Katherine Galipeau
Katherine Galipeau

56920-0025/LEGAL124905114.1
1/30/15

CERTIFICATE OF SERVICE – 2

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

56920-0025/LEGAL124945549.1

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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' SIXTH DISCOVERY
REQUESTS TO DEFENDANT ZILLOW,
INC.**

TO: Defendant Zillow, Inc.

AND TO: Susan E. Foster, Kathleen M. O'Sullivan, Katherine G. Galipeau, Judith B.
Jennison and Perkins Coie LLP

INSTRUCTIONS

1 Pursuant to the provisions of Rules 26 and 34 of the Civil Rules for Superior Court of the State
2 of Washington, you are hereby requested to respond to the following discovery requests for within
3 thirty (30) days after the service hereof. You have been served with the original of these discovery
4 requests ("requests"). You should respond to each request within the space provided or use
5 additional pages if necessary. Within the time allowed by the rules, you should serve the original
6 with your responses on the attorneys for plaintiffs Move, Inc., Realselect, Inc., Top Producer
7 Systems Company, National Association of Realtors, and Realtors® Information Network, Inc.

8 Under Civil Rule 34 you are requested to produce, and permit plaintiffs Move, Inc., Realselect,
9 Inc., Top Producer Systems Company, National Association of Realtors, and Realtors®
10 Information Network, Inc.'s attorneys to inspect and copy, the documents hereinafter designated
11 which are in your possession, custody and control, at the offices of Cable, Langenbach, Kinerk &
12 Bauer, LLP, 1000 Second Avenue, Suite 3500, Seattle, Washington 98104-1048, at such time and
13 place as may be agreed upon by the parties.

14 **These requests are intended to be continuing in nature.** In accordance with the obligation to
15 supplement responses imposed by Civil Rule 26(e), you are asked to provide any information which
16 would materially alter the answers now given at the time you obtain such additional information.
17 Any additional information relating to these requests which you acquire subsequent to the date of
18 your responses, up to and including the time of trial, should be furnished to as supplemental
19 responses promptly after such information is acquired.

20 **DEFINITIONS AND PROCEDURES**

21 Please respond fully to the following interrogatories as required by Civil Rules 26 and 33.
22 You are to comply with the following definitions and procedures.

1 **DEFINITIONS**

2 1. "Defendant(s)," "you," "your," or "Zillow" means Zillow, Inc.

3 2. "Person" means natural persons, firms, proprietorships, associations,
4 partnerships, corporations and every other type of organization or entity.

5 3. "Communication" shall mean any transmission of information, the information
6 transmitted and any process by which information is transmitted, and shall include written
7 communications and oral communications.

8 4. "Document" means any tangible materials, electronically stored information, and
9 other information stored in any form; any written, recorded, electronically or digitally stored,
10 graphic matter, however produced or reproduced; and copies and drafts thereof. Without limiting
11 the foregoing, plaintiff intends the term "document" to mean any form of information within the
12 scope and definition of Washington Civil Rule 34, and includes the following items within your
13 possession, subject to your control, or of which you have knowledge: correspondence; telegrams;
14 memoranda; reports; notes; drafts; minutes; contracts; agreements; books; records; vouchers;
15 invoices; diaries; logs; calendar notes; computer print-outs; e-mails; text messages; back-up
16 materials of any kind; card files; press clippings; newspapers or newsletters; sworn or unsworn
17 statements of employees; lists; audits; tables of organization; deposit slips; monthly or other
18 periodic statements; ledgers; journals; notices; affidavits; court papers; appointment books; minutes
19 or records of conferences or telephone calls; brochures; receipts; written reports or opinions of
20 investigators or experts; status reports; drawings; charts; photographs; negatives; tape recordings;
21 electronic mail; computer file on a hard drive or RAM, floppy disk, CD-ROM, DVD, or other
22 magnetic or optical storage medium.

1 5. "Identify", "identification", or "identity", means:

2 a. When referring to a natural person, state her full name; her present or last-
3 known business and home address; her present or last-known business position; and, if different, her
4 business position at the time to which the interrogatory or your response to the interrogatory has
5 reference; and, a brief description of the responsibilities of such position.

6 b. When referring to a document, state its title and date; identify the author or
7 person who prepared it and any signatories to it; give the type of document (e.g., letter,
8 memorandum, invoice); its present location and custodian; a summary of its contents, or principal
9 terms and provisions; the identity of its addressee and all other persons receiving it or copies of it. If
10 the document so identified was, but is no longer, in your possession, custody or control, state what
11 disposition has been made of it. Attach a copy of it to your response to these interrogatories.

12 c. When referring to a person other than a natural person, set forth:

- 13 1) Full lawful name, and all other names or styles used, at any time, and
14 for any purposes whether or not registered.
- 15 2) Type of entity (e.g., general partnership, limited partnership,
16 corporation, trust, limited liability company).
- 17 3) Present business address and telephone, or last known business
18 address and telephone.
- 19 4) Registered office address and name of registered agent.
- 20 5) States and foreign countries where qualified to do business.
- 21 6) All business addresses and telephone numbers in this state.
- 22 7) State and date of incorporation.
- 23 8) Names and addresses of Washington agent for service of process.
- 24 9) Name, principal office, state and date of incorporation, and name of
chief executive officer of:

a) Any controlling corporation;

1 b) Any subsidiary corporation.

2 10) Name and address of all persons owning a controlling interest, and a
3 description of the extent of such interest.

4 11) Identify its partners, shareholders, principals, officers, directors,
5 members and managers at the present time, and, if different, at the
6 times to which the interrogatory and your response to the
7 interrogatory refer.

6 6. "Trulia" means Trulia, Inc.

7 7. "Move" means Move, Inc.

8 **NOTICE TO DEFENDANT ZILLOW, INC. AND ITS COUNSEL REGARDING**
9 **DISCOVERY OF COMPUTER/ELECTRONIC DATA OR MEDIA.**

10 Notice is given that defendant's discovery requests, including future requests, include within
11 their scope information and data which is stored or maintained by computer or electronic means.
12 Such information and data must be preserved and protected for purposes of this litigation.

13 Plaintiff(s) is instructed to comply with the following:

14 1. Defendant(s) should not initiate any procedures which would alter any active,
15 deleted, or fragmented files. Such procedures may include, but are not limited to, storing
16 (saving) newly created files to existing drives and diskettes, loading new software such as
17 application programs, running data compression and disk defragmentation (optimization)
18 routines, or the use of utility programs to permanently wipe files, disks or drives.

19 2. Defendant(s) should stop any rotation, alteration and/or destruction of electronic
20 media that may result in the alteration or loss of any electronic data. Backup tapes and disks
21 should be pulled from their rotation queues and be replaccd with new tapes.

22 3. Defendant(s) should not alter and/or erase active, deleted files or file fragments on
23 any electronic media that may have any relation to this litigation.

1 4. Defendant(s) should not dispose of any electronic media storage devices replaced
2 due to failure and/or upgrade that may contain electronic data having any relation to this
3 litigation.

4 **REQUESTS FOR PRODUCTION**

5 **REQUEST FOR PRODUCTION NO. 142:** Produce all documents that you submitted to
6 the Special Master pursuant to the December 12, 2014 discovery order.

7 **RESPONSE:**

8
9 **REQUEST FOR PRODUCTION NO. 143:** Produce all communications between
10 January 1, 2013 and July 28, 2014 regarding your acquisition of Trulia.

11 **RESPONSE:**

12
13 **REQUEST FOR PRODUCTION NO. 144:** Produce documents created between August
14 2012 and the spring of 2014 sufficient to show when Zillow began to consider an acquisition of
15 Trulia as stated in Zillow's SEC filings, including page 94 of Zillow's Schedule 14A filing with the
16 Securities and Exchange Commission, dated November 18, 2014.

17 **RESPONSE:**

18
19 **REQUEST FOR PRODUCTION NO. 145:** Produce all copies of any strategy or Board
20 memos created between January 1, 2013 and July 28, 2014 related to your acquisition of Trulia.

21 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 146:** Produce all documents related to your
2 valuation of Trulia and created between January 1, 2013 and July 28, 2014.

3 **RESPONSE:**
4

5 **REQUEST FOR PRODUCTION NO. 147:** Produce all documents created between
6 January 1, 2013 and July 28, 2014 that refer or relate to your reasons for initiating or continuing
7 merger discussions with Trulia.

8 **RESPONSE:**
9

10 **REQUEST FOR PRODUCTION NO. 148:** Produce all documents created between
11 January 1, 2013 and July 28, 2014 that analyze, discuss or otherwise refer to the impact that your
12 merger with Trulia would have on Move.

13 **RESPONSE:**
14

15 **REQUEST FOR PRODUCTION NO. 149:** Produce all communications that Errol
16 Samuelson and/or Curt Beardsley had with Trulia regarding any proposed or actual acquisition of
17 Trulia.

18 **RESPONSE:**
19

20 **REQUEST FOR PRODUCTION NO. 150:** Produce all communications that Errol
21 Samuelson and/or Curt Beardsley had with you regarding Trulia before July 28, 2014.

22 **RESPONSE:**
23
24

1 **REQUEST FOR PRODUCTION NO. 151:** Produce all non-privileged communications
2 between you and Shearman & Sterling LLP regarding a possible acquisition of Trulia.

3 **RESPONSE:**

4
5 **REQUEST FOR PRODUCTION NO. 152:** Produce all communications between you
6 and Goldman Sachs regarding a possible acquisition of Trulia.

7 **RESPONSE:**

8
9 **REQUEST FOR PRODUCTION NO. 153:** Produce all copies, including drafts, of any
10 letters of intent related to your acquisition of Trulia.

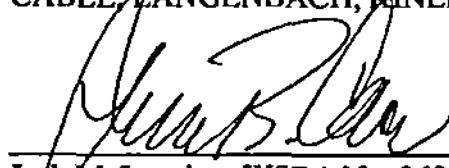
11 **RESPONSE:**

12
13 **REQUEST FOR PRODUCTION NO. 154:** Produce all communications between you
14 and “unaffiliated significant holders of both [Zillow’s] and Trulia’s common stock ” regarding your
15 acquisition of Trulia as stated in Zillow’s SEC filings, including page 94 of Zillow’s Schedule 14A
16 filing with the Securities and Exchange Commission, dated November 18, 2014.

17 **RESPONSE:**

1 DATED this 3^d day of February, 2015.

2 CABLE, LANGENBACH, KINERK & BAUER, LLP

3 

4 _____
5 Jack M. Lovejoy, WSBA No. 36962
6 Lawrence R. Cock, WSBA No. 20326
7 Attorneys for Plaintiffs

1 STATE OF WASHINGTON)
2 COUNTY OF KING) ss.
3)

4 _____ affirms and states that he/she is a
5 **Defendant**, has read the foregoing Plaintiffs' Sixth Discovery Requests to Defendant
6 Zillow, Inc. and Responses thereto, and that the answers are true and correct, and that
7 **Defendant** has not interposed any answers or objections for any improper purpose, such as
8 to harass or to cause unnecessary delay or needless increase in the cost of litigation.

9 By: _____

10
11 SUBSCRIBED AND AFFIRMED TO before me this _____ day of
12 _____, 2015.

13 _____
14 Notary Public

15 _____
16 (Address)

17 My Commission Expires:

CERTIFICATION

I, _____, the attorney for **Defendant Zillow, Inc.**, certify that I have read the answers and objections (if any) to the foregoing Plaintiffs' Sixth Discovery Requests to Defendant Zillow, Inc. and Responses thereto and, to the best of my knowledge, information, and belief formed after a reasonable inquiry are (1) consistent with these rules and warranted by existing law or good faith argument for the extension, modification, or reversal of existing law, (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation, and (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount of controversy, and the importance of the issues at stake in this litigation.

CERTIFICATION DATED this _____ day of _____, 2015.

PERKINS COIE LLP

By: _____

Attorney for Defendant Zillow, Inc.

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on February __, 2015, I caused service of the foregoing
3 upon the party and in the manner indicated below:
4

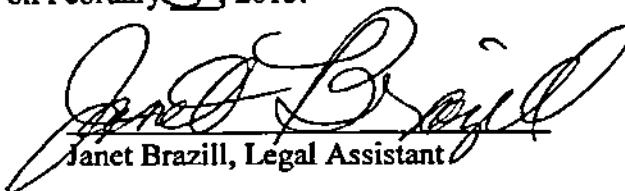
5 **VIA EMAIL:**

6 Susan E. Foster
7 Kathleen O'Sullivan
8 Katherine G. Galipeau
9 Judith B. Jennison
10 Perkins Coie LLP
11 1201 Third Ave., Suite 4900
12 Seattle, WA 98101-3099
13 Attorneys for Zillow, Inc.

14 Clemens H. Barnes
15 Estera Gordon
16 Daniel J. Oates
17 Miller Nash Graham & Dunn PC
18 Pier 70, Alaskan Way, Suite 300
19 Seattle, WA 98121-1128
20 Attorneys for Errol Samuelson

21 I declare under penalty of perjury that the foregoing is true and correct.

22 DATED at Seattle, Washington, on February 3, 2015.

23 
24 Janet Brazill, Legal Assistant

February 12, 2015

Kathleen M. O'Sullivan
KOSullivan@perkinscoie.com
D. (206) 359-6375
F. (206) 359-7375**VIA E-MAIL**Charles H. Abbott III
Jenner & Block LLP
633 West 5th Street
Suite 3600
Los Angeles, CA 90071**Re: *Move, Inc., et al. v. Zillow, Inc., et al.***

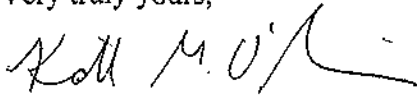
Dear Charlie,

There continue to be categories of responsive documents that appear to be largely absent or incomplete from plaintiffs' production to date. A list of examples is provided below. Please either point us to these documents in the production or confirm that they will be produced by February 27.

- Move's consideration of an acquisition of Trulia and negotiations with Trulia (Zillow's 4th RFPs, Nos. 1, 3-8; Zillow's 6th RFPs, Nos. 14-15)
- Move's acquisition by News Corp (Zillow's 4th RFPs, No. 1; Zillow's 5th RFPs, No. 12; Zillow's 6th RFPs, Nos. 1-3)
- Emails transmitting and discussing Move's Corporate and Business Development Pipeline, including all versions containing redlines and all transmissions of the documents produced by Move on January 15 (Zillow's 6th RFPs, Nos. 14-15; *see also* Katie Galipeau's email to Jack Lovejoy dated January 16 (enclosed))
- Renewal of Zillow's ListHub contract and strategic considerations of the ListHub/Zillow relationship (Zillow's 5th RFPs, No. 8; Zillow's 6th RFPs, No. 6)
- Complete set of ListHub business updates sent each week to the Move executive team (Zillow's 6th RFPs, Nos. 1-3, 6)
- Complete set of ListHub Monthly Business Reviews (Zillow's 6th RFPs, Nos. 1-3, 6)
- Complete set of Move Quarterly Business Reviews (Zillow's 5th RFPs, No. 21; Zillow's 6th RFPs, Nos. 1-3)
- Weekly, monthly and quarterly business reports through December 31, 2014 (Zillow's 5th RFPs, No. 21; Zillow's 6th RFPs, Nos. 1-4; Special Master's January 22 ruling)

Charles H. Abbott III
February 12, 2015
Page 2

Very truly yours,



Kathleen M. O'Sullivan

KMO

Enclosure

cc: Jack M. Lovejoy
Clemens H. Barnes

JENNER & BLOCK

February 13, 2015

Jenner & Block LLP
633 West 5th Street
Suite 3600
Los Angeles, CA 90071
Tel 213-239-5100
www.jenner.com

Chicago
Los Angeles
New York
Washington, DC

Kathleen M. O'Sullivan
Perkins Coie
1201 Third Avenue
Suite 4900
Seattle, WA 98101

Nick Saros
Tel 213 239-5175
NSaros@jenner.com

Dear Katie:

I reviewed the letter you sent to Charlie Abbott on February 12 regarding categories of documents that Zillow contends are absent or incomplete from Move's production. This letter responds to only the first category of documents identified in your letter, which is "Move's consideration of an acquisition of Trulia and negotiations with Trulia."

We agree with Zillow's position that the potential acquisition of Trulia is a relevant issue in this litigation. We will review our current production regarding Move's negotiations with Trulia and potential acquisition, search for additional documents should the production be incomplete, and produce the relevant non-privileged documents. We request that you do the same. We have reviewed the Zillow production, and you have not produced documents regarding Zillow's acquisition of Trulia. Those documents are responsive to at least Plaintiff's Sixth Discovery Requests to Zillow (Request Nos. 142-154). As you recognize in your letter, the acquisition of Trulia is a relevant issue in this case and warrants production of documents on that subject.

We propose that the parties agree to exchange their respective documents concerning Trulia on March 6. Please let us know if this agreement is acceptable.

Best regards,

/s/ Nick Saros

Nick Saros

February 18, 2015

Kathleen M. O'Sullivan
KOSullivan@perkinscoie.com
D. (206) 359-6375
F. (206) 359-7375

Nick Saros
Jenner & Block LLP
633 West 5th Street
Suite 3600
Los Angeles, CA 90071

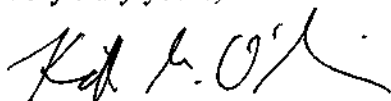
Re: Move, Inc., et al. v. Zillow, Inc., et al.

Dear Nick:

Thank you for your letter of February 13, which responds to my letter of February 12 on one topic, plaintiffs' obligation to search for and produce documents responsive to Zillow's requests issued last year in August (4th RFPs) and October (6th RFPs) for the production of certain documents regarding Trulia. We look forward to a full response to that letter on all topics.

Your letter also refers to Plaintiffs' Sixth Discovery Requests to Zillow (Request Nos. 142-154), regarding Trulia. Plaintiffs' Sixth RFPs were issued on February 3, 2015, months after the October 31, 2015 deadline for issuing interrogatories and requests for production. Attached, for your reference, is a copy of the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan, which sets out this deadline. Plaintiffs' requests for Trulia-related documents from Zillow are untimely, as Plaintiffs certainly had the opportunity to seek documents relating to Trulia prior to the deadline, but chose not to.

Very truly yours,



Kathleen M. O'Sullivan

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

~~PROPOSED~~ ORDER REGARDING
INITIAL DISCOVERY CONFERENCE
AND DISCOVERY PLAN

THIS MATTER came before the Special Master, the Honorable Bruce Hilyer (Ret.),
pursuant to the Court's Order Appointing a Special Master for Discovery dated September

~~PROPOSED~~ ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 1

56920-0025/LEGAL\23898630.1

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

1 11, 2014, appointing a Special Master to handle discovery issues. The Special Master held
2
3 an initial discovery conference with the parties on October 22, 2014.

4
5 **Discovery Plan**

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7 In light of the May 11, 2015 trial date currently scheduled, the Special Master sets
8
9 the following discovery plan:

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October 31, 2014	Last day to issue interrogatories and requests for production, other than for liberal good cause shown ¹ (liberal good cause includes new subjects and/or follow-up relating to information received in discovery)
December 1, 2014	Last day to substantially complete document production and written discovery (other than requests for admission)
December 1, 2014	First day to notice deposition of fact witnesses ²
December 8, 2014	Disclosure of possible primary witnesses (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)
January 20, 2015	Disclosure of possible additional witnesses (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)
March 2, 2015	First day to notice deposition of expert witnesses
March 23, 2015	Discovery cutoff (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)

29
30 The parties and the Special Master recognize that the parties' ability to meet these
31
32 dates, particularly the December 1, 2014 date for substantial completion of written
33
34 discovery, may be impacted by discovery and/or evidence not yet submitted. Every effort
35
36 will be taken to meet this schedule and so preserve the May trial date.

37
38 At this preliminary stage, Plaintiffs and Defendants anticipate taking approximately
39
40 15-20 fact witness depositions each, for a total of 30-40.

41
42
43 ¹ Requests for admission are not subject to the October 31, 2014 deadline and instead are
44 subject to the March 23, 2015 discovery cutoff set forth in the Court's Order Setting Civil Case
45 Schedule dated March 17, 2014.

46 ² This excludes the 30(b)(6) notice issued by Plaintiffs to Zillow on October 13, 2014, which
47 deposition(s) may be conducted prior to December 1, 2014.

~~PROPOSED~~ ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 2

56920-0025/LEGAL.123898630.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
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Custodians and Search Terms

The parties must work together in good faith to reach agreement on proposed search terms and custodians for their document productions, starting with a conference the week of October 27, 2014 on these issues, and bring any related disputes before the Special Master.

Logistics

The Special Master anticipates holding oral argument on discovery motions, which the parties should schedule with his assistant, Janelle Hall. The parties have the option of arranging for a court reporter to be present at oral arguments before the Special Master.

If a filing exceeds a total of 20 pages, the parties are requested to submit a hard copy of the filing to the Special Master.

The parties shall submit hard copies of all cases substantially relied upon to the Special Master at the time of filing.

This Order

Plaintiffs are directed to file a copy of this Order with the Court within 5 court days of its entry by the Special Master.

ENTERED this 10 day of November, 2014.



THE HONORABLE BRUCE HILYER
SPECIAL MASTER

[PROPOSED] ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 3

56920-0025/LEGAL123898630.1

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Phone: 206.359.8000
Fax: 206.359.9000

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Presented by:

CABLE, LANGENBACH, KINERK & BAUER LLP

PERKINS COIE LLP

By: /s/ Jack M. Lovejoy
Jack M. Lovejoy, WSBA No. 36962
Lawrence R. Cock, WSBA No. 20326

By: /s/ Kathleen M. O'Sullivan
Susan E. Foster, WSBA No. 18030
Kathleen M. O'Sullivan, WSBA No. 27850
Katherine G. Galipeau, WSBA No. 40812

Attorneys for Plaintiffs

Attorneys for Defendant Zillow, Inc.

GRAHAM & DUNN PC

By: /s/ Clemens H. Barnes
Clemens H. Barnes, WSBA No. 4905
Esteria Gordon, WSBA No. 12655

Attorneys for Defendant Errol Samuelson

[PROPOSED] ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 4

56920-0025/LEGAL.123898630.1

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

Jack Lovejoy

From: Galipeau, Katherine G. (Katie) (Perkins Coie) <KGalipeau@perkinscoie.com>
Sent: Wednesday, February 04, 2015 4:54 PM
To: Abbott, Charles H.
Cc: O'Sullivan, Kathleen M. (Perkins Coie); Foster, Susan E. (Perkins Coie); Caslin, Brent; Jack Lovejoy; Lawrence Cock
Subject: RE: Move et al. v. Zillow et al.

Charlie,

Thank you for your letter. Zillow will plan to meet the February 27 schedule as well.

Regards,

Katie

Katherine Galipeau | Perkins Coie LLP

D. +1.206.359.8075

E. KGalipeau@perkinscoie.com

From: Abbott, Charles H. [<mailto:CHAbbott@jenner.com>]

Sent: Tuesday, February 03, 2015 8:01 PM

To: Galipeau, Katherine G. (Katie) (Perkins Coie)

Cc: O'Sullivan, Kathleen M. (Perkins Coie); Foster, Susan E. (Perkins Coie); Caslin, Brent; Jack Lovejoy; Lawrence Cock

Subject: Move et al. v. Zillow et al.

Katie:

Please see the attached correspondence in response to a January 29, 2014 letter you addressed to Jack and Lawrence.

Best,

Charlie

Charles H. Abbott

Jenner & Block LLP

633 West 5th Street

Suite 3600, Los Angeles, CA 90071 | jenner.com

(213) 239-2243 | TEL

(213) 239-2252 | FAX

CHAbbott@jenner.com

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Jack Lovejoy

From: Abbott, Charles H. <CHAbbott@jenner.com>
Sent: Tuesday, February 03, 2015 8:01 PM
To: KGalipeau@perkinscoie.com
Cc: KOSullivan@perkinscoie.com; SFoster@perkinscoie.com; Caslin, Brent; Jack Lovejoy; Lawrence Cock
Subject: Move et al. v. Zillow et al.
Attachments: Letter to K. Galipeau 02-03-15.pdf

Katie:

Please see the attached correspondence in response to a January 29, 2014 letter you addressed to Jack and Lawrence.

Best,
Charlie

Charles H. Abbott

Jenner & Block LLP
633 West 5th Street
Suite 3600, Los Angeles, CA 90071 | jenner.com
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February 3, 2015

Charles H. Abbott
Tel 213 239-2243
Fax 213 239-2253
chabbott@jenner.com

VIA EMAIL

Katherine G. Galipeau
Perkins Coie LLP
kgalipeau@perkinscoie.com

Re: **Move, Inc., et al. v. Zillow and Samuelson
Production of Documents and Privilege Logs**

Dear Katie:

I write in response to your January 29, 2015 letter to Lawrence Cock and Jack Lovejoy concerning Move's document production and privilege logs. Going forward, I will manage this aspect of the case for Plaintiffs, so please address future correspondence on this topic to me.

Move is in the process of completing its review of documents and plans to finish its production by February 27, 2015. Move plans to produce all unprivileged documents responsive to the defendants' requests for production, including documents that reference Jim Caulfield, by February 13. Move expects to produce redacted documents and its privilege log by February 27. As sometimes happens in litigation, our dates may slip slightly, but these are our goals and we will do our best to meet them.

Please confirm that Zillow will produce all outstanding documents and its privilege log no later than February 27.

Sincerely,



Charles H. Abbott

CHA:ims

cc: Jack Lovejoy, Cable Lagenbach
Lawrence Cock, Cable Lagenbach

Jack Lovejoy

From: Jennison, Judy (Perkins Coie) <JJennison@perkinscoie.com>
Sent: Tuesday, February 17, 2015 5:06 PM
To: bcaslin@jenner.com; nsaros@jenner.com; Jack Lovejoy; Barnes, Clem (Clem.Barnes@millernash.com); CHays@GrahamDunn.com
Cc: Foster, Susan E. (Perkins Coie); Hesterberg, Nicholas H. (Nick) (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); Galipeau, Katherine G. (Katie) (Perkins Coie)
Subject: Keystone Strategy's Acknowledgement
Attachments: Keystone - Jeff Marowits.pdf

Counsel:

Pursuant to paragraph 10 of the protective order in this case, attached is an Exhibit A acknowledgement of the protective order signed by Jeff Marowits from Keystone Strategy, a consultant retained by Zillow. Mr. Marowits works with Mark Glick, for whom we provided an acknowledgement last month.

I understand the parties are providing acknowledgements only for the most senior consultant/expert of a given organization, so Mr. Glick's disclosure should be sufficient. However, since Mr. Glick is not a fulltime employee of Keystone, we thought we would provide Mr. Marowits' acknowledgement in addition.

Best,
Judy

Judy Jennison | Perkins Coie LLP

PARTNER
1201 Third Avenue Suite 4000
Seattle, WA 98101-3099
D: +1.206.359.3489
F: +1.206.359.4489
C: +1.425.736.8666
E: JJennison@perkinscoie.com

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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, JEFFERY MAROWITZ [name], of 113 SPRING ST., NEW YORK, NEW YORK [address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the King County Superior Court, in the State of Washington, on April 7, 2014 in the case of *Move, Inc., et al. v. Zillow, Inc. and Errol Samuelson*, Case No. 14-2-07669-0 SEA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the King County Superior Court in the State of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

4/14/15
Date

New York, NY
City and State where sworn and signed

JEFF MAROWITZ
Printed Name

[Signature]
Signature

Jack Lovejoy

From: Janet Petersen
Sent: Friday, January 30, 2015 5:01 PM
To: Foster, Susan E. (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); Galipeau, Katherine G. (Katie) (Perkins Coie); Jennison, Judy (Perkins Coie); clemens.barnes@millernash.com; estera.gordon@millernash.com; dan.oates@millernash.com
Cc: Griffiths, Jennifer (Perkins Coie); Wyatt, Sherri (Perkins Coie); connie.hays@millernash.com; Lawrence Cock; Jack Lovejoy
Subject: Move, Inc. v. Zillow and Samuelson
Attachments: OneTouch Jan 30, 2015 (1).PDF; Protective Order_Dalbeck_01.30.15.pdf; Dalbeck_Richard_cv_06-14.pdf

Please see the attached correspondence.

Sincerely,

Janet Petersen
Legal Assistant
CABLE LANGENBACH KINERK & BAUER, LLP
1000 Second Avenue, Suite 3500
Seattle, WA 98104
(206) 292-8800 (phone)
(206) 292-0494 (fax)
jpetersen@cablelang.com

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CABLE, LANGENBACH, KINERK & BAUER, LLP

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1000 Second Avenue Suite 3500
Seattle, Washington 98104-1048
Fax: (206) 292-0494 Phone: (206) 292-8800

LAWRENCE R. COCK
(206) 812-0836
LRC@cablelang.com

January 30, 2015

BY EMAIL:

Susan Foster
Kathleen M. O'Sullivan
Katherine G. Galipeau
Judy Jennison
PERKINS COIE LLP

Clemens H. Barnes
Esteria Gordon
Dan Oates
MILLER NASH GRAHAM & DUNN, PC

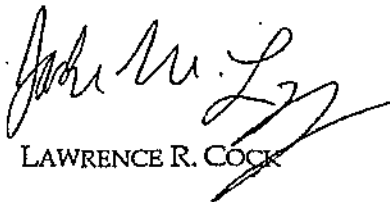
sfoster@perkinscoie.com; kosullivan@perkinscoie.com; kgalipeau@perkinscoie.com; jjennison@perkins.com;
jennifergriffiths@perkinscoie.com; swyatt@perkinscoie.com; clemens.barnes@millernash.com;
dan.oates@millernash.com; connie.hays@millernash.com

Re: *Move, Inc., et al. v. Zillow and Samuelson*
Exhibit A to Protective Order

Dear Counsel:

To comply with the procedure for disclosure to consultants and experts, I enclose Exhibit A to the protective order signed by Richard Dalbeck. I also enclose his CV.

Sincerely,

 FOR
LAWRENCE R. COCK

Enclosures

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, RICHARD DALBECK of CORNERSTONE RESEARCH, declare
[print or type full address] 633 W. FIFTH ST., LOS ANGELES, CA 90071
under penalty of perjury that I have read in its entirety and understand the Stipulated

Protective Order that was issued by the King County Superior Court in the State of
Washington, on 01/21/15 in the case of Altera, Inc. et al v. Allum, Inc. and Kernal
Navigation, Case No. 14-2-01760-0001. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or items that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the King County Superior Court in the
State Washington for the purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this action.

January 30, 2015
Date

Los Angeles, CA
City and State where sworn and signed

RICHARD DALBECK
Printed name

[Signature]
Signature

PERMITTED TO BE REPRODUCED FOR
PERSONAL USE ONLY

Perkins Cole LLP
1201 Third Avenue, Suite 2000
Seattle, WA 98101-3000
Phone: (206) 259-8000
Fax: (206) 259-1000

RICHARD W. DALBECK
Vice President

Cornerstone Research
633 West Fifth Street, 31st Floor • Los Angeles, CA 90071
213.553.2650 • fax 213.553.2699
rdalbeck@cornerstone.com

ACADEMIC BACKGROUND

1972	University of Southern California <i>Masters of Business Administration</i> Magna Cum Laude	Los Angeles, California
1970	University of Southern California B.S., Accounting and Finance With Honors	Los Angeles, California

PROFESSIONAL EXPERIENCE

2002 – Present	Cornerstone Research, Inc. <i>Vice President (Partner)</i> <i>Head, Los Angeles Office</i> <i>Head, Intellectual Property Practice</i> Applies consulting and business experience to complex litigation matters and strategic business issues, including analysis of economic harm and related financial issues. Senior management experience in entertainment, energy, and professional services. Provides litigation consulting services, managing cases involving breach of contract, mergers and acquisitions, fiduciary duty, corporate governance, corporate investigations, business valuation and intellectual property disputes. Experience in matters involving investment banking firms, capital management firms, private equity firms, venture capital firms, as well as major corporations in a variety of industries, including media and entertainment, energy, construction, telecommunications, information technology and aerospace.	Los Angeles, California
1992 – 2002	Premier Advisors <i>President</i> Provided litigation consulting services, including testifying as an expert witness, as well as management consulting and advisory services, which included corporate finance, strategic planning, accounting, and financial services.	Los Angeles, California
1989 – 1992	SONY U.S.A., Inc. SONY U.S.A. is a major subsidiary of SONY Corporation and is the holding company for Columbia Pictures Entertainment, Guber-Peters Entertainment and SONY High Definition, listed below, among other companies owned by SONY U.S.A.	New York, New York
1990 – 1992	SONY High Definition Facilities, Inc. <i>President</i> Responsibilities included planning and development for the integration of SONY's high definition technology into the entertainment industry, including coordinating budgeting	Culver City, California

RICHARD W. DALBECK
Vice President

and planning for a state of the art high definition facility to showcase the technology.
Reported to the Chairman.

- 1989 – 1990 **Columbia Pictures Entertainment** Culver City, California
Office of the Chairmen
Responsibilities included corporate planning for the integration and transition of Guber-Peters Entertainment into Columbia Pictures Entertainment. Reported to the CEO.
- 1988 – 1989 **Guber-Peters Entertainment** Burbank, California
Chief Operating Officer and Chief Financial Officer
Responsibilities included strategic planning, business operations, corporate finance, accounting and administration. Reported to the Chief Executive Officer.
- 1987 – 1988 **Lorimar-Telepictures** Culver City, California
Executive Vice President & Chief Financial Officer
Responsibilities included corporate finance and accounting, mergers and acquisitions, securities offerings, strategic planning, management information systems and administration. Reported to CEO.
- 1975 – 1987 **Pacific Enterprises** Los Angeles, California
Vice President and Controller
Director of Financial Planning
Responsibilities included accounting and financial reporting, financial planning and management information systems for the \$6 billion holding company, parent of Southern California Gas Company, the nation's largest gas distribution utility.
- 1980 – 1984 **Southern California Gas Company** Los Angeles, California
Vice President and Chief Financial Officer
Vice President, Administrative Services
Held series of senior management positions in Southern California Gas Company, the major operating subsidiary of Pacific Enterprises. Elected Chief Financial Officer of the Southern California Gas Company. Later named Vice President of Administrative Services for the 12 operating divisions of the Southern California Gas Company. Reported to the Chief Executive Officer.
- 1970 – 1975 **Ernst & Young** Los Angeles, California
Consultant
Responsibilities included providing consulting, audit and accounting services to clients in energy, real estate and manufacturing for the Los Angeles office.

HONORS AND AWARDS

- Dean's List – University Academic Honors
- Phi Kappa Phi – University Honor Society
- Beta Gamma Sigma – Business Honor Society
- Knights – University Service Honorary
- Distinguished Alumnus Award, School of Accounting, USC School of Business

PROFESSIONAL AND BUSINESS EXPERIENCE

Provided expert testimony and litigation consulting services in a case involving economic losses associated with lost earnings capacity. (*K. Cardinal, F. Cardinal, D. Cardinal v. The County of San Diego, G. Buchnoff, M. Nguyen, J. Mendoza*, Federal Court, Southern District of California)

Provided expert testimony and litigation consulting services for the U. S Attorney's Office in an international insurance fraud case, involving a series of complex business transactions run through multiple domestic and international corporations. (*United States of America v. DeGeorge, et al.*, Federal Court, Central District of California)

Provided expert testimony and litigation consulting services for the U. S. Attorney's Office in a case involving the officers of a consumer electronics company. The officers were indicted for conspiracy, loan fraud, wire fraud and falsifying corporate books and records. (*United States of America v. Berger, et al.*, Federal Court, Central District of California)

Provided litigation consulting services in a breach of contract, fraud and intentional interference with prospective economic advantage dispute between the author and motion picture producer and distributor in the entertainment industry. My role was to assess economic harm to the author. (*Tim LaHaye v. Goodneuz, dba Namesake Entertainment, Cloud Ten Productions*, Federal Court, Central District of California)

Provided litigation consulting services in a copyright, trespass, fraud, anti-trust and unfair competition dispute between two competitors in the ticketing industry. My role was to assess the economic harm to plaintiff and gain by the defendant, attendant to their copying ("spidering") and "deep linking" the plaintiff's website. (*Ticketmaster Corporation and Ticketmaster Online-Citysearch v. Tickets.com*, Federal Court, Central District of California)

Provided litigation consulting services in a securities case requiring analysis of financial statements and financial position of company, relating to whether stock buy-back transactions were accretive or dilutive to shareholders under various assumptions at different points in time. (*San Vicente Group, Inc. v. Jay Matulich, Christopher D. Jennings, Stanley Hollander, et al.*, Superior Court, State of California)

Provided litigation consulting services in an accounting malpractice and breach of fiduciary duty dispute between the corporation and accountants and former officers and directors in the personal computer sound and video accessories industry. My role was to assess economic loss. (*Official Unsecured Creditors Committee of Media Vision Technology, Inc. v. Ernst & Young, Paul Jain, et al.*, Federal District Court, Northern District of California)

Provided litigation consulting services in an Arbitration involving a breach of contract dispute in the healthcare industry. My role was to assess economic harm as a result of the breach. (*Edwards Lifesciences, Inc. v. Baxter International*, Arbitration Hearing)

Provided litigation consulting services (AAA Arbitration) in a breach of contract dispute in the electric utility industry. My role was to assess damages. (*PPM Energy Company v. Black Hills Power Company*, Deposition)

Provided litigation consulting services (Federal District Court, Eastern District of California) in a patent infringement dispute in the broadcast media industry. My role was to assess reasonable royalties. (*Technology Licensing Corporation v. Thomson, Inc.*, Deposition)

Provided litigation consulting services (Federal District Court, Eastern District of Pennsylvania) in a breach of construction contract and fraud dispute in the entertainment industry. My role was to assess

damages in the form of lost profits and excess expenses. (*Entertainment Technology Corporation v. The Walt Disney Co. and Walt Disney World, Inc.*, Deposition)

Provided litigation consulting services (Los Angeles Superior Court) in a below cost pricing and unfair competition dispute in the recorded music industry. My role was to assess below cost pricing. (*DMX v. Muzak*, Deposition)

Provided litigation consulting services (AAA arbitration) in a breach of contract dispute in the entertainment industry. My role was to assess damages. (*Los Angeles Arena d.b.a. Staples Center and Anschutz Entertainment Group v. Healthy World*, Arbitration Hearing)

Provided litigation consulting services (Arbitration) in a legal malpractice and fraud dispute in the semi-conductor industry. My role was to assess damages and causation of both the instant malpractice case and underlying case-within-a-case. (*Robert Herring, et al. v. Luce Forward Hamilton & Scripps*, Deposition and Arbitration)

Provided litigation consulting services (Federal District Court, Central District of California) in a trademark and Lanham Act case in the direct mail industry. My role was to assess unjust enrichment. (*Starcrest v. Publisher's Clearinghouse*, Deposition and Trial)

Provided litigation consulting services (Los Angeles Superior Court) in an unfair competition and below cost pricing dispute in the recreational vehicle industry. My role was to assess liability and damages. (*Steelco, Inc. v. Lippert Components, Inc.*, Deposition)

Provided litigation consulting services in a patent infringement dispute (Federal District Court, Central District of California) in the semi-conductor and video technology industries. My role was to assess reasonable royalty damages. (*TLC v. Gennum*)

Provided litigation consulting services in a case involving valuation of a minority interest in a privately held corporation in the aerospace industry (The Court of Chancery of the State of Delaware). My role was to qualitatively and quantitatively value a control right held by the minority shareholder. (*Raytheon Aircraft Holdings, Inc. v. Veritas Capital Fund, et al*)

Provided litigation consulting services in a securities case (Superior Court for the State of California, County of Santa Barbara) involving alleged breach of contract and breach of fiduciary duty with respect to investment portfolio management. My role was to assess economic damages. (*MTM Partners, Ltd. V. Trainer Wortham & Co., Inc.*)

Provided litigation consulting services in a patent infringement dispute (Federal District Court, Central District of California, Western Division) in the computer industry. My role was to assess reasonable royalty damages. (*UNOVA, Inc. v. Acer Incorporated, Acer America Corporation, Apple Computer, Inc., Fujitsu, Ltd., Fujitsu PC Corporation, Gateway, Inc., Hewlett-Packard Company, NEC Corporation and NEC Computers, Inc.*)

Provided litigation consulting services (San Diego Superior Court) in a breach of contract in the telecommunications industry. My role was to assess damages. (*Don Cameron v. Lloyds of London, General Agents Insurance Company of America, Inc. and the GAINSCO Companies, et al*, Deposition)

Provided litigation consulting services (Federal District Court, Central District of California) in a patent infringement, unfair competition (Business & Professions Code 17200) tortious interference and breach of contract dispute in the clothing industry. My role was to assess damages, lost profits and reasonable royalties. (*Tag-It Pacific, Inc. v. Pro-Fit Holdings Ltd.*, Deposition)

Provided litigation consulting services (Los Angeles Superior Court) in a breach of contract dispute in the credit card processing industry. My role was to assess damages. (*Auerbach Acquisition Associates v. Greg Daily, U.S. Bancorp et al*, Deposition)

Provided litigation consulting services in a securities case (Arbitration before the National Association of Securities Dealers) involving alleged breach of fiduciary duty with respect to investment portfolio management. My role was to assess economic damages. (*Schacht and Martin v. Merrill Lynch & Co., Inc. and Roger Engemann & Associates, Inc.*)

Provided litigation consulting services (Arbitration before the National Association of Securities Dealers) in a dispute involving alleged breach of fiduciary duty. My role was to assess damages. (*Pisevich & Pisevich Profit Sharing Plan v. Associated Securities Corporation*)

Provided litigation consulting services (Superior Court, Province of Quebec, District of Montreal, Canada) in evaluating the transaction announced between BCE, Inc. and 6796508 Canada. My role was to assess the reasonableness of the transaction in relation to prevailing norms in the global capital markets. (*BCE, Inc. v. 6796508 Canada*, Trial)

Provided litigation consulting services (United States District Court, Southern District of New York) involving investment advisory services. My role was to address industry norms and assess damages. (*GAMCO Investors v. Vivendi Universal, S.A.*, Deposition)

Provided litigation consulting services (Los Angeles Superior Court) in a breach of contract dispute. My role was to assess valuation issues and the ability to raise capital. (*Boeing Satellite Systems, Inc. v. ICO Global Communications*, Deposition)

Provided litigation consulting services in a breach of contract dispute in the artist gallery industry. My role was to assess damages. (*Goff v. The Thomas Kinkade Company*, Arbitration)

Provided litigation consulting services (United States District Court, Central District of California) in a patent infringement dispute in the high tech hardware industry. My role was to assess damages. (*Scharf v. Applied Materials, Inc.*, Deposition)

Provided litigation consulting services involving the marketing, distribution and retail practices in the satellite radio industry. My role was to address industry norms. (*U.S. Electronics v. Sirius Satellite Radio, Inc.*, Arbitration, AAA, New York)

Provided litigation consulting services (Los Angeles Superior Court) in a dispute involving tax advisory services. My role was to assess damages. (*Hansen v. KPMG, LLP* Deposition)

Provided litigation consulting services (Court of Chancery, State of Delaware) in a breach of contract dispute involving the subprime lending industry. My role was to assess damages. (*Accredited Home Lenders Holding Co. v. Lone Star Fund*, Deposition)

Provided litigation consulting services (United States District Court, Northern District of California) in a breach of contract dispute in the high tech hardware industry. My role was to assess damages. (*Cardonet, Inc. v. IBM Corporation*, Deposition)

Provided litigation consulting services (United States District Court, Southern District of California) in a securities class action matter. My role was to address issues involving executive compensation. (*In re PETCO Securities Litigation*, Deposition)

Provided litigation consulting services (Chancery Court, Sullivan County, Bristol, Tennessee) in a shareholders derivative matter. My role was to address issues involving corporate governance. (*In re King Pharmaceuticals, Inc. Derivative Litigation*, Deposition)

Provided litigation consulting services (United States District Court, Central District of California) involving investment advisory services. My role was to address fiduciary duty and assess damages. (*Looker, Looker Foundation v. Cambridge Associates.*, Deposition)

Provided litigation consulting services in a case involving executive compensation. (*United States of America v. Conrad Black, Ravelston Corporation, John Boulton, Mark Kipnis, Peter Atkinson.*, United States District Court, Northern District of Illinois, Eastern Division)

Provided litigation consulting services (United States District Court, Central District of California) in a breach of contract dispute in the high tech hardware industry. My role was to assess damages. (*Viewsonic Corporation v. AmTran Technology.* Deposition)

Provided litigation consulting services (Los Angeles Superior Court) in a dispute involving corporate governance issues related to a proposed acquisition in the entertainment industry. My role was to assess damages. (*Friedman v. Intermix Media.* Deposition)

Provided consulting services in a dispute involving a multi-billion dollar, mixed-use, commercial project that included hotels, residential high-rise buildings, retail space, and a casino. We were retained to assist with the close-out of the project and prepare for litigation by analyzing, reconciling and reconstructing massive amounts of data.

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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL
ZILLOW TO PRODUCE DOCUMENTS
REGARDING ITS ACQUISITION OF
TRULIA**

THIS MATTER came before the Special Master on Plaintiff's Motion to Compel Zillow to Produce Documents Regarding its Acquisition of Trulia. The Special Master has reviewed:

1. Plaintiffs' motion;
2. The Declaration of Jack M. Lovejoy, with exhibits;
3. Zillow's opposition; and
4. Plaintiffs' reply.

1 The Special Master is fully advised. NOW THEREFORE it is ORDERED:

- 2 1. Plaintiffs' motion is GRANTED.
- 3 2. Plaintiffs' Sixth Discovery Requests are timely.
- 4 3. Zillow is compelled to produce documents responsive to Plaintiffs' Sixth Discovery
- 5 Requests when they come due.

6 ENTERED this _____ day of March, 2015, at Seattle, Washington.

7

8 _____
Hon. Bruce Hilyer (Ret.)
Special Master

9

10 Presented by:

11 Jack M. Lovejoy
Jack M. Lovejoy, WSBA No. 36962
Lawrence R. Cock, WSBA No. 20326
12 Attorneys for Plaintiffs
CABLE, LANGENBACH, KINERK & BAUER, LLP
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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted For Consideration: March 6, 2015

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

**ZILLOW'S OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL
DOCUMENTS REGARDING ZILLOW'S
ACQUISITION OF TRULIA**

CONTAINS INFORMATION PROTECTED
BY PROTECTIVE ORDER.

PORTIONS DESIGNATED
CONFIDENTIAL AND OCEO (DON'T
SHOW ZILLOW)

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I. INTRODUCTION

Plaintiffs served Zillow with requests for production relating to Zillow’s acquisition of Trulia on February 5, 2015—three months after the deadline to serve interrogatories and requests for production (October 31, 2014), and over six months after the Trulia acquisition was made public (July 28, 2014). Although Zillow’s objections are not due until March 5, Plaintiffs prematurely moved this Court to compel Zillow to produce these documents. Zillow intends to object to these discovery requests because (i) they are untimely (by a long shot), (ii) they seek discovery of a potential claim which is currently the subject of a Motion to Amend and for which Plaintiffs have not shown a substantial factual basis; and (iii) they seek broad and burdensome discovery. Instead of waiting for Zillow’s objections or the outcome of its Motion to Amend, or even trying to show good cause to amend the deadline for written discovery, Plaintiffs insist that Zillow’s timeliness objection is “baseless” because the parties agreed to a new Case Schedule. That Plaintiffs did not even bother to receive Zillow’s objections and seek a conference before filing this motion is reason enough to deny it. But procedure aside, the motion should be denied on the merits.

First, Plaintiffs’ motion rests on a misreading of the parties’ Stipulation and Order Re Extension of Trial Date and Expiration of June 30 Preliminary Injunction (“Stipulation to Continue the Trial Date”). Specifically, Plaintiffs assume that: (i) because the parties stipulated to continue the trial date, that previously expired deadlines were revived and extended, and (ii) the deadline to serve requests for production is the same thing as the discovery cutoff. Both assumptions are wrong. As explained below, the parties explicitly negotiated a carefully worded stipulation that only extended the deadlines “*beginning with the deadline for possible primary witness disclosures.*” Lovejoy Decl., Ex. 1 at 3 (attached to

1 Plaintiffs' motion). The primary witness disclosure deadline was December 22, 2014,¹ but
2 pursuant to the parties agreement and Order Regarding Initial Discovery Conference and
3 Discovery Plan ("Scheduling Order"), the deadline to serve requests for production and
4 interrogatories was several weeks before that (October 31). Lovejoy Decl., Ex. 5 at 3. By its
5 plain terms, the Stipulation to Continue the Trial Date did not affect, much less "reset," the
6 deadline to serve requests for production. Moreover, the deadline for written discovery has
7 always been different from the discovery cutoff. Plaintiffs' attempt to conflate the two
8 deadlines illustrates the underlying flaw with their motion, and if accepted would lead to
9 serious complications moving forward.

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11 This is not hairsplitting. When the parties were negotiating the Stipulation to
12 Continue the Trial Date, Zillow's counsel pushed hard for this language to be included in the
13 order precisely because Zillow did not want the other case deadlines to be reset. While
14 Zillow was willing to agree to an extension that would allow the parties to complete existing
15 discovery, its agreement specifically anticipated that the parties would be bound by the
16 existing restrictions on the issuance of new written discovery. Declaration of Susan Foster
17 ("Foster Decl."), ¶¶ 3-4. Plaintiffs did not ask for this or any of the other preexisting
18 deadlines to be revived and extended, and agreed that the newly-extended deadlines started
19 only with the deadline for primary witness disclosures. *Id.* at ¶ 5. Plaintiffs cannot back
20 away now from a commitment they made to Zillow as a condition to extend the trial date.

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22 Second, Plaintiffs' motion should be denied because it is simply another way for
23 Plaintiffs to get the Special Master to reconsider the decision to partially quash Plaintiffs'
24 subpoena to Trulia. Notably, Plaintiffs do not even try to establish a factual basis for this

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¹ The Order Regarding Initial Discovery Conference and Discovery Plan set this date as December 8, 2015 but it was extended to December 22, 2014 by Stipulation and Order dated December 2, 2014.

1 intrusive discovery—relying instead on their flawed understanding of the Stipulation.
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3 And finally, Plaintiffs’ motion should be denied because it is impractical, highly
4 prejudicial to Zillow, and would only serve to increase dramatically the already exorbitant
5 costs of this litigation. Specifically, should Plaintiffs prevail in conflating the written
6 discovery deadline with the discovery cutoff, then Zillow will have to respond to new
7 discovery requests up through September 8, 2015. This was specifically discussed at the
8 Parties’ Initial Discovery Conference and a deadline for written discovery was established.
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10 Having been fully aware of the merger and the evidence it now points to as of at least
11 August 2014, Plaintiffs cannot now seek burdensome discovery of baseless claims. Plaintiffs
12 may regret not serving these discovery requests on time, but it is not Zillow’s responsibility
13 to compensate for Plaintiffs’ strategic mistakes. Plaintiffs’ motion should be denied.
14

15 II. ARGUMENT

16 A. The Stipulation to Continue the Trial Date Did Not Extend the Deadline to Serve 17 Interrogatories and Requests for Production.

18 The Court should deny Plaintiffs’ motion to compel because it violates the Stipulation
19 to Continue the Trial Date, conflates the deadline to submit written discovery with the
20 discovery cutoff, and breaches an agreement the parties reached in exchange for continuing
21 the trial date.
22

23 First, Plaintiffs’ requests for production are much too late because the deadline to
24 serve written discovery was over three months ago. Plaintiffs insist that their requests for
25 production are timely, based entirely on the notion that because the Stipulation to Continue
26 the Trial Date extended the *discovery cutoff* to September 8, 2015, it must have similarly
27 extended the deadline to serve requests for production. But Plaintiffs are wrong. The order
28 does not say that. Here is the relevant provision:
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1 1. The trial date in this action is continued to October 26, 2015
2 or date after October 26, 2015 that is set by the Superior Court
3 in light of the Superior Court’s schedule, with the case
4 schedule, ***beginning with the deadline for possible primary***
5 ***witness disclosures***, to be reset based on the new trial date.

6 Lovejoy Decl., Ex. 1 at 3 (emphasis added). The phrase “***beginning with the deadline for***
7 ***possible primary witness disclosures***,” forecloses Plaintiffs’ argument and underscores
8 Zillow’s timeliness objection. Instead of resetting the entire schedule—as Plaintiffs
9 suggest—the stipulation explicitly carves out the deadlines that came *before* the primary
10 witness disclosures. The key deadline in the discovery plan that preceded the primary
11 witness disclosures was October 31, 2014, which was the “[l]ast day to issue interrogatories
12 and requests for production, other than for liberal good cause shown.” Lovejoy Decl., Ex. 5
13 at 3. Thus, contrary to Plaintiffs’ assertions that Zillow is in “willful violation of the Court’s
14 Order,” Plf. Mot. at 3, the Stipulation to Continue the Trial Date did not affect the written
15 discovery deadline. Far from violating the stipulated order, Zillow’s timeliness objection
16 flows directly from the stipulation signed by the parties to this litigation.

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Nevertheless, Plaintiffs insist that because they served their Trulia Requests for
Production “seven months before [the new] discovery cutoff,” Plf. Mot. at 3, that their
requests are timely. In making this argument, Plaintiffs conflate the deadline to submit
interrogatories and requests for production with the discovery cutoff. But those are two
different things. The stipulated Order Regarding Initial Discovery Conference and Discovery
Plan (“Scheduling Order”) itself makes this distinction. Lovejoy Decl., Ex. 5 at 3.

According to the Scheduling Order, the “[l]ast day to issue interrogatories and requests for
production” was October 1, 2014. *Id.* But the “[d]iscovery cutoff” was set for March 23,
2015. *Id.* These are two different deadlines. The Stipulation extended the latter, but left the
former in place. That distinction makes sense because discovery is more than simply

1 interrogatories and requests for production; it also includes, for example, depositions and
2 requests for admission.² In complex cases like this, it is often necessary to carve out separate
3 discovery deadlines so that the parties can respond to document requests, review document
4 productions, and prepare for depositions and dispositive motions. In glossing over this
5 distinction, Plaintiffs effectively are asking the Court to rewrite *three* orders: (i) the
6 Scheduling Order; (ii) the Stipulation to Continue the Trial Date; and (iii) the Amended Case
7 Schedule. Plaintiffs should not be allowed to use a motion to compel to rewrite stipulations
8 and orders to which the parties agreed to be bound.
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17 And finally, the Court should deny Plaintiffs' motion because Plaintiffs committed to
18 these deadlines when the parties agreed to the stipulation. Specifically, Zillow's counsel
19 (Susan Foster) and Plaintiffs' counsel (Brent Caslin) negotiated the wording of the
20 Stipulation to Continue the Trial Date. Foster Decl., ¶ 2. Zillow's counsel pushed for the
21 phrase "beginning with the deadline for possible primary witness disclosures" so that the
22 parties would remain bound to previously expired deadlines, including the earlier deadline
23 for written discovery (which had already passed). *Id.* at ¶¶ 3-4. Zillow would not agree to a
24 stipulation that reopened written discovery and other deadlines in the case. Move's counsel
25 agreed to the language as a condition to extend the trial date. *Id.* at ¶ 4-5.
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35 But now a different attorney representing Plaintiffs want to renege on that agreement.
36 In fact, Plaintiffs served their outdated requests for production on the same day the parties
37 stipulated to the trial continuance. It may be that this other attorney simply did not know
38 about the commitment his co-counsel made on Plaintiffs' behalf to maintain the written
39 discovery deadline, and genuinely thought that the written discovery deadline had been
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² In fact, the Scheduling Order specifies that requests for admission "are not subject to the October 31, 2014 deadline and instead are subject to the March 23, 2015 discovery cutoff"—which further illustrates the distinction that Plaintiffs fail to grasp. Lovejoy Decl., Ex. 5 at 3, n.1.

1 extended. But whether Plaintiffs' attorneys properly communicated with one another that the
2 written discovery deadline was not being extended before filing these late discovery requests
3 does not matter. Plaintiffs are now bound by the agreement their counsel made to induce
4 Zillow to stipulate to a trial continuance: the trial was continued, but the deadline for written
5 discovery was not. Plaintiffs may not like it, but they now must accept the consequences of
6 this arrangement.
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12 Because Plaintiffs already agreed not to extend the written discovery deadline,
13 Plaintiffs' requests for production are far too late (by three months) and its motion should be
14 denied.
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19 **B. The Special Master Already Concluded That Plaintiffs Have Not Established**
20 **Good Cause for This Discovery.**

21 Plaintiffs' requests for production ask for all communications regarding the Trulia
22 acquisition, and all documents related to Zillow's reasons for acquiring Trulia and the date
23 on which Zillow launched on such efforts. Lovejoy Decl., Ex. 2. To overcome Zillow's
24 timeliness objections, Plaintiffs must show "good cause." See Scheduling Order. But in
25 their motion Plaintiffs do not even try to establish good cause. In fact, Plaintiffs relegate to a
26 footnote (and in passing) the notion that these documents are somehow relevant and
27 important to Plaintiffs' claims. See Plf. Motion to Compel at 3-4, nn. 3 & 4. But even then,
28 Plaintiffs do not bother to analyze how or why these documents are relevant, other than to
29 point out that Zillow has also asked for them.³ But shadow boxing Zillow's discovery
30 requests does not establish the factual basis that Plaintiffs would need to obtain this discovery
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43 ³ Realizing their error, Plaintiffs will no doubt emphasize relevance and good cause in their
44 reply brief. But the Court should discount any good cause argument Plaintiffs raise in their reply as
45 an improper sandbagging tactic. To the extent these documents were important to Plaintiffs' claims,
46 they should have made that case in their opening brief. Zillow obviously cannot respond to new
47 arguments in a reply brief.

1 in a trade secrets case, even if the requests were timely.⁴ *See Microwave Research Corp. v.*
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3 *Sanders Assocs., Inc.*, 110 F.R.D. 669, 674 (D. Mass. 1986) (noting that in a trade secrets
4 case plaintiffs first must demonstrate a “substantial factual basis” for their trade secret
5 misappropriation claims before permitting discovery of defendants’ trade secret information).
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9 In a halfhearted effort to drum up a factual basis for this discovery, Plaintiffs once
10 again parrot the same tired (and unsupported) line they have used many times before: that
11 Mr. Samuelson “plainly” tipped off Zillow to a potential Move/Trulia merger. Mot. at 2.
12
13 After reviewing tens of thousands of documents—including Mr. Samuelson’s *entire inbox*—
14 Plaintiffs base this allegation on a *single e-mail* that Mr. Samuelson wrote to Zillow when he
15 was negotiating the stock grant portion of his employment agreement. Here is what Mr.
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17 Samuelson wrote:
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23 However, the future we discussed included an implicit
24 assumption that there will be no significant moves by Zillow
25 competitors, the real estate industry, or other constituents. I
26 expect that both the industry and the large online players (in
27 real estate, rentals, and finance) will behave and respond
28 differently in 2014/15. . . . [and such changes] certainly could
29 impact Zillow’s valuation in the near term.⁵
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31 According to Plaintiffs’ latest conspiracy theory, that e-mail was a secret code to Zillow
32 about a potential Move/Trulia merger. Mot. at 2. And apparently this secret code was so
33 effective that, according to Plaintiffs, it spurred Zillow to “swoop in” with \$2.5 billion to
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38 ⁴ Despite the untimely nature of these requests, as a show of good faith Zillow has agreed to
39 produce those non-privileged documents submitted to the Special Master *in camera*. Zillow has also
40 searched the non-produced documents from Mr. Beardsley prior to July 12, the date when Zillow and
41 Trulia first exchanged terms, and has found no communications by Mr. Beardsley regarding the
42 acquisition or potential acquisition of Trulia. Foster Decl., ¶ 6. Plaintiffs already have Mr.
43 Samuelson’s entire email inbox. *Id.* Zillow is not aware of any document from either Mr. Samuelson
44 or Mr. Beardsley indicating that either one had any input or involvement in the potential acquisition
45 of Trulia. *Id.*

46 ⁵ This e-mail was attached as Exhibit H to the Declaration of Kathleen O’Sullivan in Support
47 of Defendant Zillow, Inc.’s Opposition to Plaintiffs’ Motion for Reconsideration of the Special
Master’s January 26, 2015 Supplemental Order (Trulia Subpoena).

1 acquire Trulia at a 70% markup. *Id.* With reasoning like that, it is no surprise that the
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3 Special Master concluded that there was no factual basis for Plaintiffs to obtain this same
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5 discovery from Trulia. Plaintiffs should not be allowed to obtain from Zillow what they were
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7 not allowed to obtain from Trulia. Timeliness aside, Plaintiffs still lack a factual basis for
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9 this discovery.

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11 Plaintiffs are sure to insist in their reply brief that what matters most is the bare fact
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13 that they have *theorized* that Mr. Samuelson misappropriated Plaintiffs' confidential
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15 information regarding Trulia, not whether their theory makes sense, or whether there is any
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17 basis to support it. But wild theories do not give plaintiffs in trade secret cases *carte blanche*
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19 to obtain discovery on their competitors' trade secrets.⁶ The standard here is not Rule 56,
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21 where all of Plaintiffs' factual allegations are taken as true, but rather the more exacting
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23 standard that courts apply before ordering a party to turn over sensitive documents to a
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25 competitor during a trade secrets case—namely, that Plaintiffs establish a factual basis for
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27 their allegation of misappropriation. *See Microwave Research Corp.*, 110 F.R.D. at 674;
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29 *Puritan-Bennett Corp. v. Pruitt*, 142 F.R.D. 306 (S.D. Iowa 1992) (denying discovery
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31 because “[t]he Court is not yet persuaded that [plaintiff] had demonstrated a ‘substantial
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33 factual basis’ for its claim”); *Avaya Inc. v. Cisco Sys., Inc.*, No. 10–5881 (FLW), 2011 WL
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35 4962817, at *1-3 (D.N.J. Oct. 18, 2011) (requiring plaintiffs to make out a prima facie case
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37 prior to allowing discovery to proceed).

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42 ⁶ See Brent Caslin, *Secret Weapon: Understanding What Constitutes “Reasonable*
43 *Particularity” Can Be the Decisive Element in Trade Secret Litigation*, at 48, Los Angeles Lawyer
44 Magazine (Apr. 2004) (“Because the information requested in almost every trade secret dispute is
45 itself valuable, defendants should not be reticent about attempting to place tight restrictions on
46 discovery. Limits on discovery are often approved, even those that are novel in their approach.”). A
47 copy of this article, which was written by Plaintiffs' counsel, was previously submitted to the Special
Master.

1 Here, after reviewing documents *in camera*, the Special Master denied Plaintiffs'
2 attempt to extract this same discovery from Trulia because the documents show that Zillow's
3 interest in acquiring Trulia had nothing to do with Mr. Samuelson, and predated his
4 employment at Zillow. In other words, as in *Microwave Research*, Plaintiffs only "fear and
5 suspect" wrongdoing, but they have not presented a substantial factual basis that would
6 justify giving them access to their competitors' trade secret information.⁷
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11 But even assuming, *arguendo*, that these documents are important for Plaintiffs'
12 claims, that would just make Plaintiffs' failure to serve timely discovery requests even less
13 excusable. Plaintiffs knew about Zillow's acquisition of Trulia back in July, when the deal
14 became public. The document on which they now rely was produced to them in June and
15 used by them in connection with their Opposition to Defendants' Motion for Reconsideration
16 in August. Plaintiffs had over three months before the October 31 deadline to submit
17 requests for production—and they took full advantage, serving Zillow with **140 requests for**
18 **production**. Not a single one of those requests asked for documents relating to the Trulia
19 acquisition. Now, six months after the acquisition, and three months after the deadline,
20 Plaintiffs want a "do-over"—not because they learned something new, but because they
21 realized their mistake. Plaintiffs are not entitled to a mulligan on discovery simply because
22 they regret their decision not to ask for these documents before the deadline. At this stage in
23 the litigation, Zillow cannot be asked to make up for Plaintiffs' strategic errors.
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42 ⁷ The court in *Microwave Research Corp.* observed that "when discovery of a defendant's
43 alleged trade secrets and confidential information is sought in litigation regarding misappropriation
44 by a defendant of a plaintiff's trade secrets or confidential information, *it is not enough to analyze the*
45 *requested discovery in terms of relevance.* . . . In order to protect a corporate defendant from having
46 to reveal its trade secrets and confidential information to a competitor during discovery, a plaintiff
47 must demonstrate that there is *a factual basis* for its claim." 110 F.R.D. at 672 (emphasis added).

1 In sum, even if Plaintiffs could get around the plain language of the Stipulation to
2 Continue the Trial Date, and their own commitment not to reset the written discovery
3 deadline, Plaintiffs' motion should still be denied because they have not established a factual
4 basis to justify the intrusive discovery they now seek, much less "good cause" to do so after
5 the deadline.
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11 **C. Plaintiffs' Argument Is Unworkable and Would Subject Zillow to Significant**
12 **Prejudice.**

13 Plaintiffs' motion also should be denied because conflating the written discovery
14 deadline with the discovery cutoff would be unreasonable, unworkable, and extremely
15 prejudicial to Zillow.
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19 First, Plaintiffs' argument is unreasonable because it not only would allow Plaintiffs'
20 pending Trulia-related discovery requests to go forward, but also would allow Plaintiffs to
21 serve even more requests for production anytime during the next *seven months*. In other
22 words, if the Court grants Plaintiffs' motion, Zillow will be responding to requests for
23 production until September 8, 2015—nearly a year after the deadline. That is unreasonable
24 on its face, and precisely the opposite of what the parties had in mind when they stipulated to
25 a continuance.
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33 Second, Plaintiffs' argument is unworkable. The discovery requests the parties
34 submitted before the October 31 deadline have already led to numerous discovery disputes,
35 and prompted the Court to appoint a Special Master. But if Plaintiffs' motion is granted, the
36 entire discovery process will be reset, which means the parties and the Court will be mired in
37 a fresh round of discovery disputes. The parties will have to renegotiate their search terms,
38 the custodians, and their production timelines. This would even put the October trial date in
39 jeopardy. The Stipulation to Continue the Trial Date was intended to give the parties time to
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1 prepare for trial by reviewing the documents responsive to requests already issued and to
2 conduct depositions based on those productions—not to provide more time to submit new
3 discovery requests altogether. In fact, Plaintiffs’ motion to continue the trial date bears this
4 out: in that motion, Plaintiffs asserted that they needed more time to review and respond to
5 the discovery that had already occurred, not more time to serve *entirely new* requests for
6 production. *See* Plf. Motion to Modify Case Schedule at 8 (observing that “there are still
7 many documents to review,” and depositions to take, but not suggesting that the parties will
8 be submitting new document requests).
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17 Third, accepting Plaintiffs’ argument would be extremely prejudicial to Zillow which
18 already spent the time and effort to submit its discovery requests on time, and has been
19 working diligently ever since to make sure its pending discovery requests are answered. As
20 Plaintiffs point out in their motion, Zillow even asked Plaintiffs for documents relating to
21 Move’s potential merger with Trulia. Four months later, Plaintiffs have yet to produce any
22 of these documents, and are now suggesting that they will not produce them unless Zillow
23 responds to Plaintiffs’ untimely requests. In other words, Plaintiffs are holding Zillow’s
24 *timely* document requests hostage to Plaintiffs’ *untimely* requests. In fact, Plaintiffs even
25 suggest that because Zillow recently followed up on its pending discovery requests, that
26 Zillow has somehow conceded that Plaintiffs’ untimely Trulia-related requests are proper.
27 But Plaintiffs’ posturing is not a legal argument; it is a sleight of hand. That Zillow served a
28 request for production (which simply asked for all documents relating to Plaintiffs claims)
29 before the deadline, and in view of Plaintiffs’ claims followed up on that request, does not
30 excuse Plaintiffs’ failure to meet the deadline.
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45 **D. Plaintiffs’ Motion and Order is Premature and Overbroad**

46 Zillow’s objections to Plaintiffs’ request are not due until March 5, 2015. Plaintiffs
47

1 cannot preempt Zillow's right to make individual objections as to the proper scope of
2
3 discovery by this motion. Accordingly, even if the Court were inclined to grant this motion,
4
5 Paragraph 3 of Plaintiffs' Proposed Order should be stricken.
6

7 **III. CONCLUSION**

8
9 Zillow respectfully requests that the Court deny Plaintiffs' motion because it is
10
11 inconsistent with the Stipulation to Continue the Trial Date, reneges on the parties'
12
13 agreement to keep the existing written discovery deadline, and would lead to an
14
15 unreasonable, unworkable, and prejudicial discovery process moving forward.
16

17 DATED: March 4, 2015

/s/Susan Foster

18 Susan E. Foster, WSBA No. 18030
19 SFoster@perkinscoie.com
20 David J. Burman, WSBA No. 10611
21 DBurman@perkinscoie.com
22 Kathleen O'Sullivan, WSBA No. 27850
23 KOSullivan@perkinscoie.com
24 Judith B. Jennison, WSBA No. 36463
25 JJennison@perkinscoie.com
26 Katherine G. Galipeau, WSBA No. 40812
27 KGalipeau@perkinscoie.com
28 **Perkins Coie LLP**
29 1201 Third Avenue, Suite 4900
30 Seattle, WA 98101-3099
31 Telephone: 206.359.8000
32 Facsimile: 206.359.9000

33
34 Attorneys for Defendant
35 Zillow, Inc.
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CERTIFICATE OF SERVICE

On March 4, 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 OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL DOCUMENTS REGARDING ZILLOW’S ACQUISITION OF TRULIA.**

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

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via E-filing
- Via E-mail

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

Clemens H. Barnes, Esq., WSBA No. 4905
Esteria Gordon, WSBA No. 12655
Daniel Oates, WSBA No. 39334
Miller Nash Graham & Dunn LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
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Brent Caslin, WSBA No. 36145
Richard Lee Stone , (*Pro Hac Vice*)
Nick G. Saros, (*Pro Hac Vice*)
Charles H. Abbott III, (*Pro Hac Vice*)
Jeffrey A. Atteberry, (*Pro Hac Vice*)
Samuel D. Green, (*Pro Hac Vice*)
Jenner & Block LLP
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chabbott@jenner.com
jatteberry@jenner.com
sgreen@jenner.com

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via E-filing
- Via E-mail

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

DATED this 4th day of March, 2015.

s/ Vicki Lynn Babani
Vicki Lynn Babani
Legal Secretary

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted For Consideration: March 6, 2015

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

**DECLARATION OF SUSAN FOSTER IN
SUPPORT OF ZILLOW'S OPPOSITION
TO PLAINTIFFS' MOTION TO
COMPEL DOCUMENTS REGARDING
ZILLOW'S ACQUISITION OF TRULIA**

1 I, SUSAN FOSTER, hereby declare:

2
3 1. I have personal knowledge of the facts stated below and am competent to
4 testify regarding the same. I am one of the attorneys representing defendant Zillow, Inc.
5 (“Zillow”) in this matter.
6

7
8 2. I personally negotiated with Plaintiffs’ counsel, Brent Caslin, the parties’
9 Stipulation and Order Re Extension of Trial Date and Expiration of June 30 Preliminary
10 Injunction (“Stipulation to Continue the Trial Date”).
11

12
13 3. When the parties were negotiating the Stipulation to Continue the Trial Date,
14 Zillow’s counsel included the language clarifying that not all dates would be reset with the
15 trial continuance. Zillow did not want the other case deadlines to be reset including the
16 existing restrictions on the issuance of new written discovery. Instead the remaining time
17 for discovery should be used for depositions and expert discovery.
18

19
20 4. Attached as **Exhibit A** is a true and correct copy of an email thread between
21 Brent Caslin, plaintiffs’ counsel, and me dated February 3, 2015, along with the final draft
22 version of the terms of the Stipulation to Continue the Trial Date. In an earlier e-mail during
23 this exchange, Mr. Caslin asked me about “the intent” of the limiting language in
24 paragraph 1 of the Stipulation to Continue the Trial Date. I clarified that the parties would
25 not be “setting all dates as if this were a new case filing.” The final draft that Mr. Caslin
26 sent back to me kept in the phrase “beginning with the deadline for possible primary witness
27 disclosures.” This ensured that the deadline for written discovery—which had already
28 passed—would not be reset. Plaintiffs agreed to this language and indicated that they did
29 not believe there was any disagreement.
30

31
32 5. At no point during the parties’ negotiation over the Stipulation to Continue
33 the Trial Date did Plaintiffs ever ask to reset the written discovery deadline.
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CERTIFICATE OF SERVICE

On March 4, 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: **DECLARATION OF SUSAN FOSTER IN SUPPORT OF ZILLOW'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DOCUMENTS REGARDING ZILLOW'S ACQUISITION OF TRULIA.**

<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 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 Daniel Oates, WSBA No. 39334 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 dan.oates@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 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>) Charles H. Abbott III, (<i>Pro Hac Vice</i>) Jeffrey A. Atteberry, (<i>Pro Hac Vice</i>) Samuel D. Green, (<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 chabbott@jenner.com jatteberry@jenner.com sgreen@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 type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of March, 2015.

s/ Vicki Lynn Babani

Vicki Lynn Babani
Legal Secretary

EXHIBIT A

From: Caslin, Brent <BCaslin@jenner.com>
Sent: Tuesday, February 03, 2015 3:10 PM
To: Foster, Susan E. (Perkins Coie)
Cc: Barnes, Clem (CBarnes@GrahamDunn.com)
Subject: RE: Stipulation re Trial Date and PI
Attachments: Final Stipulation re Continuance, Bond, Appeal, PI.docx

Here you go.

Brent Caslin
1-213-239-5150 | OFFICE
1-213-422-0427 | MOBILE

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

-----Original Message-----

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]
Sent: Tuesday, February 03, 2015 2:13 PM
To: Caslin, Brent
Cc: Barnes, Clem (CBarnes@GrahamDunn.com)
Subject: RE: Stipulation re Trial Date and PI

Assuming no other changes I have approval from Zillow for March 22. Susan

-----Original Message-----

From: Caslin, Brent [mailto:BCaslin@jenner.com]
Sent: Tuesday, February 03, 2015 1:50 PM
To: Foster, Susan E. (Perkins Coie)
Subject: Re: Stipulation re Trial Date and PI

Thanks. This is close. Can you move a week to March 22? I have a call at 2 pm and will try to get them to move down to 22 and that'll get it done.

On Feb 3, 2015, at 12:13 PM, Foster, Susan E. (Perkins Coie)
<SFoster@perkinscoie.com<mailto:SFoster@perkinscoie.com>> wrote:

Brent – Please see the redline attached. Zillow can agree to set aside the permanent injunction issue but cannot further compromise on the date for expiration of the PI. Dropping the appeal is a significant step for which Zillow expects to receive due value and March 15, 2015 is more than a year after Mr. Samuelson's resignation. I look forward to your response. Susan

From: Caslin, Brent [mailto:BCaslin@jenner.com]
Sent: Tuesday, February 03, 2015 11:39 AM
To: Foster, Susan E. (Perkins Coie)
Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick
Subject: RE: Stipulation re Trial Date and PI

Here you go. Suggest we leave perm inj issue alone and argue law at pre-trial / trial / post-trial if it remains an issue.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]

Sent: Tuesday, February 03, 2015 11:14 AM

To: Caslin, Brent

Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick

Subject: RE: Stipulation re Trial Date and PI

Brent – It sounds like we are close. Re the permanent injunctive relief my main concern is as with preliminary injunctive relief i.e. that it not be based on the same alleged misconduct or claims of inevitable disclosure. Susan

From: Caslin, Brent [mailto:BCaslin@jenner.com]

Sent: Tuesday, February 03, 2015 11:10 AM

To: Foster, Susan E. (Perkins Coie)

Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick

Subject: RE: Stipulation re Trial Date and PI

Hi Susan. I'm hoping to send you a redline shortly for your consideration. It is circulating on our side. Here's a preview, in order of distance between our positions.

n We accepted the paragraph reference you added and some of your other new language.

n In the next version you'll see we've struck "All other dates to remain the same" in the first paragraph of the stipulation. I don't think this is a disagreement, just that the language that doesn't make sense to us. I presume, if we ink a deal, the Court will set a new trial date and various discovery and disclosure deadlines that flow from the trial date. I think you have the same view. If you can think of clearer language, perhaps changing the first sentence, please do so.

n We understand your desire to stop us from simply filing a new request for an injunction, based on the same alleged misconduct, after you dismiss the appeal. That makes sense. We, on the other hand, don't want to a deal to preclude interim relief if something new occurs or in connection with the contempt proceedings. I'm trying to craft some language that addresses both concerns.

n Finally, the plaintiffs can't / won't agree to eliminate permanent injunctive relief if the matter proceeds to trial and decision. If that's a deal breaker let me know so we can stop and turn to the many other things we need to accomplish together on this case, such as deposition scheduling as you reference below.

We understand the court is likely to rule at any moment on the motion for a continuance. We're moving as fast as we can and appreciate your patience. Brent.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]

Sent: Tuesday, February 03, 2015 10:27 AM

To: Caslin, Brent

Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick

Subject: RE: Stipulation re Trial Date and PI

Hi Brent – Can you advise re status? Need to focus on deposition scheduling and notices which will of course vary depending on continuance. Susan

From: Foster, Susan E. (Perkins Coie)

Sent: Monday, February 02, 2015 4:50 PM

To: 'Caslin, Brent'

Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick

Subject: RE: Stipulation re Trial Date and PI

Yes. That is in the original. We are not setting all dates as if this were a new case filing. Susan

From: Caslin, Brent [mailto:BCaslin@jenner.com]
Sent: Monday, February 02, 2015 4:41 PM
To: Foster, Susan E. (Perkins Coie)
Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock; Stone, Richard L.; Saros, Nick
Subject: RE: Stipulation re Trial Date and PI

Susan,

Would you please help me understand the intent of the sentence added at the end of the first paragraph of the stipulation. The paragraph looks like this:

"The trial date in this action is continued to October 26, 2015 or a date after October 26, 2015 that is set by the Superior Court in light of the Superior Court's schedule, with all deadlines in the case schedule, beginning with the deadline for possible primary witness disclosures, to be reset based on the new trial date. All other dates are to remain the same."

What other dates would remain the same, if the clerk's resetting all the dates based on the new trial date? Thanks for your time. Brent.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]
Sent: Monday, February 02, 2015 3:36 PM
To: Caslin, Brent
Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock
Subject: RE: Stipulation re Trial Date and PI

Hi Brent – Your timing is good. I was able to get a decision earlier this morning that Zillow will not seek to incorporate an agreement on the Contempt motion as part of this agreement. However, they will require an earlier date in exchange for dropping the appeal. Additionally, if they are dropping the appeal they do not want to see yet another PI that they need to then take up on appeal, yet again. As such I added that language back into the agreement.

Attached is a redline so that you can more easily see the changes. Look forward to your response. Susan

P.S. Clem is still trying to get hold of Errol to get final agreement on this draft. But, if there is a desire to do something before Judge Chun rules I thought we should get back to you sooner rather than later.

From: Caslin, Brent [mailto:BCaslin@jenner.com]
Sent: Monday, February 02, 2015 2:26 PM
To: Foster, Susan E. (Perkins Coie)
Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie); Lawrence Cock
Subject: RE: Stipulation re Trial Date and PI

Susan,

Please take a look at the attachment. We used your draft document to create a new version of a potential agreement for your consideration. Thanks for your time. Brent.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]
Sent: Saturday, January 31, 2015 5:13 PM
To: Caslin, Brent
Cc: Barnes, Clem (CBarnes@GrahamDunn.com<mailto:CBarnes@GrahamDunn.com>); O'Sullivan, Kathleen M. (Perkins Coie)
Subject: Stipulation re Trial Date and PI

Hi Brent – Can you advise re status on your end? I am still working on approvals but am trying to keep the process moving. The most significant issue on my end is the contempt motion. The sense is that if Plaintiffs are going to engage in these types of tactics we should just go full out and get our vindication at trial and on appeal. Will you drop it? As you will see from our response the Transition memo is nothing like the roadmap you have described and I am not sure that the Court will look kindly on a request for such a significant sanction with so little basis. I know that Zillow and Samuelson do not.

In any event, as I said, I am trying to keep this moving while folks hash this out. Attached is a proposed stipulation and order. I have not heard from everyone on our side re the form but I have received substantial input so I think it is worth circulating for discussion. A few notes:

1. There are some complexities due to the appeal. The fastest way of resolving those seem to be to file the notice of withdrawal of the appeal immediately and then let the trial court's order become effective (rather than having it be effective as of the date it is entered).

2. I was struggling with how to ensure that the withdrawal of the appeal does not prejudice the parties' positions i.e. give up rights that may exist if the PI is overturned. By this stipulation and order we will give up right to pursue bond but we shouldn't be in a worse position going forward. As such, we propose vacating the Order and exonerating the bond.

I think the remaining terms were previously discussed. One question though: Was the October 26, 2015 date given to you by the clerk? Or is it a proposal? If the later, I would change the language somewhat or contact the court so as not to be presumptuous of the Court's calendar.

Look forward to your thoughts. Susan

From: Foster, Susan E. (Perkins Coie)
Sent: Friday, January 30, 2015 6:01 PM
To: Caslin, Brent
Subject: RE: Motion to Extend

I'll prepare something in the morning. Take care. Susan

Sent from my Windows Phone

From: Caslin, Brent<mailto:BCaslin@jenner.com>
Sent: 1/30/2015 4:35 PM
To: Foster, Susan E. (Perkins Coie)<mailto:SFoster@perkinscoie.com>
Subject: RE: Motion to Extend

Hey Susan -- have not been able to get in touch with everyone to discuss your counter-proposal and, in light of the time, just want to let you know. I'll try again in the morning and send a note. I have some fear the devil's in the details so, if you have a whip smart young lawyer over there who could put together a short stip for us to chew on, I'd be grateful. In any event, thanks. Brent.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]
Sent: Friday, January 30, 2015 9:58 AM
To: Caslin, Brent
Subject: RE: Motion to Extend

Hey Brent, left you a VM a little after 9. Give me a call when you get a chance: 206 359 8846. Susan

From: Caslin, Brent [mailto:BCaslin@jenner.com]
Sent: Thursday, January 29, 2015 6:39 PM
To: Foster, Susan E. (Perkins Coie)
Subject: RE: Motion to Extend

Thank you.

From: Foster, Susan E. (Perkins Coie) [mailto:SFoster@perkinscoie.com]
Sent: Thursday, January 29, 2015 6:21 PM
To: Caslin, Brent
Subject: Motion to Extend

Brent -- Just wanted to let you know that I have been unable to talk with the necessary decision maker at Zillow. I expect to chat with him in the morning and will reach out to you then. Susan

Susan E. Foster | Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Wa. 98199
206.359.8846 | Fax: 206.359.9846 | sfoster@perkinscoie.com<mailto:sfoster@perkinscoie.com>

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.
<Draft Stip Feb 3.docx>

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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HONORABLE JOHN CHUN

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

**[PROPOSED] STIPULATION AND
ORDER RE EXTENSION OF TRIAL
DATE AND EXPIRATION OF JUNE 30
PRELIMINARY INJUNCTION**

[CLERK'S ACTION REQUIRED]

FINAL

[PROPOSED] STIPULATION AND ORDER RE
TRIAL DATE AND PRELIMINARY INJUNCTION

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. STIPULATION

WHEREAS, this civil action was commenced by Move, Inc., Real Select, Inc., Top Producers Systems Company, the National Association of Realtors, and Realtors Information Network (“the plaintiffs”) on March 17, 2014 alleging, among other things, violations of fiduciary duty and the misappropriation of trade secrets by defendants Errol Samuelson and Zillow, Inc. (“the defendants”);

WHEREAS, the defendants dispute the plaintiffs’ claims in this matter and assert that their conduct has been lawful;

WHEREAS, following an application from the plaintiffs, the Court entered Findings of Fact, Conclusions of Law and Preliminary Injunction [Dkt. No. 201] on June 30, 2014, (“the Preliminary Injunction”) enjoining the defendants from certain conduct through the adjudication of this matter;

WHEREAS, the defendants filed a notice of appeal relating to the Preliminary Injunction and a Court of Appeals Commissioner granted Discretionary Review on October 28, 2014 (No. 72534-3-I and No. 72534-1-I) (“the Appeal”);

WHEREAS, the plaintiffs and the defendants are presently briefing the Appeal and oral argument has not yet been scheduled;

WHEREAS, the plaintiffs filed a Motion to Modify Case Schedule on January 23, 2015 [Dkt. No. 333], requesting an extension of the schedule, and the motion was opposed by the defendants [Dkt. No. 342];

WHEREAS, with the goal of narrowing the issues for presentation to the Superior Court, the parties have agreed that the case is complex and that further discovery appears appropriate to address the various claims and defenses asserted in this case;

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2 WHEREAS, the parties have also agreed, subject to the Court's approval, to a
3 modification in the expiration of the Preliminary Injunction for the purpose of reaching
4 agreement on a case schedule; and
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7 WHEREAS, the plaintiffs and defendants make this stipulation subject to and
8 conditioned upon approval of this stipulation by the Superior Court.
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11 In light of the foregoing, the plaintiffs and defendants hereby stipulate as follows:
12

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14 1. The trial date in this action is continued to October 26, 2015 or a date after
15 October 26, 2015 that is set by the Superior Court in light of the Superior Court's schedule,
16 with the case schedule, beginning with the deadline for possible primary witness disclosures,
17 to be reset based on the new trial date.
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21 2. The Parties shall file a joint stipulated Voluntary Withdrawal of Review
22 pursuant to Rule 18.2 of the Rules of Appellate Procedure within three (3) business days of
23 entry of the Order requested by this joint stipulation. The stipulated Voluntary Withdrawal
24 of Review will provide that each side will bear its own costs and attorneys' fees in
25 connection with the Appeal.
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30 3. The Preliminary Injunction entered by the Court on June 30 2014 (Dkt. No.
31 201) shall be construed so that Paragraphs 1, 2, 3, 6, and 9 expire when this matter is
32 adjudicated, or on March 22, 2015, whichever date occurs first. The plaintiffs agree they
33 will not submit another request for preliminary injunctive relief in this matter unless the
34 request is based on newly discovered information or unless the relief is in connection with
35 ongoing contempt proceedings.
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39 4. The Parties request that the Court enter an order exonerating the bond on the
40 Preliminary Injunction and directing the bond to be returned to the plaintiffs. The
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2 defendants will forgo any further request for a bond or security related to the Preliminary
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4 Injunction.
5

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7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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10
11
12 **CABLE, LANGENBACH, KINERK & BAUER LLP**

PERKINS COIE LLP

13
14 By: s/ Lawrence Cock
15 Jack M. Lovejoy, WSBA No. 36962
16 Lawrence R. Cock, WSBA No. 20326

By: s/ Susan E. Foster
Susan E. Foster, WSBA No. 18030
Kathleen M. O'Sullivan, WSBA No. 27850
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18
19 Attorneys for Plaintiffs

Attorneys for Defendant Zillow, Inc.

20
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23 **JENNER & BLOCK LLP**

GRAHAM & DUNN PC

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25 By: s/ Brent Caslin
26 Brent Caslin, WSBA No. 36145
27 Richard Stone (*pro hac vice*)
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By: s/ Clemens H. Barnes
Clemens H. Barnes, WSBA No. 4905

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30 Attorneys for Plaintiffs

Attorneys for Defendant Errol Samuelson

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II. ORDER

THIS MATTER came before the Court on the above stipulation of the parties. The Court has reviewed the stipulation and the records and files herein. The Court is fully advised. NOW, THEREFORE, it is ORDERED, consistent with the above stipulation:

1. The trial date in this action is continued to _____ [enter date after October 26, 2015] in light of the complexities of the case and the Superior Court's schedule.
2. The Clerk is directed to enter a new case schedule. Deadlines in the case schedule, beginning with the deadline for possible primary witness disclosures, are to be reset based on the new trial date.
3. The Parties shall file a joint stipulated Voluntary Withdrawal of Review pursuant to Rule 18.2 of the Rules of Appellate Procedure within three (3) business days of entry of this Order. The stipulated Voluntary Withdrawal of Review will provide that each side will bear its own costs and attorneys' fees in connection with the Appeal.
4. The Preliminary Injunction entered by the Court on June 30 2014 (Dkt. No. 201) is hereby amended so that Paragraphs 1, 2, 3, 6, and 9 expire when this matter is adjudicated or on March 22, 2015, whichever is earlier.
5. The bond filed by Plaintiffs, in part on July 1, 2014 and in part on January 30, 2015, is hereby exonerated. The Clerk is directed to return the bond in full to the plaintiffs or their attorneys without delay. No further bond or security of any type will be required in connection with the Preliminary Injunction.

ENTERED this ___ day of February 2015.

THE HONORABLE JOHN CHUN

1 Presented by:
2
3

4
5 **CABLE, LANGENBACH, KINERK & BAUER LLP**

PERKINS COIE LLP

6
7 By: s/ Lawrence Cock

By: s/ Susan E. Foster

8 Jack M. Lovejoy, WSBA No. 36962
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12 Attorneys for Plaintiffs

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18 By: s/ Brent Caslin

By: s/ Clemens H. Barnes

19 Brent Caslin, WSBA No. 36145
20 Richard Stone (*pro hac vice*)

Clemens H. Barnes, WSBA No. 4905

21
22 Attorneys for Plaintiffs

Attorneys for Defendant Errol Samuelson

CERTIFICATE OF SERVICE

On February ___, 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 forgoing document.

Jack M. Lovejoy, WSBA No. 36962	<input type="checkbox"/>	Via Hand Delivery
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Miller Nash Graham & Dunn LLP	<input type="checkbox"/>	Via Overnight Delivery
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- Via E-mail

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

DATED this __ day of February 2015.

s/Vicki Lynn Babani

Vicki Lynn Babani
Legal Secretary

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted For Consideration: March 6, 2015

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0

[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL
DOCUMENTS REGARDING ZILLOW'S
ACQUISITION OF TRULIA

THIS MATTER came before the Special Master on Plaintiffs' Motion to Compel
Zillow to Produce Documents Regarding Its Acquisition of Trulia ("Motion to Compel"),

[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL
TRULIA RFP – 1

56920-0025/LEGAL125214871.1

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

SM 1116

1
2 filed on February 26, 2015. The Special Master having considered all pleadings and papers
3
4 submitted in connection with the Motion to Compel, and being fully advised in the premises,
5

6
7
8 IT IS ORDERED, that the Motion to Compel is DENIED.
9

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11 ENTERED this _____ day of _____, 2015.
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19
20 _____
21 THE HONORABLE BRUCE HILYER

22 **PERKINS COIE LLP**
23

24
25 By s/ Susan Foster

26 Susan E. Foster, WSBA No. 18030

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43 Attorneys for Defendant Zillow, Inc.
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47

[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL
TRULIA RFP – 2

56920-0025/LEGAL125214871.1

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SM 1117

CERTIFICATE OF SERVICE

On March 4, 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: [PROPOSED] ORDER DENYING PLAINTIFFS' MOTION TO COMPEL DOCUMENTS REGARDING ZILLOW'S ACQUISITION OF TRULIA.

Jack M. Lovejoy, WSBA No. 36962 Via Hand Delivery
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- Via E-mail

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

DATED this 4th day of March, 2015.

s/ Vicki Lynn Babani

Vicki Lynn Babani
Legal Secretary

The Honorable Bruce W. Hilyer (Ret.)
Noted for Consideration March 6, 2015
Without Oral Argument

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

9 MOVE, INC., a Delaware corporation,
10 REALSELECT, INC., a Delaware
11 corporation, TOP PRODUCER SYSTEMS
12 COMPANY, a British Columbia unlimited
13 liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
14 Illinois non-profit corporation, and
15 REALTORS® INFORMATION
16 NETWORK, INC., an Illinois corporation,

17 Plaintiffs,

18 vs.

19 ZILLOW, INC., a Washington corporation,
20 and ERROL SAMUELSON, an individual,

21 Defendants.
22
23

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' REPLY RE MOTION TO
COMPEL ZILLOW TO PRODUCE
DOCUMENTS REGARDING ITS
ACQUISITION OF TRULIA**

CONTAINS INFORMATION

PROTECTED BY PROTECTIVE ORDER

CONFIDENTIAL

1 **I. INTRODUCTION**

2 Zillow again asks the Special Master to summarily adjudicate heavily disputed facts in
3 this case: whether Zillow and Samuelson misappropriated Move’s top secret merger discussions
4 with Trulia so that Zillow could block the transaction by acquiring Trulia for itself. The
5 circumstances of defendants’ unlawful interference go to the heart of Plaintiffs’ claims.

6 Unsurprisingly, Zillow seeks to avoid any discovery on this issue, and has resisted with
7 force at every turn. Its Opposition here relies on: (1) an old discovery plan that has been
8 superseded and which would not apply even if it were still in effect; (2) a strained interpretation
9 of “Discovery Cutoff” that artificially excludes a large component of “Discovery”; (3) false
10 allegations of an agreement to be bound by a single excerpt of the old discovery plan; and (4) a
11 rehash of arguments about relevance and the need to protect its alleged trade secrets, which have
12 been shown to be insufficient and meritless. By contrast, Plaintiffs’ Motion relies on a plain
13 reading of the current scheduling order and seeks production of highly relevant documents that
14 Zillow refuses to produce. The Motion should be granted.

15 **II. RESPONSE TO ZILLOW’S PROCEDURAL STATEMENTS**

16 Zillow claims that Plaintiffs’ Motion is somehow premature because Zillow’s objections
17 to the discovery are not due until March 5. That is a red herring. Zillow has *already* objected
18 to the document requests at issue, claiming they are “untimely,” and it has *already* refused to
19 produce the requested documents. February 26, 2015, Lovejoy Dec., Ex. 5.

20 Zillow also claims that Plaintiffs failed to meet and confer before filing this motion.
21 Opp. Br. at 1. But that is not true either. The parties *did* meet and confer about the subject of
22 this motion shortly after Zillow refused to produce the requested documents, and Zillow refused
23 to withdraw its objections.

III. ARGUMENT

A. The Old Discovery Plan Relied on By Zillow No Longer Applies.

The Special Master’s discovery plan clearly states that it was set “*in light of the May*

1 *11, 2015 trial date currently scheduled.*” Nov. 10 Order Re Discovery Plan. Because the trial
2 date has been moved to October 26, 2015, the earlier discovery plan – which was tied to the
3 earlier trial date – no longer applies. The Plaintiffs raised this issue in their Motion. Mot. at 4.
4 Zillow had absolutely no response. Zillow’s silence on the issue is deafening.

5 **B. Zillow’s Contrived Recitation of the Parties’ Stipulation and the Court’s New**
6 **Scheduling Order is Not Supported.**

7 Zillow relies on its own strained version of the parties’ Stipulation and the Court’s
8 Scheduling Order. Indeed, it fashions its argument as a “gotcha” against the plaintiffs’ counsel,
9 but those arguments have no support in the facts. *First*, the Court’s February 4, 2015 Case
10 Schedule, which supersedes prior scheduling orders, states that September 8, 2015 is the new
11 Discovery Cutoff. The order does not distinguish between a “Non-written Discovery Cutoff” or
12 “Discovery Cutoff Excluding Written Discovery.” In plain English, “Discovery” includes
13 written discovery. Zillow’s attempt to insert language into the Court’s straightforward
14 scheduling order must be rejected.

15 *Second*, Zillow alleges it intentionally included a provision in the Stipulation that the new
16 case schedule is to begin with the Disclosure of Primary Witnesses in order to maintain the
17 October 31 written discovery deadline. But the content of the original case schedule shows
18 otherwise. The Court’s original March 17, 2014 case schedule calls for a Disclosure of Primary
19 Witnesses on December 8, 2014. The only “case events” set to occur *before* that the primary
20 witness disclosure date are:

- 21 • Filing Statement of Arbitrability (Aug. 25, 2014);
- 22 • Confirmation of Joinder if not subject to Arbitration (Aug. 25, 2014); and
- 23 • Hearing Motions to Change Case Assignment Area (Sept. 8, 2014).

Dkt. 2, March 17, 2014 Case Schedule. Thus, the only case events not reset by the Court’s new
case schedule are the three noted above. The “Discovery Cutoff” occurs later and was expressly
amended as agreed upon by the parties. Nowhere did the parties agree that the discovery plan
from the Special Master, which states it is based on the old trial date, will still apply.

1 Notably, the prior scheduling order called for “Discovery Cutoff [See KCLCR 37(g)]” to
2 occur on March 23, 2015. *Id.* KCLCR 37(g) requires discovery under CR 26-37 to occur 49
3 calendar days before the assigned trial date, which includes written discovery. The Court
4 ordered a new Discovery Cutoff of September 8 and a trial date of October 26, which superseded
5 the prior order. Thus, the Plaintiffs’ document requests are well within the 49 calendar day
6 window required under the Court’s applicable schedule, and KCLR 37(g).

7 If Zillow wanted to exclude further written discovery, which the Plaintiffs did not and
8 would not have agreed to, it should have said so explicitly rather than concoct its flawed
9 argument afterward. Defiant, Zillow argues that it “specifically anticipated” that the written
10 discovery deadline based on the old trial date would still apply (Opp. Br. at 2) and “ensured that
11 the deadline for written discovery ... would not be reset” (Foster Dec., ¶¶ 3-4). These newly-
12 invented positions are simply not true and only exist in the mind of Zillow’s counsel. In the
13 email exchange relied on by Zillow, Mr. Caslin asks Ms. Foster “What other dates would remain
14 the same if the clerk’s resetting all the dates based on the new trial date?” Foster Dec., Ex. A at
15 3. Ms. Foster’s response was simply, “We are not setting all dates as if this were a new case
16 filing”—nothing more. *Id.* at 2. Zillow *never* disclosed that it was secretly interpreting
17 “Discovery Cutoff” to mean something other than Discovery Cutoff, and there was never any
18 discussion about keeping an old written discovery deadline from the superseded discovery plan.¹
19 Instead, Zillow simply agreed to “further discovery” and “a new case schedule.” Mot. at 5.

20 *Lastly*, Zillow’s argument that it intended to maintain in force the discovery plan for all
21 dates before the disclosure of primary witnesses (despite the plain indication that it applies to the
22 May 11 trial date) is inconsistent with the other entries in that discovery plan. The discovery
23

¹ Zillow makes the incredible statement that “Move’s counsel agreed” to language keeping the written
discovery deadline “as a condition to extend the trial date” and that “a different attorney representing
Plaintiffs want to renege on that agreement.” Opp. Br. at 5. Both are blatantly false. It is Zillow that
agreed to a new “Discovery Cutoff” and failed to ask to keep the October 31 deadline (because it knew it
would be rejected) in order to receive relief from the Preliminary Injunction. And the Plaintiffs’ counsel
is the same now as it was during those discussions. The Plaintiffs are not renegeing on any aspect of the
Stipulation. Zillow, on the other hand, is playing games to try to block discovery on this critical issue.

1 plan calls for a December 1, 2014 deadline to “substantially complete document production.”
2 Zillow has not complied with this date, nor has it tried to enforce that date against the Plaintiffs.
3 But under Zillow’s approach, that date falls before the Disclosure of Primary Witnesses and
4 should remain in force. Zillow knows that is not the case. Its attempt to argue that some dates
5 before the primary witness disclosure deadline are still applicable while others are not exposes
6 Zillow’s positions for what they are—highly flawed and inconsistent.

7 **C. The Old Discovery Plan Allows Discovery “For Good Cause,” Which Exists.**

8 Even if the discovery plan based on the invalid May 11, 2015 trial date applied, which it
9 does not, the Plaintiffs have demonstrated good cause to permit the discovery. Contrary to
10 Zillow’s assertions otherwise, the Plaintiffs did raise this issue in its moving papers. Mot. at 4,
11 fn 2. Indeed, the issue of Mr. Samuelson’s disclosure in a January 6, 2014 email of highly
12 confidential Move/Trulia merger discussions to Zillow while still a Move officer has been
13 detailed in several other briefs before the Special Master.² This is a key issue in the case, which
14 Zillow recognizes by fighting at every turn to keep those documents hidden. The Plaintiffs have
15 a right to discovery on this important claim.

16 **D. The Remainder of Zillow’s Arguments Are Repetitive and Unconvincing.**

17 Zillow’s remaining hodgepodge of arguments do not support the ultimate decision to
18 refuse discovery and essentially grant summary judgment, which is what it again asks of the
19 Special Master. It claims the Trulia acquisition documents are not relevant and again provides
20 its skewed interpretation of Mr. Samuelson’s disclosure of secret Move information to Zillow.
21 Opp. Br. at 6. The Plaintiffs have provided a substantial basis in fact in several briefs before the
22 Special Master detailing Mr. Samuelson’s leak of information regarding a potential Move/Trulia
23 Subpoenas), Mar. 3, 2015.

² See Plaintiffs’ Motion for Reconsideration of the Special Master’s Jan. 26, 2015 Supplemental Order (Trulia Subpoena), Feb. 2, 2015; Plaintiffs’ Reply in Support of Motion for Reconsideration of the Special Master’s January 26, 2015 Supplemental Order (Trulia Subpoena), Mar. 2, 2015; Plaintiffs’ Opposition to Defendant Zillow’s Motion for Protective Order (J.P. Morgan & Goldman Sachs Subpoenas), Mar. 3, 2015.

1 merger, and Zillow’s action on that tip to acquire Trulia for itself.³ Notably, Zillow fails to
2 address the fact that it admitted the relevance of these documents when asking Move for its
3 production of the very same category of documents. Mot. at 2. In addition, Zillow again argues
4 that the requested information contains Zillow trade secrets, and therefore should be precluded
5 from discovery. Opp. Br. at 6-7. The Plaintiffs have previously addressed that argument as
6 well.⁴ Zillow fails to show how the requested documents are trade secrets, or why the operative
7 protective order does not protect any confidential documents.⁵

8 Lastly, Zillow claims that production of these key documents is “unworkable” and would
9 cause significant expense to Zillow. Opp. Br. at 10-11. Zillow’s arguments are disingenuous.
10 What has been expensive for the parties has been the myriad of briefs filed due to Zillow’s
11 refusal to produce documents, including motions to quash a then-third party subpoena (Trulia)
12 and third party subpoenas to Goldman Sachs and J.P. Morgan, and now refusing to produce the
13 relevant documents at issue here. If Zillow spent half the effort collecting the requested
14 documents as it has fighting the production, there would be no burden at all. The Trulia
15 acquisition documents are critical to the Plaintiffs’ case and Zillow is fighting tooth and nail to
16 keep its misconduct private and seeking issue-determinative rulings by the Special Master.

17 * * * *

18 The Plaintiffs have established the Trulia acquisition documents are directly relevant to
19 their misappropriation claims. Zillow’s refusal to produce them is based solely on an Order that
20 states on its face that it no longer applies, ignores the Court’s latest scheduling order, and relies
21 on a series of procedural “gotchas” which do not apply. There is no basis for allowing Zillow to
22 withhold these critical documents, and the Motion to Compel should be granted.

23 ³ See Footnote 2.

⁴ See Footnote 2.

⁵ Zillow also offers to produce a limited set of documents, which consist of those submitted to the Special Master *in camera*. While Zillow would surely like to produce only hand-picked documents that support its case, the Plaintiffs are entitled to all relevant documents on the issue—both good and bad for Zillow.

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DATED March 5, 2015, at Seattle, Washington.

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

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)
3 MOVE, INC., a Delaware )
) corporation, REALSELECT, INC., )
4 a Delaware corporation, TOP )
) PRODUCER SYSTEMS COMPANY, a )
5 British Columbia unlimited )
) liability company, et al., )
6 )
) Plaintiffs, ) 14-2-07669-0 SEA
7 vs. )
) )
8 ZILLOW, INC., a Washington )
) corporation, and ERROL SAMUELSON, )
9 an individual, )
) )
10 Defendants. )
)
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Hearing before the Honorable Bruce W. Hilyer

March 11, 2015

1000 Second Avenue, Suite 3000

Seattle, Washington

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Leslie M. Sherman, RMR, CRR, CSR 2629

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1 (Proceedings.)

2 JUDGE HILYER: So, I will introduce the
3 case. It's March 11th, 2015. We're gathered at
4 Hilyer Dispute Resolution offices for the purpose of
5 conducting a hearing with the special master, me,
6 regarding six pending motions. And I have some
7 thoughts about how we're going to do this
8 procedurally. But before we do that, I think we
9 should go around the room and have each person
10 identify themselves and their affiliation.

11 MR. LOVEJOY: I'll start. Jack Lovejoy on
12 behalf of the plaintiffs.

13 MR. SAROS: Nick Saros from Jenner & Block
14 on behalf of the plaintiffs.

15 MR. CASLIN: Brent Caslin for the
16 plaintiffs.

17 MR. BARNES: Clem Barnes from Miller Nash
18 Graham & Dunn on behalf of Errol Samuelson.

19 MS. GALIPEAU: I'm Katie Galipeau on behalf
20 of defendant Zillow from Perkins Coie.

21 MS. O'SULLIVAN: Katie O'Sullivan on behalf
22 of Zillow.

23 MS. FOSTER: Susan Foster, Perkins Coie, on
24 behalf of Zillow.

25 JUDGE HILYER: Thank you. Now, don't take

1 this as a criticism, but if I just say we're going to
2 do oral argument, I've learned, I know you are sort of
3 conditioned to do what you do in court, which is you
4 repeat what's in the briefs. And you have to do that
5 in the court because you don't know if the judge has
6 read it.

7 I've read it, so I'm not going to just ask
8 for opening statements or argument. Instead what I'm
9 going to do is I'm going to go through each one of
10 these motions. I'm going to tell you where you I'm
11 at. I'm going to give you a chance to react to it
12 before I reach a decision as to how we're going to
13 proceed.

14 And I would just to ask, it's great to have
15 so much talent here, but just one lawyer per party per
16 issue. Okay? So, you're different.

17 MR. BARNES: That's not that tough for me to
18 decide who is going to be speaking for us.

19 JUDGE HILYER: But, just, that's my request.

20 MR. BARNES: When you say per side, you
21 don't mean -- you mean one for Zillow and one for
22 Samuelson, just to make sure I understand.

23 JUDGE HILYER: One for Move, one for Zillow,
24 one for Samuelson, one lawyer, right, per issue, which
25 is the same for you.

1 Okay. So, here's where I am at. With
2 respect to the motion for reconsideration, I don't
3 remember sitting here today what my rationale was for
4 the bright line rule that I drew, or the bright line
5 on I think March 5th, but it doesn't make any sense to
6 me, given what Move's allegation is with respect to
7 Samuelson's conversations before he was hired.

8 And I also, Counsel, just to let you know,
9 I'm not offended by the reminder to me in particular
10 that I should remember to stay in my lane, and that
11 I'm not a judge that's okay. Even though it's kind of
12 interesting, because in trade secret discovery
13 disputes, maybe you are a little bit of a judge
14 because of this requirement that you have to have some
15 factual showing. But I'm being facetious, but I don't
16 mind the caution that the discovery master needs to be
17 careful to make discovery rulings and not to impinge
18 upon substantive rulings.

19 So, I am inclined to, and I'm going to give
20 you, you know, one last chance to say something that's
21 not repetitive with what's in here, but I'm inclined
22 to grant the motion for reconsideration with respect
23 to the first portion of item number 4 in the
24 subpoena. And that was the documents. I've got to
25 find my page here, item number 4 said, "Documents

1 including communications between Zillow and Trulia
2 sufficient to show the date on which Zillow and Trulia
3 began discussing their pending merger."

4 So previously, like I said, the logic
5 escapes me, and since I can't put the genie back in
6 the bottle, I'm going to reverse myself saying that
7 all that Zillow has to do is show that March 5th was
8 the cut-off. And I'm going to grant that part.

9 However, the second part, "and Zillow's
10 stated reasons for the proposed merger," I'm not going
11 there because I think that opens up a whole other host
12 of potential trade secret issues with regard to what
13 its plan is.

14 I think it's a fair comment to say that this
15 issue has morphed because the merger has actually
16 occurred. But -- and I will also say parenthetically,
17 I don't think there is a plethora of evidence in
18 support of this claim. And I understand the argument
19 over this one e-mail about whether it was a shrouded
20 allusion to Trulia or not, but I don't think it's my
21 place to draw inferences from the evidence where those
22 inferences are contested. So I'm giving you the
23 benefit of the doubt.

24 I also think that although I don't have any
25 case law that directly supports this, I think that

1 this balancing act that is the proper line here in
2 terms of what discovery do you allow should depend
3 logically in significant measure on what interests are
4 threatened. So, for instance, the fact that the
5 merger occurred is a fait accompli, it's a done deal,
6 there is nothing magic about that.

7 But, when Move starts asking, well, what was
8 the business reason for the merger, that could trip
9 very quickly into some very current proprietary
10 matters with regard to the current configuration where
11 Trulia is part of Zillow.

12 So, those are the reasons why I am saying
13 that you've convinced me that the first part was a
14 mistake. You ought to be able to do some further
15 discovery to figure out when those discussions
16 occurred.

17 But I'm not -- and this is going to come up
18 again in one of the other motions on the other side of
19 the same issue, that doesn't mean that you get to sort
20 of open up the whole subject and sort of litigate the
21 case by saying, well, let's find out what your
22 ostensible reasons were for the merger and then we can
23 see if that makes sense or if it's more likely that
24 you got inside information from Errol Samuelson.

25 That doesn't -- so for that reason, and you

1 can respond to this, which is why I'm giving it to you
2 now, you win the first point, but I'm not inclined to
3 say that you get to do -- get to look at all of the
4 stated reasons for the proposed merger, because that
5 just seems to me to go into something that is very
6 likely highly proprietary and a trade secret.

7 So, somebody from over here can respond to
8 that. You don't have to respond to the first part
9 because you won, but you probably should respond to
10 the second part. Hold on one second. I lost my pen
11 in this maze. You are Mr. Saros, right?

12 MR. SAROS: Yes. Nick Saros for the
13 plaintiff, your Honor. So, with respect to part 2,
14 Zillow's stated reasons for the proposed merger, I
15 think your concerns are that we're looking for
16 something that goes beyond what would be relevant in
17 this case.

18 But I think that you have applied a little
19 bit too broad a brush to that request in the sense of,
20 what if there are documents, and obviously I'm
21 speculating because we don't have any documents from
22 them, what if there are documents that say, we really
23 need this merger because we know about Move and Trulia
24 being a possibility, and that would be a big problem
25 for us.

1 So, I don't know that that would be covered
2 under part 1, where you say, communications sufficient
3 to show the date where they began discussing. I mean,
4 there were Zillow/Trulia discussions in 2011, 2012,
5 that stopped, got picked up later, which we're not
6 exactly sure when. The documents in camera showed,
7 the earliest one I saw was February 24th, but if it's
8 just documents that are going to show, assuming that
9 was the first time, you know, around February or late
10 January, I don't know, that's not going to do it.
11 That's not going to be enough to just say, "well, this
12 is when we started talking about it."

13 So, the Zillow stated reasons for the
14 merger, we're not looking for business reasons, you
15 know, what things about, I don't know, I don't know
16 what kind of confidential things would be in there,
17 M&A type things. I'm frankly not that interested in
18 that.

19 But what I am interested in is all those
20 reasons we'll provide the evidence of, what was really
21 going on there, what were the reasons for this
22 merger? Was it Move/Trulia? So I think by just
23 saying part 1, they are going to view that as
24 incredibly narrow, just about communications when they
25 started, that's similar to picking the March 5th date

1 and saying, see, we were before March 5th.

2 Now they're going to go back and say, well
3 we're just going to go back to that first
4 communication and then nothing else matters. And I
5 don't think that that's fair to our case. We should
6 be able to see the whole story of communications.
7 That's going to include why did you do this merger?

8 And that's the idea, is to, you know, get
9 evidence of valuations, different things, what they
10 told people, you know. There is not going to be a lot
11 of -- there is not going to be e-mails where somebody
12 is saying, "Samuelson just told me X, Y, Z." I mean,
13 there might be but I'd be surprised. People usually
14 don't put that kind of thing in e-mail.

15 But there could be, you know, other people
16 talking about it. "Spencer told me X, Y, Z." I don't
17 know. And that's where I think the ruling is just too
18 narrow. And I can tell you how it's going to be
19 interpreted on the other side is, we owe about this
20 many documents about when we first started looking at
21 this.

22 And I don't think that's fair to our case.
23 This is a big issue in our case, obviously, to show
24 that, you know, what they're -- what they did was take
25 this information, move on from it. And the reasons

1 will be largely circumstantial. That's what trade
2 secret cases, they are circumstantial. There is
3 rarely a smoking gun. And that evidence of why they
4 did that is all going to be circumstantial evidence to
5 show they did it to block a potential Move/Trulia,
6 which would be a very formidable competitor. And the
7 purpose is not the sensitive business communications.

8 On that note, there is, in many of the
9 briefs which obviously you saw, there is this talk
10 about the balancing act with trade secrets. I don't
11 know that any of this are trade secrets. The merger
12 is done. I don't -- things of future ideas, maybe
13 that can be carved out. We're not really -- we're
14 looking in the past. We're not looking into the
15 future.

16 And I don't think anything has been
17 substantiated as a trade secret. It's just sort of
18 out there. And they rely on this Microwave case that
19 talks about, you know, you need a substantial factual
20 basis, and it's -- that's where I think the balancing
21 act comes from.

22 But when you read that case, it doesn't
23 apply. That case was a plaintiff who had just fears,
24 fears about something. And they couldn't even state
25 what trade secrets they thought were taken. And so

1 the Court said, well, if you can't even identify what
2 trade secrets you think are taken, then you are going
3 to have to make this additional showing. We're not
4 going to allow that.

5 In this case, in this issue we've said
6 exactly what we think they did. We think
7 Mr. Samuelson tipped them off, and he did it because
8 he was in the know at Move, one of very few people,
9 and he had that information. He wanted more money
10 from them. So, it was a little horse trading on his
11 part.

12 So, I don't think that that balancing act is
13 appropriate. I mean, there are protections in this
14 case to protect trade secrets like ours. That's what
15 the protective order is for. And the idea that
16 somehow our client is going to find out all about this
17 is not going to happen. It will be produced with the
18 outside counsels' eyes only designation, and it will
19 be sufficiently protected.

20 JUDGE HILYER: Thank you.

21 Mr. Barnes, do you want to say something?

22 MR. BARNES: No.

23 JUDGE HILYER: Okay.

24 MS. FOSTER: Your Honor, we would still
25 object that it is untimely and that there is no basis

1 for reconsideration under CR 49, but we will just rest
2 on our briefs on that point.

3 To address directly the question here of
4 whether or not there should be additional discovery of
5 the reasons, first, I'd have to say that it's clear
6 that Trulia is looking for the business reasons. I
7 kept hearing Mr. Saros say that wasn't true, but when
8 we look at the broader discovery that we'll be talking
9 about later, the subpoenas to J.P. Morgan, et cetera,
10 it's clear that they are looking for that.

11 Nothing in this subpoena asked for
12 specifically just documents, talking about the
13 Trulia -- about a Trulia/Move merger. That wasn't
14 asked for in the subpoena. If that's what he's asking
15 for now, let's talk about that.

16 But on that topic, I would say there was a
17 lot of discussion in the industry at the time about a
18 Trulia/Move merger. We've pointed to some publicly
19 available articles in this time period, in January,
20 February, March about that. It wasn't secret at all.
21 We pulled out just last night after we received their
22 supplemental statement on Monday, their most recent
23 production from last week included an e-mail from
24 Ms. Glazier saying that she had talked to 10 people
25 who were asking her about a Move/Trulia merger in

1 February of 2014. In other words, even if you were to
2 find that there was anything in the documents
3 referencing a Move/Trulia merger in the Trulia
4 materials, it wouldn't mean anything.

5 But if we're going to talk about that, then
6 let's talk about that narrowly and not broadly about
7 the reasons, because those reasons for doing the
8 merger and Zillow's plans for what to do with Trulia
9 are highly sensitive. That merger just took place
10 last month, February.

11 So, in talking about the planning of why we
12 wanted to acquire Trulia, what those plans were, those
13 are playing out right now and are highly sensitive,
14 and any discovery in this regard should be very
15 narrowly construed.

16 With respect to Microwave, Microwave and the
17 other cases clearly indicate that there has to be
18 mechanisms for controlling discovery. Your Honor has
19 chosen one which is more of a gating mechanism. Let's
20 focus on the specific claim, and that's what we've
21 done. We've allowed them to see all of Errol's
22 e-mails. To the extent that there has been discovery,
23 we've said let us look and see if there is anything,
24 you are focusing on communications, we'll check for
25 communications. So this targeted discovery to see if

1 there is any misappropriation we've been trying to
2 accommodate, and we believe that that's the proper
3 approach in this case.

4 JUDGE HILYER: Thank you. I end up about
5 where I was when I told you my thinking about this,
6 that I'm going to grant the first part.

7 With regard to the second part, there is a
8 huge gulf between something narrowly focused on
9 whether or not Samuelson provided information through
10 Rascoff or somebody at the top of Zillow with regard
11 to Move's plans, and again it isn't the idea of a
12 Trulia merger. Anybody can figure out if there is
13 three people in the industry, it's the focus on
14 whether or not Zillow needs to do a Trulia merger to
15 preempt Move from doing it. That is the information
16 that Samuelson ostensibly would have. And that's a
17 very, very narrow inquiry, and as phrased, this thing
18 is wider than the kitchen sink.

19 So, I'm going to grant the motion as I
20 indicated with respect to the time. We're going to --
21 I'm going to grant something much narrower as far as
22 the second part, but it's not going to be all the
23 business plans. And we're going to come back to this
24 because the same issue comes up in some of these other
25 motions. And I've gone through and decided which of

1 the questions I'm going to allow, unless you talk me
2 out of it, and which and which I'm not.

3 So, we'll revisit this, and it's going to
4 parallel a narrowly tailored discovery so that you do
5 have the opportunity to pursue this theory that
6 Samuelson provided information about Move's plans,
7 which is a whole different thing than what are all
8 your other business reasons. So that's how we're
9 going to decide that one.

10 MR. SAROS: I guess, can we, as we go
11 through these later, I could argue more right now, but
12 it seems like you are going to make additional rulings
13 as we go.

14 JUDGE HILYER: Yeah, we can, because when I
15 get to the other ones, we have in the same discussion
16 because it's a parallel issue in the -- there is two
17 motions I think which overlap with this. So yes, we
18 can. All right. So that's that one.

19 MS. FOSTER: I'm sorry. I'm very sorry,
20 your Honor. So what is being --

21 JUDGE HILYER: The reconsideration is
22 granted with respect to, I'm going to allow documents
23 sufficient to show the date on which Zillow and Trulia
24 began discussing their pending merger. I'm not going
25 to rewrite it. That's what they asked for before.

1 You've already produced the documents to me and then
2 later to them about the March 5th date. But that
3 discovery request, it's a subpoena duces tecum, I
4 guess, is revived.

5 The one on the stated reasons for the
6 merger, I'm going to allow some very narrow discovery
7 on that, but it's a whole lot narrower than that, and
8 we'll get to the specifics when we get to these other
9 ones.

10 MS. FOSTER: Thank you.

11 JUDGE HILYER: Okay. So the next one is the
12 motion for leave to disclose information to
13 Berkowitz. Here are my thoughts about this.

14 This is an extremely unique set of facts,
15 and a very unique request. And I have a lot of
16 concern about it. First of all, is this requirement
17 of independent. Does it have to be in the discovery
18 order, or can it be sort of judicially implied,
19 especially given the fact that in this order it says
20 employed or employee.

21 I'm not quite sure the answer to that, but
22 certainly the idea, implicit in the idea of not being
23 an employee is some measure of independence, even if
24 it's not explicitly stated.

25 Now, it's interesting that most of the

1 focus, I think all of the focus in the cases that have
2 been cited to me are focused on the risk if you don't
3 have independence that the trade secrets will be
4 breached. I'm struggling, and I wish I had a case
5 that I could point to which gets to the subject of, is
6 this an appropriate expert witness given their lack of
7 independence. And I've got to tell you, in my gut I
8 have some real concerns about that with regard to
9 Steve Berkowitz in this case. But I'm a little
10 hesitant to use that as a reasons because the cases
11 all seem to talk about this independence issue.

12 So, here is my take. First of all, I don't
13 think there is any showing in here from Move that
14 Mr. Berkowitz is the only expert available to them.
15 And as Zillow points out, had the Rupert Murdoch
16 takeover never occurred, presumably Berkowitz would
17 still be there and you'd be looking for somebody else
18 anyway.

19 But I don't think there is anything in the
20 record, and I looked back, and if there is something
21 in there, you need to point out to me. That's the
22 first point.

23 Second point is, if you look at Berkowitz's
24 declaration, when he says where it expertise came
25 from, it's all from his employment with Move. So,

1 really what the argument comes down to is, he is
2 uniquely qualified as an expert because he is such a
3 knowledgeable fact witness. And that's just
4 conflating two different roles to me.

5 I also note that Berkowitz supervised
6 Samuelson. They had a lot of conflict. Berkowitz was
7 the president when the lawsuit was filed. Berkowitz
8 was the point man in the press. What Move refers to,
9 and you'll have to pardon me, counsel, but as the
10 ostensible bias, it's blatant. He has definitely made
11 up his mind about the appropriateness of Samuelson's
12 activities. He has already decided that the lawsuit
13 was well founded. He presumably had a role in
14 initiating the lawsuit.

15 Now, I notice that in the first declaration
16 it said that he was going to get paid out some cash
17 over a year. He said that. And then in the later
18 declaration from somebody else it said now we paid him
19 off. And I mean, I don't know, that doesn't -- I
20 mean, he had a financial sort of reward relationship
21 with Zillow, and the fact that for unexplained reasons
22 other than perhaps to clear up this conflict he got
23 paid off doesn't change much.

24 I didn't see any response to his bias for
25 having maybe up to \$8 million worth of stock options.

1 I didn't see any discussion with that. And I've got
2 to tell you, it just bothers me. I mean, this is I
3 guess having been a judge, it's just like this guy
4 doesn't look like an appropriate expert. He's not
5 independent. He's already made up his mind. His
6 expertise just comes from the fact that he is a fact
7 witness.

8 I hope you appreciate the fact that your
9 special master is not reticent to express his opinions
10 about things, but that gives you a chance to let me
11 know where I really am.

12 I think one could also make the argument
13 that he hasn't forsworn the idea that he could have
14 future economic relationships with Move. He hasn't
15 said he's not going to do it, and even if he did I
16 guess that's future focused.

17 And it just -- oh, one more thing that
18 Zillow points out is, he has a personal relationship
19 with a lot of the employees at Move, which would
20 provide temptation and opportunity for breaching this
21 wall.

22 And then I guess finally, you know, I
23 understand the argument that Move is making that the
24 cases that were cited don't create this independent
25 idea that that was actually in the order, but I just

1 have to believe that the requirement that he not be an
2 employee was meant to reflect that he has to have a
3 certain measure of independence.

4 So, for all those reasons, my inclination is
5 to agree with Zillow that he shouldn't be the person
6 to whom -- has access to this confidential
7 information. Thank you for your patience.

8 MR. SAROS: No problem, your Honor. And
9 thank you. I will be candid as well in my
10 discussion. I appreciate yours.

11 Almost every one of your reasons for denying
12 it goes to bias. His relationship with Mr. Samuelson,
13 he's made up his mind, things like that, all go to all
14 go to his bias. Experts have bias. They're paid.
15 They have biases for their clients. How many times
16 when you were in court did an expert for a party come
17 up and say, "My side is wrong. I'm here to testify
18 actually for the other side." Experts testify for
19 their side. So I don't think he has made up his mind
20 because he hasn't seen the documents that would be
21 required to do so.

22 Why is he such a valuable expert? Yes, he
23 already knows the trade secrets. That's a big
24 advantage for Move, and that's why when he left his
25 employment with Move we retained him as an expert,

1 because he is the best expert for us. To go find some
2 other expert is very difficult.

3 There are three main players in this
4 industry. Two have just merged. So, we're certainly
5 can't use a current Move employee. We certainly can't
6 use somebody from Zillow or Trulia. So, there is not
7 a big mass of other experts. This is a very kind of
8 small industry. This online real estate industry is
9 small. It's not like we can just get an accountant,
10 you know, and there is millions of those.

11 So, the first question is much of what you
12 said just goes to his bias. The fact that he gained
13 his expertise as a fact witness, you know, I'll admit
14 it's an unusual situation, but it doesn't change the
15 fact that he is an expert in this industry, and there
16 is no other person who is going to become an expert in
17 this business, really, unless you work for Move,
18 Zillow, Trulia, or I don't really know how else. It's
19 not like they teach the online listings business in
20 college.

21 So, I think most of it goes to bias and can
22 be handled fairly on cross-examination. They can
23 cross him all day long on his bias and how much he
24 dislikes Samuelson or doesn't. I actually don't know
25 the relationship.

1 On the independent, you know, the issue with
2 independence, so, one, it's not in the protective
3 order, I think as we argued, and the cases they cite,
4 that word isn't in the protective order. But really
5 the issue is not independent of do you have some
6 preconceived notion, because that goes to bias. The
7 issue of independence when you look at those cases is
8 about, do you currently have a conflict of interest
9 where you are going to take the confidential
10 information you learned and you are going to use that
11 against the party disclosing it in your current
12 relationships, like as a consultant, like as a
13 business decision maker for that company.

14 That's what independent means. It doesn't
15 mean that you have a preconceived notion about the
16 case. Because if that were the case, every expert is
17 not independent, because they are there talking about,
18 you know, in favor of their client.

19 So, what independence means is, is there a
20 risk that you are going to disclose this confidential
21 information and use it against the party disclosing
22 it? That doesn't exist. He's not an employee.
23 That's why the protective order says you can only
24 object if the person is an employee or an employee of
25 a competitor. He doesn't meet that. He's not.

1 Frankly he's not -- has no involvement in Move at this
2 point. He's gone.

3 And his personal relationships, frankly,
4 it's stated he has personal relationships. I don't
5 know what those are. I know he's not around Move.
6 Nobody talks to him. He doesn't live anywhere near.
7 I've been to the Move offices in Westlake Village, he
8 doesn't live anywhere near there. I frankly don't
9 know where he lives. And he seems to be, you know,
10 kind of retired at this point.

11 But he is a good expert for us because that
12 first step of learning all the trade secrets, yeah,
13 that's done. That's not -- shouldn't be held against
14 us. That's a benefit to us, and taking that
15 possibility away from us makes it very difficult.
16 Finding another expert who is a true expert in this
17 field will be difficult, and then having them learn
18 all the trade secrets and then analyze the documents,
19 it's very difficult.

20 So yes, it's an unusual situation, but
21 because Berkowitz no longer works for Move, it works
22 well for us, and all the reasons against it don't seem
23 to apply. There is no -- are any bias can be handled
24 on cross and isn't a reason to exclude an expert.

25 And then this threat of disclosure just

1 doesn't exist. There is no threat. And I haven't
2 seen anything. All the allegations in the brief are
3 that he's still a current employee, which is just not
4 true. He has nothing to do with Move's business. He
5 makes no decisions, has no input, doesn't talk to
6 those people.

7 And the issue about payment, he was
8 scheduled to be paid. There was no payment made for
9 this issue. That's the later declaration. It was
10 under the terms of his contract, there was an
11 acceleration clause or something, and to be honest I'm
12 not sure exactly how that happened. But it wasn't
13 because of this issue.

14 And he was just -- he was paid in full. And
15 I don't think even if he were being paid over the
16 years, or over the months, that doesn't matter. That
17 has nothing to do with being an employee or not, which
18 is really the issue.

19 So, I think if you go back to it, any bias
20 can be addressed, and the fact that he is a good
21 expert for us isn't a reason, you know, that he will
22 make it easier for my client to use him as an expert
23 because he already has a factual knowledge isn't a
24 reason to exclude him. There must be, you know, some
25 reason, some conflict of interest.

1 Those other cases where -- that have been
2 cited where experts, you know, work for a company,
3 leave the company, become experts, they developed
4 their expertise, you know, on the products or whatever
5 it was. And so, I think that's a fair way to develop
6 your expertise and doesn't affect any potential harm
7 that could be caused by serving as an expert, which I
8 think is the point of moving to exclude somebody.

9 JUDGE HILYER: I don't think you commented
10 on the stock options.

11 MR. SAROS: The stock options? That he
12 still has stock options?

13 JUDGE HILYER: Right.

14 MR. SAROS: That's still just another bias
15 point. Yeah, he has stock options. So, on cross-
16 examination, it's the same as, "isn't it true, sir,
17 you are paid \$1200 an hour to," you know, in some
18 cases experts charge that that I've had, "isn't it
19 true you are paid \$1200 an hour and your team has been
20 paid over, you know, \$750,000 or \$2 million to testify
21 in this case?" How is that any different than you
22 have stock options? It's the same -- it's a bias
23 issue. It's not -- there is no harm to Zillow on how
24 much he gets paid. It's an issue they are free to
25 address.

1 JUDGE HILYER: Thank you. Do you want to be
2 heard?

3 MR. BARNES: I do. There is a difference
4 between an expert who is paid for his honest testimony
5 and someone who has got a stake in the outcome of the
6 case. The latter is what happens when you own the
7 business or a stock owner.

8 Number two, I'm not as lucky apparently as
9 Mr. Saros. I've had plenty of experts who tell me the
10 truth rather than what I want to get on the stand and
11 repeat.

12 Number 3, if he is an expert he is going to
13 do what; express opinions about the case? You're
14 right, maybe I've skipped to the bottom line. I don't
15 understand how in the world this man can pass a
16 gatekeeper test. But to the direct point, he is an
17 owner of the business. The outcome of the business --
18 the outcome of the case is going to affect him. Next.

19 JUDGE HILYER: Okay. Thank you. Zillow?

20 MS. O'SULLIVAN: Yes, Judge Hilyer, thank
21 you. Your inclination and your concern is spot on
22 here. And I'll just try to give three quick reasons
23 in support. First, going to the cases, the question
24 of whether this independence requirement is there in
25 the cases or has to be in the protective order, it's

1 absolutely in the cases if you look at Digital
2 Equipment and the Beam cases and other cases that they
3 cite. And of course the reason is the risk of
4 disclosure.

5 And their favorite case, Isis, involves
6 someone who worked for this entity seven years ago,
7 not someone who was CEO on the day the complaint was
8 filed and the first nine months of the case.

9 Second, you were making some comments about
10 what was the intent and purpose of the protective
11 order, whether it has this word "independent" in it or
12 not, and it clearly envisions that it's someone who
13 does not have a close tie, even if a prior tie, to one
14 of the parties. And that's why the protective order
15 lets you ask for someone's CV and any previous
16 relationship with any of the parties, and a listing of
17 all companies for which the individual has consulted
18 or been employed by within the past four years. There
19 would be no point in asking for that prior information
20 if the sole question is, where does the person work
21 today.

22 And the third reason your inclination and
23 interpretation of the protective order is correct,
24 because it's Move's own prior interpretation. So, at
25 the beginning of the case and before Jenner & Block

1 was involved, when a lot of the key filings on the
2 preliminary injunction were marked attorney's eyes
3 only, Mr. Samuelson's lawyer said, we've got to see
4 these. And the answer was, no, you can retain an
5 independent expert to review all those documents. So
6 that's simply the argument we're making back at them
7 now.

8 MR. SAROS: Can I respond quickly, your
9 Honor?

10 JUDGE HILYER: Yes, you bet.

11 MR. SAROS: I don't know what that last part
12 had anything to do with anything, because
13 Mr. Samuelson still works at the time for Zillow, so
14 that doesn't help the argument because I would agree
15 if Mr. Berkowitz were still a Move employee, then this
16 probably -- we wouldn't be here discussing this
17 issue. So, that is irrelevant.

18 The info about prior, you know, an expert
19 disclosing who they prior worked for, the reason you
20 do that is because are you going to work for them
21 again? And usually what happens in these cases is,
22 you consult for X, Y and Z companies, are you going to
23 be still doing that, because I'm going to be telling
24 you all my competitive information, and then if next
25 year you are consulting for one of my other

1 competitors, I want to know about that.

2 So usually there is agreements that I won't
3 consult for any of these companies for so many years,
4 or I won't do it again, or however that works. So
5 that's what it goes to is still that, who are you --
6 what are you going to do with my information. And the
7 showing here, there hasn't been anything, he's really
8 a risk to do anything with it.

9 It's kind of feeling like we are doing a
10 Daubert motion way before it's appropriate. He hasn't
11 given his opinions, but they already know exactly what
12 they are evidently. He hasn't been allowed to look at
13 anything. And, you know, I think it's unfair to say
14 he's just going to just say whatever we want him to or
15 come out. He is going to look at the evidence,
16 knowing the trade secrets or analyzing the trade
17 secrets, and do what an expert does and compare the
18 two.

19 And at that point, if it's just so off base,
20 they can bring a Daubert motion and say there is no
21 basis for any of this, and they can raise all these
22 points. But right now all we're talking about is
23 having access to some of their information that he's
24 agreed to keep confidential. We are a step way beyond
25 the issue of just disclosure. We've already assumed

1 what his report and his testimony will be, and now
2 we're cutting him off as if we are in the Daubert
3 proceeding right before trial.

4 JUDGE HILYER: I'm not going to repeat
5 myself but I will just make a couple of comments. As
6 far as, is he an employee or not, I think arguably he
7 was an employee when the motion was brought before his
8 severance was advanced. That's point number 1.

9 Point number 2 is, the bias is relevant
10 because the point of analyzing the bias, just looking
11 at sort of the four corners of the cases is, the risk
12 that the information will be disclosed. And the more
13 bias that the witness has, the higher the risk of
14 that.

15 And finally, this may be sort of a silly
16 example, but what if the evidence showed that he
17 bought half of the company. I mean, I just -- it's
18 just mind boggling to me, the idea that this witness
19 hasn't expressed his opinions when he was the
20 president of the company, and said what he said in the
21 e-mails and said what he said to the press about the
22 ultimate merits of the lawsuit just rings hollow with
23 me.

24 Frankly, I'm going to grant the -- now, I
25 can't remember which side --

1 MR. SAROS: It was our motion.

2 JUDGE HILYER: I'm going to deny the motion,
3 and frankly, if I didn't, and you only had one expert,
4 I think the chances of you facing trial without an
5 expert, but that's, you know, somebody else's decision
6 for another day. I've already told you the reasons
7 why. I just don't think that, under these unique
8 facts, that this individual is the appropriate person
9 to whom the trade secrets should be disclosed. So,
10 I'm going to deny that motion. So, that's that one.

11 Okay. And the next one then is the motion
12 for the protective order regarding the subpoena, the
13 Trulia subpoenas to J.P. Morgan and Goldman Sachs.

14 Again, I take to heart Move's cautions to me
15 to not overstep my bounds to allow them to pursue
16 discovery on this topic. As I said before, there is
17 not a plethora of evidence, but there is some from
18 which the inference can be made. And I want to do
19 what I can to allow Move to continue to take discovery
20 on its theory that Samuelson tipped off Zillow to
21 Move's plan, and therefore that was the reason that
22 Zillow acted when it did with regard to the Trulia
23 acquisition.

24 But, again, Exhibit A to the Goldman Sachs
25 subpoena is a universe of issues compared to the

1 narrow focus that I'm inclined to grant. And
2 specifically, here is -- and I'm looking now at
3 Exhibit A to the subpoena duces tecum directed to
4 Goldman Sachs, what I'm inclined to grant is number
5 6. And I think for the purpose of this one, you know,
6 let's not rehash sort of the substantive argument. I
7 want you to sort of pick up with me about what's wrong
8 with this particular remedy, sort of resist the
9 temptation to go back either side and say we want to
10 revisit the underlying issue.

11 Number 6 says, "Documents sufficient to show
12 when and how you first learned of Zillow's interest in
13 potentially acquiring Trulia in 2014."

14 7, "Documents sufficient to show when you
15 were first retained by Zillow in connection with the
16 Trulia acquisition."

17 8, "Documents generated or received in
18 connection with the Trulia acquisition that mention or
19 refer to Move, Inc. and/or realtor.com."

20 16, and I've rewritten it. "Any analysis or
21 evidence of any specific plan of Move or realtor.com
22 to acquire Trulia."

23 19, "All documents relating in any way to
24 the premise that Zillow should acquire Trulia as a
25 defensive measure against a potential transaction

1 involving Move and Trulia."

2 Now, I actually think that -- my thinking is
3 I guess most jelled on these last two that I gave. It
4 seems to me that those are the most rifle shot
5 targeted at the issue that I want to allow discovery
6 on. But 6, 7 and 8 are a little broader than that.
7 And the rest of them, for the reasons that I've
8 indicated, really are a fishing expedition into other
9 business issues.

10 So, this is Zillow's motion for protective
11 order. So I'll let you go first.

12 MS. FOSTER: Your Honor, can I just ask for
13 a clarification. You had --

14 JUDGE HILYER: Are the subpoenas the same?

15 MS. FOSTER: No, they're not.

16 JUDGE HILYER: Oh, great.

17 MS. FOSTER: They're very similar, but
18 they're not identical.

19 JUDGE HILYER: I don't know why I assumed
20 they were. Go ahead.

21 MS. FOSTER: I was just going to ask if you
22 could clarify, you had rewritten 16.

23 JUDGE HILYER: Yes.

24 MS. FOSTER: If you could just read that
25 once more.

1 JUDGE HILYER: Okay. "Any analysis or
2 evidence of any specific plan of Move or realtor.com
3 to acquire Trulia." It should say -- no, that's
4 okay. "Any analysis," I think that's all right the
5 way it reads.

6 MS. FOSTER: Your Honor, we would of course
7 object to further discovery of this. But I'm going to
8 dive right into, as you requested, the specific
9 requests here. Specifically I would focus on 8 here.
10 That is way too broad. It asks for all documents
11 generated or received in connection with the Trulia
12 acquisition that mention or refer to Move or
13 realtor.com.

14 There was an enormous second request,
15 antitrust investigation by the FTC. Move and Zillow
16 are competitors. NARA and Move were active in that
17 investigation. The documents or the files are going
18 to be replete with references to competitors, Move and
19 realtor.com.

20 This doesn't go to the specific issue of
21 whether or not Mr. Samuelson revealed any information
22 about a potential Move/Trulia. This is purely
23 references to the competitors Move or realtor.com, and
24 is way too broad, and would frankly lead to
25 extraordinary burden because of the second request and

1 the FTC investigation which was just resolved in
2 February.

3 As to the others --

4 JUDGE HILYER: Do they have access to those
5 documents?

6 MS. FOSTER: No.

7 JUDGE HILYER: Okay. And do you, or you
8 just know what you gave the FTC?

9 MS. FOSTER: I'm sorry?

10 JUDGE HILYER: So, there this big
11 investigative file.

12 MS. FOSTER: Yes.

13 JUDGE HILYER: But is all you know what you
14 gave to the FTC, is that what you know, or do you,
15 because you are a target, do you get access to all
16 this stuff?

17 MS. FOSTER: No, we don't.

18 JUDGE HILYER: Okay.

19 MS. FOSTER: Under the Act there is
20 confidentiality that's accorded to the FTC files of
21 what's submitted.

22 JUDGE HILYER: I see.

23 MS. FOSTER: But over and apart from what
24 was submitted to the FTC, you are going to have an
25 enormous amount of discussion back and forth, say,

1 with Goldman Sachs and Zillow about, okay, what are
2 the risks of a challenge under HSR? What are we going
3 to do, here we have this competitor, it's just going
4 to be a lot of frankly irrelevant information that
5 doesn't go to this specific claim, which is again an
6 allegation that Mr. Samuelson tipped off Zillow.
7 These documents will not go to that.

8 Your other request would, and for that
9 reason, while still preserving our broader objection,
10 I would not object to 16 and 19.

11 JUDGE HILYER: 6, 7 and 8. You just talked
12 about 8.

13 MS. FOSTER: 6 and 7 I think they pretty
14 much have from what we submitted in camera, and what
15 we submitted and produced in discovery. Whether or
16 not Goldman needs to reproduce those for you I don't
17 know. But that's fine. 6, 7, and then 16 and 19, I
18 think is the proper scope.

19 JUDGE HILYER: Do you want to be heard on
20 this?

21 MR. BARNES: No. I'm good.

22 JUDGE HILYER: Counsel?

23 MR. SAROS: Thank you, your Honor. So, you
24 mentioned a few times that there is no plethora of
25 evidence about this issue. Well, there is a very good

1 reason for that, because we haven't received it.
2 We've gotten very, very limited evidence on that, so
3 it's not fair to say, well, there is not a plethora of
4 evidence so I'm going to really limit the discovery.

5 JUDGE HILYER: I want to interrupt you by
6 saying I should stop saying that, because even though
7 I don't think there is a plethora, there is enough of
8 a threshold showing that I'm taking you even assuming
9 that I buy this idea that you have to have a threshold
10 showing, it's a gratuitous comment. I'm saying, I'm
11 going to say that your plethora showing is sufficient,
12 okay?

13 MR. SAROS: Okay.

14 JUDGE HILYER: And then I'll stop calling it
15 that. It's sufficient.

16 MR. SAROS: I was making sure that that
17 wasn't the basis for some of these arguments.

18 JUDGE HILYER: No.

19 MR. SAROS: So, now, what you've done here
20 is you mentioned earlier that you understand our
21 position that your role is not to limit claims. But I
22 think that's exactly what you're doing. You've taken
23 this issue now, 6, 7 and 8, are essentially, when did
24 you first learn of this it. When did Errol tell you?
25 That's not the whole issue. There is not going to

1 this smoking gun. Those are like, what are the
2 smoking gun, what did Errol tell you about the
3 transaction specifically? And then when did you first
4 learn?

5 It's the rest of those documents that are
6 going to tell the whole story, and those are the
7 documents we need to show that they took that tip and
8 acted on it. And it's that acting on it, those are
9 the reasons of why all this happened that goes back
10 to, it's all circumstantial evidence that goes back to
11 the tip and what happened after that.

12 Really what 6, 7 and 8, you know, when did
13 you first learn, we are going to get almost nothing
14 from them. They are going to hand us the in camera
15 documents that they gave you and say, there, there is
16 the communications.

17 JUDGE HILYER: Well, I need to stop you
18 there. They are going to give you more than that
19 because the in camera documents that you just got were
20 the March 5th ones.

21 Now, because they reversed the motion for
22 reconsideration, you are going to get all of the ones,
23 not just the March 5th ones. So you are going to get
24 more than you got before because I reversed myself on
25 the motion for reconsideration.

1 MR. SAROS: Assuming there are other ones.
2 Maybe, maybe not. I mean, I don't know that that's
3 correct. I mean, I hope you're right that we would
4 get more, but I'm not sure that we would because I
5 don't know when all this first started, you know.

6 JUDGE HILYER: I meant if they exist you are
7 going to get them.

8 MR. SAROS: Yeah. So, I'm saying there is a
9 possibility that we might not get anything else. And
10 that's just not sufficient for us to be able to fairly
11 pursue our claim. Those other documents about the
12 transaction, you know, those don't just go to
13 liability issues and the reasons why this all
14 happened. They go to damages too, you know, what was
15 happening between these -- the two companies, those
16 are the kind of documents our damages experts are
17 going to want to look at.

18 It's just what you've done with -- there is
19 a large category of could be very relevant documents
20 that are excluded by the select topics that you chose
21 to move on. So, like all documents that discuss any
22 of the reasons why Zillow should proceed --

23 JUDGE HILYER: Slow down.

24 MR. SAROS: Sorry. I know I talk fast. My
25 apologies.

1 JUDGE HILYER: When you start reading things
2 you've got to slow down.

3 MR. SAROS: Yeah. Thank you for pointing
4 that out.

5 So, number 9, "All documents that discuss
6 the reasons why Zillow should proceed with the Trulia
7 acquisition." We should be allowed to look at those
8 reasons that they say they're proceeding to see if
9 they make sense, to challenge those. Are they
10 different than what they said in 2011 when they
11 thought to acquire Trulia? What's the whole story?

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 was in the documents recently -- or that we saw in
17 camera, I think it was in our supplemental submission.

18 So, all of a sudden you weren't interested
19 in Trulia. The companies industry-wide were very much

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 And so, if we just get documents about when

1 you first learned, that's like one little part of the
2 story. That's taking a big part of our ability to
3 pursue the claim away, you know.

4 And then with respect to 16 and 19, those
5 are just specific documents about Move. And yes, if
6 they exist, they should have been produced already.
7 But that's also a very small --

8 JUDGE HILYER: This is to different
9 entities.

10 MR. SAROS: You're right, I'm sorry, your
11 Honor, that's to Goldman. So, my apologies. But
12 you're right, so, those are very small little pieces
13 of the whole story. And we really need to have the
14 whole story to pursue that, to pursue the claim. And
15 these very small pieces are just telling like one
16 little part. Okay, just, when did you first start
17 looking at it. That's not a fair amount of discovery.

18 I understand your concerns about, you know,
19 opening up a big swath, but this doesn't satisfy
20 that. What this does is, you know, kind of cuts our
21 knees off, because there is just, we are getting
22 almost nothing.

23 MR. CASLIN: Your Honor, you said only one
24 could argue, but could I ask a question, one
25 question?

1 JUDGE HILYER: Okay.

2 MR. CASLIN: Thank you. I appreciate it.

3 MR. BARNES: Was that the question?

4 MR. CASLIN: At trial, you are a trial
5 judge, your Honor, so you know what's going to
6 happen. You are going to hear from witnesses from the
7 Move side who are going to say we were at the Wilson
8 Sonsini law firm, we were going to merge with Trulia.
9 It was going to change the landscape. Only four
10 people at Move knew about that. Errol Samuelson was
11 one of them, general counsel, the CEO, a board member,
12 I think.

13 And we're going -- our witnesses are going
14 to explain, the fact witnesses are going to explain
15 that suddenly Zillow swoops in very quickly, pays a

16 [REDACTED]

17 [REDACTED]

18 Mr. Berkowitz, but someone is going to get up there
19 and explain why that is such a big deal and why that

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 why they did it, because they are refusing to give it

1 to us in discovery. And you are, respectfully,
2 cutting us off. You are not allowing us to go in and
3 say, why did you swoop in and buy Trulia? That's the
4 plans.

5 And I think what I'm hearing today is, our
6 witnesses are free to come in, they are going to talk
7 about the industry, they are going to talk about what
8 they saw happen. They are in at Wilson Sonsini and
9 they are going to merge. It's going to change the
10 landscape. And Errol Samuelson goes out in the
11 hallway on his burner phone and calls up the CEO of
12 Zillow.

13 MR. BARNES: Is this the shoe phone, is that
14 the one we're talking about?

15 MR. CASLIN: We'll get to that in a minute.
16 And they won't let us take any discovery into it. And
17 you are eliminating this claim, and I think what's
18 going to happen at trial is, I think it's an
19 appropriate motion in limine, which is why I mentioned
20 you are a trial judge, because you know what's going
21 to happen. They can't talk about it. They can't say
22 in response, "Actually, we didn't swoop in and buy
23 Trulia, block the Move/Trulia merger. We did it for
24 the following three reasons," and you are not letting
25 us take discovery on that, so they won't be able to

1 talk about it at trial. I think that's what I'm
2 hearing.

3 JUDGE HILYER: Well, Counsel, I'm going to
4 go back to one lawyer per side. But, you know, I'm
5 the one who insisted we have a court reporter because
6 I wanted to have a good record of this, because I
7 recognize these are serious issues, and if you're
8 right that I'm curtailing your case, you should have a
9 good appellate record, and you've now got one.

10 So, and I have, you know, what the trial
11 judge is going to do the trial judge is going to do.
12 The whole thing comes down to I guess Mr. Saros'
13 contention that -- it's sort of summarized in number
14 9, "All documents that discuss any of the reasons why
15 Zillow should proceed with the Trulia acquisition."

16 And with all due respect, I appreciate your
17 advocacy for your client, but I just strongly disagree
18 that given the concerns of the courts and the case law
19 that's been cited to me in trade secret cases, that
20 that's the appropriate way to litigate this case.

21 I don't think -- that to me is just a
22 massive fishing expedition into the business reasons
23 why Zillow has desired to -- has decided to acquire
24 Trulia. And your claim that I want you to be able to
25 pursue is whether or not there is evidence that

1 Samuelson disclosed the trade secret and that that was
2 part of the reason for Zillow acting when it did. So,
3 I think you've got a good record. I respectfully
4 appreciate your advocacy.

5 MR. CASLIN: Thank you.

6 JUDGE HILYER: But I just don't agree with
7 it. So, I'm going to limit motion for protective
8 order. I'm going to grant the protective order,
9 except with respect to 6, 7 and 8, I'm going to
10 rephrase as follows: All documents generated or
11 received in connection with the Trulia acquisition
12 that mention or refer to Move, Inc. and/or
13 realtor.com, and involve any communications with or
14 reference to Errol Samuelson. So that's number 8.

15 I already gave you number 16 and number 19.
16 Plus you have a transcript to do your order from.
17 Okay.

18 Off the record for a minute.

19 (Discussion off the record.)

20 JUDGE HILYER: So we'll go back on the
21 record. And now --

22 MS. FOSTER: Your Honor, one clarification.
23 That was for Goldman.

24 JUDGE HILYER: Oh.

25 MS. FOSTER: I am assuming that the same

1 would apply to J.P. Morgan?

2 JUDGE HILYER: Yeah. You guys -- I don't
3 want to go into the details. I assume that you can
4 morph that into the J.P. Morgan one. If you can't,
5 you can e-mail me, but I think you can follow the,
6 under protest, the logic.

7 MR. CASLIN: Respectful protest, your Honor.

8 JUDGE HILYER: Respectful protest.

9 Okay. Now, the plaintiff's motion to compel
10 production of documents re Zillow's acquisition of
11 Trulia. So, here are my comments on this one.

12 MR. CASLIN: Your Honor, would you say that
13 again for me, plaintiff's motion to compel --

14 JUDGE HILYER: I just read the wrong one.
15 Excuse me. I'm sorry. I think I put away the wrong
16 one here. Yeah, no. Wait a minute. Plaintiff's
17 motion to compel Zillow to produce documents regarding
18 its acquisition of Trulia. But now the issue is the
19 discovery status of the case.

20 So, here are my comments and where I am on
21 this. So, one argument is sort of just like a
22 contract analysis or something, what was the
23 manifestation of the parties being the lawyers when
24 you negotiated over the form of this.

25 So, Zillow says, well, I said that it was

1 going to be -- Ms. Foster said that it begins with the
2 deadline for possible primary witness disclosure, and
3 that her intent was to sort of cut it off before that.
4 And then she also said, we are not setting all dates
5 as if this were a new case filing.

6 But then Mr. Caslin said, I presume if we
7 ink a deal the Court will set a new trial date and
8 various discovery and disclosure deadlines that flow
9 from the trial date, which sounds like there wasn't a
10 meeting of the minds.

11 And when I look at the case scheduling
12 order, which trumps everything, it says the discovery
13 cut-off has been moved. Zillow wants to say, oh, my
14 gosh, if you let them do that, they are going to do
15 all this other discovery, but, you know, I'm not -- I
16 am the servant of the Court here. And to me, the
17 showing on the e-mail that there was an agreement to
18 the contrary is not convincing. And I think this
19 order supersedes the previous cut-off that I ordered
20 in light of the earlier trial date.

21 So, I think I'm bound by this order to say
22 that discovery is not over. Do you want to sit back
23 and let them -- maybe you can respond.

24 MR. SAROS: Yes.

25 JUDGE HILYER: So, I will give you a chance

1 to respond to that.

2 MS. FOSTER: Your Honor, the Court's order
3 on this specifically states that deadlines in the case
4 schedule beginning with the deadline for possible
5 primary witness disclosures are to be based on the new
6 trial date. And the clerk was directed to enter a new
7 case schedule. That primary witness date was December
8 22nd. So, that's what changed. The dates after
9 December 22nd, not dates prior to this.

10 And there was an earlier order in this case
11 which specifically provided that the written discovery
12 would close as of October 31, 2014, absent -- excuse
13 me, "other than for liberal good cause shown (liberal
14 good cause includes new subjects and/or follow-up
15 relating to information received in discovery.)"

16 When we were negotiating this we wanted to
17 make sure that the earlier dates were not affected,
18 because if we open up written discovery, it's not
19 going to just be Trulia discovery that gets opened up.
20 We have new counsel here who has already indicated
21 that they are seeking broader discovery, and we are
22 going to get tons of new discovery requests. And I
23 can guarantee you that Zillow's production is going to
24 doubling or triple as a result if that date is not
25 included, and if we don't stick to the liberal good

1 cause shown standard that the Court had before.

2 And frankly, I don't think we meet our trial
3 date if we do that. Currently we are in March of
4 2015. There is a show cause hearing on May 22nd.
5 Counsel has indicated the deps should start in June,
6 and discovery closes September 8th.

7 If we are engaged in burdensome document
8 discovery between now and then, we are going to end up
9 in the same exact place we were before, being unable
10 to get this done. The only reason we agreed to the
11 October 24th date is because we thought that written
12 discovery would close and we could immediately launch
13 into depositions. Even that's not happening because
14 of the order to show cause, it's being pushed back
15 further.

16 So, everything that we agreed to with that
17 stipulation, and believing that we could do October
18 24th, goes out the window if this is not enforced per
19 the stipulation and order which specifically says that
20 it's dates after the primary witness disclosures that
21 are affected and that earlier dates are not affected.

22 And so, your Honor, I would respectfully
23 request that rather than open this can of worms, that
24 we stick to the schedule that we've previously had.
25 We've got a lot of work to do in this case even

1 without broader discovery. And we can't add to that
2 burden.

3 MR. SAROS: Briefly, your Honor, I mean, if
4 Zillow wanted so badly to maintain the written
5 discovery date, it should have just said so instead of
6 playing this little coy game with e-mails. It should
7 have just said we want to keep the written discovery
8 deadline, and they never did. We never would have
9 agreed to it, that's why.

10 And if you look at everything in the
11 stipulation and the order talks about the case
12 schedule. Well, I look at the case schedule. It
13 doesn't say anything about written discovery, right?
14 And that's the case schedule we're talking about. And
15 the dates before the disclosure of primary witnesses,
16 those don't get reset. It doesn't mention the
17 discovery plan, which on its face says it doesn't
18 apply because it's in light of the May 11 trial date.

19 Just lastly, there is another date that's
20 before the disclosure of primary witnesses, which is
21 the last date to complete document production. So why
22 doesn't that one still apply? It's a selective, you
23 know, after the fact selection of, well, we just want
24 to prevent written discovery. So, I think those
25 arguments are not convincing. I think your idea that

1 the case discovery plan was -- I mean the discovery
2 cut-off was extended to September and written
3 discovery includes that.

4 MS. FOSTER: If I can have just a quick
5 follow-up, your Honor. One, there was a reference to
6 completion of discovery. At the same time, in fact
7 the very day that we executed the stipulation, we
8 agreed that the date for last production in this case
9 was going to be February 27th, 2015. And that is in
10 the court record here as Exhibit 6 to Mr. Lovejoy's
11 declaration.

12 In other words, the parties at that time
13 were talking about closing and finalizing all
14 documents in this case. I can show you my copy if
15 you'd like, your Honor. And that's the same day we
16 executed the stipulation.

17 JUDGE HILYER: This is a letter from Charles
18 Abbott at Jenner & Block. You said Mr. Lovejoy. Is
19 that at the back?

20 MS. FOSTER: It's the declaration of
21 Mr. Lovejoy. It's attached to his declaration.

22 JUDGE HILYER: This is attached to his
23 declaration?

24 MS. FOSTER: Yes. That's all I was saying.
25 And we, if I could, just real quickly, and

1 we responded that we would agree and would complete
2 all of the production by then.

3 JUDGE HILYER: Even taking that document
4 into account, I don't think there is a clear
5 manifestation of the meeting of the minds as to what
6 you intended. And in fact, the e-mail that I
7 referenced earlier pretty much shows that you weren't
8 on the same page.

9 And the parade of horribles argument of
10 what's going to happen, I don't think that I can say
11 because of that that it drives the result. I think
12 your remedy here is, you can go back to the trial
13 court and make a motion saying, you brought this to
14 discovery master, and the discovery master ruled that
15 there is no meeting of the minds.

16 I'm sticking by this ruling because this is
17 what I'm sort of I think retained to do. I'm ruling
18 on the merits that there is no meeting of the minds
19 here, or manifestation of the meeting of the minds of
20 a stipulation by counsel as to what the effect on the
21 discovery schedule was for agreeing to the trial
22 continuance.

23 Point number 2, I'm bound by the Court's
24 order unless the Court decides that what it intended
25 was to not reopen discovery. That's fine, and we'll

1 deal with it.

2 And I think that in the orderly flow of
3 things, if you are going to take this remedy you
4 should do it right away. Let's not get a big backlog
5 of discovery going. That's your remedy here is you
6 need to go back to the trial court and say --

7 MS. FOSTER: And keep the May trial date.

8 JUDGE HILYER: But at the same time, I've
9 done my work here and I've sorted through this record,
10 and I don't see there is a meeting of the minds of
11 counsel as to how this is going to work. I think you
12 are on different pages. So the trial court can then
13 decide whether or not what it meant.

14 So, but for now, I'm not going to deny this
15 one for that reason. For right now this -- by "this
16 one" I mean the motion -- so, I guess I'm not quite
17 sure. You all know what discovery request you are
18 talking about. I don't have them here in front of me,
19 but I'm going to grant the motion to compel the
20 production because I don't see that as it currently
21 appears to me that it's precluded by the discovery
22 cut-off.

23 MS. FOSTER: So, your Honor, one of the
24 objections we had was to the form of the order. The
25 order reads, "Plaintiff's motion is granted." The

1 second plaintiff's six discovery requests are timely,
2 which I think both fit within your ruling.

3 But the third one compels us to produce all
4 of those documents. And as of the time this motion
5 was filed we hadn't even been -- our obligation to
6 submit objections had not even come up. So, to that
7 extent, it is completely premature to order us to
8 produce all of those documents without allowing us to
9 submit our objections, go through a meet and confer as
10 to the scope and relevance of those requests, and if
11 necessary, come back to your Honor.

12 So, we would request that that third bullet
13 point on the order just be stricken, because this
14 really --

15 JUDGE HILYER: I think that's probably
16 correct. I will give you a chance to respond to that,
17 but I think that's correct.

18 MR. SAROS: I mean, I don't really agree.
19 The motion was timely. They told us they're not going
20 to produce anything. Their position was we're not
21 going to produce anything. They should have said in
22 the motion, here is what we don't agree with. There
23 was no -- there was an offer, we will give you the in
24 camera documents and nothing else.

25 I said, well, that's not sufficient. You

1 cherry picked a few things. So, if they wanted to put
2 stuff in the motion, they should have gone so. Here
3 was our --

4 JUDGE HILYER: Well, they thought they had a
5 way to cut the thing off cleanly and they don't. So,
6 I'm going to agree with them and still require that
7 you go through that process.

8 Okay. Obviously I'm also going to require
9 you to meet and confer with respect to the objections
10 before you bring it back to me.

11 The motion to compel the defendant to search
12 the employees' web based e-mails, my concern about
13 this is this thing has morphed, and people keep
14 bringing up things about the way it was before, is my
15 observation. And it looked to me like initially there
16 was some Samuelson/Zillow, not me; him, not him; me,
17 but it seems to me that subsequent to that, this got
18 sorted out it looked to me like, and I saw a letter
19 from Mr. Barnes I think on March 2nd saying, hey, if
20 there is a gap, we'll still deal with it.

21 And it looked to me like -- I'm not quite
22 sure how it got sorted out, but it seemed to me that
23 the things that definitely that pertained to the
24 employment on the e-mail Zillow was handling, and the
25 other things Mr. Barnes was handling. And if that

1 issue needs to be clarified, it should be. But I'm
2 not sure that it's unclear. So, to me, the answer to
3 that is, if it's employment based, then it's Zillow.
4 If it's anything else, then it's Samuelson.

5 And it looked to me like you were in the
6 middle of getting that decided when Move pulled the
7 trigger. So that's kind of where I am right now on
8 that issue. And I'd invite I guess Move to --

9 MR. CASLIN: That's me, your Honor, if you
10 could be patient with me. I'd like to show you why,
11 first of all, I think you are actually granting the
12 motion because you are saying if it's employment based
13 it's Zillow's responsibility. That's our whole
14 point. And their response was, we don't have custody
15 or control are on employees' non-Zillow e-mails even
16 when they know that they are using them for Zillow --

17 JUDGE HILYER: I couldn't resist reading the
18 New York Times this morning about Hillary Clinton
19 knowing this issue was coming up.

20 MR. CASLIN: It's pretty similar. If you
21 can be patient with me I'll show you why we're
22 concerned about this, because there is a lot of
23 activity on this e-mail and other e-mail accounts that
24 are not in the formal Zillow documents.

25 And we really concerned, we are genuinely

1 concerned that it hasn't been produced, it may have
2 been destroyed or is being hidden. And so if you grab
3 the Atteberry declaration, which is the big one, I can
4 show you my copy.

5 JUDGE HILYER: Hold on one second.

6 MR. CASLIN: I'm also looking at the
7 Mittenthal declaration, if you find that one, that one
8 is pretty small.

9 JUDGE HILYER: I've got that one.

10 MR. CASLIN: It's from Mr. Barnes' office.

11 JUDGE HILYER: And what's the other one that
12 you want?

13 MR. CASLIN: Atteberry, or I call him Atta
14 Boy.

15 JUDGE HILYER: These are both Graham & Dunn?

16 MR. CASLIN: No. This one, Mr. Atteberry
17 works with us.

18 JUDGE HILYER: Oh, okay. Sorry.

19 MR. CASLIN: It has a lot of exhibits to it.

20 JUDGE HILYER: It's in the first, not in the
21 reply, the first part of the motion?

22 MR. CASLIN: That's exactly right, yes. I
23 can give you mine.

24 JUDGE HILYER: I've read it, but I can't
25 find it. So, okay.

1 MR. CASLIN: I might pass the document down.

2 MS. FOSTER: Is it in there?

3 JUDGE HILYER: Which one do you think?

4 MS. FOSTER: In there.

5 JUDGE HILYER: Okay. Hold on one second.

6 MS. FOSTER: No?

7 JUDGE HILYER: No.

8 MR. CASLIN: That's okay, your Honor. I
9 don't want you to miss your plane. I will pass stuff
10 down when it becomes appropriate. Although I wonder
11 why you are going to Chicago right now.

12 Mr. Mittenthal works at -- did I say his
13 name right?

14 MR. BARNES: Yes, Mittenthal.

15 MR. CASLIN: Mr. Mittenthal put in a
16 declaration about Mr. Samuelson's e-mails. He is from
17 Mr. Barnes' office.

18 JUDGE HILYER: Right.

19 MR. CASLIN: And it purports -- it does
20 address a lot of the concerns that we have about
21 Mr. Samuelson's e-mails and what we think is not
22 e-mail, the failure to produce a lot of those.

23 And he divides it into two pieces.
24 Pre-injunction piece, we call that kind of the old
25 e-mail address; and then post injunction, the new

1 e-mail address. So let's first talk about the
2 pre-injunction piece. So these are e-mails from
3 January, February, March, April, May of 2014.

4 And Mr. Mittenthal says that he -- that
5 Mr. Barnes' law firm captured twice the old e-mails,
6 and but nevertheless Mr. Samuelson had access to that
7 e-mail account until July of 2014. And he says we've
8 produced those, but then in paragraph 5 he says, "But
9 for reasons I don't understand, some of them just
10 weren't in the e-mail account." And if you go look at
11 those e-mails --

12 JUDGE HILYER: Like three of them, right?

13 MR. CASLIN: Yeah. If you go look at those
14 e-mails, and our theory, it's a genuine theory, is
15 that Mr. Samuelson intentionally cherry-picked things
16 that he thought helped him, and produced them, and
17 things that hurt him he deleted.

18 And let's look at the order in the
19 preliminary injunction. Mr. Samuelson has already
20 been found to have destroyed evidence in this case.
21 It's a finding of fact in paragraph 23, I think of the
22 preliminary injunction.

23 Exhibit No. 17 is the first one. I'll just
24 read it to you, since you don't have it in front of
25 you. Exhibit 17 to the Atteberry declaration, it's an

1 e-mail from Mr. Samuelson on his old gmail account, to
2 a bunch of people at Zillow, and the beginning of the
3 third paragraph --

4 JUDGE HILYER: What's the date?

5 MR. CASLIN: March 25th, 2014. This is a
6 week or two after the case has been filed. He has
7 just gone to Zillow, he is I think in the second or
8 third week of his employment there.

9 JUDGE HILYER: He started March 5th, right?

10 MR. CASLIN: I think so, yes, sir. And he
11 is using this gmail account for a lot of business.
12 Third paragraph, quote, "Chris and I are putting
13 together a plan to get direct feeds from MLSs and
14 brokers around the country."

15 Our theory, of course, is that plan was
16 Move's plan. He has taken our whole business plan and
17 he is now implementing it at Zillow.

18 If you go to subsection H of the preliminary
19 injunction, this precise issue is addressed in the
20 PI. I'm not arguing that he violated PI by sending
21 this e-mail, but I am arguing that he absolutely knew
22 this e-mail was responsive. And it's mysteriously not
23 in the e-mails that were produced. And no one knows
24 why. I mean, the declaration is pretty clear. No one
25 knows why. I think I know why. I think he deleted

1 it.

2 Exhibit 18 is the other one that's missing.
3 Exhibit 18 is a March 20th e-mail, same topic. First
4 paragraph, talking about MLS's direct feeds, "This has
5 the added benefit of laying the foundation for direct
6 feeds from the MLS." Absolutely responsive document
7 in the heart of the case about ListHub and the direct
8 feed issues.

9 This document is actually a series of six
10 e-mails. There is the first one, two, three, four,
11 five, Mr. Samuelson is on every single one, talking
12 about direct feeds. But it's not in his e-mail
13 production. So he mysteriously missed six e-mails on
14 a direct issue in the case right in the middle of the
15 PI hearing. So we think there is real concerns about
16 Mr. Samuelson personally. I want to be clear, I am
17 not blaming any of these lawyers. Mr. Samuelson
18 personally has already been found to have already
19 destroyed evidence, is the one in his e-mail account
20 and stuff is not in his production. That's the first
21 point. I've got three points.

22 The second point, there is a little bit of
23 theatrics in the opposition brief talking about the
24 burner phone. We are called conspiracy theorists. I
25 feel like Mulder from the X-Files. We are called

1 conspiracy theorists. It's repeatedly been said that
2 these are just, quote-unquote, slurs against
3 Mr. Samuelson.

4 The same Mittenthal, I'm so sorry, the same
5 declaration from Mr. Barnes' office says, there was no
6 burner phone. This is Mr. Samuelson's wife's phone.
7 This is in the Mittenthal declaration. It's at the
8 end.

9 MR. BARNES: Paragraph 12.

10 MR. CASLIN: Paragraph 12. Thank you. This
11 is Mr. Samuelson's wife's phone.

12 JUDGE HILYER: It's an iPhone that belonged
13 to his wife.

14 MR. CASLIN: Yeah, there is nothing
15 mysterious here.

16 JUDGE HILYER: And it still exists, also.

17 MR. CASLIN: Yes. Let's call that one the
18 wife's phone, okay. And the four-year-old has it.
19 Interesting story there. Mr. Samuelson's
20 declaration --

21 JUDGE HILYER: They also said they produced
22 a forensic copy of it for you.

23 MR. CASLIN: They did, yes, sir. And then
24 in paragraph 12 of that declaration, Mr. Mittenthal --
25 please apologize to him when you get back to the

1 office -- Mittenthal says, if you go to Exhibit A,
2 there is a copy of the forensic analysis of that
3 phone. So you go to Exhibit A, it's actually not
4 there. It's Exhibit B, we know it's Exhibit B because
5 he gives us the citations.

6 So, go to Exhibit B, and it has a bunch of
7 data from that phone, and it has dates, and this is
8 the data that they gave us. And they claim this is
9 the wife's phone.

10 Now, curiously, every single text in the far
11 right column has been deleted, but they recovered it,
12 so that's great evidence for the case.

13 Let's go to the exhibit that we showed your
14 Honor for evidence of the burner phone. We still
15 think there is a burner phone. It's Exhibit 15 to the
16 Atteberry declaration. It's an e-mail from Kathleen
17 Philips, the COO of Zillow, to the CEO of Zillow, and
18 it's dated January 5th of 2014.

19 And what Ms. Philips has done in Exhibit 15
20 is she has cut and pasted a text from Mr. Samuelson
21 into an e-mail. Here is the text from Mr. Samuelson.
22 "Hi, Kathleen, Errol Samuelson here. Welcome back to
23 the West Coast." And there is some Seahawks type
24 stuff. And he says, "Spencer and I are still working
25 on the numbers." I'm sorry. "Spencer and I are still

1 working on the numbers. This number is a prepaid
2 personal cell phone, so feel free to text me and call
3 me on it. Best, Errol."

4 That's January 5th of 2014. If that's the
5 wife's phone, what we call the burner phone, and he
6 calls a prepaid personal cell phone, not the wife's
7 phone, it would show up in this for forensic analysis,
8 right?

9 Let's go back to the forensic analysis. Go
10 to January 5th. Is there any text from Mr. Samuelson
11 talking about the Seahawks? None. Nowhere in here,
12 not the entire document. There is another phone, and
13 we don't have it. The four-year-old doesn't have it.
14 We don't trust Mr. Samuelson. We think he had a
15 burner phone. I think he is texting on it. I think
16 it's missing. That's the second point of our old
17 e-mails, old destruction of evidence from prior to the
18 injunction.

19 We don't think he produced all the e-mails.
20 Now let's go to the post injunction discovery and
21 e-mails. In Mr. Mittenthal's declaration in paragraph
22 9 he says he didn't search the e-mails. Nobody has
23 searched those e-mails. Guess who searched those
24 e-mails?

25 JUDGE HILYER: Samuelson.

1 MR. CASLIN: Mr. Samuelson himself. This is
2 Mr. Samuelson, who has been found to have destroyed
3 evidence. He wiped multiple computers clean before he
4 turned them back in. He's got phones that he hasn't
5 showed to us or Perkins Coie or probably his lawyer.
6 He has got e-mail accounts where clearly relevant
7 e-mails are mysteriously missing. And he says, and
8 the only production of documents is through
9 Mr. Samuelson. It is not a reliable approach. So
10 let's look at some of the documents produced.

11 And in the opposition brief there is right
12 under a headline that says we are conspiracy theorists
13 and, you know, none of our theories are true, they
14 say, go look at Exhibit No. 20. That's just
15 Mr. Samuelson having lunch with friends.

16 So let's go look at Exhibit No. 20.
17 Mr. Barnes wrote, you know, "This is a waste of time.
18 This is just Mr. Samuelson having lunch with
19 friends." And Exhibit No. 20 is a LinkedIn e-mail
20 which Mr. Mittenthal did capture. In his declaration
21 he said I went and captured the LinkedIn e-mail.
22 That's why we had it, by the way, not from
23 Mr. Samuelson.

24 The e-mail from Mr. Samuelson he says, "Oh,
25 this injunction got entered and I can't do anything."

1 He is e-mailing an old friend. He says, "Nice to see
2 you. You should call Matthew Moore."

3 Let me read it word for word slowly for the
4 court reporter. "By the way, I'm sure Matthew Moore
5 would love to see you as well. Now that I am not
6 working he and I have been doing sushi lunches. He
7 orders well. You should ping him as well." So he has
8 been having sushi lunches with Matthew Moore. Who is
9 Matthew Moore?

10 Back here, sorry. I Googled Matthew Moore
11 this morning. Matthew Moore is the owner of Retsly.
12 He is having lunches with the guys from Retsly. He is
13 one of our key theories in this case. If you go to
14 the end of this newspaper article, sorry, it's right
15 here on the first page, right there, this is a
16 newspaper article about the announcement of Retsly.
17 It's in July of 2014, after the injunction is in
18 place.

19 Our theory of this case is that Retsly was
20 an acquisition target that Mr. Samuelson was
21 responsible for at Move. He intentionally pushed it
22 to the side. We don't want to buy Retsly, it's not
23 important. Why? Because he already knows he is going
24 to Zillow. He wants to get Zillow when -- he wants to
25 get Retsly when he goes to Zillow, and the e-mail

1 traffic actually proves this point pretty well.

2 He violated his fiduciary obligations by not
3 buying Retsly for Move. He gets over to Zillow. On
4 the second day he's there he goes after Retsly to
5 purchase them for Zillow. He has violated his
6 fiduciary obligation. He has violated his
7 confidentiality obligations to Move.

8 He goes after Retsly, and he is having sushi
9 lunches with the guy, I never actually told you, but
10 you see there in this acquisition it says, "Previous
11 investors in Retsly in addition to Growlab include
12 Eric Stegemann, Klaas Lameijer and Matthew Moore."

13 So he is having sushi lunches with Mr. Moore
14 the same week the acquisition of Retsly is announced,
15 clearly relevant to the case. They have a different
16 theory, probably, right, different factual theory.
17 Clearly relevant to the case. Not one single e-mail,
18 not one. Nothing.

19 Instead what we get is a constant barrage of
20 communications from the other side. Mr. Samuelson was
21 doing nothing. He was out. The preliminary
22 injunction was in effect. He did nothing.

23 He was doing stuff, and he was using his
24 gmail, and we don't have it. And the reason that we
25 don't have it is because the only person who searched

1 that gmail account is a known evidence destroyer,
2 Mr. Samuelson.

3 And the case law makes pretty clear that
4 when a company knows its employees are using
5 non-company e-mails to conduct business, the company
6 has an obligation to get those e-mails. And Perkins
7 Coie has an obligation to get those e-mails.

8 And frankly, I trust Perkins Coie to get
9 those e-mails. I don't trust Mr. Samuelson at this
10 point. He is using burner phones, he is deleting
11 e-mails.

12 JUDGE HILYER: So what specific relief are
13 you asking for?

14 MR. CASLIN: It's their obligation, your
15 Honor. It's Zillow's obligation, if it knows its
16 employees are using non-Zillow e-mails to conduct
17 Zillow business, it has an obligation to go get those
18 e-mails and produce them.

19 JUDGE HILYER: But I think, and I'm going to
20 hear in a minute from Mr. Barnes and from them, that
21 in almost all the other cases they did do it that way,
22 except I noticed that in Mr. Barnes' letter of March
23 2nd to Charles Abbott -- that's another lawyer with
24 you guys, I guess?

25 MR. CASLIN: Yes, sir.

1 JUDGE HILYER: On the fourth paragraph from
2 the bottom, it says, "In these collections, Samuelson
3 was not involved. What he was involved in was a
4 search of his new gmail account in November resulting
5 in documents numbered EGS 006851-7469" Then it
6 describes the search. So which suggests to me this is
7 the only occasion in which Mr. Samuelson was the
8 person who did the search.

9 So, are you just asking -- you disagree with
10 that, or are you are you just asking for that search
11 to be redone by lawyers who have to certify it?

12 MR. CASLIN: I might be confused here. I
13 think what you're saying is that Mr. Samuelson claims
14 he went in and got his gmail and produced it.

15 JUDGE HILYER: Well, no. Mr. Barnes recites
16 how the search was done in great detail. And this is
17 the only one, because I made a note of it too, that
18 Samuelson did it that I saw where Mr. Barnes says,
19 Samuelson did this one. So if that's your issue, are
20 you just concerned that that one be done by a lawyer,
21 because all the other ones were done by lawyers, I
22 think.

23 MR. CASLIN: Actually, that's not true, your
24 Honor. The former one was done by a lawyer. It was,
25 I call that the old gmail account, that's the first

1 one. But there are documents missing from that one as
2 well. Actually it wasn't done by a lawyer, it was
3 done by Mr. Mittenthal, and he can't explain why there
4 is e-mails missing.

5 JUDGE HILYER: So ,what's the relief you're
6 asking for? That's what I want to get to.

7 MR. CASLIN: Zillow is responsible, because
8 Zillow has the resources to go in, take snapshots of
9 those gmail accounts, figure out what has and hasn't
10 been produced, figure out what has been destroyed and
11 not destroyed, and tell us. There are two different
12 things. Having Mr. Samuelson just print out e-mails
13 at home and produce what he thinks are good for him,
14 is the exact opposite of having Perkins Coie and
15 Zillow use their --

16 JUDGE HILYER: So are you saying that you
17 want Zillow to produce everything, whether it's stuff
18 that Barnes has been doing that they say is personal,
19 and stuff that which employees -- that everything
20 should go there Zillow?

21 MR. CASLIN: No. If it's business related
22 and it's written by Mr. Samuelson or Mr. Beardsley or
23 anybody else, it should be searched in this case, and
24 Zillow should have that responsibility.

25 And it's not just gmail. In our opening

1 brief we showed you an exhibit where Mr. Samuelson is
2 using Dropbox, which is, you know, has functionality
3 for allowing documents to be sent around the
4 Internet. Dropbox has a special gmail functionality
5 that allows you to use your gmail to send Dropbox
6 documents around. It's not even addressed in their
7 opposition. They don't even talk about it. They
8 pretend it doesn't exist. I would like to know what
9 Mr. Samuelson was sending out through his Dropbox
10 account that he could later access.

11 There is also Yahoo accounts. These are
12 very sophisticated, very smart, very technologically
13 savvy people. They are using a large number of
14 communication devices and are just not producing them.

15 JUDGE HILYER: So back to -- one more time,
16 specifically what relief do you want me to order? If
17 I were to grant the relief, what is the relief?

18 MR. CASLIN: If it's a business related
19 e-mail by a Zillow employee, Zillow has responsibility
20 for searching and producing it, subject of course to
21 all the other objections and, you know, everything
22 else that's going on in the case. And the reason
23 is --

24 JUDGE HILYER: And what else? Is that it?

25 MR. CASLIN: That's it. So, if

1 Mr. Beardsley is sending Zillow-related e-mails on
2 Yahoo, then Zillow has the obligation, and they
3 actually have the, from a practical perspective, the
4 custody and control to go get his e-mail account and
5 go look at it. If Mr. Samuelson is doing Zillow
6 business on gmail, Zillow has the obligation to go get
7 it.

8 If anyone else, including Mr. Rascoff, is
9 doing Zillow business on gmail and talking about
10 Mr. Samuelson, for example. They already know who
11 their custodians are, right, because all of us have
12 been through a lot of document discovery.

13 But you have to ask the custodians, were you
14 doing company business on another e-mail account? We
15 already know the answer for Mr. Samuelson. He clearly
16 hasn't produced a lot of it. We know from
17 Mr. Beardsley he clearly was. The evidence is in the
18 Atteberry declaration.

19 And they should go get those documents.
20 Because as I've showed you, the individuals themselves
21 can't -- frankly can't be trusted to do it themselves.

22 JUDGE HILYER: Would you pass me your copy
23 of the Atteberry declaration for a minute?

24 MR. CASLIN: I will tell Ms. Foster that on
25 Exhibit 17 and 18 I've written in big red ink "not

1 produced by Zillow," or "not produced." Other than
2 that, those are --

3 JUDGE HILYER: Before I hear from you, just
4 one minute. I want to look at this again. I know I
5 read it, but -- okay.

6 Okay. You can have that back. Thank you.
7 I think I'll hear from you next.

8 MR. BARNES: I bet you imagine I have a few
9 things to say.

10 JUDGE HILYER: Okay.

11 MR. BARNES: To start off, one thing Errol
12 Samuelson did, he made a mistake in this case, and
13 that was he used company communication devices for
14 personal communications, and that's what all of this
15 destroying evidence has to do with.

16 Now, that doesn't have anything to do with
17 this case, but I am getting a little tired of hearing
18 about how he destroyed evidence, he is a known
19 destroyer of evidence.

20 Number two, yes, you are right, Samuelson
21 only did the search on one piece. You know why he did
22 it? Because these guys turned in a discovery request
23 at the end of October, and we had a December 1
24 cut-off, as you may recall, for producing stuff, and
25 we didn't have time.

1 JUDGE HILYER: You've got to slow down.

2 MR. BARNES: We didn't have time, as we
3 pointed out, to go do a capture, search and so on, but
4 to respond in time, by the way, as far as I know, we
5 are the only ones who did, with our documents on
6 December 1st, because they asked for them late. And
7 we didn't have time to go do a capture, screening,
8 search and so on.

9 I tell you, we have now. And what I'm
10 trying to -- what I wrote in that -- let me slow down.

11 Yes, we now have been able to capture, and
12 we can go back and do a better job than rely on
13 Errol's search in the fall in response to those
14 document requests, and we are doing so. But the
15 accusation that Samuelson was controlling these, these
16 searches prior to that, is absolutely not true. And
17 this idea about a burner phone is silly.

18 Now, this motion, though, has to do with
19 whether Zillow should go back and search an employee's
20 personal e-mail accounts, right?

21 I started off by talking about the one thing
22 Errol did wrong, and that's because these guys, when
23 they grabbed -- when they did get ahold of Move
24 computers and so on, would not agree, would not agree
25 to search -- to leave out personal things about his

1 religion, his church, his medical history, his family
2 and so on. That's the problem he had.

3 Now, no offense to Zillow, but I do not
4 think the answer to that, to this situation is to have
5 now Zillow go search his e-mail accounts, his personal
6 e-mail accounts.

7 We've captured it, okay? And we've captured
8 all his personal e-mail accounts. And there is a
9 document or two that I understand that they say is
10 here, because they have it from the other end of
11 things. Now, they have them from the Zillow end of
12 things. So, I mean it's not like they are missing
13 documents. I mean, they have them from one end or the
14 other.

15 And yes, you're right, there was a sort out
16 as to where they were coming from. But the rest of it
17 is just not true. Samuelson hasn't controlled that
18 production at all. We have. And now that we've
19 captured -- we have the time to capture and respond,
20 we are going to look at that capture and see if it
21 needs to be supplemented. Period. But I don't know
22 why the remedy to this is to have Zillow searching
23 through everybody's personal e-mail files.

24 MS. O'SULLIVAN: Yes, I'll speak for Zillow
25 on this. Thank you. Your Honor, again your instinct

1 is correct here that really this is a premature
2 motion. Clem Barnes and another lawyer for the
3 plaintiffs, Charlie Abbott, were talking about these
4 things the day their motion was filed.

5 They had a follow-up the Monday after the
6 motion was filed. They are still working on it, and
7 they've -- Mr. Samuelson's counsel has promised to
8 produce the additional responsive documents, if any.

9 I'd like to talk for a minute just about why
10 Mr. Samuelson is different, why he was using gmail,
11 why he had these two different accounts.

12 JUDGE HILYER: Different than Hillary?

13 MS. O'SULLIVAN: Right. Hillary wanted, as
14 far as I can tell, just one account, one phone. It
15 would be easiest. And now she is being challenged for
16 that.

17 But he used a gmail the first two weeks he
18 was at Zillow because he wasn't technically an
19 employee yet for various immigration reasons.
20 Approving getting the visa. So that accounts for
21 those March period e-mails. And they've largely been
22 produced.

23 He started using the second gmail address
24 after the preliminary injunction was issued because
25 out of an abundance of caution, Zillow blocked him

1 internally from having e-mails go to his at Zillow.com
2 e-mail address, so he wouldn't even see things. They
3 were automatically forwarded to the company's general
4 counsel.

5 And so that's why his situation is a little
6 bit different.

7 Second, the suggestion that Mr. Samuelson
8 deleted intentionally e-mails and that's why they
9 haven't been produced, there is no basis in the record
10 for that whatsoever. Mr. Mittenthal in his
11 declaration clearly says, Graham & Dunn, the counsel
12 took a full capture of these e-mails, reviewed them
13 for production, and for whatever reason a couple or
14 some greater number were not produced. And
15 Mr. Mittenthal says, "I am diligently working to
16 resolve this issue and we will fully supplement the
17 EGS production as soon as possible."

18 Third, there is no evidence that anyone
19 other than Mr. Samuelson was using a personal e-mail
20 address during the time period he was a Zillow
21 employee. They point to some Curt Beardsley
22 examples. Those were before he joined the company.
23 So I would ask that on behalf of Zillow that you deny
24 the motion, the understanding and expectation that
25 Mr. Samuelson's counsel will continue producing

1 responsive documents.

2 JUDGE HILYER: What about the claim that
3 there has been use of Yahoo and/or Dropbox in addition
4 to gmail?

5 MS. O'SULLIVAN: Specifically as to Yahoo, I
6 believe that's a reference to Mr. Beardsley who had a
7 couple of different personal addresses.

8 JUDGE HILYER: Before he went to Zillow?

9 MS. O'SULLIVAN: He may still have that as a
10 personal e-mail address now, but that was an e-mail
11 that -- the Atteberry declaration I believe cites a
12 few Beardsley documents, I think one of which may have
13 a Yahoo address.

14 JUDGE HILYER: So, at this point has Perkins
15 Coie certified for Zillow the work-related e-mails on
16 gmail, said, here is a response to your discovery
17 request, this is what we got?

18 Ms. O'SULLIVAN: We have not so certified,
19 and the parties are continuing to produce documents.

20 JUDGE HILYER: Okay. Back to you.

21 MR. CASLIN: Thanks, your Honor.

22 JUDGE HILYER: I want you to focus -- I want
23 to get past the arguments and talk about relief,
24 okay? I want you to focus on what you want me to do.

25 MR. CASLIN: Thank you, sir. If a Zillow

1 employee is using any electronic communication device
2 for Zillow business, Zillow has an obligation to
3 search and produce those documents. In fact, we just
4 heard a moment ago, I actually think it was a mistake,
5 I don't think it was intentional, she said
6 Mr. Samuelson has produced all the e-mails from the
7 second account. They actually don't know, they have
8 no idea. They haven't looked at the account. And I'm
9 guessing he won't let them look at the account. I
10 don't know.

11 We also heard just a moment ago that for a
12 couple of weeks he didn't even have a Zillow account.
13 He was only using gmail for Zillow business. They
14 clearly have an obligation, your Honor, to go into
15 that gmail account, see what's there, and produce it.
16 And I guarantee you we will get a more full production
17 than we are getting from Mr. Samuelson as the
18 gatekeeper.

19 So I think if the order simply says the
20 obligations extend beyond -- right now their view is
21 when there is discovery they go look at Zillow.com on
22 the Zillow server. And that's all they're looking at.
23 They are not looking at gmail, they are not looking at
24 Dropbox. They are just narrowly focused on Zillow.
25 And we know there are all those other communications

1 out there, and they won't go get those.

2 And they are aware -- they don't have to go
3 to every single employee, but if they are aware there
4 is a custodian in this case who is using non-Zillow
5 e-mail for Zillow business, the cases cited in our
6 briefs, the law is they have an obligation to produce
7 them under those circumstances.

8 MR. BARNES: I do have one thing to add as
9 long as we are talking about Mr. Atteberry.
10 Atteberry, is that his name?

11 MR. CASLIN: Yeah, Atteberry.

12 MR. BARNES: As you remember from reading
13 what we produced, is it more than 20, probably,
14 documents supposedly weren't produced or cited in
15 their answer, supplemental answer to interrogatory
16 number 1. There are times maybe when I'm not sure
17 exactly what got produced, and I will tell you what,
18 there are more times that they're not sure what they
19 got. I am reading all about it in Atteberry's
20 declaration. Go back to our briefs, how many of those
21 things that we supposedly did produce, right there.

22 JUDGE HILYER: All right. Here is the
23 answer to this. I agree with Move that Zillow has an
24 obligation to certify, and that means that they've
25 done the search, or they are vouching for the search,

1 with regard to any use of third party communication
2 mediums, Zillow, Dropbox, gmail, whatever, that
3 pertains to Zillow business, so that's point number
4 one.

5 Point number two, Mr. Barnes has indicated
6 that on the personal side of this, which he's
7 responsible, that the only search that's been done up
8 until now by Mr. Samuelson and not by someone at his
9 law firm, which is a reputable, professional law firm
10 that I have no basis to doubt their integrity or their
11 professionalism, is the reference in his letter to the
12 Samuelson e-mails which he explained. That needs to
13 be redone by a lawyer and certified.

14 And you all need to meet and confer before
15 you bring this back to me about sorting this out so
16 that you end up with a pile of documents that
17 Mr. Barnes produces that's personal, and a pile of
18 documents that Zillow certifies, or whoever they feel
19 comfortable doing that, pertain to work, and it
20 includes gmail or Dropbox or anything like that.

21 And if you have that, I think the argument
22 is over. You can then argue in Court about why it is
23 that you didn't get the second version of the e-mail.
24 But I think that's pretty much -- and I want you to
25 confer about this.

1 And that, by confer I mean I want senior
2 layers there, and I don't know that you are not senior
3 lawyers. I don't want this shoved down the food chain
4 to people who don't know what's going on, because I
5 think you can sort this out, and say here is a group
6 of documents that came from there. Here is a group of
7 documents that came from here. And the law firms
8 ultimately are responsible for making sure that the
9 rules of evidence are complied with. All right?

10 MS. O'SULLIVAN: Judge Hilyer, if I can just
11 be heard and ask one question briefly. Respectfully,
12 there was not a meet and confer on anyone other than
13 Samuelson, but we will respect and take your ruling.
14 What I ask, that the ruling be bilateral and be
15 applied to plaintiffs as well.

16 JUDGE HILYER: In general I would say yes,
17 but what's pending? I don't know what's pending in
18 that regard.

19 MR. CASLIN: There has been not a single
20 letter, e-mail or hint that we have this problem on
21 our side. Our side isn't the side that was using
22 secret e-mail accounts.

23 JUDGE HILYER: Well, let me just say this.
24 I think you know from my reaction to this, and, you
25 know, I'm not giving you the disgust that you would

1 get from the judge because you are paying me to do
2 this painstaking work, and I find time at night after
3 mediations to get it done, and you are all great
4 lawyers and it's very interesting and all that.

5 But I think you know what my attitude about
6 this is, if it comes up on the other side. I mean,
7 when I read this, and I understand your point now, but
8 I've read this, this is like untangling the
9 spaghetti. And, you know, I could read, you know, and
10 I did read the Atteberry one, and I read every one of
11 those e-mails, everything that you mentioned is
12 something that I've read.

13 But still, I mean, going back through this
14 and matching that up with each discovery request, good
15 lawyers ought to be able to get to the bottom of
16 this. Now you know what the ground rules are, okay,
17 and the ground rules are as I stated them. So by all
18 means, it may not be explicitly bilateral because
19 there is no motion pending, but don't bring me one of
20 these on the other side unless you've tried really
21 hard to get it.

22 And what I was going to order before, but I
23 think I've just cleared it up now, is I was going to
24 ask you to sort through this and figure out what the
25 remaining disputes were. But I'm just going to leave

1 it the way that I just said it a few moments ago.

2 MS. FOSTER: Your Honor, if I could ask for
3 an indulgence similar to Mr. Caslin for just a moment
4 oh this issue.

5 JUDGE HILYER: Okay.

6 MS. FOSTER: And that is that Mr. Samuelson
7 is a party to this case. We can work with his counsel
8 and then certify. That we're willing to do to try to
9 work with him. It's just frankly an extension of what
10 we are trying to do now.

11 What's being requested here is that we
12 certify and vouch for every device that our employees
13 who aren't parties may have, and say that they've
14 produced everything that relates to Zillow. And the
15 only way we can do that is if we go out and capture
16 our employees' e-mail box, Dropbox, and do a search.

17 They don't have a counsel who can act as
18 Mr. Barnes is to protect their personal information
19 from their employer. So, for us to certify and vouch
20 for that would require a huge intrusion into our
21 employees' privacy, and I don't think that the Courts
22 allow that, particularly for non-parties such as this.

23 The request here to say that it applies
24 equally to Move and Zillow is simply an ordinary
25 request to say, listen, to the extent that you want us

1 to do this, then let's recognize that we all need to
2 be doing this, that you can't be expecting that
3 intrusion by Zillow into its employees, that there has
4 to be some reasonable way of working this out.

5 And this issue has never been the Sunday of
6 a meet and confer. We've never had the opportunity to
7 discuss this broader Zillow employee issue. And I
8 would really request that you reserve judgment on that
9 until we can discuss it.

10 MR. CASLIN: I can just, very quickly, we
11 are actually not asking for private stuff. Zillow, it
12 was very clear when you were cross-examining me on the
13 relief I'm requesting, if it's Zillow business. And
14 that's important, because I don't want their church
15 stuff.

16 MS. FOSTER: But I can't certify --

17 MR. CASLIN: If your employees are using
18 gmail for Zillow business, they have no expectation of
19 privacy. And there is a lot of evidence in this
20 case. On our side I'm obviously going to go back and
21 ask all my people, hey, were you using gmail for
22 business. If so, I have to go look at that now. But
23 there is a lot of evidence in this case, I mean, 20,
24 30 e-mails that a lot of people on the Zillow side
25 were using gmail and Yahoo and Dropbox.

1 And our view of the world is the reason
2 they're doing it is because they are trying to keep it
3 away from Perkins Coie and trying to keep it away from
4 discovery in this case.

5 JUDGE HILYER: My attitude about this,
6 Ms. Foster, is if your employees, I mean, it's your
7 company and you can give directives to your employees,
8 and if they want to mix their personal stuff with the
9 business stuff, if we get a request like this, then
10 I'm going to say you have to produce the business
11 stuff, and I'm just not going to worry hypothetically
12 about where that crosses over the line with their
13 personal issues. And if they have to get lawyers,
14 they have to get lawyers.

15 But I don't start -- I don't want to go any
16 further down the path other than to say I agree that
17 if the employees -- I think that Zillow should be able
18 to control this, or any employer should be able to
19 control this.

20 And if your employees want to mix their
21 business stuff on their personal e-mail account, then
22 I guess they can do that. But I'm not going to say,
23 well, I'm not going to require you to certify it
24 because I'm invading their privacy. I didn't create
25 the problem. That's as good as I can do for now. So,

1 I'm trying not to prejudge this, but I'm also trying
2 to clue you in to my thinking enough that you can work
3 through these issues yourself.

4 I think we have one more.

5 MR. BARNES: It's our motion.

6 JUDGE HILYER: Yeah. So on this last
7 motion, first of all, it looked like everything is
8 washed away now but the damages in your reply
9 material?

10 MR. BARNES: Damages and related to the
11 damages is the acquisition documents.

12 JUDGE HILYER: So, here's where I will do
13 what I did before. Where is the master in his
14 thinking. I think that the theory, damages theory
15 that you've articulated is plausible, which is to say
16 that if someone is acquiring this company at a time
17 when there has been this defection and there is loss
18 to trade secrets, that's a legitimate topic of
19 discovery.

20 But again, it's sort of the flip side now of
21 what we were dealing with with the Trulia situation.
22 It needs to be narrowly focused on that theory, and
23 not opening up a whole host of the other business-
24 related topics.

25 With regard to the damages, I just, to me

1 this is a tempest in a teapot because it's a question
2 of timing. And I guess I can go through this and tell
3 you more about that, but I want to hear I guess from
4 Move about what its plans are in terms of when it does
5 intend to respond with particularity about damages,
6 which you are obviously going to have to do before
7 very much longer.

8 And I don't know exactly where you are in
9 terms of, I thought that -- weren't expert depositions
10 going to start in March? I don't know where you are
11 in terms of developing the case. But to me, once your
12 reply materials came in that I read, this all got to
13 be about damages, and that's just a question of timing
14 to me. So, let me hear from you.

15 MR. LOVEJOY: Sure. First on the News Corp
16 documents, I think the theory that Move would have
17 been, in the course of its talks with News Corp,
18 essentially doing a damages calculation in this case
19 and then showing it to News Corp, that's not really
20 plausible because that's not what companies who are
21 acquisition targets do. If you have a disclosure to
22 make, you say, we're involved in this lawsuit and you
23 can read the pleadings. And so that's what ends up
24 being in the file.

25 We did send a letter to Miller Nash Graham &

1 Dunn shortly before this motion was filed saying, we
2 can do some discovery, but let's talk about what
3 search terms are appropriate, because it's really what
4 you are saying, your Honor, this should be narrow.
5 Turning over every due diligence document just makes
6 no sense. It's not going to be helpful.

7 We didn't get a response on that, but I
8 think if we did, if basically the order today was that
9 we've now heard your thinking on this and we are
10 directed to go back and meet and confer about
11 appropriate search terms and custodians to look for
12 docs, then that would be fine. And we can proceed
13 that way.

14 In terms of the damages, interrogatories and
15 the other requests for production relating to
16 calculations that we've made, you're right. This is a
17 question of timing, and it's the same issue that we
18 were arguing about in our last hearing which was over
19 the phone in response to Zillow's interrogatory number
20 4 request.

21 We have now supplemented our response to
22 Zillow's interrogatory 4, and Samuelson's
23 interrogatory 1, where we lay out for them, okay, as
24 of this point what can we tell you about what
25 misappropriation has happened? And that really

1 answers to a large extent the part of this motion that
2 says, hey, you've got to give me kind of your
3 categories of what your damages are.

4 What's left is, they want an answer right
5 now about amounts and calculations, and yeah, we're
6 not done. This isn't the right time for it.

7 JUDGE HILYER: When is the right time?

8 MR. LOVEJOY: Well, so, the right time is
9 not yet. And I'm not sure that doing an order that
10 says here's the date is the right thing to do right
11 now, because as Ms. Foster has pointed out, we've got
12 a lot to do in the next couple of months that is going
13 to draw away from this process a little bit.

14 We have the order to show cause that
15 requires a number of depositions. We're going to get
16 through those. And I think probably the best thing to
17 do is for the -- for right now, the parties to talk
18 about search terms to complete the document discovery
19 that's hanging out in this motion to compel, do the
20 order to show cause proceeding, and then regroup and
21 say, okay, when are we going to get -- when are we
22 going to specify more about the damages
23 interrogatories?

24 JUDGE HILYER: Do you all have a deposition
25 schedule that has -- including damages experts already

1 set up at a certain time?

2 MR. LOVEJOY: We did a lot of back and forth
3 at the time that we were trying to work out the
4 extension to the trial date. And there were
5 possibilities discussed about deposition dates and
6 other dates. And I'd say we got to about the one yard
7 line on that. But maybe Brent can fill in a little
8 bit more on what's still left, or what didn't get
9 closed out in those discussions.

10 MR. CASLIN: I think Ms. Foster can correct
11 me if I'm wrong, this was two or three weeks ago, I
12 think we were talking about experts in August or
13 September, is that right, Sue?

14 MS. FOSTER: Yes. And then you said we
15 couldn't agree to a schedule because you wanted to
16 push everything back. So I'm not -- I don't know
17 where that puts us.

18 JUDGE HILYER: That's really late. I
19 mean -- but I will listen from Mr. Barnes.

20 MS. FOSTER: If I can just point out, I
21 believe that the primary witness disclosures are due
22 in May, which require the experts' opinion. So at
23 minimum it would have to be by then.

24 JUDGE HILYER: Okay. Let me hear from you.
25 It's your motion. Focus on -- give me your argument,

1 but focus on the relief especially that you want.

2 MR. BARNES: I will. On damages, you don't
3 need an expert's opinion to tell me whether you are
4 claiming that there was a deal that was derailed, the
5 Sentrilock deal, that was deferred and you therefore
6 lost money; that you lost revenue on something that
7 Samuelson dropped the ball on; that the value of Move
8 stock somehow fell down; that you lost investors; that
9 you lost business; that it prevented a sale of the
10 company another sale of the company; it prevented an
11 acquisition of somebody.

12 These are items, it is no answer to say, we
13 will wait until the expert tells us what they think we
14 can sell to a jury. These are very specific things.
15 You can tell us Sentrilock. This was a deal that was
16 derailed. Okay, what happened? Did you lose money?
17 How are you hurt? These don't require an expert
18 opinion. They just don't.

19 Secondly, talking about the acquisition
20 documents, you know the reason search terms won't
21 work, because we'll be searching for names like
22 "Samuelson," "trade secrets," "misappropriation," our
23 whole point is when we look at those documents, I
24 believe we are not going to find one mention of
25 those.

1 So using search terms, all its going to tell
2 us is that there are no documents that respond.
3 That's my point. I'm looking for trial exhibits. I
4 want a jury to see exactly what these people said
5 about Samuelson and his misappropriation, how it would
6 hurt the company, how it would damage their business.
7 I want to see what they said then in a disclosure
8 schedule and in due diligence documents. So that's
9 why I want it. I'm not looking to learn stuff. I
10 won't learn anything in the search. What I'm looking
11 for is proof.

12 JUDGE HILYER: Just one second. Let me hear
13 back from you about -- in response to Mr. Barnes.

14 MR. LOVEJOY: Well, it sounds like what I'm
15 hearing is search terms is exactly the right
16 approach. If you want to see what's in the
17 disclosures that talks about Samuelson, we search the
18 disclosures for Samuelson. And it just seems to me we
19 should put a list together and run the search and see
20 if there is a problem.

21 JUDGE HILYER: Well, I think you are talking
22 about something other than -- I thought after your
23 reply, that the only thing we had left was damages
24 with regard to your motion to compel. Is that wrong?

25 MR. BARNES: No. The News Corps acquisition

1 documents are broader than that.

2 JUDGE HILYER: And that issue?

3 MR. BARNES: Yes.

4 JUDGE HILYER: But that and damages. What
5 are the interrogatories on damages? I'm struggling to
6 find -- I'm looking at your declaration and all I'm
7 seeing is interrogatories on other topics. What are
8 the damages ones? There is one on experts. Oh,
9 interrogatory number 3 asks for what amounts and
10 categories of damages are claimed. Is that it?

11 MR. BARNES: Yes. Then I think there is
12 probably a sequel that says something like --

13 MR. LOVEJOY: Provide a computation.

14 JUDGE HILYER: So, what is the answer to his
15 point that you ought to be able to identify the
16 categories, your theory basically of the discrete
17 element of the damages that you are going to be
18 claiming, what's wrong with that? That's actually a
19 lawyer's analysis, together with the facts from the
20 client.

21 MR. LOVEJOY: Sure. I think to a large
22 extent, I mean, if you look at the examples that he's
23 been saying, okay, well, look, you've got to tell me
24 if you think that he derailed the Trulia deal, if he
25 derailed the Sentrilock deal.

1 Well, that's what we've been telling him.
2 That's why he knows those categories. So, I mean, we
3 can cut and paste our response to interrogatory number
4 1, and say, you know, here are the instances of
5 misappropriation, and each one damaged us by causing
6 unjust enrichment to Zillow, and lost business or
7 profit to Move. And that's basically, it sounds like
8 what he's asking for.

9 But I don't see why we need a motion to
10 compel on that if he's got the information.

11 MR. BARNES: That's not true. What I'm
12 looking for is someone to tell me that you were
13 somehow damaged by this. What were the damages?

14 JUDGE HILYER: Are you talking about
15 generically or the --

16 MR. BARNES: No. I am asking how were they
17 damaged. "We lost a sale." "The deal didn't go
18 through." That's what I'm looking for. "We lost
19 revenue that would have been derived."

20 JUDGE HILYER: Hold on just a second. So
21 you are talking now about interrogatory number 3?

22 MR. BARNES: I have to take a look at it.

23 MS. FOSTER: There is a subsequent one.

24 MR. BARNES: There is a subsequent one, too.

25 MS. FOSTER: Jack, I think you were pointing

1 to it just a moment ago.

2 MR. LOVEJOY: I was pointing to
3 interrogatory number 3.

4 MR. CASLIN: What exhibit number is that?

5 MR. LOVEJOY: This is the motion.

6 MR. CASLIN: Your Honor, maybe I can help
7 short circuit this. You may cut me off under the one
8 lawyer rule.

9 JUDGE HILYER: Yeah, I'm going to.

10 MR. CASLIN: Okay.

11 JUDGE HILYER: Somebody needs to -- I am
12 confused now by my own filing system here. I finally
13 found Mr. Atteberry's declaration in the wrong stack.

14 I need a five-minute break here so I can
15 organize myself and I come back and ask you that. I
16 am embarrassed, but I'm got too many piles going, so
17 everybody take a five-minute break, and we're going to
18 come back.

19 What I'm going to try to figure out is
20 exactly which discovery requests I'm not going to
21 order answered and which we're going to defer. And my
22 thinking is that I'm going to order the ones that are
23 categories and I'm going to defer the ones that are
24 dollars.

25 MR. CASLIN: We can short circuit this. We

1 are going to offer to do that. We can give categories
2 in a couple of weeks and save everyone time. We can
3 give categories. It's not that complicated. Giving
4 numbers, we all know that's going to be a expert.

5 MS. FOSTER: I think what Clem is asking for
6 though is not just a category but a description of
7 what you mean by it.

8 JUDGE HILYER: All right. Let's go off the
9 record for a minute. Give me five minutes.

10 (Discussion off the record.)

11 JUDGE HILYER: So, interrogatory number 3,
12 "What are the amounts and categories of damages
13 claimed by plaintiffs in this litigation? Provide a
14 computation of each category of claim damages."

15 I think within 10 days you should get an
16 answer to that with regard to the categories.

17 And we are going to talk more at the end
18 here about your schedule and when it is that you are
19 actually going to get into the numbers.

20 The next one is, "Identify the persons with
21 knowledge," that's fine. That's interrogatory number
22 4.

23 Request for production number 2 is the
24 documents with regard to the computation, so there
25 aren't any computations yet.

1 MR. LOVEJOY: The motion actually calls out
2 which requests are covered by the motion.

3 JUDGE HILYER: Okay.

4 MR. LOVEJOY: So, interrogatory 1, 2, 3, 4,
5 which you've just addressed.

6 JUDGE HILYER: Right.

7 MR. LOVEJOY: And then we jump to request
8 for production 56 and 57.

9 JUDGE HILYER: Thank you. So, requests for
10 production number 56 as phrased is overly broad,
11 because it asks for all documents related to the News
12 Corp acquisition between News Corp and Move.

13 MR. BARNES: If I may be heard. We did
14 narrow that, and I described the letter as an
15 enclosure. We did narrow the request. It was set
16 forth in a letter that I attached as an exhibit to my
17 declaration. We did that after Jack and I talked
18 about it.

19 And I zeroed in subsequently on some
20 specific five, I think it's five specific things that
21 are spelled out in my motion -- in my reply, I'm
22 sorry. My reply, if I remember this right.

23 JUDGE HILYER: Do you have it there?

24 MR. BARNES: I do. Shall I just hand it
25 down?

1 JUDGE HILYER: Yes.

2 MR. LOVEJOY: And we'd argue that this is
3 still way too broad.

4 JUDGE HILYER: Next time I ought to put this
5 stuff in notebooks. My assistant asked me if I wanted
6 this done. I said no, no, no.

7 MS. FOSTER: Do you want us to submit them
8 in notebooks?

9 JUDGE HILYER: That would be a great idea.
10 One more thing; with tabs. Thank you.

11 MR. BARNES: If you turn the page you will
12 see the five, the categories are all described.

13 MR. LOVEJOY: Page 5.

14 JUDGE HILYER: So, this is the reply
15 material. I haven't heard your comment about this.

16 MR. LOVEJOY: Right. So we've got eight
17 categories here that are hugely broad. And I
18 understand that Mr. Barnes is trying to narrow
19 things. But there is no reason at all why we should
20 produce every single disclosure schedule to the merger
21 agreement. Why not just search them for the name
22 Samuelson and see if it pops up. If it does, there is
23 probably going to be one that says, "We are in a
24 lawsuit with Errol Samuelson. You can go see the
25 complaint because it's in the document room."

1 Minutes of all board and committee meetings
2 in which all transactions disclosed in schedule 14 D9
3 were discussed. There is no reason for that at all.
4 That's asking for everything that a board and any
5 committee did in relation to the News Corp
6 acquisition.

7 MR. BARNES: You are proposing then to
8 search it to see if in those minutes there are
9 Samuelson --

10 MR. CASLIN: We can do that.

11 MR. BARNES: -- or misappropriation, trade
12 secrets, or Zillow.

13 JUDGE HILYER: Be careful that we don't talk
14 over each other. It's really hard for the court
15 reporter.

16 MR. BARNES: I'm just trying to cut to
17 the --

18 JUDGE HILYER: Is that attractive to you?

19 MR. BARNES: It sounds like it's a
20 reasonable way to get at it. I never know until I see
21 what comes out the other end, but it sounds like it's
22 a reasonable way to get at it.

23 JUDGE HILYER: Here's what I think. I agree
24 with Move that as it is right now it's way too
25 sweeping. But I also agree with Mr. Barnes that

1 really the focus on the inquiry should be on any
2 documents which show, among other things, the level of
3 materiality Trulia assigned to Samuelson's, quote
4 "defection," unquote, and threatened misappropriation,
5 and whether the value of the company was impacted
6 thereby. That's clearly discoverable material.

7 But I don't think you have to vacuum clean
8 up everything else that pertains to the deal, and I
9 think that in addition to answering that specific
10 question, i.e., please identify all documents which
11 pertain or relate to the level of materiality assigned
12 to Samuelson, that you should also confer with each
13 other about a search term search on the other
14 documents to see if Errol Samuelson's name comes up.
15 All right? You can fashion an order into that one. I
16 think that means we're done.

17 MS. FOSTER: I think we need to go back to
18 the --

19 JUDGE HILYER: Ah, yes, you're right. We
20 do.

21 MR. LOVEJOY: So --

22 JUDGE HILYER: There is going to be one
23 request that says, please produce all documents which
24 pertain or relate to that sentence that I read, you
25 know, the materiality of the Samuelson defection. And

1 you are also going to, with respect to those other
2 documents, agree on search terms which will pertain to
3 Samuelson.

4 MR. LOVEJOY: Can I just ask where you read
5 that sentence from?

6 JUDGE HILYER: It's underlined.

7 MR. LOVEJOY: It may be --

8 JUDGE HILYER: It's his.

9 MR. LOVEJOY: Oh, okay. All right.
10 Thanks. Thank you.

11 MR. BARNES: It's a well traveled brief.

12 JUDGE HILYER: Okay. So now we are back to
13 the --

14 MS. FOSTER: -- subpoena to Trulia.

15 JUDGE HILYER: Right.

16 MS. FOSTER: And I think the issue is, with
17 respect to the statement that said, "and Zillow's
18 stated reasons for the proposed merger," how is that
19 going to be modified.

20 JUDGE HILYER: So, this was, which motion
21 was it again?

22 MS. FOSTER: This was the motion for
23 reconsideration.

24 JUDGE HILYER: Okay, right.

25 MS. FOSTER: And you had indicated that on 4

1 you would allow documents including communications
2 between Zillow and Trulia sufficient to show the date
3 on which Zillow and Trulia began discussing their
4 pending merger, and then we need the "sufficient to
5 show and Zillow's stated reasons for the proposed
6 merger," how is that latter statement going to be
7 rephrased.

8 JUDGE HILYER: And I thought that we were
9 going to cover that when we did the ones on the
10 Goldman Sachs --

11 MS. FOSTER: So, did you want that same
12 language you had crafted for them?

13 JUDGE HILYER: Yes. You know, there was
14 like four of them. It was one of the four.

15 MS. FOSTER: I will pull that. So, I
16 believe 19, or --

17 JUDGE HILYER: No, this one. It's 19. It's
18 the same as 19 in the Goldman Sachs subpoena.

19 MS. FOSTER: Great. Thank you, your Honor.

20 JUDGE HILYER: Okay. So, I won't see you
21 for a while, hopefully, right? I think you've got to
22 get this motion addressed. I think the over-arching
23 need is to find out where the trial court is on the
24 implications of its discovery order. I think that --
25 I guess what I'm trying to say is, I don't know that I

1 need to officially put a moratorium in effect now, but
2 let's get that issue. And would you copy me on that
3 so I know what's going on with the trial court on
4 that?

5 MS. FOSTER: Yes, your Honor.

6 JUDGE HILYER: Okay. All right. Thanks
7 very much, everybody.

8 (Hearing adjourned at 11:10 a.m.)
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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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**[PROPOSED] ORDER GRANTING IN
PART PLAINTIFFS' MOTION TO
COMPEL ZILLOW TO PRODUCE
DOCUMENTS REGARDING ITS
ACQUISITION OF TRULIA**

THIS MATTER came before the Special Master on Plaintiff's Motion to Compel Zillow
to Produce Documents Regarding its Acquisition of Trulia. The Special Master has reviewed:

1. Plaintiffs' motion;
2. The Declaration of Jack M. Lovejoy, with exhibits;
3. Zillow's opposition; and
4. Plaintiffs' reply.

1 The Special Master is fully advised. NOW THEREFORE it is ORDERED:

- 2 1. Plaintiffs' motion is GRANTED in part.
3 2. Plaintiffs' Sixth Discovery Requests are timely.
4 3. The parties are required to meet and confer regarding Zillow's objections to Plaintiffs'
5 Sixth Discovery Requests.

6
7 ENTERED this 30 day of March, 2015, at Seattle, Washington.

8
9 
Hon. Bruce Hilyer (Ret.)
Special Master

10 Presented by:

11 Jack M. Lovejoy
12 Jack M. Lovejoy, WSBA No. 36962
13 Lawrence R. Cock, WSBA No. 20326
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22
23

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

MOVE, INC., et al,

Plaintiffs,

vs.

ZILLOW, INC., ERROL SAMUELSON, and CURT
BEARDSLEY

Defendants

**NO. 14-2-07669-0 SEA
NOTICE FOR HEARING**

HEARING BEFORE THE SPECIAL MASTER

TO: PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below.

Calendar Date: April 14, 2015

Day of Week: Tuesday

Nature of Motion: Defendant Zillow's Motion for Reconsideration of the Special Master's March 30, 2015 Order Compelling Zillow to Produce Documents Regarding its Acquisition of Trulia

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 must be noted in the upper right corner of the Judge's copy. **Deliver Judge's copies to Judges' Mailroom at C203**

Without oral argument (Mon - Fri)

With oral argument Hearing

Date/Time: April 14, 2015

Judge's Name: Judge Bruce Hilyer (Ret.) Trial Date: 10/26/15

CHIEF CRIMINAL DEPARTMENT – SEATTLE (E1201)

Bond Forfeiture 3:15 pm, 2nd Thursday of each month

Certificates of Rehabilitation- Weapon Possession (**Convictions from Limited Jurisdiction Courts**)
3:30 First Tues of each month

CHIEF CIVIL DEPARTMENT – SEATTLE (Please report to W864 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

Extraordinary Writs (Show Cause Hearing) (LCR 98.40) 1:30 p.m. Tues/Wed -report to Room W864

Supplemental Proceedings/ Judicial Subpoenas (1:30 pm Tues/Wed)(LCR 69)

Motions to Consolidate with multiple judges assigned (LCR 40(a)(4) (without oral argument) M-F

Structured Settlements (1:30 pm Tues/Wed)(LCR 40(2)(S))

Non-Assigned Cases:

Non-Dispositive Motions M-F (without oral argument).

Dispositive Motions and Revisions (1:30 pm Tues/Wed).

Certificates of Rehabilitation (**Employment**) 1:30 pm Tues/Wed (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/Kathleen M. O'Sullivan

Print/Type Name: Kathleen M. O'Sullivan

WSBA # 27850 (if attorney)

Attorney for: Defendant Zillow, Inc.

Address: 1201 Third Avenue, Suite 4900

City, State, Zip Seattle, WA 98101-3099

Telephone: (205) 359-8000

Date: April 6, 2015

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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.

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted for Consideration: April 14, 2015

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

DEFENDANT ZILLOW, INC.'S MOTION
FOR RECONSIDERATION OF THE
SPECIAL MASTER'S MARCH 30, 2015
ORDER COMPELLING ZILLOW TO
PRODUCE DOCUMENTS REGARDING
ITS ACQUISITION OF TRULIA

DEFENDANT ZILLOW'S MOTION FOR
RECONSIDERATION RE TRULIA
PRODUCTION – 1

LEGAL125520851.1

Perkins Coie LLP
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SM 1237

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I. INTRODUCTION

Zillow respectfully moves the Special Master for reconsideration of his Order Granting In Part Plaintiffs’ Motion to Compel Zillow to Produce Documents Regarding Its Acquisition of Trulia (“Order”),¹ which relates to Plaintiffs’ requests for production served on Zillow on February 3, 2015. The Special Master ruled that the Court’s February 4, 2015 order setting a new case schedule (the “Order Amending Case Schedule”, Galipeau Decl., Ex. H) superseded the Special Master’s Order re Initial Conference and Discovery Plan (“Discovery Plan”, *id.* Ex. G), and that the requests for production were therefore timely. The Court, however, has now held that the October 31, 2014 deadline for serving requests for production, contained in the Discovery Plan, was unaltered by the Order Amending Case Schedule and new discovery cutoff date. *See id.*, Ex. F (Order Granting Zillow’s Motion for Clarification Regarding February 4, 2015 Order Amending Case Schedule (“Order Granting Clarification”). Accordingly, the requests were served more than three months after the deadline. The Order should be vacated, and the motion to compel denied.

II. STATEMENT OF FACTS

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On March 30, 2015, the Special Master granted (in part) Plaintiffs’ Motion to Compel Zillow to Produce Documents Regarding its Acquisition of Trulia (“Motion to Compel”). *Id.*, Ex.

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¹ A copy of the Order is attached as Exhibit B to the Declaration of Katherine G. Galipeau in Support of Defendant Zillow, Inc.’s Motion for Reconsideration of the Special Master’s March 30, 2015 Order Compelling Zillow to Produce Documents Regarding its Acquisition of Trulia (“Galipeau Decl.”).

1 B. In the Order, the Special Master ruled that the requests were “timely” and ordered Zillow to
2
3 respond. *Id.*
4

5 At the March 11, 2015 hearing, however, the Special Master concluded that the dispute
6
7 over whether the Discovery Plan was superseded by the Order Amending Case Schedule was, at
8
9 heart, a matter for the Court to decide, and urged Zillow to seek resolution from the Court as soon
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11 as possible.² *Id.*, Ex. I (excerpt of hearing transcript).
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14 Zillow did just that, filing a Motion for Clarification Regarding the February 4, 2015 Order
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16 Amending Case Schedule (“Motion for Clarification”) on March 16, 2015. *Id.*, Ex. C; *see also id.*
17
18 Ex. D (Plaintiffs’ Opposition); *id.* Ex. E (Zillow’s Reply). On March 30, 2015, the Court granted
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20 Zillow’s motion, ruling that “all dates contained in the Discovery Order that were prior to the
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22 disclosure of possible primary witnesses, including the deadline for issuing interrogatories and
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24 requests for production, remain in effect unless otherwise modified by Order of the Special
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26 Master.” *Id.*, Ex. F.
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31 Plaintiffs have been fully aware since prior to October 31, 2014 of the evidence on which
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33 they now rely in asserting their Trulia-related claims. Having made a strategic decision not to
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35 seek this discovery then, there is no reason for broad and burdensome new discovery to now
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37 proceed which will only further delay resolution of this matter.
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45 _____
46 ² The background regarding the stipulation and Order Amending Case Schedule is familiar to the Special
47 Master, but, if additional detail is needed, is also set forth in the briefing for Zillow’s Motion for Clarification,
attached as Exhibits C-E to the Galipeau Declaration.

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III. STATEMENT OF ISSUES

Should the Special Master reconsider the Order and instead deny the Motion to Compel, given that the requests for production are untimely pursuant to the Court’s Order Granting Clarification, which enforced all deadlines prior to the disclosure of possible primary witnesses?

In the alternative, should the Special Master strike the requests for production because there was no good cause shown to serve these requests subsequent to October 31, 2014?

IV. EVIDENCE RELIED UPON

Zillow relies on the concurrently filed Declaration of Katherine G. Galipeau and the exhibits attached thereto, as well as the briefing related to Plaintiffs’ Motion to Compel and Zillow’s Motion for Clarification.

V. AUTHORITY AND ARGUMENT

A. The Special Master’s Order Requires Reconsideration

Civil Rule 59 permits a party to seek reconsideration of any decision or order of the Court. CR 59(a). Grounds on which reconsideration may be granted include: “(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial”; “(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law”; and “(9) That substantial justice has not been done.” CR 59(a)(4), (7), (9). New or additional materials may be submitted as part of a motion for reconsideration. *Martini v. Post*, 178 Wn. App. 153, 162, 313 P.3d 473, 478 (2013) (“Generally, nothing in CR 59 prohibits the submission of

1 new or additional materials on reconsideration.”); *Wagner Dev., Inc. v. Fid. & Deposit Co. of Md.*,
2
3 95 Wn. App. 896, 906, 977 P.2d 639, 645 (1999) (“Under CR 59(a)(4), reconsideration is
4
5 warranted if the moving party presents new and material evidence that it could not have
6
7 discovered and produced at trial.”).
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10 Here, any of the reasons set forth above require reversal. Subsequent to the hearing on this
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12 matter, the Court granted Zillow’s Motion for Clarification. Galipeau Decl., Ex. F (Order
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14 Granting Clarification). The Court ordered that all dates prior to the disclosure of possible
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16 primary witnesses, including the deadline for serving interrogatories and requests for production,
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18 remain in place, unless modified by order of the Special Master. *Id.* Because the requests were
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20 served after the October 31 deadline for serving requests for production, and that deadline was, by
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22 order of the Court, unaltered by the Court’s Order Amending the Case Schedule, the requests are
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24 untimely.
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29 **B. Plaintiffs Have Not and Cannot Show Good Cause**
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31 Pursuant to the Discovery Plan, Plaintiffs must show good cause to submit additional
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33 requests for production. *Id.*, Ex. G (Discovery Plan). This, they have not attempted to do. Nor
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35 can they.
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38 As an initial matter, Plaintiffs could have sought discovery about the Trulia acquisition as
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40 early as July 2014, when the deal became public and the articles that they rely upon regarding
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42 valuation were published. Plaintiffs thus had over three months before the October 31 deadline to
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1 submit requests for production regarding the Trulia acquisition, but they inexplicably declined to
2 do so. *See* Zillow’s Opposition to Motion to Compel at 9-10.
3
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5 Additionally, to the extent that Plaintiffs are now relying on the January 6, 2014 email
6 from Mr. Samuelson to Mr. Rascoff, that was also produced in June. And, Plaintiffs relied upon it
7 in their August 2014 Opposition to Defendants’ Motions for Reconsideration regarding the
8 preliminary injunction. Months prior to the October 31 deadline, Plaintiffs were well aware of the
9 basis of a claim relating to the Trulia acquisition. Yet they made a conscious decision not to
10 pursue it in discovery. *See generally id.* at 7.
11
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13 Finally, it is not as if Plaintiffs have been completely barred from all Trulia-related
14 discovery. To the contrary, despite Plaintiffs’ delay, Zillow agreed to produce documents as to
15 some of Plaintiffs’ requests for production regarding Trulia and has already produced Samuelson’s
16 entire Zillow email box.³ Galipeau Decl. ¶ 2 & Ex. A. Plaintiffs have access to other Trulia-
17 related documents from Trulia itself, as well as now from JP Morgan and Goldman Sachs, given
18 the Special Master’s orders permitting certain discovery to go forward from those third parties.
19 As Plaintiffs’ Trulia misappropriation claim hinges on Samuelson’s supposed conveyance of
20 secret merger information to Zillow, Plaintiffs should have all the material they need to support
21 their claim.
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43 ³ Zillow agreed to produce responsive, non-privileged documents submitted to the Special Master for *in*
44 *camera* review (RFP No. 142) and communications by Curt Beardsley relating to Zillow’s acquisition or potential
45 acquisition of Trulia prior to July 12, 2014, the date the first term sheet was exchanged (RFP Nos. 143, 149-150).
46 Underscoring the lack of justification for Plaintiffs’ requests, Zillow found no such Beardsley documents. *See*
47 Galipeau Decl., Ex. A (responses to RFP Nos. 143, 149, 150).

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VI. CONCLUSION

Because the requests for production were not timely and Plaintiffs have failed to show good cause, Zillow respectfully requests that the Special Master reconsider the Order and deny the Motion to Compel instead.

DATED: April 6, 2015

s/ Kathleen M. O'Sullivan

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Attorneys for Defendant Zillow, Inc.

CERTIFICATE OF SERVICE

On April 6, 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:

DEFENDANT ZILLOW, INC.'S MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS ACQUISITION OF TRULIA

Jack M. Lovejoy, WSBA No. 36962	<input type="checkbox"/>	Via Hand Delivery
Lawrence R. Cock, WSBA No. 20326	<input type="checkbox"/>	Via U.S. Mail, 1st Class, Postage Prepaid
Cable, Langenbach, Kinerk & Bauer, LLP	<input type="checkbox"/>	Via Overnight Delivery
Suite 3500, 1000 Second Avenue Building	<input type="checkbox"/>	Via Facsimile
Seattle, WA 98104-1048	<input type="checkbox"/>	Via E-filing
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Estera Gordon, WSBA No. 12655	<input type="checkbox"/>	Via U.S. Mail, 1st Class, Postage Prepaid
K. Michael Fandel, WSBA No. 16281	<input type="checkbox"/>	Via Overnight Delivery
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- Via E-mail

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

DATED this 6th day of April, 2015.

/s/ Maryellen Walsh
Maryellen Walsh, Legal Secretary

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted For Consideration: April 14, 2015

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

DECLARATION OF KATHERINE G.
GALIPEAU IN SUPPORT OF
DEFENDANT ZILLOW, INC.'S ' MOTION
FOR RECONSIDERATION OF THE
SPECIAL MASTER'S MARCH 30, 2015
ORDER COMPELLING ZILLOW TO
PRODUCE DOCUMENTS REGARDING
ITS ACQUISITION OF TRULIA

**CONTAINS INFORMATION
PROTECTED BY PROTECTIVE
ORDER**

EXHIBIT D FILED UNDER SEAL

EXHIBIT I IS OCEO

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys representing defendant Zillow, Inc. ("Zillow") in this matter.

GALIPEAU DECL. ISO ZILLOW'S MOTION
FOR RECONSIDERATION OF ORDER – 1

1 2. After agreeing to the stipulation, on February 3, 2015 Plaintiffs served
2
3 requests for written interrogatories and requests for production. Plaintiffs did not endeavor
4
5 to show good cause for these new discovery requests. Zillow objected to these requests in
6
7 part due to untimeliness; pursuant to the Discovery Plan, these discovery requests should
8
9 have been served by October 31, 2014. Yet Zillow agreed to produce as to some of these
10
11 requests for production. And Zillow has already produced Samuelson's entire nonprivileged
12
13 Zillow email box. Attached as Exhibit A is a true and correct copy of Defendant Zillow,
14
15 Inc.'s Responses and Objections to Plaintiffs' Sixth Discovery Requests, dated March 5,
16
17 2015.

18
19 3. Attached as Exhibit B is a true and correct copy of the Special Master's
20
21 Order Granting in Part Plaintiffs' Motion to Compel Zillow to Produce Documents
22
23 Regarding its Acquisition of Trulia.

24
25 4. Attached as Exhibit C is a true and correct copy of Zillow's Motion for
26
27 Clarification Regarding February 4, 2015 Order Amending Case Schedule, filed with the
28
29 Court on March 16, 2015.

30
31 5. Attached as Exhibit D is a true and correct copy of Plaintiffs' Opposition to
32
33 Zillow's Motion for Clarification Regarding February 4, 2015 Order Amending Case
34
35 Schedule, filed with the Court on March 20, 2015 (filed under seal).

36
37 6. Attached as Exhibit E is a true and correct copy of Zillow's Reply in Support
38
39 of Motion for Clarification Regarding February 4, 2015 Order Amending Case Schedule,
40
41 filed with the Court on March 23, 2015.

42
43 7. Attached as Exhibit F is a true and correct copy of the Court's Order
44
45 Granting Defendant Zillow, Inc.'s Motion for Clarification Regarding February 4, 2015
46
47 Order Amending Case Schedule, dated March 30, 2015.

CERTIFICATE OF SERVICE

On April 6, 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 foregoing document. DECLARATION OF KATHERINE G. GALIPEAU IN SUPPORT OF DEFENDANT ZILLOW, INC.'S ' MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS ACQUISITION OF TRULIA.

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- Via E-mail

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

DATED this 6th day of April, 2015.

/s/Maryellen Walsh

Maryellen Walsh, Legal Secretary

EXHIBIT A

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THE HONORABLE JOHN CHUN

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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., a Illinois corporation,

Plaintiffs,

v.

ZILLOW, INC., a Washington corporation,
and ERROL SAMUELSON, an individual,

Defendants.

No. 14-2-07669-0 SEA

DEFENDANT ZILLOW, INC.'S
RESPONSES AND OBJECTIONS TO
PLAINTIFFS' SIXTH DISCOVERY
REQUESTS

Defendant Zillow, Inc. ("Zillow") hereby submits its responses and objections to
Plaintiffs' Sixth Discovery Requests.

1 **A. GENERAL OBJECTIONS**

2
3 1. Zillow objects to Plaintiffs' Sixth Discovery Requests because they were
4 issued well after the October 31, 2014 deadline for the issuance of all requests for
5 production and interrogatories set by the Special Master's November 10, 2014 Order
6 Regarding Initial Discovery Conference and Discovery Plan. The only exception for written
7 discovery beyond that deadline was "liberal good cause shown (liberal good cause includes
8 new subjects and/or follow-up relating to information received in discovery)," which is
9 inapplicable as the Plaintiffs' Sixth Discovery Requests seek documents about Zillow's
10 acquisition of Trulia, which was publicly announced in July 2014. Plaintiffs' Sixth
11 Discovery Requests are therefore improper and Zillow need not respond.

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20 2. Zillow objects to Plaintiffs' Sixth Discovery Requests to the extent they seek
21 information that is not relevant to the issues in this case or is not reasonably calculated to
22 lead to the discovery of admissible evidence. These requests all relate to Zillow's
23 acquisition of Trulia, and the Special Master specifically held that Zillow was considering
24 an acquisition of Trulia prior to March 5, 2014, the date of Mr. Samuelson's hiring, thus
25 making discovery inappropriate. *See* Supplemental Order Re: December 12 Order Granting
26 in Part and Denying in Part Defendant Zillow's Motion for Protective Order (Trulia
27 Subpoena), dated January 26, 2015.

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35 3. Zillow objects to these requests for production to the extent they impose
36 discovery obligations on Zillow beyond the obligations imposed by the Civil Rules, the
37 Local Rules of King County Superior Court, or the Court's (or Special Master's) Orders in
38 the above-captioned matter.

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44 4. Zillow objects to these requests for production to the extent that they seek
45 information that is protected from discovery by the attorney-client privilege, the work-
46
47

1 product doctrine, the common interest (joint defense) doctrine and/or any other applicable
2 privilege or immunity. Nothing contained in these objections and responses is intended to
3 be, or in any way may be deemed, a waiver of any such available privilege or immunity.
4
5 Any inadvertent disclosure of such information is not intended to be and should not be
6
7 construed as a waiver of any applicable privilege or protection.
8
9

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11 5. Zillow objects to these requests for production to the extent they seek
12 information that Zillow is legally or contractually prohibited from providing.
13

14
15 6. Zillow objects to these requests for production to the extent they call for
16 information relating to Zillow's, or third parties', confidential product, business, financial,
17 marketing and strategy information that has nothing to do with Plaintiffs' claims in this
18 lawsuit.
19
20

21
22 7. Zillow objects to these requests for production to the extent they call for
23 competitively sensitive information relating to Zillow's, or third parties', confidential
24 product, business, financial, marketing and strategy information.
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28 8. Zillow objects to these requests for production to the extent they seek
29 documents already in the possession of, or otherwise available to, Plaintiffs.
30
31

32
33 9. Zillow objects to these requests for production to the extent they are unduly
34 burdensome or expensive, taking into account the needs of the case, the amount in
35 controversy, and the importance of the issues at stake in this litigation. Zillow objects to
36 these requests for production to the extent they would require Zillow to review each and
37 every document contained in all of its files (including electronic files) and to interview every
38 one of its agents and employees to determine if they may have documents responsive to one
39 of the requests for production. Such a requirement imposes upon Zillow an undue burden
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1 and expense not commensurate with Plaintiffs' legitimate discovery needs, and seeks
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3 discovery beyond that reasonably calculated to lead to the discovery of admissible evidence.
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5 10. Each of these general objections is hereby specifically incorporated into each
6
7 of the individual responses set forth below.
8

9 **B. RESPONSES TO REQUESTS FOR PRODUCTION**

10 **REQUEST FOR PRODUCTION NO. 142:** Produce all documents that you
11
12 submitted to the Special Master pursuant to the December 12, 2014 discovery order.
13

14 **RESPONSE:**

15
16 Zillow objects to this request for production on the grounds that it is untimely under
17
18 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
19
20 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
21
22 also objects to this request as seeking information that is not relevant to the issues in this
23
24 case nor reasonably calculated to lead to the discovery of admissible evidence. The Special
25
26 Master requested these documents for in camera review and has not required that they be
27
28 produced. To the contrary, based on these documents, the Special Master reached a finding
29
30 of lack of relevance, holding that Zillow was considering an acquisition of Trulia prior to
31
32 March 5, 2014, the date of Mr. Samuelson's hiring. *See* Supplemental Order Re: December
33
34 12 Order Granting in Part and Denying in Part Defendant Zillow's Motion for Protective
35
36 Order (Trulia Subpoena), dated January 26, 2015. Zillow further objects on the grounds that
37
38 the request seeks confidential, trade secret information of Zillow and third parties. Zillow
39
40 also objects to this request to the extent it seeks documents protected by the attorney-client
41
42 privilege and work product doctrine.
43

44 Subject to and without waiver of this objection and its general objections, and
45
46 although Zillow is not required to answer this untimely request, in a good faith showing of
47

1 openness, Zillow will produce the documents it submitted to the Special Master pursuant to
2
3 the December 12, 2014 discovery order, subject to redactions for privilege.
4

5
6
7 **REQUEST FOR PRODUCTION NO. 143:** Produce all communications between
8
9 January 1, 2013 and July 28, 2014 regarding your acquisition of Trulia.

10
11 **RESPONSE:**

12 Zillow objects to this request for production on the grounds that it is untimely under
13
14 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
15
16 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
17
18 also objects to this request as seeking information that is not relevant to the issues in this
19
20 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
21
22 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
23
24 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
25
26 Zillow further objects on the grounds that the request seeks confidential, trade secret
27
28 information of Zillow and third parties. Zillow objects to this request as overly broad,
29
30 unduly burdensome, vague and ambiguous. Zillow further objects to this request to the
31
32 extent it seeks documents protected by the attorney-client privilege and work product
33
34 doctrine. Moreover, Zillow has already produced Mr. Samuelson's entire Zillow email
35
36 account, which would include any non-privileged references to Trulia.
37

38
39 Subject to and without waiver of this objection and its general objections, and
40
41 although Zillow is not required to answer this untimely request, in a good faith showing of
42
43 openness, Zillow will produce communications of Curt Beardsley, prior to July 12, 2014
44
45 (the date the first term sheet was exchanged between Zillow and Trulia), regarding Zillow's
46
47 acquisition or potential acquisition of Trulia, to the extent they exist. Zillow conducted such

1 a review and found no such documents. Plaintiffs already have all nonprivileged emails
2
3 from Mr. Samuelson's Zillow email box.
4
5

6
7 **REQUEST FOR PRODUCTION NO. 144:** Produce documents created between
8
9 August 2012 and the spring of 2014 sufficient to show when Zillow began to consider an
10
11 acquisition of Trulia as stated in Zillow's SEC filings, including page 94 of Zillow's
12
13 Schedule 14A filing with the Securities and Exchange Commission, dated November 18,
14
15 2014.

16
17 **RESPONSE:**

18
19 Zillow objects to this request for production on the grounds that it is untimely under
20
21 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
22
23 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
24
25 also objects to this request as seeking information that is not relevant to the issues in this
26
27 case nor reasonably calculated to lead to the discovery of admissible evidence. The Special
28
29 Master requested examples of the documents sought in this request for in camera review and
30
31 has not required that they be produced. To the contrary, the Special Master reached a
32
33 finding of lack of relevance, holding that Zillow was considering an acquisition of Trulia
34
35 prior to March 5, 2014, the date of Mr. Samuelson's hiring. *See* Supplemental Order Re:
36
37 December 12 Order Granting in Part and Denying in Part Defendant Zillow's Motion for
38
39 Protective Order (Trulia Subpoena), dated January 26, 2015. Zillow further objects on the
40
41 grounds that the request seeks confidential, trade secret information of Zillow and third
42
43 parties. This request is also vague and overbroad as to time. Zillow further objects to this
44
45 request to the extent it seeks documents protected by the attorney-client privilege and work
46
47 product doctrine.

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3 **REQUEST FOR PRODUCTION NO. 145:** Produce all copies of any strategy or
4 Board memos created between January 1, 2013 and July 28, 2014 related to your acquisition
5 of Trulia.
6

7
8 **RESPONSE:**
9

10 Zillow objects to this request for production on the grounds that it is untimely under
11 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
12 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
13 also objects to this request as seeking information that is not relevant to the issues in this
14 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
15 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
16 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
17 Zillow further objects on the grounds that the request seeks confidential, trade secret
18 information of Zillow and third parties. Zillow also objects to this request to the extent it
19 seeks documents protected by the attorney-client privilege and work product doctrine.
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32 **REQUEST FOR PRODUCTION NO. 146:** Produce all documents related to your
33 valuation of Trulia and created between January 1, 2013 and July 28, 2014.
34

35 **RESPONSE:**
36

37 Zillow objects to this request for production on the grounds that it is untimely under
38 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
39 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
40 also objects to this request as seeking information that is not relevant to the issues in this
41 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
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1 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
2
3 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
4
5 Zillow further objects on the grounds that the request seeks confidential, trade secret
6
7 information of Zillow and third parties. Zillow objects to this request as overly broad,
8
9 unduly burdensome, vague and ambiguous. Zillow further objects to this request to the
10
11 extent it seeks documents protected by the attorney-client privilege and work product
12
13 doctrine.
14

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17 **REQUEST FOR PRODUCTION NO. 147:** Produce all documents created
18
19 between January 1, 2013 and July 28, 2014 that refer or relate to your reasons for initiating
20
21 or continuing merger discussions with Trulia.
22

23 **RESPONSE:**

24
25 Zillow objects to this request for production on the grounds that it is untimely under
26
27 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
28
29 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
30
31 also objects to this request as seeking information that is not relevant to the issues in this
32
33 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
34
35 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
36
37 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
38
39 Zillow further objects on the grounds that the request seeks confidential, trade secret
40
41 information of Zillow and third parties. Zillow objects to this request as overly broad,
42
43 unduly burdensome, vague and ambiguous. Zillow further objects to this request to the
44
45 extent it seeks documents protected by the attorney-client privilege and work product
46
47 doctrine.

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3 **REQUEST FOR PRODUCTION NO. 148:** Produce all documents created
4
5 between January 1, 2013 and July 28, 2014 that analyze, discuss or otherwise refer to the
6
7 impact that your merger with Trulia would have on Move.

8
9 **RESPONSE:**

10 Zillow objects to this request for production on the grounds that it is untimely under
11
12 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
13
14 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
15
16 also objects to this request as seeking information that is not relevant to the issues in this
17
18 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
19
20 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
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22 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
23
24 Zillow further objects on the grounds that the request seeks confidential, trade secret
25
26 information of Zillow and third parties. Zillow objects to this request as overly broad,
27
28 unduly burdensome, vague and ambiguous. Zillow further objects to this request to the
29
30 extent it seeks documents protected by the attorney-client privilege and work product
31
32 doctrine.
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34

35
36 **REQUEST FOR PRODUCTION NO. 149:** Produce all communications that Errol
37
38 Samuelson and/or Curt Beardsley had with Trulia regarding any proposed or actual
39
40 acquisition of Trulia.
41

42 **RESPONSE:**

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44 Zillow objects to this request for production on the grounds that it is untimely under
45
46 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
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1 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
2 objects that this request for production is duplicative because Zillow has already produced
3 Mr. Samuelson's entire Zillow email account, which would include any non-privileged
4 communications with Trulia. Zillow further objects to the extent that this request seeks
5 information relating solely to Mr. Beardsley who is not a party. Zillow also objects to this
6 request as seeking information that is not relevant to the issues in this case nor reasonably
7 calculated to lead to the discovery of admissible evidence. See Supplemental Order Re:
8 December 12 Order Granting in Part and Denying in Part Defendant Zillow's Motion for
9 Protective Order (Trulia Subpoena), dated January 26, 2015. Zillow further objects on the
10 grounds that the request seeks confidential, trade secret information of Zillow and third
11 parties.
12

13
14 Subject to and without waiver of this objection and its general objections, and
15 although Zillow is not required to answer this untimely request, in a good faith showing of
16 openness, Zillow will produce communications of Curt Beardsley with Trulia regarding any
17 proposed or actual acquisition of Trulia, prior to July 12, 2014 (the date the first term sheet
18 was exchanged between Zillow and Trulia), to the extent they exist. Zillow conducted such
19 a review and found no such documents.
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37 **REQUEST FOR PRODUCTION NO. 150:** Produce all communications that Errol
38 Samuelson and/or Curt Beardsley had with you regarding Trulia before July 28, 2014.
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41 **RESPONSE:**

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43 Zillow objects to this request for production on the grounds that it is untimely under
44 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
45 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
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1 objects that this request is overly broad and unduly burdensome in seeking all references to
2 Trulia, one of Zillow's main competitors that is frequently discussed in contexts entirely
3 unrelated to any acquisition. Zillow also objects that this request for production is
4
5 duplicative because Zillow has already produced Mr. Samuelson's entire Zillow email
6
7 account, which would include any non-privileged references to Trulia. Zillow further
8
9 objects to the extent that this request seeks information relating solely to Mr. Beardsley who
10
11 is not a party in the litigation. Zillow also objects to this request as seeking information that
12
13 is not relevant to the issues in this case nor reasonably calculated to lead to the discovery of
14
15 admissible evidence. *See* Supplemental Order Re: December 12 Order Granting in Part and
16
17 Denying in Part Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated
18
19 January 26, 2015.
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22
23 Subject to and without waiver of this objection and its general objections, and
24
25 although Zillow is not required to answer this untimely request, in a good faith showing of
26
27 openness, Zillow will produce communications of Curt Beardsley regarding any proposed or
28
29 actual acquisition of Trulia prior to July 12, 2014 (the date the first term sheet was
30
31 exchanged between Zillow and Trulia), to the extent they exist. Zillow conducted such a
32
33 review and found no such documents.
34
35

36
37 **REQUEST FOR PRODUCTION NO. 151:** Produce all non-privileged
38
39 communications between you and Shearman & Sterling LLP regarding a possible
40
41 acquisition of Trulia.
42

43 **RESPONSE:**

44
45 Zillow objects to this request for production on the grounds that it is untimely under
46
47 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,

1 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
2 also objects to this request as seeking information that is not relevant to the issues in this
3 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
4
5 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
6
7 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
8
9 Zillow further objects on the grounds that the request seeks confidential, trade secret
10
11 information of Zillow and third parties.
12
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16
17 **REQUEST FOR PRODUCTION NO. 152:** Produce all communications between
18
19 you and Goldman Sachs regarding a possible acquisition of Trulia.
20

21 **RESPONSE:**

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23 Zillow objects to this request for production on the grounds that it is untimely under
24
25 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
26
27 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
28
29 also objects to this request as seeking information that is not relevant to the issues in this
30
31 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
32
33 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
34
35 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
36
37 Zillow further objects on the grounds that the request seeks confidential, trade secret
38
39 information of Zillow and third parties.
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43 **REQUEST FOR PRODUCTION NO. 153:** Produce all copies, including drafts, of
44
45 any letters of intent related to your acquisition of Trulia.
46
47

1 **RESPONSE:**
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3 Zillow objects to this request for production on the grounds that it is untimely under
4 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
5 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
6 also objects to this request as seeking information that is not relevant to the issues in this
7 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
8 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
9 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.
10 Zillow further objects on the grounds that the request seeks confidential, trade secret
11 information of Zillow and third parties. Zillow also objects to this request to the extent it
12 seeks documents protected by the attorney-client privilege and work product doctrine.
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23 **REQUEST FOR PRODUCTION NO. 154:** Produce all communications between
24 you and "unaffiliated significant holders of both [Zillow's] and Trulia's common stock"
25 regarding your acquisition of Trulia as stated in Zillow's SEC filings, including page 94 of
26 Zillow's Schedule 14A filing with the Securities and Exchange Commission, dated
27 November 18, 2014.
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34 **RESPONSE:**
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36 Zillow objects to this request for production on the grounds that it is untimely under
37 the Special Master's Order Regarding Initial Discovery Conference and Discovery Plan,
38 which set a deadline of October 31, 2014 for issuance of requests for production. Zillow
39 also objects to this request as seeking information that is not relevant to the issues in this
40 case nor reasonably calculated to lead to the discovery of admissible evidence. *See*
41 Supplemental Order Re: December 12 Order Granting in Part and Denying in Part
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1 Defendant Zillow's Motion for Protective Order (Trulia Subpoena), dated January 26, 2015.

2
3 Zillow further objects on the grounds that the request seeks confidential, trade secret
4
5 information of Zillow and third parties.
6

7
8
9 DATED: March 5, 2015

s/ Katherine G. Galipeau

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Attorneys for Defendant
Zillow, Inc.

CERTIFICATE OF SERVICE

On March 5, 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: DEFENDANT ZILLOW, INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' SIXTH DISCOVERY REQUESTS.

Jack M. Lovejoy, WSBA No. 36962	<input type="checkbox"/>	Via Hand Delivery
Lawrence R. Cock, WSBA No. 20326	<input type="checkbox"/>	Via U.S. Mail, 1st Class, Postage Prepaid
Cable, Langenbach, Kinerk & Bauer, LLP	<input type="checkbox"/>	Via Overnight Delivery
Suite 3500, 1000 Second Avenue Building	<input type="checkbox"/>	Via Facsimile
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14 chabbott@jenner.com
15 jatteberry@jenner.com
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19
20 I certify under penalty of perjury under the laws of the State of Washington that the
21 foregoing is true and correct.
22

23
24 DATED this 5th day of March, 2015.

25
26 *s/ Nancy Lygren*
27 _____
28 Nancy Lygren
29 Legal Secretary
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EXHIBIT B

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,
and ERROL SAMUELSON, an individual,

Defendants.

Case No. 14-2-07669-0 SEA

**[PROPOSED] ORDER GRANTING IN
PART PLAINTIFFS' MOTION TO
COMPEL ZILLOW TO PRODUCE
DOCUMENTS REGARDING ITS
ACQUISITION OF TRULIA**

THIS MATTER came before the Special Master on Plaintiff's Motion to Compel Zillow to Produce Documents Regarding its Acquisition of Trulia. The Special Master has reviewed:

1. Plaintiffs' motion;
2. The Declaration of Jack M. Lovejoy, with exhibits;
3. Zillow's opposition; and
4. Plaintiffs' reply.

1 The Special Master is fully advised. NOW THEREFORE it is ORDERED:

- 2 1. Plaintiffs' motion is GRANTED in part.
3 2. Plaintiffs' Sixth Discovery Requests are timely.
4 3. The parties are required to meet and confer regarding Zillow's objections to Plaintiffs'
5 Sixth Discovery Requests.

6
7 ENTERED this 30 day of March, 2015, at Seattle, Washington.

8
9 
10 Hon. Bruce Hilyer (Ret.)
Special Master

11 Presented by:

12 Jack M. Lovejoy
13 Jack M. Lovejoy, WSBA No. 36962
14 Lawrence R. Cock, WSBA No. 20326
15 Attorneys for Plaintiffs
16 CABLE, LANGENBACH, KINERK & BAUER, LLP
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23

EXHIBIT C

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THE HONORABLE JOHN CHUN
Noted For Consideration: March 24, 2015
WITHOUT ORAL ARGUMENT

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

**ZILLOW'S MOTION FOR
CLARIFICATION REGARDING
FEBRUARY 4, 2015 ORDER
AMENDING CASE SCHEDULE**

1 Zillow respectfully requests that the Court clarify whether the Order Amending Case
2 Schedule dated February 4, 2015 (“Amended Case Schedule”) was intended to strike the
3 Special Master’s Order re Initial Conference and Discovery Plan (“Discovery Plan”), which
4 set the last day to issue written discovery (absent liberal good cause) as October 31, 2014.
5
6 The parties’ stipulation that led to the Amended Case Schedule requested a new trial date and
7 that the case schedule be reset “beginning with the deadline for possible primary witness
8 disclosures,” explicitly carving out deadlines that were prior to that date. The deadline for
9 possible primary witness disclosures was December 22, 2015. Despite this fact, Plaintiffs
10 have continued to argue that deadlines prior to this date are no longer in effect and most
11 recently issued discovery and sought a motion to compel arguing that the Discovery Cutoff
12 date of September 8, 2015 under the Amended Case Schedule now governs the *issuance* (not
13 just the completion) of written discovery. The Special Master observed that the Court’s
14 order appeared to supersede his Discovery Plan and that he was bound to comply, but he
15 suggested that Zillow obtain clarification from the Court.
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28 Plaintiffs are using the trial date extension as an excuse to further complicate and
29 greatly broaden this case. The major document discovery has been completed and the parties
30 are poised to begin depositions. The stipulation was entered into so as to allow the parties to
31 *complete* discovery of the case as then currently configured—not to grant Plaintiffs a “do
32 over.” Zillow would not have entered the stipulation otherwise and Plaintiffs cannot be
33 allowed to launch new written discovery requests untethered to a showing of good cause and
34 disrupt what is already a tight schedule.
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42 I. STATEMENT OF FACTS

43 On November 10, 2014, the Special Master entered an Order Regarding Initial
44 Discovery Conference and Discovery Plan (Dkt. No. 272) (“Discovery Order”). Declaration
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46
47

1 of Susan Foster in Support of Motion for Clarification Regarding the February 4, 2015 Order
2 Amending Case Schedule (“Foster Decl.”), Ex. A. The Discovery Order both incorporated
3 and expanded on the deadlines set by the Case Schedule then in place and dated March 17,
4 2014 (Dkt. No. 2) (the “Original Case Schedule”). Specifically, the Discovery Order
5 incorporated the Original Case Schedule’s March 23, 2015 Discovery Cutoff, but, as part of
6 the discovery plan, set October 31, 2014 as the “[l]ast day to issue interrogatories and
7 requests for production, other than for liberal good cause shown (liberal good cause includes
8 new subjects and/or follow-up relating to information received in discovery),” and set dates
9 for the substantial completion of document production and the first day depositions could be
10 noted. The Disclosure of Primary Witnesses, set in the Original Case Schedule, was to occur
11 on December 8, 2014, after the deadline for serving interrogatories and requests for
12 production. This date was later extended to December 22. *See* Stipulation and Order
13 Extending Deadlines for Disclosure of Witnesses (Dkt. No. 275).

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On February 3, 2015, the parties submitted a stipulation intended to resolve multiple
issues, including the duration of restrictions in the preliminary injunction, Zillow’s
discretionary appeal, and Plaintiffs’ motion to amend the case schedule. Foster Decl., Ex. B.
In that stipulation, the parties stated as follows:

The trial date in this action is continued to October 26, 2015 or
a date after October 26, 2015 that is set by the Superior Court
in light of the Superior Court’s schedule, with the case
schedule, *beginning with the deadline for possible primary
witness disclosures*, to be reset based on the new trial date.

Id. (emphasis added). During the negotiations between counsel regarding the stipulation,
counsel for Zillow was clear that it was asking for the language “beginning with the deadline
for possible primary witness disclosures” because it did not want all pre-trial deadlines to be
reset. Foster Decl., ¶ 8, Ex. E. Indeed, around the same time, the parties were discussing

1 completing document production by February 27. *Id.*, ¶ 14, Ex. F.
2

3 The Court adopted the parties' stipulation on February 4, 2015, resetting the trial date
4 to October 26, 2015. Foster Decl., Ex. C. The Court also directed the Clerk to enter a new
5 case schedule, specifically ordering—consistent with the stipulation—that “[d]eadlines in the
6 case schedule, *beginning with the deadline for possible primary witness disclosures*, are to be
7 reset based on the new trial date.” *Id.* (emphasis added). The original deadline for possible
8 primary witness disclosures was December 22, 2014, so the order applied to all discovery
9 deadlines originally set for after that date. Foster Decl., Exs. C and D; Dkt. No. 275
10 (extending witness disclosure deadline from December 8 to December 22, 2014). The
11 Amended Case Schedule therefore set new dates beginning with the disclosure of witnesses,
12 and included a Discovery Cutoff of September 8, 2015. Foster Decl., Ex. D.
13
14

15 On February 3, 2015 (after agreeing to the stipulation), Plaintiffs served new written
16 requests for production without any effort to show good cause. Foster Decl., ¶ 15. Zillow
17 objected in part because of the untimeliness of the discovery requests, which should have
18 been served by October 31, 2014. *Id.* Plaintiffs, however, have now taken the position that
19 they can serve discovery requests, untethered to good cause, until the Discovery Cutoff. This
20 is not what the parties agreed to.
21
22

23 The Special Master concluded that this issue should be decided by the Court by
24 interpreting the Amended Case Schedule. Foster Decl., Ex. G at 53:11-15.
25
26

27 **II. STATEMENT OF ISSUES**

28 Whether the Court intended that the new Discovery Cutoff date supersede the Special
29 Master's Discovery Order setting October 31, 2014 as the deadline for the parties to serve
30 additional interrogatories and requests for production, absent good cause.
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III. RELIEF REQUESTED

Zillow respectfully requests that the Court clarify its Case Schedule Order to make it clear that the Discovery Cutoff of September 8, 2015 does not supersede the October 31, 2014 deadline for serving written interrogatories and requests for production.

IV. EVIDENCE RELIED ON

Zillow relies on (i) the Declaration of Susan Foster and exhibits submitted herewith; (ii) the Special Master’s Discovery Order; (iii) the stipulation submitted by the parties on February 3, 2015; and (iv) the Court’s February 4, 2015 Order and Amended Case Schedule.

V. AUTHORITY AND ARGUMENT

A. The Plain Language of the Stipulation Retains All Case Deadlines Prior to the Disclosure of Possible Primary Witnesses

“When a court order incorporates an agreement between parties, the meaning of the order is the same as the meaning objectively manifested by the parties at the time they formed the agreement.” *Martinez v. Miller Indus., Inc.*, 94 Wn. App. 935, 942, 974 P.2d 1261 (1999) (internal quotations and citation omitted). Here, the parties requested that the Court reset the case schedule “beginning with the deadline for possible primary witness disclosures.” Foster Decl., Ex. E. The phrase “*beginning with the deadline for possible primary witness disclosures*,” objectively manifests an intent by the parties to carve out the deadlines that came *before* the primary witness disclosures. The deadline in the discovery plan to issue interrogatories and requests for production (other than for liberal good cause shown) was October 31, 2014, and preceded the primary witness disclosures by months, and accordingly should be enforced.

Plaintiffs cannot create an ambiguity regarding the stipulation and order simply because new counsel (who appeared in January, months after the written discovery deadline)

1 want to start discovery completely over. *Martinez*, 94 Wn. App. at 944 (“a contract
2 provision is not ambiguous merely because the parties suggest opposite meanings”). Rather,
3 the words must be given their ordinary meaning. *Id.* And the words “beginning with the
4 deadline for possible primary witness disclosures” mean just that—all deadlines *preceding*
5 the possible primary witness disclosure stay in place, including those set forth in the Special
6 Master’s Discovery Order.
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12 The parties’ negotiations regarding the wording of the stipulation also support
13 enforcement of the deadline to serve interrogatories and requests for production. *See*
14 *Martinez*, 94 Wn. App. at 946 (“When the court is asked to determine the meaning of what is
15 written, and not what was intended to be written, extrinsic evidence is admissible to
16 determine the parties’ intent.”) (internal quotations and citation omitted). In emails, in
17 response to a direct question from Move’s counsel regarding this paragraph, Zillow’s counsel
18 explicitly stated that “We are not [re]setting all dates as if this were a new case filing.”
19 Foster Decl., ¶ 8, Ex. E. And, around the same time, the parties were discussing *completing*
20 document production by February 27. *Id.*, ¶ 14, Ex. F.
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30 Plaintiffs are bound by the stipulation: the trial was continued, but certain deadlines,
31 including the deadline for written discovery, were not. The fact that the date for the
32 Discovery Cutoff was extended does not alter the agreement made between the parties and
33 reopen written discovery.
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39 **B. Enforcing the Deadlines that Existed Prior to the Disclosure of Possible Primary**
40 **Witnesses Is Consistent with the Current Schedule and Case Management Needs**
41

42 The stipulation itself and the emails make it clear that Zillow would not agree to a
43 stipulation that reopened all the deadlines in the case as if it were a new case filing. There is
44 a history and a preexisting case management plan. As such, the parties agreed to extend only
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1 those dates “beginning with the deadline for possible primary witness disclosures.” Foster
2 Decl., ¶ 8, Ex. E. And the reason for this is manifested by the schedule that was ultimately
3 agreed to—a five month extension of trial. The extension was to allow the parties to
4 complete document production, depositions, and other discovery, not to allow a slew of
5 additional discovery requests according to the orderly process previously developed. As of
6 the date of the stipulation, all written discovery had been issued and the parties were entering
7 into an agreement to finalize document production, including privilege logs, on February 27,
8 2015. This positioned the parties to launch depositions. But if written discovery is reopened
9 and the parties are forced to respond to broad new discovery requests untethered to “good
10 cause,” those depositions will inevitably be pushed back and the trial date placed in jeopardy.
11 The parties expect at least 40 fact depositions and considerable expert discovery. Foster
12 Decl., ¶ 7. There simply is not enough time to allow additional rounds of broad written
13 discovery. Yet, under Plaintiffs’ theory, the parties could be serving last minute requests in
14 September, and the Special Master’s plan for orderly discovery will have been in vain. This
15 makes no sense in light of the October 26 trial date.
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30 Staggered discovery deadlines in a complex case like this one are common and
31 necessary for case management. Here, they were imposed to help the parties meet the trial
32 date—including when that trial date was extended. And, until Plaintiffs served their new
33 discovery requests on February 3, the parties had been complying with the deadlines that
34 existed prior to the primary witness disclosure—no other party has served additional requests
35 or interrogatories, and the defendants complied with the deadline to substantially finish
36 document production by December 1. Foster Decl., ¶¶ 10-13. To interpret the Discovery
37 Cutoff deadline as nullifying the discovery plan entered by the Special Master would be to
38 upend the entire current posture of the case and seriously jeopardize the parties’ ability to
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1 prepare for an October trial.
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3 **VI. CONCLUSION**
4

5 Zillow respectfully requests that the Court clarify that the Discovery Cutoff date
6 contained in the Amended Case Schedule did not modify the deadline to serve interrogatories
7 and requests for production, which preceded the deadline for disclosure of possible primary
8 witnesses.
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15 DATED: March 16, 2015

/s Susan E. Foster

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CERTIFICATE OF SERVICE

On March 16, 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 FOR CLARIFICATION REGARDING FEBRUARY 4, 2015 ORDER AMENDING CASE SCHEDULE.**

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

DATED this 16th day of March, 2015.

s/ Vicki Lynn Babani
Vicki Lynn Babani
Legal Secretary

EXHIBIT D

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

8 MOVE, INC., a Delaware corporation,
9 REALSELECT, INC., a Delaware
10 corporation, TOP PRODUCER SYSTEMS
11 COMPANY, a British Columbia unlimited
12 liability company, NATIONAL
13 ASSOCIATION OF REALTORS®, an
14 Illinois non-profit corporation, and
15 REALTORS® INFORMATION
16 NETWORK, INC., an Illinois corporation,

17 Plaintiffs,

18 vs.

19 ZILLOW, INC., a Washington corporation,
20 ERROL SAMUELSON, an individual, and
21 CURT BEARDSLEY, an individual,

22 Defendants.
23

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' OPPOSITION TO
ZILLOW'S MOTION FOR
CLARIFICATION REGARDING
FEBRUARY 4, 2015 ORDER AMENDING
CASE SCHEDULE**

FILED UNDER SEAL PER COURT ORDER

DATED _____

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I. INTRODUCTION

Zillow's motion for "clarification" seeks to rewrite this Court's Order Amending Case Schedule to superimpose an outdated written discovery deadline from last year, which was set by the Special Master based on a now obsolete trial date and Complaint, and which the Special Master himself agrees does not and should not apply given the new trial date, the current discovery cut-off date of September 8, 2015, and the Second Amended Complaint.

The Special Master correctly rejected Zillow's tortured post-hoc argument that the plaintiffs, who were seeking a continuance of the entire case schedule so they could take discovery to uncover evidence from Zillow, actually agreed to the inverse of their request, restricting written discovery to requests existing as of December 1, 2014. There never was any such agreement. The discovery restriction Zillow seeks to enforce was never once mentioned in the parties' Stipulation, the Court's resulting Order, or the email chain leading up to the Stipulation. Yet Zillow now claims that the parties' emails, which are similarly silent on this issue, somehow prove that they agreed that a particular discovery deadline from the old discovery plan should be imported into the Court's new case schedule to help Zillow avoid producing evidence of its misconduct.

Lastly, Zillow ignores that the Court recently granted leave for the plaintiffs to file a Second Amended Complaint. Zillow made some of the same arguments in opposing the Motion for Leave to Amend that it makes here regarding alleged discovery burdens. The Court already rejected those arguments. The Second Amended Complaint added new parties and raised additional claims. Additional discovery, including written discovery, is necessary for those new claims and new parties, in addition to the many outstanding issues in this case. Zillow's motion is a continuation of its increasingly desperate campaign to at all costs avoid producing damaging documents relevant to the core claims and allegations in this case.

1 **II. STATEMENT OF FACTS**

2 The Court’s original Order Setting Case Schedule set a trial date of May 11, 2014. Dkt.
3 2, Lovejoy Decl. Ex 1. In light of that trial date, the Special Master entered a discovery plan last
4 year with suggested dates for a few discovery events, such as service of written discovery (Oct.
5 31, 2014), a deadline for document production to be completed (Dec. 1, 2014), disclosure of
6 primary witnesses (Dec. 8, 2014), disclosure of additional witnesses (Jan. 20, 2015), a discovery
7 cutoff (Mar. 23, 2015), and dates for the first day to notice fact and expert depositions. Foster
8 Decl. Ex. A. The Special Master’s discovery plan stated that it was entered in “light of the May
9 11, 2015 trial date currently scheduled.” *Id.*

10 On January 23, 2015, the plaintiffs’ filed a Motion to Modify Case Schedule to Change
11 Trial Date Due to Case Complexities. Dkt. 333. One of the primary arguments in support of the
12 motion to continue the trial date was the need for more time for further necessary discovery. *Id.*
13 at 2:24-27; 3:2-3; 6:6-8; 7:9-18; 8:2-10. Indeed, the plaintiffs specifically stated in the
14 continuance request that the case requires “additional and thoughtful discovery.” *Id.* at 11:2-3.
15 While the motion to continue was pending, on February 3, 2015, the parties reached an
16 agreement on a continuance and requested through stipulation that the Court continue the trial
17 date. Foster Decl. Ex. B. In that Stipulation, the parties not only agreed to continue the trial date
18 until October 26, 2015, but also to (i) modify the Preliminary Injunction such that particular
19 provisions prohibiting Zillow’s and Mr. Samuelson’s activities expire earlier than they otherwise
20 would have; (ii) to withdraw Zillow’s appeal of the preliminary injunction; (iii) to exonerate
21 Move’s bond on the Preliminary Injunction; and (iv) to modify the case schedule in accord with
22 the new trial date. *Id.* The Court entered an order on February 4, 2015, consistent with the
23 parties’ Stipulation, setting a new trial date of October 26, 2015, and resetting the case schedule.

1 *Id.* Exs. C, D. The Order Amending Case Schedule, now operative in the case, set a discovery
2 cutoff date of September 8, 2015. *Id.* Ex. D. Nowhere did the motion for a continuance, the
3 stipulation, the Court’s resulting Order, or the Order Amending Case Schedule include a
4 provision to maintain any specific piece of the Special Master’s old discovery plan, or a written
5 discovery deadline that was based on the superseded trial date. *See id.* Exs. B-D.

6 Zillow’s entire argument rests on its subjective, secret view of the interplay between the
7 case schedule and the discovery plan. In the course of negotiating the Stipulation Re Extension
8 of Trial Date and Preliminary Injunction, the parties engaged in an email exchange regarding the
9 terms of the Stipulation—Ms. Foster for Zillow and Mr. Caslin for the plaintiffs. Foster Decl.
10 Ex. E. Those communications indicate, consistent with the resulting Stipulation, that the *case*
11 *schedule* will be reset “beginning with the deadline for possible primary witness disclosures.”
12 *Id.* at 3. Mr. Caslin tried to clarify “What other dates would remain the same, if the clerk’s
13 resetting all the date based on the new trial date?” *Id.* Ms. Foster vaguely replied, “We are not
14 setting all dates as if this were a new case filing.” *Id.* at 2. One thing is certain though, Ms.
15 Foster did not state that Zillow wanted to maintain any portion of the old discovery plan, or
16 maintain the old written discovery deadline. *See id.* Indeed, the “*case schedule*” mentioned in
17 the email and the Stipulation is the one issued by the Court, with a discovery cutoff of September
18 8, 2015. Exs. B-D. The plaintiffs never intended they would be agreeing to a continuance with
19 no document discovery. That simply does not make sense, and the plaintiffs would not have
20 signed the stipulation if they had known Ms. Foster had a secret interpretation of an otherwise
21 straightforward agreement that she planned to spring on the plaintiffs after Zillow received the
22 benefit of the deal (i.e., an agreement to shorten the preliminary injunction).
23

1 After the Court entered the Order Amending Case Schedule, the plaintiffs served
2 document requests. Lovejoy Dec. Ex. 2. Zillow then sprang its trap, responding with a flat
3 refusal to produce any documents based on an objection that the requests were “untimely” due to
4 a provision in the now inapplicable discovery plan, which was based on the obsolete trial date.
5 After gaining the benefits of the Stipulation, Zillow unveiled its secret view that the new
6 schedule somehow imported one date from the old schedule to prevent new document requests.
7 Zillow’s position was, and remains, entirely frivolous.

8 The plaintiffs then brought the issue to the Special Master, through a motion to compel.
9 At the hearing on the matter, the Special Master agreed entirely with the plaintiffs. He found
10 that the new case scheduling order “trumps everything,” stated that “the discovery cut-off has
11 been moved,” and concluded that the new schedule “supersedes” the prior written discovery
12 deadline based on the earlier trial date. Foster Decl. Ex. G at 48. The Special Master also found
13 that Zillow’s position that the email correspondence between counsel shows an agreement to
14 maintain the written discovery deadline is “not convincing,” and there was no “meeting of the
15 minds” as Zillow alleges. *Id.* at 48, 53. For those reasons, the Special Master agreed with the
16 plaintiffs and ruled that new document requests are not precluded by the old written discovery
17 plan. *Id.* at 54:18-22.

18 The hearing quoted above, at which the Special Master determined his previous
19 discovery deadline was no longer applicable, took place on March 11, 2014. Foster Decl. Ex. G
20 at 1. Two days later, on March 13, 2015, this Court granted the plaintiffs’ motion for leave to
21 file a Second Amended Complaint. Dkt. 467. The new pleading was submitted to the Court to
22 be filed under seal on March 16, 2015. Dkt. 488. The Second Amended Complaint adds Curt
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1 Beardsley as a new party to this case and adds additional claims against the defendants, including
2 multiple claims for tortious interference, unjust enrichment, and aiding and abetting breaches of
3 fiduciary duty. Dkt. 416.

4 Despite the existence of a new party in the case, new claims, an entirely new schedule,
5 and a finding from the Special Master instructing Zillow that the one rule it wants from the
6 Special Master's old discovery plan no longer applies, Zillow nevertheless filed this motion
7 asking the Court to rule that the old deadline somehow still applies. Dkt. 490. The request is
8 frivolous.

9 III. ARGUMENT

10 A. The Court's Order Amending Case Schedule Does Not Need "Clarification."

11 The Court's February 4, 2015 "Order Amending Case Schedule" sets the discovery cutoff
12 as **September 8, 2015**. That Order does not say "Non-written Discovery Cutoff," or "Discovery
13 Cutoff Excluding Written Discovery." Put simply, "Discovery" includes written discovery. The
14 Special Master agreed. After considering Zillow's arguments on this issue, which are identical
15 to what it advances now before this Court, the Special Master stated that the amended case
16 scheduling order "trumps everything, it says the discovery cut-off has been moved," and
17 "supersedes the previous cut-off that I ordered in light of the earlier trial date." Foster Ex. G at
18 48:11-20.

19 Ignoring the Court's Order, Zillow still tries to rely on the Special Master's November
20 10, 2014 discovery plan even though it plainly states that it was set "*in light of the May 11,*
21 *2015 trial date currently scheduled.*" Foster Decl., Ex. A, emphasis added. Zillow's motion
22 ignores this key fact. The May 11, 2015 trial date no longer applies and, as the Special Master
23

1 recognized, neither does the discovery plan derived from that trial date. The plaintiffs never
2 agreed to maintain the inapplicable written discovery deadline. In fact, they would not have
3 agreed to the Stipulation if that had been a condition, and would have simply allowed the Motion
4 to Modify Case Schedule to be heard.

5 **B. Zillow’s Contrived Recitation of the Parties’ Stipulation and the Court’s New**
6 **Scheduling Order is Not Supported.**

7 Zillow attempts to fashion a “gotcha” argument by reading language into the Stipulation
8 that does not exist and claiming that, outside of the Stipulation, the plaintiffs supposedly agreed
9 to be bound by the written discovery deadline in the old discovery plan. Yet, Zillow cannot cite
10 to one bit of evidence to support that argument, which is why the Special Master rejected it.

11 The parties’ February 3, 2015 Stipulation memorialized several provisions that the parties
12 had agreed upon, which were: a new trial date; a trimming of the preliminary injunction end
13 date; the withdrawal of the appeal of that injunction; and a new case schedule. Indeed, the
14 Stipulation contains numerous provisions where Zillow acknowledged further discovery would
15 occur under a new case schedule:

- 16 • “the parties have agreed that the case is complex and that *further discovery appears*
17 *appropriate* to address the various claims and defense asserted in the case”;
- 18 • “the parties have also agreed [] to a modification in the expiration of the Preliminary
19 Injunction for *the purpose of reaching an agreement on a case schedule*”;
- 20 • The trial date is to be continued with “*the case schedule*, beginning with the deadline
21 for possible primary witness disclosures, *to be reset* based on the new trial date”; and
- 22 • “The Clerk is directed to enter a *new case schedule*.”

23 Foster Ex. B. Zillow agreed to be bound by a new schedule, and in return received relief from
the Preliminary Injunction, so the injunction would expire on March 22, 2015.

1 Nowhere did the Stipulation mention the outdated discovery plan. Instead, it explicitly
2 covers the “case schedule,” which has no specific written discovery deadline. Lovejoy Dec. Ex.
3 1. Zillow’s argument that it intentionally included a provision in the Stipulation that the new
4 case schedule is to begin with the Disclosure of Primary Witnesses in order to maintain the
5 October 31 written discovery deadline is engineered after-the-fact. The content of the original
6 *case schedule*, which was the subject of the Stipulation, belies Zillow’s position. The Court’s
7 original March 17, 2014 case schedule calls for a Disclosure of Primary Witnesses on December
8 8, 2014. The only “case events” set to occur before that the primary witness disclosure date are:

- 9 • Filing Statement of Arbitrability (Aug. 25, 2014);
- 10 • Confirmation of Joinder if not subject to Arbitration (Aug. 25, 2014); and
- 11 • Hearing Motions to Change Case Assignment Area (Sept. 8, 2014).

12 Lovejoy Dec. Ex. 1, March 17, 2014 Case Schedule. Thus, the only case events not reset by the
13 Court’s new case schedule are three noted above. The “Discovery Cutoff” occurs later and was
14 expressly amended as agreed upon by the parties. Nowhere did the parties agree that the
15 discovery plan from the Special Master, which states it is based on the old trial date, will still
16 apply.

17 If Zillow wanted to exclude further written discovery, which the plaintiffs did not and
18 would not have agreed to, it should have said so explicitly, rather than secretly concocting an
19 argument based on its own obtuse emails after the fact. In the face of the Special Master’s ruling
20 otherwise, Zillow still argues, however, that the parties negotiated an agreement (nowhere to be
21 found in the Stipulation) to maintain the written discovery deadline from the Special Master’s
22 discovery plan. Def. Mot. at 5-6. This is simply not true. In the email exchange relied on by
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1 Zillow, the plaintiffs’ counsel asks “What other dates would remain the same if the clerk’s
2 resetting all the dates based on the new trial date?” Foster Ex. E at 3. Ms. Foster’s
3 nonresponsive response was, “We are not setting all dates as if this were a new case filing”—
4 nothing more. *Id.* at 2. Whether she was just acting coy, or trying to lay a trap to make this very
5 argument at a later date, the fact remains that Zillow did not mention the inapplicable written
6 discovery deadline, and the plaintiffs certainly did not agree to keep that deadline. Instead,
7 Zillow agreed to “further discovery” and “a new case schedule.” Zillow’s attempts to rewrite
8 history is gamesmanship. It should be rejected.

9
10 Lastly, Zillow’s argument that it intended to maintain in force the discovery plan for all
11 dates before the disclosure of primary witnesses (despite that it was expressly conditioned on the
12 May 11 trial date) is inconsistent with its own conduct and a practical construction of the Order
13 Amending Case Schedule itself. For example, the discovery plan calls for a December 1, 2014
14 deadline to “substantially complete document production.” Yet, Zillow has not complied with
15 this date, nor has it tried to enforce that date against the plaintiffs. Rather, it has adhered to the
16 new case schedule. But under Zillow’s approach, that date falls before the Disclosure of Primary
17 Witnesses and thus should be operative if it believed in its own theory. Zillow’s attempt to argue
18 that some dates before the primary witness disclosure deadline are still applicable while others
19 are not exposes Zillow’s positions for what they are—unsupported, post-hoc, and logically
20 inconsistent.¹

21
22 ¹ Even if the prior discovery plan still applied, which it does not, that discovery plan was not inflexible.
23 It allowed further written discovery “for liberal good cause shown (liberal good cause includes new
subjects and/or follow-up relating to information received in discovery).” Foster Ex. A. Therefore,
considering the additional issues raised and the additional party added in the Second Amended
Complaint, the Court should allow further written discovery to proceed.

1 **C. Zillow’s Remaining Arguments Ignore the Recent Service of the Second**
2 **Amended Complaint and the Necessity for Further Discovery.**

3 Zillow complains that additional written discovery, which it agreed to in the Stipulation
4 that called for a new discovery cut-off date, will “disrupt” the case and threaten the October 26
5 trial date. If Zillow believed this, it should have raised that issue when it entered the Stipulation
6 and asked the Court for a different trial date. Zillow’s concerns are simply made-up and an
7 attempt to further thwart discovery required for the plaintiffs to pursue their claims. Zillow’s
8 true concern is that documents uncovered in the case suggest broad misconduct by some of its
9 key personnel involving substantial events, as well as attempts to hide that misconduct in Gmail
10 and similar non-corporate email accounts – Zillow now desperately wants discovery to stop so its
11 unlawful and contemptuous conduct will remain hidden from the plaintiffs and the Court.

12 Zillow completely ignores that the plaintiffs filed a Second Amended Complaint after the
13 Court granted them leave to do so. Under Zillow’s position, Mr. Beardsley—a new party to the
14 case—will not be allowed to serve written discovery, and the plaintiffs will not be allowed to
15 serve any discovery on Mr. Beardsley. Under Zillow’s position, there will be no written
16 discovery related to the multiple new torts alleged against Zillow in the Second Amended
17 Complaint. Such results are simply nonsensical.

18 In addition, when opposing the plaintiffs’ Motion for Leave to File Second Amended
19 Complaint, Zillow sought to prevent the plaintiffs’ “New Claims Related to Trulia,” and argued
20 that allowing the Second Amended Complaint would lead to “additional factual discovery” and
21 “a staggering volume of documents and communications to collect and review” related to the
22 Trulia transaction. Dkt. 455, at p. 9-11. These arguments were obviously rejected, and
23 “additional factual discovery” was permitted, when the Court allowed the filing of the Second

1 Stipulation it submitted to the Court. No “clarification” is required of the amended case
2 schedule. The discovery plan, which states on its face it no longer applies, is not mentioned in
3 the Stipulation, the resulting Order, or the Amended Case Schedule, which is clear on its face
4 that the discovery cutoff is set on September 8. Zillow’s motion is a thinly-veiled, frivolous
5 attempt to prevent the plaintiffs from obtaining discovery necessary for their claims. The Motion
6 should be DENIED.

7 DATED March 20, 2015, at Seattle, Washington.

8
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EXHIBIT E

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THE HONORABLE JOHN CHUN
Noted For Consideration: March 24, 2015
WITHOUT ORAL ARGUMENT

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 REPLY IN SUPPORT OF
MOTION FOR CLARIFICATION
REGARDING FEBRUARY 4, 2015
ORDER AMENDING CASE SCHEDULE**

ZILLOW'S REPLY IN SUPPORT OF MOTION
FOR CLARIFICATION

56920-0025/LEGAL125390763.1

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I. INTRODUCTION

In their Opposition to Zillow’s Motion for Clarification Regarding February 4, 2015 Order Amending Case Schedule, Plaintiffs make much of Zillow’s supposed “secret plan” to ambush Plaintiffs with its position that the deadline of October 31, 2014 for serving interrogatories and requests for production was not altered by the continuance of the trial date. What Plaintiffs fail to do, however, is explain how the phrase “*beginning with the deadline for possible primary witness disclosures*” could mean anything else. This language is plain—not secret—and Plaintiffs agreed to it. Zillow therefore respectfully asks the Court to enforce it.

II. ARGUMENT

A. Plaintiffs Ignore the Plain Language of the Stipulation and the Court’s Order

As explained in Zillow’s Motion, when the parties agreed to continue the trial date for five months, they agreed to move only those case deadlines “*beginning with the deadline for possible primary witness disclosures.*” Motion at 3 (emphasis added); Declaration of Susan Foster in Support of Zillow’s Motion for Clarification Regarding February 4, 2015 Order Amending Case Schedule (“Foster Decl”), Ex. B. While lengthy in dramatics, Plaintiffs fail to explain why the phrase “beginning with the deadline for possible primary witness disclosures” means something other than what it says. Because this phrase is unambiguous, the Court should enforce it.

Moreover, given this plain language, Plaintiffs’ accusations of secrecy and ambush are ridiculous. Zillow never tried to hide the nature of its request. To the contrary, during negotiations over the Stipulation, Zillow’s counsel expressly asked that only the deadlines

1 after the disclosure of possible primary witnesses be altered in light of the new trial date,
2 explaining that not all case deadlines should be reset as if this was a new case filing. Foster
3 Decl. ¶¶ 7-8, Ex. E. There were multiple deadlines that occurred before the deadline for
4 possible primary witness disclosures, and just because Zillow’s counsel did not highlight the
5 written discovery cutoff as one of them does not mean there was an attempt to conceal it.
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7 Instead, it is Plaintiffs who now seek to alter the plain meaning of the language to which they
8 agreed. While admitting in their Opposition that this language encompassed the deadline for
9 joinder, just days after executing the stipulation Plaintiffs moved to amend the complaint *and*
10 *join an additional party*. Similarly, just hours after agreeing to the stipulation Plaintiffs
11 served new written discovery in violation of the discovery plan. If anyone had a secret
12 agenda it was Plaintiffs. And, having received a free pass with the Second Amended
13 Complaint, they should not be given another.
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26 **B. The Procedural Posture of the Case Requires Enforcement of the Deadlines**
27 **Preceding the Disclosure of Possible Primary Witnesses**

28 Additionally, the procedural posture of the case indicates the parties intended to and
29 should use the five-month trial continuance to conclude discovery—not issue new
30 interrogatories and requests for production untethered to a good cause threshold.
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33 First, at the time of the Stipulation, the parties were discussing *completing document*
34 *production* in short order and in compliance with *another* deadline that preceded the
35 disclosure of possible primary witnesses. Foster Decl. ¶ 14, Ex. F. And, Zillow did just that,
36 producing the bulk of its documents by the deadline set forth in the Discovery Plan and as
37 agreed by the parties, thereby positioning the parties to launch depositions. *Id.* ¶ 10.
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44 Second, the deadline does not bar all additional written discovery, but, after October
45 31, 2104, the issuing party must show “liberal good cause.” *Id.*, Ex. A. Plaintiffs are
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1 therefore not harmed by enforcement of this deadline. They have served more than 140
2 document requests (and have received tens of thousands of documents in response). *Id.*
3 ¶¶ 10-11. Additional discovery should be targeted and they must show good cause to serve
4 more. For example, to the extent that the Second Amended Complaint necessitates new
5 discovery (i.e. as to the newly added defendant), then that would be appropriate under the
6 good cause standard set by the Special Master.
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12 Third, ignoring the history of this case and treating it as if the case were just filed
13 would greatly complicate the case and threaten the case schedule. There are just six months
14 left until the discovery cut-off, and the parties are looking at approximately 50 depositions,
15 including expert discovery. *Id.* ¶ 7. If Plaintiffs are allowed to issue broad new discovery
16 absent showing good cause, the trial date will be at risk, and the discovery management plan
17 put in place by the Special Master will be for naught.
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24 Finally, Plaintiffs are incorrect that the issue presented by Zillow’s Motion has been
25 decided by the Special Master. The Special Master opined regarding the Stipulation, but
26 twice stated that he was “bound” by the Order and expressly concluded that the Court (not
27 the Special Master) needed to interpret the Order Amending Case Schedule. *Id.*, Ex. G at
28 48:21-48:23, 53:23-54:13.
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36 III. CONCLUSION

37 For these reasons, and the reasons set forth in its Motion, Zillow respectfully requests
38 that the Court clarify that its Amended Case Schedule did not alter any deadlines preceding
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1 the disclosure of possible primary witnesses, including those deadlines set forth in the
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3 Discovery Plan.
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5
6
7 DATED: March 23, 2015

s/ Susan E. Foster

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Attorneys for Defendant Zillow, Inc.

CERTIFICATE OF SERVICE

On March 23, 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 REPLY IN SUPPORT OF MOTION FOR CLARIFICATION REGARDING FEBRUARY 4, 2015 ORDER AMENDING CASE SCHEDULE.**

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

DATED this 23rd day of March, 2015.

s/Vicki Lynn Babani
Vicki Lynn Babani
Legal Secretary

EXHIBIT F

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THE HONORABLE JOHN CHUN
Noted For Consideration: March 24, 2015
WITHOUT ORAL ARGUMENT

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0

~~PROPOSED~~ ORDER GRANTING
DEFENDANT ZILLOW, INC.'S MOTION
FOR CLARIFICATION REGARDING
FEBRUARY 4, 2015 ORDER AMENDING
CASE SCHEDULE

THIS MATTER came before the Court on Defendant Zillow Inc.'s Motion for
Clarification Regarding the February 4, 2015 Order Amending Case Schedule ("Motion for

~~PROPOSED~~ ORDER GRANTING ZILLOW'S
MOTION FOR CLARIFICATION - 1

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Clarification”), filed on March 16, 2015. The Court having considered all pleadings and papers submitted in connection with the Motion for Clarification, and being fully advised in the premises,

IT IS ORDERED, that the Motion for Clarification is GRANTED. The Court clarifies that the Discovery Cutoff date in the Amended Case Schedule was not intended to supersede the Special Master’s Discovery Order, and that all dates contained in that Discovery Order that were prior to the disclosure of possible primary witnesses, including the deadline for issuing interrogatories and requests for production, remain in effect unless otherwise modified by Order of the Special Master.

ENTERED this 30th day of March, 2015.



THE HONORABLE JOHN H. CHUN

* The issue was not presented to this 
court.


PROPOSED ORDER GRANTING ZILLOW’S
MOTION FOR CLARIFICATION – 2

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Attorneys for Defendant Zillow, Inc.

PROPOSED ORDER GRANTING ZILLOW'S
MOTION FOR CLARIFICATION – 3

56920-0025/LEGAL125322288.1

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CERTIFICATE OF SERVICE

On March 16, 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: [PROPOSED] ORDER GRANTING DEFENDANT ZILLOW, INC.'S MOTION FOR CLARIFICATION REGARDING FEBRUARY 4, 2015 ORDER AMENDING CASE SCHEDULE.

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

DATED this 16th day of March, 2015.

s/ Vicki Lynn Babani
Vicki Lynn Babani
Legal Secretary

EXHIBIT G

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)

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, and
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

~~PROPOSED~~ ORDER REGARDING
INITIAL DISCOVERY CONFERENCE
AND DISCOVERY PLAN

THIS MATTER came before the Special Master, the Honorable Bruce Hilyer (Ret.),
pursuant to the Court's Order Appointing a Special Master for Discovery dated September

~~PROPOSED~~ ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 1

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1 11, 2014, appointing a Special Master to handle discovery issues. The Special Master held
2
3 an initial discovery conference with the parties on October 22, 2014.

4
5 **Discovery Plan**

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7 In light of the May 11, 2015 trial date currently scheduled, the Special Master sets
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9 the following discovery plan:

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October 31, 2014	Last day to issue interrogatories and requests for production, other than for liberal good cause shown ¹ (liberal good cause includes new subjects and/or follow-up relating to information received in discovery)
December 1, 2014	Last day to substantially complete document production and written discovery (other than requests for admission)
December 1, 2014	First day to notice deposition of fact witnesses ²
December 8, 2014	Disclosure of possible primary witnesses (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)
January 20, 2015	Disclosure of possible additional witnesses (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)
March 2, 2015	First day to notice deposition of expert witnesses
March 23, 2015	Discovery cutoff (as set forth in the Court's Order Setting Civil Case Schedule dated March 17, 2014)

29
30 The parties and the Special Master recognize that the parties' ability to meet these
31
32 dates, particularly the December 1, 2014 date for substantial completion of written
33
34 discovery, may be impacted by discovery and/or evidence not yet submitted. Every effort
35
36 will be taken to meet this schedule and so preserve the May trial date.

37
38 At this preliminary stage, Plaintiffs and Defendants anticipate taking approximately
39
40 15-20 fact witness depositions each, for a total of 30-40.

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44 ¹ Requests for admission are not subject to the October 31, 2014 deadline and instead are
45 subject to the March 23, 2015 discovery cutoff set forth in the Court's Order Setting Civil Case
46 Schedule dated March 17, 2014.

47 ² This excludes the 30(b)(6) notice issued by Plaintiffs to Zillow on October 13, 2014, which
deposition(s) may be conducted prior to December 1, 2014.

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Presented by:

CABLE, LANGENBACH, KINERK & BAUER LLP

PERKINS COIE LLP

By: /s/ Jack M. Lovejoy
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Attorneys for Defendant Errol Samuelson

~~PROPOSED~~ ORDER RE INITIAL
CONFERENCE AND DISCOVERY PLAN- 4

56920-0025/LEGAL123898630.1

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SM 1313

EXHIBIT H

**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

MOVE INC ET AL
Plaintiff/Petitioner

vs

ZILLOW INC ET ANO
Defendant/Respondent

NO. 14-2-07669-0 SEA

Order Amending Case Schedule

Clerk's Action Required

The trial date is reset, and the Court amends the case schedule as shown below:

Case Events	Amended Due Date
Disclosure of Possible Primary Witnesses	5/26/2015
Disclosure of Possible Additional Witnesses	7/6/2015
Change of Trial Date	7/20/2015
Filing Jury Demand	7/20/2015
Discovery Cutoff	9/8/2015
Deadline for Engaging in Alternative Dispute Resolution	9/28/2015
Exchange of Witness & Exhibit Lists & Documentary Exhibits	10/5/2015
Deadline to file Joint Confirmation of Trial Readiness	10/5/2015
Advise Court on Settlement	10/6/2015
Inspect Exhibits	10/12/2015
Deadline for hearing Dispositive Pretrial Motions	10/12/2015
Joint Statement of Evidence	10/19/2015

2/4/2015

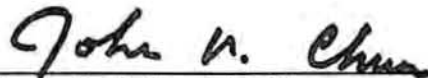
Page 1

SM 1315

Trial Brief	10/19/2015
Motions in Limine	10/19/2015
Jury Instructions	10/19/2015
Proposed Findings of Fact & Conclusions of Law	10/19/2015
Use of Discovery/Depositions at Trial	10/19/2015
Trial	10/26/2015

Pursuant to King County Local Rules, IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in the King County Local Rules, may be imposed for failure to comply.

Dated : 2/4/15



Honorable Judge John Chun

EXHIBIT I

**Hearing (SUBJECT TO PROTECTIVE ORDER - OUTSIDE
COUNSELS' EYES ONLY)**

Move, Inc., et al. v. Zillow, Inc., et al.

March 11, 2015



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IN THE SUPERIOR COURT FOR 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, et al.,)	
)	
Plaintiffs,)	14-2-07669-0 SEA
vs.)	
)	
ZILLOW, INC., a Washington)	
corporation, and ERROL SAMUELSON,)	
an individual,)	
)	
Defendants.)	

Hearing before the Honorable Bruce W. Hilyer

March 11, 2015
1000 Second Avenue, Suite 3000
Seattle, Washington

* * * THIS TRANSCRIPT IS SUBJECT TO PROTECTIVE
ORDER - OUTSIDE COUNSELS' EYES ONLY * * *

Leslie M. Sherman, RMR, CRR, CSR 2629

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1 would apply to J.P. Morgan?

2 JUDGE HILYER: Yeah. You guys -- I don't
3 want to go into the details. I assume that you can
4 morph that into the J.P. Morgan one. If you can't,
5 you can e-mail me, but I think you can follow the,
6 under protest, the logic.

7 MR. CASLIN: Respectful protest, your Honor.

8 JUDGE HILYER: Respectful protest.

9 Okay. Now, the plaintiff's motion to compel
10 production of documents re Zillow's acquisition of
11 Trulia. So, here are my comments on this one.

12 MR. CASLIN: Your Honor, would you say that
13 again for me, plaintiff's motion to compel --

14 JUDGE HILYER: I just read the wrong one.
15 Excuse me. I'm sorry. I think I put away the wrong
16 one here. Yeah, no. Wait a minute. Plaintiff's
17 motion to compel Zillow to produce documents regarding
18 its acquisition of Trulia. But now the issue is the
19 discovery status of the case.

20 So, here are my comments and where I am on
21 this. So, one argument is sort of just like a
22 contract analysis or something, what was the
23 manifestation of the parties being the lawyers when
24 you negotiated over the form of this.

25 So, Zillow says, well, I said that it was

1 going to be -- Ms. Foster said that it begins with the
2 deadline for possible primary witness disclosure, and
3 that her intent was to sort of cut it off before that.
4 And then she also said, we are not setting all dates
5 as if this were a new case filing.

6 But then Mr. Caslin said, I presume if we
7 ink a deal the Court will set a new trial date and
8 various discovery and disclosure deadlines that flow
9 from the trial date, which sounds like there wasn't a
10 meeting of the minds.

11 And when I look at the case scheduling
12 order, which trumps everything, it says the discovery
13 cut-off has been moved. Zillow wants to say, oh, my
14 gosh, if you let them do that, they are going to do
15 all this other discovery, but, you know, I'm not -- I
16 am the servant of the Court here. And to me, the
17 showing on the e-mail that there was an agreement to
18 the contrary is not convincing. And I think this
19 order supersedes the previous cut-off that I ordered
20 in light of the earlier trial date.

21 So, I think I'm bound by this order to say
22 that discovery is not over. Do you want to sit back
23 and let them -- maybe you can respond.

24 MR. SAROS: Yes.

25 JUDGE HILYER: So, I will give you a chance

1 to respond to that.

2 MS. FOSTER: Your Honor, the Court's order
3 on this specifically states that deadlines in the case
4 schedule beginning with the deadline for possible
5 primary witness disclosures are to be based on the new
6 trial date. And the clerk was directed to enter a new
7 case schedule. That primary witness date was December
8 22nd. So, that's what changed. The dates after
9 December 22nd, not dates prior to this.

10 And there was an earlier order in this case
11 which specifically provided that the written discovery
12 would close as of October 31, 2014, absent -- excuse
13 me, "other than for liberal good cause shown (liberal
14 good cause includes new subjects and/or follow-up
15 relating to information received in discovery.)"

16 When we were negotiating this we wanted to
17 make sure that the earlier dates were not affected,
18 because if we open up written discovery, it's not
19 going to just be Trulia discovery that gets opened up.
20 We have new counsel here who has already indicated
21 that they are seeking broader discovery, and we are
22 going to get tons of new discovery requests. And I
23 can guarantee you that Zillow's production is going to
24 doubling or triple as a result if that date is not
25 included, and if we don't stick to the liberal good

1 cause shown standard that the Court had before.

2 And frankly, I don't think we meet our trial
3 date if we do that. Currently we are in March of
4 2015. There is a show cause hearing on May 22nd.
5 Counsel has indicated the deps should start in June,
6 and discovery closes September 8th.

7 If we are engaged in burdensome document
8 discovery between now and then, we are going to end up
9 in the same exact place we were before, being unable
10 to get this done. The only reason we agreed to the
11 October 24th date is because we thought that written
12 discovery would close and we could immediately launch
13 into depositions. Even that's not happening because
14 of the order to show cause, it's being pushed back
15 further.

16 So, everything that we agreed to with that
17 stipulation, and believing that we could do October
18 24th, goes out the window if this is not enforced per
19 the stipulation and order which specifically says that
20 it's dates after the primary witness disclosures that
21 are affected and that earlier dates are not affected.

22 And so, your Honor, I would respectfully
23 request that rather than open this can of worms, that
24 we stick to the schedule that we've previously had.
25 We've got a lot of work to do in this case even

1 without broader discovery. And we can't add to that
2 burden.

3 MR. SAROS: Briefly, your Honor, I mean, if
4 Zillow wanted so badly to maintain the written
5 discovery date, it should have just said so instead of
6 playing this little coy game with e-mails. It should
7 have just said we want to keep the written discovery
8 deadline, and they never did. We never would have
9 agreed to it, that's why.

10 And if you look at everything in the
11 stipulation and the order talks about the case
12 schedule. Well, I look at the case schedule. It
13 doesn't say anything about written discovery, right?
14 And that's the case schedule we're talking about. And
15 the dates before the disclosure of primary witnesses,
16 those don't get reset. It doesn't mention the
17 discovery plan, which on its face says it doesn't
18 apply because it's in light of the May 11 trial date.

19 Just lastly, there is another date that's
20 before the disclosure of primary witnesses, which is
21 the last date to complete document production. So why
22 doesn't that one still apply? It's a selective, you
23 know, after the fact selection of, well, we just want
24 to prevent written discovery. So, I think those
25 arguments are not convincing. I think your idea that

1 the case discovery plan was -- I mean the discovery
2 cut-off was extended to September and written
3 discovery includes that.

4 MS. FOSTER: If I can have just a quick
5 follow-up, your Honor. One, there was a reference to
6 completion of discovery. At the same time, in fact
7 the very day that we executed the stipulation, we
8 agreed that the date for last production in this case
9 was going to be February 27th, 2015. And that is in
10 the court record here as Exhibit 6 to Mr. Lovejoy's
11 declaration.

12 In other words, the parties at that time
13 were talking about closing and finalizing all
14 documents in this case. I can show you my copy if
15 you'd like, your Honor. And that's the same day we
16 executed the stipulation.

17 JUDGE HILYER: This is a letter from Charles
18 Abbott at Jenner & Block. You said Mr. Lovejoy. Is
19 that at the back?

20 MS. FOSTER: It's the declaration of
21 Mr. Lovejoy. It's attached to his declaration.

22 JUDGE HILYER: This is attached to his
23 declaration?

24 MS. FOSTER: Yes. That's all I was saying.
25 And we, if I could, just real quickly, and

1 we responded that we would agree and would complete
2 all of the production by then.

3 JUDGE HILYER: Even taking that document
4 into account, I don't think there is a clear
5 manifestation of the meeting of the minds as to what
6 you intended. And in fact, the e-mail that I
7 referenced earlier pretty much shows that you weren't
8 on the same page.

9 And the parade of horribles argument of
10 what's going to happen, I don't think that I can say
11 because of that that it drives the result. I think
12 your remedy here is, you can go back to the trial
13 court and make a motion saying, you brought this to
14 discovery master, and the discovery master ruled that
15 there is no meeting of the minds.

16 I'm sticking by this ruling because this is
17 what I'm sort of I think retained to do. I'm ruling
18 on the merits that there is no meeting of the minds
19 here, or manifestation of the meeting of the minds of
20 a stipulation by counsel as to what the effect on the
21 discovery schedule was for agreeing to the trial
22 continuance.

23 Point number 2, I'm bound by the Court's
24 order unless the Court decides that what it intended
25 was to not reopen discovery. That's fine, and we'll

1 deal with it.

2 And I think that in the orderly flow of
3 things, if you are going to take this remedy you
4 should do it right away. Let's not get a big backlog
5 of discovery going. That's your remedy here is you
6 need to go back to the trial court and say --

7 MS. FOSTER: And keep the May trial date.

8 JUDGE HILYER: But at the same time, I've
9 done my work here and I've sorted through this record,
10 and I don't see there is a meeting of the minds of
11 counsel as to how this is going to work. I think you
12 are on different pages. So the trial court can then
13 decide whether or not what it meant.

14 So, but for now, I'm not going to deny this
15 one for that reason. For right now this -- by "this
16 one" I mean the motion -- so, I guess I'm not quite
17 sure. You all know what discovery request you are
18 talking about. I don't have them here in front of me,
19 but I'm going to grant the motion to compel the
20 production because I don't see that as it currently
21 appears to me that it's precluded by the discovery
22 cut-off.

23 MS. FOSTER: So, your Honor, one of the
24 objections we had was to the form of the order. The
25 order reads, "Plaintiff's motion is granted." The

1 you would allow documents including communications
2 between Zillow and Trulia sufficient to show the date
3 on which Zillow and Trulia began discussing their
4 pending merger, and then we need the "sufficient to
5 show and Zillow's stated reasons for the proposed
6 merger," how is that latter statement going to be
7 rephrased.

8 JUDGE HILYER: And I thought that we were
9 going to cover that when we did the ones on the
10 Goldman Sachs --

11 MS. FOSTER: So, did you want that same
12 language you had crafted for them?

13 JUDGE HILYER: Yes. You know, there was
14 like four of them. It was one of the four.

15 MS. FOSTER: I will pull that. So, I
16 believe 19, or --

17 JUDGE HILYER: No, this one. It's 19. It's
18 the same as 19 in the Goldman Sachs subpoena.

19 MS. FOSTER: Great. Thank you, your Honor.

20 JUDGE HILYER: Okay. So, I won't see you
21 for a while, hopefully, right? I think you've got to
22 get this motion addressed. I think the over-arching
23 need is to find out where the trial court is on the
24 implications of its discovery order. I think that --
25 I guess what I'm trying to say is, I don't know that I

1 need to officially put a moratorium in effect now, but
2 let's get that issue. And would you copy me on that
3 so I know what's going on with the trial court on
4 that?

5 MS. FOSTER: Yes, your Honor.

6 JUDGE HILYER: Okay. All right. Thanks
7 very much, everybody.

8 (Hearing adjourned at 11:10 a.m.)

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THE HONORABLE BRUCE HILYER (RET.)
Noted for Consideration: April 14, 2015
Without Oral Argument

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

[PROPOSED] ORDER GRANTING
DEFENDANT ZILLOW, INC.'S MOTION
FOR RECONSIDERATION OF THE
SPECIAL MASTER'S MARCH 30, 2015
ORDER COMPELLING ZILLOW TO
PRODUCE DOCUMENTS REGARDING
ITS ACQUISITION OF TRULIA

THIS MATTER came before the Special Master on Defendant Zillow, Inc.'s Motion
for Reconsideration of the Special Master's March 30, 2015 Order Compelling Zillow to
Produce Documents Regarding Its Acquisition of Trulia. The Special Master, having

[PROPOSED] ORDER GRANTING ZILLOW, INC.'S
MOTION FOR RECONSIDERATION OF THE SPECIAL
MASTER'S MARCH 30, 2015 ORDER COMPELLING
ZILLOW TO PRODUCE DOCS RE TRULIA – 1

56920-0025/LEGAL125558846.1

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SM 1332

1 considered all pleadings and papers submitted in connection with Defendant Zillow, Inc.'s
2 Motion to Reconsider the March 30, 2015 Order, the argument of counsel, and being fully
3 advised in the premises,
4

5
6 IT IS ORDERED that Zillow, Inc.'s Motion for Reconsideration of the Special
7 Master's March 30, 2015 Order Compelling Zillow to Produce Documents Regarding Its
8 Acquisition of Trulia is GRANTED, and Plaintiffs' Motion to Compel Zillow to Produce
9 Documents Regarding Its Acquisition of Trulia is DENIED.
10
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15
16 ENTERED this _____ day of April __, 2015.
17
18

19
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21 _____
22 THE HONORABLE BRUCE HILYER
23 (RET.)

24 Presented by:

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[PROPOSED] ORDER GRANTING ZILLOW, INC.'S
MOTION FOR RECONSIDERATION OF THE SPECIAL
MASTER'S MARCH 30, 2015 ORDER COMPELLING
ZILLOW TO PRODUCE DOCS RE TRULIA – 2

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SM 1333

CERTIFICATE OF SERVICE

On April 6 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 foregoing document. [PROPOSED] ORDER GRANTING DEFENDANT ZILLOW, INC.'S MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS ACQUISITION OF TRULIA.

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

DATED this 6th day of April, 2015.

/s/Maryellen Walsh

Maryellen Walsh, Legal Secretary

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

**PLAINTIFF'S OPPOSITION TO
ZILLOW'S MOTION FOR
RECONSIDERATION OF THE SPECIAL
MASTER'S MARCH 30, 2015 ORDER
COMPELLING ZILLOW TO PRODUCE
DOCUMENTS REAGR DING ITS
TRULIA ACQUISITION**

1 Zillow's Motion for Reconsideration seeks to enforce the outdated written discovery
2 deadline by pretending that Judge Chun has already ruled on this issue. That is not true. The
3 trial court stated in no uncertain terms that "this issue was not presented to this Court." Because
4 the issue was not before the trial court, Judge Chun deferred to the Special Master on how to best
5 have discovery proceed. Zillow ignores this and other critical facts. Zillow ignores that the
6 Special Master set the old discovery plan "[i]n light of the May 11, 2015 trial date currently
7 scheduled," that the Court recently allowed a second amended complaint with new claims, new
8 facts, and a new party, and that the Court set a new trial date of October 26, 2015. Besides
9 ignoring key facts, Zillow fails to give any valid reason why written discovery should not
10 proceed.

11 Zillow's strategy is transparent. It is trying to keep important and likely damaging
12 documents out of the hands of plaintiffs. It claims that plaintiffs have "all the material needed"
13 to support their claim, but how can that be true if Zillow has refused to produce the documents.
14 The defendants can hardly be believed at this point. For instance, the whistleblower letter, which
15 the Special Master is now well aware of, raises serious questions about defendants' compliance
16 with court orders and unlawful conduct, and therefore willingness to produce documents. The
17 whistleblower letter details a devious scheme where the defendants use Move's stolen databases
18 and hide them on non-Zillow cloud storage devices, and that this illegal behavior was apparently
19 well known to others at Zillow. Also, after weeks of denying the existence of a "burner" phone
20 by Mr. Samuelson, forensic analysis has revealed the following text from Samuelson to
21 Beardsley: "Errol here. This is my new prepaid 'burner' phone. Just sent you an email at your
22 Beardsley.net account. Would like your feedback."¹ The number of Samuelson burner phones,
23 and the incomplete production of data from his multiple phones is still very much at issue. Saros
24 Dec., Ex. 1, Atteberry Ltr. (describing missing texts and data from defendants' production
25 regarding the various phones used by Mr. Samuelson). These are just a few examples of why a
26

27 ¹ Declaration of B. Caslin in Support of Plaintiffs' Motion for Entry of a New Discovery Plan, Ex. 7.

1 new discovery plan is necessary, and that plaintiffs’ written discovery to Zillow (and future
2 written discovery) should be allowed to proceed for at least a few more weeks.

3 On the same day that Zillow submitted its Motion for Reconsideration, the plaintiffs
4 submitted a request for the Special Master to enter a new discovery plan—one that is up to date
5 with the current posture of this case. Zillow’s motion should be denied and plaintiffs’ reasonable
6 discovery plan entered.

7 I. STATEMENT OF FACTS

8 The plaintiffs’ Motion for Entry of a New Discovery Plan adequately describes most of
9 the relevant facts for purposes of this brief, and is incorporated herein by reference. Plaintiffs
10 present a few key facts here that were omitted from Zillow’s statement of facts.

11 In the trial court’s March 30 Order on Zillow’s Motion for “Clarification,” the Judge
12 specifically noted that the issue regarding a written discovery deadline “was not presented to this
13 Court.” Galipeau Decl. Ex. F at 2. Acknowledging that it had not ruled on the issue, and
14 consistent with the trial court’s decision to have the Special Master handle the administration of
15 discovery in the case, the Judge redirected the issue back to the Special Master, allowing the case
16 deadlines to be adjusted “by Order of the Special Master.” *Id.* Judge Chun certainly did not
17 preclude further written discovery; he instead placed the issue at the discretion of the Special
18 Master in his management of the parties’ discovery. The old discovery plan was entered on
19 November 11, 2014, and states it was set “[i]n light of the May 11, 2015 trial date.” Galipeau
20 Decl., Ex. G at 2.

21 Before making the ruling that resulted in the Order at issue here, the Special Master
22 considered extensive argument and briefing during the motion to compel, and the resolution from
23 that proceeding should still apply. The Special Master noted there was no “meeting of the
24 minds” to keep the old discovery plan in force as Zillow had argued. Galipeau Decl. Ex. I at 48:-
25 10, 53:14-15. The Special Master also determined that new case schedule, and its September 8,
26 2015 discovery cutoff, “trumps everything.” *Id.* At 48:11-13. And the Special Master
27 recognized that the new case scheduling order “supersedes the previous cut-off that I ordered in

1 light of the earlier trial date.” *Id.* at 48:18-20. The accuracy of those statements has not
2 changed. The new case schedule includes a September 8 discovery cutoff consistent with the
3 October 26 trial date, and the written discovery deadline should be consistent with those dates
4 and not the inapplicable trial date.

5 II. ARGUMENT

6 A. The Special Master’s Order Correctly Allows For Further Written Discovery And 7 Should Not Be Disturbed.

8 This case is not the same as it was when the Special Master entered the original discovery
9 plan on November 11, 2014, which was based on the old trial date, and a now superseded
10 Complaint. That May 11, 2015 trial date, which was the yard stick for the discovery plan, no
11 longer exists. The trial date has been moved to October 26, and the discovery plan should be
12 modified accordingly. In fact, no good reason exists to prevent further written discovery. The
13 recently-filed second amended complaint adds a new party to the case (Mr. Beardsley), new
14 claims, and new facts. Even though Zillow strenuously opposed amendment of the complaint, it
15 has been entered and is the operative pleading that governs this case. Discovery, including
16 written discovery, should be allowed to proceed based on that pleading. *See Beltran v. State*
17 *Dep’t of Social & Health Servs.*, 98 Wash. App. 245, 256 (1999) (the scope of discovery is
18 established by the allegations made in the complaint).

19 Under Zillow’s absurd view that further written discovery should be precluded, the
20 plaintiffs would not even be allowed to serve a single document request or interrogatory on the
21 new defendant (Mr. Beardsley), or do any discovery on their new claims recently added to the
22 case. That result is untenable. Recognizing the unreasonable rigidity in its position, Zillow may
23 argue that further written discovery is appropriate for only some issues. But such a case-by-case
24 analysis of each request is not workable. It will result in more disputes between the parties, and
25 enable Zillow to continue its strategy of frustrating discovery. As the Special Master well
26 knows, the parties have not been able to see eye-to-eye on discovery issues in this case, and will
27 surely not be able to agree when further written discovery is appropriate, leading to even more

1 motions to the Special Master and more delay. The only reasonable approach is to allow written
2 discovery as part of the normal course under the new landscape of this case with a reasonable
3 deadline as requested in plaintiffs' motion for a new discovery plan leading up to the September
4 8 discovery cutoff.

5 **B. Zillow Makes No Showing Why Written Discovery Should Not Proceed.**

6 Zillow cannot provide a valid basis to deny further written discovery. Zillow does not
7 even try to argue that the discovery requests at issue in this motion are not relevant. What harm
8 will be caused by the written discovery and Zillow document production at issue in the motion;
9 only that the truth will be revealed, which is evidently Zillow's primary concern and why it has
10 fought so hard to keep its documents hidden.

11 Having no substance to support its position that the outdated discovery plan should still
12 apply, Zillow relies on far-fetched arguments. First, Zillow argues that plaintiffs have enough
13 discovery already on its claims regarding Zillow's acquisition of Trulia. (Zillow Br. at 6). It
14 cites the production of Samuelson's Zillow emails, and the documents from Goldman Sachs and
15 J.P. Morgan that have not yet been produced. (Zillow Br. at 5-6). But production of a small
16 fraction of the relevant documents from other parties does not warrant preclusion of other
17 relevant documents *from Zillow*. *Welle v. Provident Life & Accident Ins. Co.*, No. 312cv3016,
18 2013 WL 6020763, at *3 ("Defendant is not relieved of its obligation to produce relevant
19 documents imply because it has produced other documents that may contain similar
20 information.")

21 Second, Zillow argues that allowing new discovery "will only further delay resolution of
22 this matter." (Zillow Br. at 3). That argument is unexplained, unsupported, and makes no sense.
23 The trial date is set for October, and additional written discovery will not affect that date.
24 Zillow's half-hearted arguments reveal the lack of any tangible justification to preclude further
25 discovery. Zillow's intent is to use the order it seeks to prevent all further written discovery
26 from plaintiffs.

1 Further, Zillow focuses on the Trulia acquisition issue, which is very important, but it is
2 not all that Zillow seeks to prevent through this Motion. The plaintiffs are entitled to discovery
3 from Mr. Beardsley as a new party to this case, from Zillow regarding additional claims and facts
4 alleged in the second amended complaint, and to follow-up on what plaintiffs continue to learn.

5 Lastly, even if the Special Master decides to maintain a discovery plan based on the old
6 trial date, the old discovery plan's edict that "liberal good cause" justifies further discovery has
7 been amply shown for this discovery to proceed. The Trulia acquisition, and Mr. Samuelson's
8 tip to Mr. Rascoff, are important issues in this case that warrant full disclosure by Zillow, and
9 should not be subject to Zillow hiding behind an outdated discovery plan, and evidently hiding
10 behind declarations denying plaintiffs' claims that are rife with skepticism after the
11 whistleblower letter exposed Samuelson's scheme to ignore the injunction and Rascoff's
12 apparent awareness of that scheme. The whistleblower letter indicts both Samuelson's and
13 Rascoff's truthfulness by revealing that (despite declarations to the Court otherwise) Samuelson
14 was working during the injunction, hiding that conduct so plaintiffs and the Court would not find
15 out, and that Rascoff had knowledge of that work. Rascoff's and Samuelson's denials regarding
16 the Trulia acquisition should be viewed through the same tainted lens, which is another reason
17 the Zillow documents are necessary to reveal the truth.

18 With new claims, new facts, a new party, and now a whistleblower letter that raised deep
19 concerns about Zillow's truthfulness, written discovery should be open to allow the parties to
20 litigate this case on the merits with a full view of the facts, and not through the prism of Zillow's
21 reliance on procedural technicalities.

22 III. CONCLUSION

23 Because the plaintiffs proposed revised discovery plan is reasonable based on the current
24 case schedule, it should be adopted and Zillow's attempt to maintain one aspect of the discovery
25 plan that was based on the now defunct May 2015 trial date through its motion for
26 reconsideration should be denied.

1 DATED April 16, 2015, at Seattle, Washington.

2
3 /s/Brent Caslin

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 16, 2015, I served the documents described below:

3 **PLAINTIFFS' OPPOSITION TO ZILLOW'S MOTION FOR RECONSIDERATION OF**
4 **THE SPECIAL MASTER'S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO**
5 **PRODUCE DOCUMENTS REAGRDRING ITS TRULIA ACQUISITION**

6 **DECLARATION OF NICK SAROS RE PLAINTIFFS' OPPOSITION TO ZILLOW'S**
7 **MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015**
8 **ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REAGRDRING ITS**
9 **TRULIA ACQUISITION**

10 **[PROPOSED] ORDER DENYING ZILLOW, INC.'S MOTION FOR**
11 **RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015 ORDER**
12 **COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS**
13 **ACQUISITION OF TRULIA**

14 by email transmission at the email addresses provided to the following:

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

2 DATED at Los Angeles, CA on April 16, 2015.

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

8 MOVE, INC., a Delaware corporation,
9 REALSELECT, INC., a Delaware
10 corporation, TOP PRODUCER SYSTEMS
11 COMPANY, a British Columbia unlimited
12 liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
13 Illinois non-profit corporation, and
14 REALTORS® INFORMATION
15 NETWORK, INC., an Illinois corporation,

16 Plaintiffs,

17 vs.

18 ZILLOW, INC., a Washington corporation,
19 ERROL SAMUELSON, an individual, and
20 CURT BEARDSLEY, an individual.

21 Defendants.
22
23

Case No. 14-2-07669-0 SEA

**DECLARATION OF NICK SAROS RE
PLAINTIFFS' OPPOSITION TO
ZILLOW'S MOTION FOR
RECONSIDERATION OF THE SPECIAL
MASTER'S MARCH 30, 2015 ORDER
COMPELLING ZILLOW TO PRODUCE
DOCUMENTS REAGRNDING ITS
TRULIA ACQUISITION**

Hearing Date: April 20, 2015

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Nick Saros declares:

1. I am over the age of eighteen and competent to testify to the facts stated herein on personal knowledge.
2. I am one of the attorneys for plaintiffs in this lawsuit.
3. Attached as Exhibit A is a letter sent on April 15, 2015 from Jeffrey Atteberry to Clemens Barnes.

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

DATED April 16, 2015, at Los Angeles, California.


Nick Saros

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 16, 2015, I served the documents described below:

3 **PLAINTIFFS' OPPOSITION TO ZILLOW'S MOTION FOR RECONSIDERATION OF**
4 **THE SPECIAL MASTER'S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO**
5 **PRODUCE DOCUMENTS REAGRDNIG ITS TRULIA ACQUISITION**

6 **DECLARATION OF NICK SAROS RE PLAINTIFFS' OPPOSITION TO ZILLOW'S**
7 **MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015**
8 **ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REAGRDNIG ITS**
9 **TRULIA ACQUISITION**

10 **[PROPOSED] ORDER DENYING ZILLOW, INC.'S MOTION FOR**
11 **RECONSIDERATION OF THE SPECIAL MASTER'S MARCH 30, 2015 ORDER**
12 **COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS**
13 **ACQUISITION OF TRULIA**

14 by email transmission at the email addresses provided to the following:

15 Susan E. Foster
16 Joseph Mc Millan
17 Kathleen M. O'Sullivan
18 Katherine G. Galipeau
19 David J. Burman
20 Judith B. Jennison
21 Mary P. Gaston
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Counsel for Curt Beardsley

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

2 DATED at Los Angeles, CA on April 16, 2015.

3 /s/ Chris Ward _____
4 Chris Ward
5 JENNER & BLOCK
6 633 West Fifth Street, Suite 3600
7 Los Angeles, CA 90071
8 (213) 239-5100 phone
9 (213) 539-5199 facsimile
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EXHIBIT A

April 15, 2015

Jeffrey A. Atteberry
Tel 213 239-2225
Fax 213 239-2235
jatteberry@jenner.com

VIA EMAIL

Clemens H. Barnes, Esq.
Miller Nash Graham & Dunn LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128

Re: *Move Inc. et al. v. Zillow Inc., et al.*

Dear Clem:

We write to follow-up on our prior meet and confers regarding plaintiffs' Document Request Nos. 11 and 12 seeking inspection all of defendant Errol Samuelson's various cell phones and smartphones, their contents, and phone records. We have gone back-and-forth many times on these issues but have made no progress.

For example, Zillow produced a January 5, 2014 email from Kathleen Philips forwarding a text message from Mr. Samuelson to Spencer Rascoff. Mr. Samuelson's text message states:

Hi Kathleen. Errol Samuelson here. Welcome back to the West Coast and thank you for your call today. I just picked up your message. I have a bunch of family coming over to watch the football game on PVR (they are 49ers fans. Go figure. I'm one of the few Seahawks fans in the family) so I won't call tonight. I'll give you a ring in the morning. Spencer and I are still disagreeing on compensation but hopefully, maybe we will figure that out. **This number is a prepaid personal cell phone so feel free to text / call me in it.** Best, Errol.

(See Zillow0052507).

Which "prepaid personal cell phone" did Mr. Samuelson send this message from and where are the records from this device? Mr. Samuelson has already testified that the "burner" phone was his wife's old cell phone and that "anything that was relevant" on that phone has already been produced. See Samuelson Declaration, dated March 15, 2015. But we have no record of the January 5, 2014 text message ever being produced by Mr. Samuelson. That means relevant materials from the "burner" phone have been withheld or there is another cell phone that Mr. Samuelson is hiding.

Clemens H. Barnes, Esq.

April 15, 2015

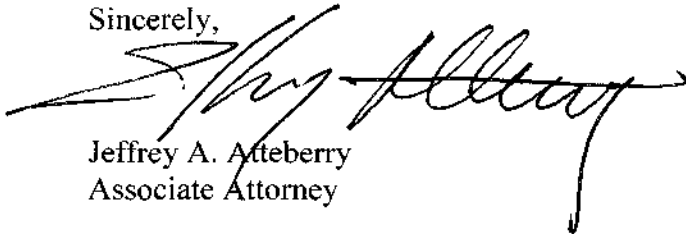
Page 2

Additionally, Mr. Samuelson produced a phone bill for the number 206-697-7150, which appears to be yet another mobile phone number that he used. (See EGS006514). Where is this phone and the related records?

Based on our review of the phone logs produced by Mr. Samuelson, there are obvious gaps where no text messages or phone calls are reported. Please provide *complete* records of all phone calls or text messages from any phone which Mr. Samuelson has used for business purposes since January 1, 2014. These records should include records of any text messages that were deleted but have since been recovered from these devices.

The only way to ensure that we have access to the requested information is for Mr. Samuelson to make all of his cell phones and cell phone records available for physical inspection and copying. Please let us know within 7 days whether Mr. Samuelson will immediately make these materials available. If you will not agree, we request an immediate phone conference in advance of our expected motion to compel. We are available any time this week or Monday, Tuesday, or Wednesday of next week.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Atteberry". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Jeffrey A. Atteberry
Associate Attorney

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

9 MOVE, INC., a Delaware corporation,
10 REALSELECT, INC., a Delaware
11 corporation, TOP PRODUCER SYSTEMS
12 COMPANY, a British Columbia unlimited
13 liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
14 Illinois non-profit corporation, and
15 REALTORS® INFORMATION
16 NETWORK, INC., an Illinois corporation,

17 Plaintiffs,

18 vs.

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

23 Defendants.

Case No. 14-2-07669-0 SEA

**[PROPOSED] DENYING ZILLOW'S
MOTION FOR RECONSIDERATION OF
THE SPECIAL MASTER'S MARCH 30,
2015 ORDER COMPELLING ZILLOW
TO PRODUCE DOCUMENTS
REAGRNDING ITS TRULIA
ACQUISITION**

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SPECIAL MASTER
THE HONORABLE BRUCE HILYER (RET.)
Noted For Consideration: April 14, 2015

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

**REPLY IN SUPPORT OF DEFENDANT
ZILLOW, INC.'S MOTION FOR
RECONSIDERATION OF THE SPECIAL
MASTER'S MARCH 30, 2015 ORDER
COMPELLING ZILLOW TO PRODUCE
DOCUMENTS REGARDING ITS
ACQUISITION OF TRULIA**

REPLY ISO ZILLOW MOTION FOR
RECONSIDERATION RE TRULIA
DOCUMENTS

56920-0025/LEGAL125698510.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
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SM 1354

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I. ZILLOW’S REPLY

The narrow issue before the Special Master is whether to reconsider its order that the Plaintiffs’ Request For Production re Trulia were timely, in light of the Court’s decision to grant Zillow’s Motion for Clarification Regarding the February 4, 2015 Order Amending Case Schedule. In that Order the Court held:

[T]he Discovery Cutoff date in the Amended Case Schedule was not intended to supersede the Special Master’s Discovery Order, and that **all dates contained in that Discovery Order** that were prior to the disclosure of possibly primary witnesses, ***including the deadline for issuing interrogatories and requests for production, remain in effect*** unless otherwise modified by Order of the Special Master.

In the underlying motion, the very arguments made by Plaintiffs here were made to the Court. But the parties’ stipulation and order extending the trial date and amending the Case Schedule expressly stated that it was extending deadlines “***beginning*** with the deadline for possible primary witness disclosures,” and did not extend deadlines that passed prior to that primary witness disclosure deadline (which passed in December 2014). *See* Declaration of Katherine Galipeau in Support of Zillow’s Motion for Reconsideration of Special Master’s Order Compelling Zillow to Produce Documents Regarding Its Acquisition of Trulia (“Galipeau Decl.”), Ex. C at *2 (emphasis added) (citing to underlying stipulation). The deadline for filing discovery without good cause has passed.

The upshot here is twofold. First, given that the October 31, 2014, deadline “remain[s] in effect,” Plaintiffs’ requests for production are four months too late, which means Zillow’s objections should carry the day. Plaintiffs’ assertions that the Discovery Plan is “outdated” fall apart in light of the Court’s explicit observation to the contrary.

Second, if Plaintiffs are asserting good cause for why they should be allowed to

1 submit new discovery, then they should have done so explicitly. But they cannot. They
2 knew about the Zillow/Trulia merger back in July 2014—over three months before the
3 deadline, and seven months before they finally decided to serve these untimely requests.
4
5 And, despite this deficiency Zillow has already provided some documents regarding the
6 acquisition. Lacking any legitimate basis for asserting good cause, Plaintiffs make
7 accusations that not only have no basis in fact,¹ but also have absolutely nothing to do with
8 Trulia or Plaintiffs’ request for discovery regarding Trulia. The fact is that the discovery cut
9 off is quickly approaching and the parties, and the Court, must be disciplined about how they
10 proceed. A good cause requirement has already been adopted for this case and there is no
11 good reason not to insist upon compliance with it.
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20 **II. CONCLUSION**

21
22 The Court has clarified that the written discovery deadline of October 31, 2014, is not
23 “outdated” or “superseded” by the Amended Case Schedule. Because that deadline
24 “remain[s] in effect,” Zillow respectfully requests that the Special Master reconsider his
25 Order Granting in Part Plaintiffs’ Motion to Compel Zillow to Produce Documents
26 Regarding Its Acquisition of Trulia.
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44 ¹ As set forth more fully in Defendants’ Reply in Support of its Motion for Reconsideration
45 of the Web Based Email Services Order, the evidence reflects that there simply is no hidden burner
46 phone. And, Defendants review of Mr. Beardsley’s google docs account has not revealed any
47 evidence of the misappropriated Move database alleged in the anonymous letter.

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DATED: April 20, 2015

/s/Susan E. Foster

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Attorneys for Defendant
Zillow, Inc.

CERTIFICATE OF SERVICE

On April 20, 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: REPLY IN SUPPORT OF DEFENDANT ZILLOW, INC.’S MOTION FOR RECONSIDERATION OF THE SPECIAL MASTER’S MARCH 30, 2015 ORDER COMPELLING ZILLOW TO PRODUCE DOCUMENTS REGARDING ITS ACQUISITION OF TRULIA.

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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 type="checkbox"/> Via E-filing <input checked="" type="checkbox"/> Via E-mail</p>
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of April, 2015.

s/ Sherri Wyatt

Sherri Wyatt, Legal Secretary

Hearing

Move, Inc., et al. v. Zillow, Inc., et al.

April 20, 2015



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THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MOVE, INC., a Delaware corporation,)
REALSELECT, INC., a Delaware)
corporation, TOP PRODUCER SYSTEMS)
COMPANY, a British Columbia)
unlimited liability company, et al.)

Plaintiffs,)

vs.)

No. 14-2-07669-0 SEA

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

Defendants.)

Hearing Before The Honorable Bruce W. Hilyer

Taken at: 1000 Second Avenue
Seattle, Washington

DATE TAKEN: April 20, 2015

REPORTED BY: ELIZABETH PATTERSON HARVEY, RPR, CCR 2731

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* * * * *

1 Seattle, Washington April 20, 2015

2 2:00 p.m.

3 -o0o-

4

5 JUDGE HILYER: Okay. I think just to set the
6 record, this is Move et al. v. Zillow et al., King County
7 Cause No. 14-2-07669-0.

8 Today is April 20th. We're at the my office,
9 Bruce Hilyer, the special master, at 1000 Second Avenue for
10 a hearing for the special master to consider six pending
11 discovery motions.

12 Jack, if you'd start, and everybody introduce
13 themselves around the circle.

14 MR. LOVEJOY: Sure. Jack Lovejoy for the
15 plaintiffs.

16 MR. CASLIN: Brent Caslin for the plaintiffs.

17 MR. SAVITT: James Savitt for Mr. Curt
18 Beardsley.

19 MR. BARNES: Clem Barnes for Errol Samuelson.

20 MS. GASTON: Mary Gaston for Zillow.

21 MS. O'SULLIVAN Katie O'Sullivan for Zillow.

22 MS. FOSTER: Susan Foster for Zillow.

23 JUDGE HILYER: So just to make it easy for
24 the court reporter, I think probably you need to say your
25 name. It's too much to ask her to commit it all to memory

1 when you're speaking. I don't know, you weren't here last
2 time. I don't think you were.

3 I don't know -- you weren't here last time.
4 I don't think you were. I don't remember if you were or
5 not. But I thought it worked better when I told the lawyers
6 last time is that if I just let you argue, you're going to
7 do what you do in court, which is you're going to assume I
8 haven't read anything and take me from soup to nuts. And I
9 have read everything.

10 So I thought it worked better if I just told
11 you where I'm at in my thinking and then invited you to
12 respond to that. You can say anything you want. All
13 right?

14 So the first motion that I think it makes
15 sense to take up is the plaintiff's motion to compel Zillow
16 and Errol Samuelson to produce the post-July 2014 documents.

17 My take on this is that it's a pretty simple
18 matter under 26(e) that you can create a duty to supplement
19 in a number of ways. One of which is to ask for it. And
20 once you ask for it, you have to supplement.

21 I realize that a similar motion or a similar
22 substantive issue arose on the flip side of the coin when
23 Zillow was making an analogous request on the other side,
24 but that was procedurally different because then we were
25 shaping the contours of the discovery request in the course

1 of a motion to compel. And now we're just talking about a
2 motion to compel that's already part of the case, and the
3 question is whether or not it needs to be supplemented.

4 So I sort of came around full circle on this.
5 And my tentative conclusion is it's governed by 26(e), and
6 that means when you ask to supplement, there's a duty to
7 supplement.

8 So I think maybe it might make most sense to
9 hear from Zillow, Samuelson, and Mr. Beardsley's -- does
10 this apply to Beardsley also? No, because you haven't
11 served any request on him yet.

12 MR. LOVEJOY: Right.

13 MR. CASLIN: We have. They just haven't been
14 responded to.

15 JUDGE HILYER: So let's hear from Zillow and
16 then from Samuelson, and then I'll give you some rebuttal.

17 MS. O'SULLIVAN: This is Katie O'Sullivan.
18 I'll be speaking for Zillow on this issue.

19 Respectfully, Judge Hilyer, I think we could
20 not disagree with you more on this. The relevant rule is,
21 as you say, Rule 26(g).

22 JUDGE HILYER: I said (e), actually.

23 MS. O'SULLIVAN: Excuse me; 26(e), which is what
24 my piece of paper says, but I was looking at Rule 26(g),
25 which comes up in a different motion I'm going to argue.

1 And it could mean at any time until trial, if
2 another party asks the other to supplement its document
3 collection, you have to do it.

4 But we know the plaintiffs don't believe that's
5 what the rule means because they already refused our request
6 to supplement their March collection.

7 So at a minimum, we would argue that the
8 parties need to be on an even playing field. They collected
9 their documents in March. We collected months later,
10 starting in August and going through September.

11 And what we would submit is you need to read
12 Rule 26 in its entirety.

13 So you're looking at Rule 26(e). And I think
14 I heard you say it's a pretty simple duty. Once you ask,
15 that's it. They have to do it.

16 But we would suggest you read 26(e) in
17 conjunction with 26(b)(1), which would limit discovery if
18 it's unreasonably cumulative or burdensome or expensive.
19 And on that basis, we would ask you to consider relevance
20 and burden.

21 And on relevance, their theory of their
22 motion is just to repeat this mantra that defendant's
23 conduct was ongoing. I actually counted up more than 20
24 times in their ten-page brief they said, "The defendant's
25 misconduct is ongoing and that gives us a basis to demand a

1 supplement until today." But if you look at what's closest
2 to their specifics, it's July, August, September of last
3 year. And so we've collected documents through the period
4 they have alleged is the actual misappropriation. And
5 they're talking about trying to get documents now until
6 today, which would be April 20th.

7 So just throwing out there the word "ongoing"
8 cannot be a basis to the relevance required by Rule 26(b) (1)
9 or burden.

10 So we're talking about a multi-month
11 re-collection, and then a review. So you've got to staff up
12 an electronic review team. You have to designate under the
13 confidentiality order what is the appropriate level of
14 protection. You have all the tricky privilege issues that
15 we have had to deal with before, and then a production.

16 So when you balance this really questionable
17 and speculative relevance on the other side with the burden,
18 this doesn't seem to us to be a close call at all.

19 I remember when I argued Zillow's motion to
20 compel on this exact issue, we said come on, give us the
21 documents past March. And you called it borderline fishing,
22 what we were asking for on behalf of Zillow.

23 So it just looks to us that this is way over
24 the border and that the duty that you've cited in rule 26(e)
25 doesn't get plaintiffs there at all. Thank you.

1 MR. BARNES: I kind of got lost in all the
2 motions I guess.

3 JUDGE HILYER: It's easy to do.

4 MR. BARNES: The one I can remember is the
5 one that I talked about and what we submitted, and that had
6 to do with the Retsly documents and supplementing past the
7 cutoff of October 31, all of which we've not only agreed to
8 do but done. So I'm lost in where we conferred on a broader
9 basis than that.

10 JUDGE HILYER: That was motion they had which
11 was almost worded the same. And I went back and looked at
12 it. But the difference was that we were shaping -- there
13 was a motion to compel, so we were shaping the parameters in
14 the hearing of what I was going to allow.

15 And my analysis that I gave at the outset was
16 we're not doing to that now. It's already established that
17 this was an appropriate discovery request then. And I
18 understand she's arguing you need to look again at relevance
19 and burden. That's fine. I get that. But that's what we
20 were talking about, is if you look at the wording it looks
21 almost exactly the same. But the difference procedurally is
22 that was on a motion to compel, and this is on a
23 supplementation.

24 MR. BARNES: I still don't -- the meet and
25 confer I was looking at was a very specific one as it had to

1 do with the Retsly documents.

2 In any case, when I saw the motion here, my
3 reaction was huh? I don't know -- I mean, we've already
4 produced documents up through February 13th. I must be
5 confused. We must be talking about different motions,
6 because the only one I saw and the only one we conferred
7 about is the one that we've agreed to do and set forth what
8 we agreed to do.

9 JUDGE HILYER: The information that I had is
10 that you had done a more recent supplementation than they
11 had up through February of this year.

12 MR. BARNES: Yes.

13 JUDGE HILYER: But theirs isn't that current
14 right now.

15 MR. BARNES: I'm not sure how this is
16 applying to us. We didn't talk about anything in the past
17 we had done. At least in our meet and confer, we dealt
18 specifically with the Retsly documents. That's all.

19 JUDGE HILYER: Okay.

20 MR. LOVEJOY: Well, I'll address
21 Mr. Samuelson's arguments because I think we can get there
22 pretty quickly on those. There was a meet and confer. I
23 think the date was March 27th.

24 And on our side we started out the meet and
25 confer because we had called for it. And we said we've got

1 two topics. One is we need Retsly docs; one is we need an
2 updated production.

3 And basically we talked to Mr. Barnes first
4 and thought that we had covered both Retsly docs and
5 generally an updated production. And what we thought was
6 the agreement is, okay, Mr. Samuelson is going to re-review
7 or re-collect up through February 2015 and produce. And our
8 understanding was that's -- we're talking about not just
9 Retsly there, but generally. And maybe there was some
10 slippage in understanding.

11 But our position is that if there hasn't been
12 a re-collection and production generally up through
13 February, 2015, then that's what should happen on Mr.
14 Samuelson's end.

15 MR. BARNES: We did do that, by the way.
16 Thinking back on this -- you'll remember this -- that
17 because there was a specific document request that came in
18 on the 31st of October, right, and it was a December 1st
19 deadline that only we observed as far as I can tell.

20 But what happened was Samuelson -- because we
21 didn't have time to go collect, sift, sort, et cetera,
22 Samuelson pulled his own e-mail to respond to it.

23 The objection was made well, look, we don't
24 -- you know, you can't rely just on him.

25 And you'll recall we said, "You're right; I

1 agree." And what we did was we did go back and do an
2 evaluation of the documents on a broader basis dealing with
3 the issues that Samuelson was responding in that set of
4 discovery requests, the ones that were done in October.

5 So I guess what we -- as I said, and what we
6 submitted, the thing about it is, you know, what we're going
7 to have to do anyway is we're going to have to, as I wrote
8 -- it isn't just a matter of supplementing because our
9 objections are still there, that they're overbroad, they're
10 not specific about what they're looking for.

11 What we need to do is actually confer about
12 that, Jack, and have you narrow down and tell us exactly
13 what you're looking for in those areas, just like we
14 suggested. So that's a different question than what time
15 frame to collect.

16 MR. LOVEJOY: Okay. So sounds like we --

17 JUDGE HILYER: That's Mr. Lovejoy.

18 MR. LOVEJOY: Sorry. Thank you. I've done
19 it twice to you now. Here's Mr. Lovejoy talking.

20 It sounds like we have not gotten the
21 production we understood we were going to get from Mr.
22 Samuelson.

23 But I'd like to address Zillow's points. We
24 completely agree with you that what we're dealing with here
25 is discovery requests that we've propounded. And the case

1 is ongoing. The requests were stated as continuing
2 requests. We have made a request for updating of the
3 production and that's what we should get.

4 And the idea that we haven't identified any
5 reason to go forward I think is a nonstarter, because you've
6 identified the rule that says we need to have a continuing
7 production.

8 And if we do need to get deeper into the
9 facts than that, we are dealing with a case where our
10 allegations relate to a lot of Zillow business initiatives.

11 Many of the allegations deal with Mr.
12 Samuelson using Move confidential information to create
13 Zillow's competitor to ListHub. That competitor to ListHub
14 was not announced until January of 2015. It was not
15 launched until April of 2015. So we're in some senses at
16 the beginning of the most relevant time period. If we want
17 to look at what Zillow has actually done with our
18 confidential information, we need information that is up to
19 date.

20 And if you look at other areas of this case,
21 the Trulia deal didn't close until November. To the extent
22 that it had anything to do with Move confidential
23 information, to the extent that the integration of Trulia
24 and the benefits that Zillow derives from it has to do with
25 our damages claim, which it does, we need recent

1 information.

2 So our position is that your initial tendency
3 or leaning on this motion is completely right.

4 JUDGE HILYER: I'll give Zillow the last word
5 on this one.

6 MS. O'SULLIVAN: Okay. Two rebuttal points.
7 Number one, we are simple asking the same rules apply to
8 both sides. So it's very troubling to hear when we ask to
9 supplementation from 10 of 50 custodians, 20 percent of what
10 they did, that we had to show a particularized need and jump
11 through hoops to get any more documents. We don't have a
12 single one after your order that we should get some, that
13 they get a full scale supplementation. That just strikes us
14 as a totally unfair process with different rules applying to
15 both sides.

16 Secondly, as to the specifics, Mr. Lovejoy in
17 his example cites Trulia didn't close until November, but it
18 was announced in July. So if there was some kind of
19 misappropriation or information given towards that, that
20 would be a June or July or prior document. And they have
21 documents that we have already collected from that period.

22 They give other examples about Retsly. That
23 was announced in June and closed in July.

24 And so they've really are just fishing. And
25 if there are particular areas that could be justified for

1 additional discovery, we're willing to meet and confer and
2 give them additional documents, just the way we're trying to
3 extract those documents from them.

4 But the notion that we have a play by a
5 different set of rules just does not seem fair at all.

6 JUDGE HILYER: Thank you. I know what you're
7 talking about because as I said, when I saw this come up I
8 went back in my files and found the motion that was the flip
9 side of it.

10 But again, I just reiterate it was
11 procedurally different. And you're right that in that case,
12 by the time it came to me, you had agreed -- you had made
13 certain modifications to it with regard to dates and the
14 number of custodians, et cetera. I wasn't involved in that.
15 That's the way you brought it to me. And that's a different
16 situation than when I'm just being asked whether or not Rule
17 26(e) applies. It does. And therefore, you will have to
18 supplement.

19 However, I also am going to require a
20 post-motion meet and confer because I want you to go through
21 these one by one. There's hundreds of them. And there will
22 be some that you'll say, "That doesn't apply anymore" just
23 because of the call of the question, so to speak.

24 So I'm going to require that you meet and
25 confer and go through and cull out the wheat from the chaff.

1 I don't expect to be involved in that process. If there's
2 something extraordinary I suppose you could come back to me.

3 But I think that basically I'm agreeing with
4 Move that supplementation applies. I'm not going to say --
5 and you're right. You should be one on one with it, but
6 that's not a reason for me to not apply the rule. But I'm
7 going to require a meet and confer after the fact so you can
8 pear this list down. So that's the first one.

9 The second one is the plaintiff's motion to
10 compel Zillow to produce the Retsly documents. And Move,
11 I'm not quite sure why we're here on this one because you
12 filed a motion to compel on Requests for Production 45, 46,
13 47, 48, 49, 76 and 77.

14 And Zillow responded by saying you already
15 reached an agreement before the motion it was filed or on
16 the day the motion was filed for 45, 48, 49, 76 and 77.

17 So I guess I'm sort of questioning why I got
18 -- I have to get involved in that.

19 And that, then, as I understand it, left only
20 two issues, which is whether the request for production
21 asking for identification of documents pertaining to when an
22 event occurred should be interpreted to require all the
23 documents and whether or not the business plan documents
24 should -- the Retsly business plan documents should stop on
25 July 16th. So let's start with that.

1 Are those, as you understand it, the two
2 issues that remain after you saw Zillow's response?

3 And you might also explain to me why you
4 included those other items in the motion when Zillow said
5 they'd already agreed to do that.

6 MR. LOVEJOY: Sure. Those are some of the
7 issues. The -- in this case unfortunately, some agreements
8 have been slippery, and we've seen that happen already
9 before you've been involved.

10 We had a motion about compelling production
11 of responses to more recent discovery requests and the
12 response to that was, "Sorry, the old discovery plan still
13 applies."

14 And we said, "What do you mean? We had an
15 agreement that that was all changed."

16 And apparently we didn't have an agreement
17 that that was all changed.

18 On this topic, there has been a lot of back
19 and forth. There's no question about that. And there was
20 back and forth on April 1st. The back and forth has
21 continued up to today.

22 We got a couple of e-mails from a Perkins
23 attorney representing Zillow today talking about what they
24 will agree to do in terms of search terms and dates of
25 collection. And there still is disagreement. There's a --

1 I'm not sure if it's a small or a large disagreement on the
2 nature of the certain terms to be used, because it comes
3 down to the syntax of the search terms.

4 There continues, as far as I can tell, to be
5 a disagreement about who the custodians are going to be
6 because even in today's correspondence there is a statement
7 by Zillow that, "Look, it's just too late in the game for us
8 to be adding custodians to the request."

9 We have asked that they search custodial
10 documents for Brad Owens, Maria Seredina --

11 JUDGE HILYER: These are all internal Zillow
12 people?

13 MR. LOVEJOY: Yes. And then the two founders
14 of Retsly, Joshua Lopour and Kyle Campbell. They have
15 agreed to produce some documents from Mr. Lopour and Mr.
16 Campbell.

17 But I do not believe that that agreement
18 extends to all of the requests. And we believe that it
19 should expend to all of the Retsly related requests.

20 And then as you identified, there is what I
21 think is a quite significant issue, which is does the
22 document production stop with documents on the date that the
23 -- actually I don't recall. Is it the date that the
24 transaction closed that they want or the date that it was
25 announced? But it's July 16th, 2014. We don't think that's

1 appropriate. And it really gets us back to the discussion
2 that we just had.

3 And again, just because the transaction
4 closed that day that doesn't mean that all of the evidence
5 on misappropriation is going to be before then, because in
6 fact it's during the integration phase that you see what did
7 Zillow actually do with this company and how was
8 confidential information used.

9 So those are the issues that I believe are
10 still in front of you, still live.

11 JUDGE HILYER: So all 45, 46, 47, 48, 49, 76
12 and 77 with regard to the document custodian?

13 MR. LOVEJOY: The document custodian and --

14 JUDGE HILYER: And then 46 and 47 regarding
15 when or all?

16 MR. LOVEJOY: I'm sorry?

17 JUDGE HILYER: I'm shortening it up to their
18 interpretation, is you asked when something occurred. And
19 so one document might demonstrate that.

20 Your interpretation is no, that means all
21 documents.

22 So is the dispute now deciding who the
23 document custodians are for five of the seven and what when
24 or all means for the other two? Is that what it is?

25 MR. LOVEJOY: And do we get documents past

1 July 16th, 2014.

2 JUDGE HILYER: For everything?

3 MR. LOVEJOY: For the requests that extend
4 beyond that -- where are the documents might be from beyond
5 July 16th 2014. So for instance --

6 JUDGE HILYER: I'm confused again.

7 MR. LOVEJOY: Sorry.

8 JUDGE HILYER: That's that I wrote down when
9 I heard this the first time, and then I thought I figured it
10 out. But maybe I haven't.

11 MR. LOVEJOY: If you look back at the
12 requests there -- for instance, there is a request that asks
13 "When did you first start meeting with Retsly." Well, in
14 all likelihood, there probably isn't going to be much from
15 past July 16th, 2014 that is going to speak to that.

16 However, as a practical matter, what we do
17 with this whole batch of requests is we agree on search
18 terms and custodians and we run them. And our contention is
19 we've got to have the right custodians.

20 We have a little lingering disagreement about
21 the terms, but I don't think it's something you need to
22 weight in on.

23 So we need to decide the right custodians.

24 And then we need to decide are you going to
25 look for documents only up to July 16, 2014, or are you

1 going to look past that?

2 So that's really the two issues we need help
3 with, is do we include the founders of Retsly in our
4 custodian list, and --

5 JUDGE HILYER: You mean Zillow documents that
6 pertain to the founders of Retsly, because we're talking
7 about Zillow?

8 MR. LOVEJOY: Yes.

9 JUDGE HILYER: Okay.

10 MR. LOVEJOY: Right. And do we get documents
11 past July 16th, 2014.

12 And I'm sorry. The other custodian that
13 there's a dispute about is Brad Owens, because I believe
14 there's no more dispute over the fourth person we wanted to
15 add to the list, who was Maria Seredina.

16 JUDGE HILYER: Okay. Let me hear from
17 Zillow.

18 MS. GASTON: Mary Gaston for Zillow, your
19 Honor.

20 I would like to take them in order, starting
21 with the ones that I think you recognized there was no
22 dispute, at least as of the time the motion was filed and
23 the discussion that had gone back and forth, and that was
24 all of the discovery requests other than 46 and 47.

25 Zillow met and conferred with regard to one

1 of them. We agreed on the phone that we would produce the
2 responsive documents as requested. We got off the phone and
3 indicated that we would investigate and figure out what it
4 would take to give them the other documents, and then
5 communicated to them that we would.

6 It was only the day that we filed our
7 opposition brief that they first raised an issue about
8 needing additional custodians.

9 And it was only the day that we filed our
10 opposition brief that they raised the issue about search
11 terms.

12 And that's why we included the section, your
13 Honor, about this is a rush to your Honor; that meet and
14 confer requirements have meaning, and if we're going to get
15 through discovery in this case we need to meet and confer.

16 Meet and confer means you have a good faith
17 back and forth until no more progress can be reached. In
18 this case, we're having back and forth. We thought that we
19 had entirely agreed to what they requested. And it wasn't
20 until this motion had already been filed and our opposition
21 brief had been filed that we learned no, there was an
22 additional problem.

23 So at best, their motion is premature. I
24 would argue that the meet and confer requirements -- under
25 the meet and confer requirements, Zillow did exactly what

1 the meet and confer requirements were intended to do, solve
2 a dispute and not have to race to the courthouse.

3 Do you have any more questions on those, your
4 Honor?

5 If I could turn, then, to -- and that's why
6 I'm not going to address the question that they're now
7 asking for Brad Owens, general counsel at Zillow, for his
8 documents because that wasn't in the motion, that wasn't
9 part of our meet and confer. And that's the only reason I'm
10 not responding to it. If you want to hear on it -- okay.

11 The second issue your Honor deals with the --
12 let's just call the July 16th date the before and after
13 date. In their motion, they even concede the fact that the
14 July 16th date only applies to a single one of the discovery
15 requests, and that's at page 11 of their brief, line 16 and
16 17.

17 The only request that arguably covered a
18 broader time frame --

19 JUDGE HILYER: Hold on. I don't have the
20 right one in front of me here. Page 9, you said?

21 MS. GASTON: You can start on page 5. It's
22 multiple pages, but start on 5. If you look up on lines 4,
23 5 and 6, starting at, for example -- I'm sorry. Line 6: A
24 small universe of documents covering a four-month period
25 between March 2014 and June 2014.

1 They're basically conceding that the only
2 relevant documents are essentially four months, so there
3 should be no problem with us producing them.

4 And if you turn to page 11, they say, very
5 specifically, most of the requests relate to a short time
6 frame -- sorry, your Honor. Down at line 15. And the only
7 request that arguably covered a broader time frame is
8 Request 77. And 77 is the one that states specifically
9 within the request from January 1st to the present.

10 And your Honor, the frustrating part of this
11 is we've already agreed to provide documents on the business
12 plans of Retsly up until February when the documents were
13 collected.

14 So again, there is nothing in dispute with
15 regard to the one document request that asked for documents
16 beyond that July 16 cutoff.

17 Unless you have another -- any questions on
18 there, I'll move to that final issue, and that's simply
19 their document requests with regard to 46 and 47 were very
20 specific. They wanted documents that recorded when an event
21 occurred.

22 And your Honor, again, we didn't just provide
23 them documents that showed when the event occurred as they
24 requested. We also agreed to provide them the actual
25 executed documents. So even though they had never in any of

1 their document requests asked for the NDA or the term sheet,
2 we in fact provided it.

3 So I would submit, your Honor, we're really
4 here arguing about whether --

5 JUDGE HILYER: You provided the nondisclosure
6 agreement, you mean? Is that what you're talking about?

7 MS. GASTON: Yes, as well as the asset
8 purchase agreement has been provided. I can't recall all of
9 the executed documents. I think there was also another
10 related document as part of the closing documents.

11 So as opposed to Zillow refusing to produce
12 documents and getting called on a motion to compel before
13 the special master, your Honor, we tried very hard to
14 cooperate. We went above and beyond in producing documents.
15 These late or untimely issues about custodians and
16 additional search terms were not part of the motion to
17 compel. They've only been recently raised. And again
18 that's what Rule 26 is for.

19 MR. LOVEJOY: I'm sorry. I should have
20 printed it up and brought it. But we got an e-mail today
21 saying that Zillow is not going to do a production beyond
22 July of 2014. And so to hear that we've agreed to do
23 through February, it surprises me. And if I'm wrong, I'm
24 wrong. But that's what we're looking for.

25 MS. GASTON: I think the confusion you may

1 have is the request that we search for documents, for
2 example, produce all internal communications pertaining to
3 the proposed acquisition -- or acquisition, right. So we've
4 searched documents up through the acquisition date,
5 right? That's what you've already gotten. Right?

6 MR. LOVEJOY: Okay.

7 MS. GASTON: And when I say the "acquisition
8 date," let me be clear on the record because I don't want to
9 misspeak. The acquisition date was early June, June 3, June
10 4, of 2014.

11 We actually agreed to produce documents
12 related to the acquisition up through the middle of July
13 when that acquisition was announced.

14 So to the extent that in the meet and confer
15 they were asking that those types of documents -- that we
16 search for acquisition-related documents post-July, we took
17 the position that's not appropriate. Why would there be
18 any? And the request doesn't -- would certainly not suggest
19 that.

20 With regard to the one RFP that they asked
21 for it to be specifically extended, we agreed to do so.

22 Does that -- I'm hoping that the e-mail today
23 was supposed to help, not make thing more confusing. So to
24 the extent --

25 MR. LOVEJOY: I don't think -- it doesn't

1 make things more confusing.

2 Sorry. This is Jack Lovejoy again.

3 It seemed entirely consistent with what we
4 had been hearing before, that we have requested documents
5 from past July -- yes, July 16th, 2014. And it did not
6 sound like we were going to get them.

7 JUDGE HILYER: Okay. I am going to deny the
8 motion. I think that Move did jump the gun.

9 I'm not going to deal with the issues of
10 custodians. You're going to continue try to work those out.

11 And by denying the motion I'm not
12 overturning. I'm ratifying what the parties have already
13 agreed to with regard to 45, 46, 47, 48, 49 -- excuse me;
14 45, 48, 49, 76 and 77.

15 With regard to 46 and 47, I'm going to deny
16 those on the merits, that I think they were adequately
17 responded to.

18 And I would just encourage counsel to flesh
19 out all the issues before you bring a motion.

20 Okay. So number three then is Zillow's
21 motion for reconsideration of the order compelling Zillow to
22 produce the Trulia acquisition documents.

23 I'm going to adjust my comments to Move
24 first. So I think we all remember what happened, which is
25 that this came to me originally after the new case schedule

1 had been issued and the trial date had been moved, and there
2 was a disagreement about whether or not you had reached an
3 agreement and what the import of the trial court's intention
4 was.

5 And I encouraged you to go back to the trial
6 court and clarify that, and you did.

7 And the trial court judge said, "I didn't
8 mean to overturn the apple cart," and if there discovery
9 issues pertaining to the schedule it goes back to me.

10 So I gather Zillow's point is in that case
11 you were three months and three days late from when the
12 deadline was for promulgating written discovery.

13 And you dealt with a lot of issues in your
14 brief, Counsel, but I didn't see where you really dealt
15 straight up with why didn't you bring this issue up
16 earlier? Didn't you issue the bank subpoenas earlier for
17 Goldman Sachs or JP Morgan or whoever it was?

18 So the issue was teed up. You knew about the
19 merger. But I didn't think you really dealt -- and if you
20 did, I overlooked it -- with -- I mean, you could say "mea
21 culpa," but I don't even think you said that. Why didn't
22 you deal with this earlier?

23 And forgetting the arguments of whether you
24 had to, why didn't you?

25 MR. LOVEJOY: By "dealing with it," you mean

1 bring it to you?

2 JUDGE HILYER: Why didn't you issue your
3 written discovery -- I think it was February 3rd of 2015.
4 I'm just doing this from memory now. And the deadline was
5 October 31st, wasn't it? So that's three months?

6 MR. LOVEJOY: Go ahead.

7 JUDGE HILYER: Is this your take?

8 MR. CASLIN: Yes, sir. I get the joy of
9 explaining this to you.

10 JUDGE HILYER: I don't think you were here
11 when this happened, were you?

12 MR. CASLIN: No, but I'm going to take it
13 anyway.

14 This case, from our perspective -- and I
15 recognize the defendants will disagree -- has been very
16 frustrating to figure out what happened on the other side.

17 As the case began we had documents destroyed,
18 already found by the court to have occurred. We had
19 documents not being produced.

20 As we looked at what Zillow was doing, there
21 was a strong belief, and still is to this day, that Zillow
22 was recreating business lines that looked virtually
23 identical to our own. And we attempted to figure out what
24 was happening. It's been more than a year we've been trying
25 to figure that out.

1 We are still, to this day -- just today we
2 got another declaration with another piece of evidence in
3 this case, which was some text messages from Kathleen
4 Philips.

5 My overarching point is this is a hard thing
6 for us to figure out. Everything we learn about what Zillow
7 has done on the other side we learn through the discovery
8 process. And they claim everything is confidential.
9 They're doing a very good job in claiming everything is
10 confidential and trying to keep it from us.

11 But for us, it's difficult to figure out what
12 when happened and piece together what has happened.

13 And this theme, I think this problem will go
14 on for a little bit longer, your Honor. And in fact, this
15 will spill a little bit into our discovery plan discussion.
16 But I'd like to show you something we just discovered on
17 Friday.

18 MS. FOSTER: Your Honor, I have to object to
19 documents being presented for the first time at hearing.
20 This is becoming a common approach, is to ambush at hearing.

21 JUDGE HILYER: I'm going to reserve that.
22 What is this?

23 MR. CASLIN: That is summary talking about
24 documents not being produced in the case and evidence not
25 being produced in the case. And just as a point, Ms.

1 O'Sullivan produced several documents at the hearing we were
2 at last week. I became a little bit jealous of that.

3 Evidence is still coming out. And this is
4 key evidence that we just uncovered on Thursday or Friday.
5 And if you can give me a minute to explain it to you, I
6 will, and show how it's very difficult for us to piece
7 together what has happened in this case.

8 And this is not the kind of case where on day
9 one we know everything that's been done with our
10 information. It did indeed take time to figure out what had
11 happened. And as documents were produced we pieced together
12 the story. So if you'll let me walk through this, it will
13 just take a minute.

14 JUDGE HILYER: Is this pertinent to the
15 Trulia theory?

16 I mean is this directly on point to the
17 theory that part of the transition of Samuelson to Zillow
18 was the Trulia acquisition, or is it on some other subject
19 like burner phones or --

20 MR. CASLIN: No, it's not specific to burner
21 phones. It covers the whole case, and here's why: We
22 discovered evidence on Thursday night -- I saw it on Friday
23 morning -- that Mr. Samuelson downloaded 719 documents.

24 MS. FOSTER: Then let's have a meet and
25 confer and discuss it before it's brought to a special

1 master. This is completely inappropriate.

2 MR. CASLIN: Can I continue, please?

3 JUDGE HILYER: Well, I'm going to stop you
4 for a second and say I'm following the argument. And so I
5 guess the message is, Be very careful, Mr. Special Master,
6 before you circumscribe discovery, because you can't trust
7 the other side. And you don't have to reply on the merits.

8 But we're not talking about an issue about,
9 you know, whether somebody handed over their computer.
10 We're talking about a -- maybe the most prominent feature of
11 your theory here, which is that Samuelson's defection from
12 Move to Zillow was directly related to misappropriating the
13 trade secret that Move had planned to buy Trulia right
14 before Zillow did.

15 So if you want to persuade me that there's
16 some reason, which is the call of my question, about why you
17 were so late, you've got to point to something specific and
18 say, "On this day we found this piece of evidence, which for
19 the first time opened our eyes that the Trulia thing was
20 part of this case." Show me something like that and I'll
21 consider it.

22 But if it's just evidence which may be
23 pertinent to some other discovery issue or whatever, that's
24 -- it needs to be real specific on Trulia.

25 MR. CASLIN: Sir, I respectfully but strongly

1 disagree, and here's why: When parties destroy evidence --
2 and that's what happened. There's a finding of fact by the
3 Court that Mr. Samuelson deleted multiple devices. It's on
4 page 8 of the preliminary injunction, a finding of fact that
5 he deleted multiple devices. We're in the dark on day one
6 because we don't know what evidence he destroyed.

7 So to say that we're late in figuring out all
8 of the things that have happened when he got to the other
9 side -- it was pretty clear that things were going to happen
10 to us. They went out and buy Retsly. The Trulia thing is
11 happening. They're recreating a ListHub. A lot of things
12 were happening on the other side of the case. But we're at
13 a distinct disadvantage with respect to all of them because
14 he destroyed evidence. It's a finding of fact.

15 How can we tell you here's on March 6th the
16 evidence that we saw when he destroyed it? And this
17 document directly relates to his hiding and destroying of
18 evidence. Our forensics --

19 JUDGE HILYER: Does the evidence pertain to
20 the acquisition of Trulia?

21 MR. CASLIN: It's 719 documents, sir. I
22 haven't been through all 719.

23 And it shows forensically that after he left
24 the company he destroyed his Dropbox. This is something
25 that's been in our Gmail motion for a month and a half now.

1 He destroyed his Dropbox application so we couldn't see it.

2 And we forensically have gone back and
3 recreated that application with Strouse Greenberg
4 (phonetic), one of the leading forensic firms in the
5 country. And they determined on October 23rd, when he's
6 beginning his discussions with Zillow, he downloads 719
7 documents, the crown jewels of the company, to Dropbox;
8 takes them off the company network, puts them on his
9 personal e-mail account.

10 And then on March 4th, the day before he
11 leaves -- so he resigned on the morning of March 5th. So on
12 March 4, literally the day before, he e-mails his Dropbox
13 credentials to himself at Gmail. It's very clear he
14 downloaded a tremendous amount of information.

15 And it's also clear, which is why you are
16 very suspicious and asking why we didn't bring this up in a
17 clearer way earlier, but to punish us because we haven't
18 been able to figure out all the evidence that's been hidden
19 on the other side is exceedingly unfair to us.

20 I haven't been through the 719 documents. It
21 will take me weeks to do that. I'm sure there's something
22 in there about Trulia.

23 JUDGE HILYER: Just a second. I know you're
24 anxious to respond.

25 MR. BARNES: Can we start with that finding

1 that evidence is being destroyed? Can we start with that?

2 MR. CASLIN: Please don't raise your voice to
3 me. It's on page 8.

4 JUDGE HILYER: Hold on. I'm not going down
5 that path yet. I'm going to bring this back to the
6 immediate issue in front of me, which isn't globally who's a
7 malefactor or anything like that.

8 Didn't you serve your subpoenas on JP Morgan
9 and -- who was other investment bank? There were two of
10 them.

11 MS. FOSTER: Goldman Sachs.

12 JUDGE HILYER: Goldman Sachs. There was no
13 discovery deadline issue about those. So you must have
14 known about the issue, because that was to get Trulia
15 documents. But you didn't ask them for Trulia documents in
16 the deadline. Is that not correct? Am I wrong?

17 MR. LOVEJOY: Judge Hilyer, the fact is that
18 the old discovery plan had a deadline in it for serving
19 requests for production on parties.

20 It did not have a similar deadline for
21 third-party subpoenas.

22 JUDGE HILYER: Okay.

23 MR. LOVEJOY: So we did third-party subpoenas
24 because that's all we could do at that point.

25 Then we did a continuance that was agreed to,

1 and there was a lot of tit for tat that went back and forth.
2 And our understanding was that part of the whole stipulation
3 to continue the trial date was that we were getting rid of
4 the preliminary dates, which meant we now have the
5 opportunity to serve new discovery requests, which we did.

6 And Zillow said we're not going to respond
7 because we believe those requests about Trulia are untimely.

8 You said no, they're timely, and if you
9 disagree, go to the Court.

10 The Court said it's up to the special master.
11 That's why we're back here saying you got it right. Now you
12 just need to say it again.

13 JUDGE HILYER: Well, one more thing. Thank
14 you for the clarification, because I was blending
15 third-party discovery with first-party and second-party
16 discovery. And I understand that now.

17 But when did you serve -- this request for
18 production to Zillow was February 3rd, I think.

19 MS. FOSTER: Correct.

20 JUDGE HILYER: So when did you serve those
21 subpoenas to -- was it around the same time or was it
22 before?

23 MS. FOSTER: Trulia was sometime in December,
24 the subpoena to Trulia.

25 And JP Morgan and Goldman, I don't know. I

1 believe it was early January.

2 JUDGE HILYER: Why did you wait until
3 February 3rd?

4 MR. LOVEJOY: Because that's when the
5 continuance happened. The old discovery plan got
6 superseded.

7 JUDGE HILYER: I see.

8 MR. LOVEJOY: Your Honor, if you'll recall --

9 JUDGE HILYER: You've answered my question.
10 I remember now.

11 All right. Let me hear from Zillow.

12 MS. FOSTER: Your Honor, we hear that this is
13 complicated, that they have to go through all the documents
14 to find the evidence to come back to us.

15 But in fact, with respect to Trulia, there is
16 simply nothing complicated about their case.

17 They say that it's obvious that something
18 might have happened simply because of the timing, because
19 they were having discussions with Trulia prior to Errol's
20 talking with Zillow that it was obvious as a result purely
21 of that timing that something was wrong.

22 They say that in the January 6th e-mail it
23 was obvious that he must have been talking about Trulia
24 rather than anything else, and that it's a smoking gun and
25 so obvious. Well, we know they knew about it in August.

1 They printed it as part of their motion for reconsideration.

2 The valuation arguments were in the public
3 documents in July of 2014.

4 All of the arguments that they rely upon for
5 Trulia were known to them before the deadline. And what did
6 they do? Their trade secret claims, which were made
7 November 17, included Trulia. But yet they didn't issue any
8 sort of request for production with respect to Trulia.

9 Now we are at a point where we are trying to
10 narrow the issues in the case and get this case to trial.
11 We can't be going out and serving new requests for
12 production. We need to be identifying what we need
13 additional to what we've got based upon what's been produced
14 in evidence and move forward.

15 If we completely open this all up again, and
16 we say you can ask new requests for production, such as the
17 one we got here recently that go to all your direct feed
18 efforts, or as we have here, all the documents relating to
19 Trulia, we're going backwards, not forward.

20 And there's no good cause that has been shown
21 at all for why these requests for production weren't issued
22 earlier rather than in February.

23 JUDGE HILYER: I don't think this motion
24 involves you guys.

25 MR. BARNES: No. As long as you don't decide

1 this based on some idea that Errol Samuelson is destroying
2 evidence, no.

3 JUDGE HILYER: Rebuttal?

4 MR. LOVEJOY: Sure. Your Honor, we could
5 have done with this already. We could have had documents a
6 month and a half ago if they'd respond.

7 So this argument that we're getting to late
8 in the case to deal with this, I'm not going to accept the
9 blame for that. The requests have been outstanding for a
10 long time, and we've had to do a lot of briefing over the
11 requests. And that energy could have been otherwise spent
12 and we could have the documents.

13 We did get some documents from them in the
14 summer, that's true. We were not allowed to show a lot of
15 the documents that we got in their first production to our
16 clients.

17 We got most of their documents after December
18 1. And again, we weren't allowed to show most of those
19 documents to our clients.

20 So we didn't put everything together and come
21 up with all of our evidence immediately. Frankly, I don't
22 think that that's the standard that you have to meet in
23 order to get discovery in a case.

24 If we gave them requests on February 3rd,
25 then those requests are almost nine months before the trial

1 date. To say, "Oh, it may be a central issue but you can't
2 get any discovery on it because you only asked nine months
3 before the trial date," I think is terribly unfair.

4 MR. CASLIN: Can I make one small point.

5 MS. FOSTER: We keep going back and forth.

6 JUDGE HILYER: One lawyer, Counsel.

7 MR. CASLIN: It was mine. He stole it from
8 me, your Honor. It's a fundamental point --

9 JUDGE HILYER: All right.

10 MR. CASLIN: -- because it's a reversible
11 error point, candidly.

12 We've moved to file a second amended
13 complaint in this case. In that complaint, we went into
14 detail about our allegations with respect to Trulia. It
15 would be reversible error to deny us discover about a key
16 allegation in a pleading that has actually nothing to do
17 with --

18 JUDGE HILYER: So Trulia is not mentioned in
19 the first complaint, but it is in the second?

20 MR. LOVEJOY: How could it be? Because we
21 filed the first complaint in March, which was well before
22 Trulia happened.

23 MS. FOSTER: But if I could, your Honor, just
24 as we have with Retsly and allowed discovery with respect to
25 Retsly, just as Trulia was referenced in the trade secrets

1 and we have been moving forward with that discovery, nothing
2 that they've identified saying "We couldn't show our
3 clients, we have had to go through all of this discovery,"
4 after having done that, they still have not identified one
5 single piece of evidence that they're relying on and saying
6 why they didn't do this earlier. The fact of the matter is
7 that they could.

8 But even though it's untimely, we did agree
9 to produce some documents. We haven't been trying to strong
10 arm them completely. We have given them documents with
11 respect to the documents that we showed to you. We've
12 provided them some additional documents. We're willing to
13 engage in that.

14 But we can't just open up the floodgates to
15 all additional discovery with respect to this issue. We
16 don't have time. We need to get going with depositions.
17 And we should have been going with depositions already, but
18 we keep getting these new issues.

19 JUDGE HILYER: Okay. I think I have the full
20 picture. I'll make a couple of comments because you all
21 provided a lot of case law that I read much of it for the
22 first time when I got involved in this case about trade
23 secret litigation. And if you recall, we've had the
24 argument that in trade secret litigation you have to have
25 more than just a bald-faced allegation in a complaint.

1 And I think that to be fair to both sides,
2 that I'm going to allow some limited discovery in this. And
3 I say fair because number one, the fact that counsel
4 represents to me that there are more specific allegations
5 about Trulia in the second amended complaint is a factor, as
6 you'll see when we get to the discussion about the new
7 discovery plan, because it plays into my thinking there.
8 That's the first point.

9 The second point is I think I need to be
10 careful that I don't overstep my -- get out of my lane. I'm
11 not acting as a judge. I'm acting as a discovery master.
12 And to effectively preclude all discovery on one aspect of
13 the plaintiff's claim is something I need to be very
14 cautious about.

15 On the other hand, I think the way you go
16 about discovering this issue is really important to the
17 trade secret interest. And let me just give you an example.
18 When you ask a question-- and this has come up in Retsly and
19 with Trulia also. When you say, "Show me all communications
20 about your thinking about why you went about doing this
21 acquisition," that's obviously a very interesting fishing
22 expedition in terms of what your competitor is doing. And I
23 think I think the concern that courts have about
24 demonstrating more than just a bare allegation in trade
25 secret cases comes from situations like that, because the

1 courts don't want to be used as a way for one competitor to
2 stick their nose in the other competitor's tent.

3 And I think that the way to handle this is
4 I'm going to give you some pretty direct discovery, but I'm
5 not going to allow you to do the other theory that I've
6 heard Move say before, which is "We need to look at your
7 actual business reasons for doing this so we can see if that
8 makes any sense in order to prove that it must have been
9 Samuelson who talked you into it because we don't think your
10 actual" -- I'm characterizing here. And I can be more
11 specific with your discovery requests.

12 So for instance, when Move asked the
13 question, "Produce all documents" -- this is Request for
14 Production No. 147 -- "Produce all documents created between
15 January 1, 2013 and July 28, 2014 that refer or relate to
16 your reasons for initiating or continuing merger discussions
17 with Trulia," that's the kitchen sink and everything else.
18 And I'm not going to allow that type of discovery for the
19 reasons that I have anticipate just alluded to.

20 But the three requests for production that
21 are narrowly geared to allow Trulia -- or excuse me; move to
22 explore this subject are 148, 149 and 150. 148 says,
23 "Produce all documents created between January 1, 2013 and
24 July 28, 2014 that analyze, discuss, or otherwise refer to
25 the impact that your merger with Trulia would have on Move."

1 I think that's fair game.

2 Request for Production No. 149, "Produce all
3 communications that Errol Samuelson and/or Curt Beardsley
4 had with Trulia regarding any proposed acquisition of
5 Trulia."

6 And No. 150, "Produce all communications that
7 Errol Samuelson and/or Curt Beardsley had with you regarding
8 Trulia before July 28th, 2014."

9 I think Ms. Foster makes a good point that
10 we're supposed to be narrowing the scope of the inquiry.
11 But at the same time, I'm hesitant to completely cut off
12 Move from inquiry.

13 And those are the ones, to me, that go right
14 to the heart of the matter.

15 As someone said earlier -- maybe it was
16 Mr. Rascoff -- it's not a shock when you see one person, one
17 entity acquire another one. So that fact doesn't mean much.
18 But these particular discovery requests I think are narrowly
19 tailored to allow you to explore the question of whether or
20 not you can trace some trade secret information that came
21 from Samuelson that went into your theory that that's why
22 Zillow acted when it did.

23 So I'm going to give you those three
24 discovery requests and none of the others.

25 And if you're able to make a showing -- I'm

1 not prejudging this at all. But if you're able to make a
2 showing that there's some evidence that was hidden in the
3 course of the case, then that would be a different matter
4 altogether.

5 MS. FOSTER: Can I ask one question, your
6 Honor?

7 As you know, there was an FTC investigation
8 on the antitrust impact of the merger. There were a lot of
9 documents created as a result of that analyzing the
10 antitrust impact which goes into anticompetitive effect and
11 antitrust injury on competitors. Can we ask that those
12 antitrust documents be excluded?

13 JUDGE HILYER: What's your position on
14 that?

15 MR. CASLIN: Why?

16 MS. FOSTER: One, because it would be very
17 burdensome, and I don't see it goes to the trade secret
18 issue here. It simply goes to the analysis of the antitrust
19 review.

20 JUDGE HILYER: What's your theory on that?

21 MR. CASLIN: My theory on why they shouldn't
22 be able to reduce it?

23 JUDGE HILYER: If you think they shouldn't be
24 excluded, why shouldn't they?

25 MR. CASLIN: If there's an internal analysis,

1 your Honor, that talks about the industry and the impact of
2 this merger on Move that was created in connection with the
3 FTC inquiry, I think it would be helpful for us to
4 understand how they viewed their Trulia merger impacting
5 Move, because our theory is that they did it to block Move
6 out, as you know.

7 And I won't go into my long story, but we
8 obviously think we have a fair amount of evidence. This
9 isn't just a bare allegation in a complaint.

10 MS. FOSTER: I don't believe that that goes
11 to trying to determine the trade secret allegation here, and
12 falls squarely in the broader context of looking at reasons
13 for pursuing or initiating the acquisition.

14 JUDGE HILYER: So it's really 148 you're
15 talking about?

16 MS. FOSTER: Correct. It's only 148.

17 JUDGE HILYER: How many documents do you
18 think you're talking about?

19 MS. FOSTER: I was not personally involved in
20 that. Having been involved in FTC requests, it's a lot.
21 They are some of the most burdensome reviews ever. They are
22 extraordinarily burdensome.

23 MR. CASLIN: It sounds, your Honor, like they
24 go to the heart of our claim, talking about how that merger
25 impacted Move. That's our theory of the case, is that they

1 executed that merger to block us from a merger with Trulia.

2 So if there's analyses internally or e-mails
3 talking about that issue in context of the FTC
4 investigation, that goes to the heart of our case.

5 JUDGE HILYER: Blocking you from acquiring
6 Trulia is different than taking you out as you a competitor.
7 Those are two different things.

8 MR. CASLIN: I don't follow you. I'm sorry.
9 I honestly don't follow that.

10 MS. FOSTER: These documents go to issues
11 such as what's the scope of the market here, what if it's
12 broader, how would it affect Move if it's narrowed or how
13 did it affect Move, what about their agent products and
14 their buyer products, how is this going to impact them, who
15 are the additional competitors in the marketplace. It goes
16 on and on like that.

17 And I really don't think they have any
18 relation to the trade secret claim here.

19 JUDGE HILYER: Mr. Caslin, what I'm saying
20 here is that like I said before -- I mean, the fact that
21 there were three major players in this industry and one of
22 the major players decided to acquire another one for the
23 competitive position it would put to them vis-a-vis the
24 third is not newsworthy. I mean, it's not that.

25 What you have to show, I think what's

1 discoverable in this case, is that the reason why that
2 happened or a material part of why that happened is because
3 an employee defected and misappropriated trade secret
4 information, not just it had this effect on the market and
5 that had that effect on Move.

6 To me, this takes us from this narrowly
7 tailored inquiry that I was trying to design to let you
8 explore whether Samuelson and Beardsley provided information
9 that led to this vs. what's this going to do to Move in the
10 industry.

11 MR. CASLIN: I think I failed, then, your
12 Honor, in explaining to you that through the many briefs
13 you've had to read, our allegation is not based on the
14 simple premise that when two of the three major players in a
15 marketplace combine it has an impact on the third.

16 It's the head of M&A for our company,
17 literally the head of M&A, is talking to the CEO of our
18 large competitor at night, is texting him, sends a long
19 e-mail describing how the major players, only three, are
20 going to change.

21 There's a series of e-mails where Mr.
22 Rascoff, the CEO of Zillow, says, "I'm in a board meeting; I
23 need you to help me make a decision," and the guy who works
24 for us as head of M&A and is deeply involved in negotiating
25 our merger with Trulia is literally at the Wilson Sonsini

1 law firm, jumps ship, and then immediately our
2 arch-competitor Zillow changes course.

3 And they do two things. They put in a huge
4 offer, at the time, three and a half billion, a huge
5 premium. The papers described it as a 70 percent premium on
6 the stock price.

7 [REDACTED]
8 [REDACTED].

9 Those circumstances, in our view, establish a
10 pretty good circumstantial case that what Mr. Samuelson did
11 was tip off Zillow with our negotiations with Trulia. And
12 part of our -- we'd like to take discovery, and we believe
13 we should be able to take discovery into why Zillow made
14 that sudden decision to buy a company we were pretty close
15 to merging with.

16 [REDACTED] [REDACTED]
[REDACTED]
18 just a lawyer, so it doesn't matter what I think. You've
19 ruled.

20 But now we're hearing even in the limited
21 confines that we're allowed to take discovery, which is
22 their specific analyses of how this would impact Move, we're
23 not even going to get most of that because it relates to an
24 FTC inquiry and might be burdensome.

25 This is a substantial case. They have

1 literally dozens of lawyers on their team. And we had asked
2 for this stuff a long, long time ago, months ago. If they
3 had responded, we'd already have it and we wouldn't be
4 talking about last minute discovery requests.

5 JUDGE HILYER: So back to I have one question
6 about we're talking about 148. So when you said there are
7 documents that pertain to the FTC investigation, the FTC
8 just investigates the business documents already there,
9 right?

10 You don't create documents for the FTC?

11 MS. FOSTER: No, we create -- there's a lot
12 of --

13 JUDGE HILYER: Oh, is that right?

14 MS. FOSTER: Yes.

15 JUDGE HILYER: Because they asked you
16 questions or something?

17 MS. FOSTER: Yes. They actually issue like
18 requests for production, interrogatories. There's also
19 white papers. There's a lot of back and forth with the FTC
20 and the parties, and then internally talking about that.

21 JUDGE HILYER: Were you the lawyer on this?

22 MS. FOSTER: No, I was not.

23 JUDGE HILYER: Perkins was the law firm?

24 MS. FOSTER: We were deal counsel.

25 We were not antitrust counsel.

1 So I was able to see some of this, but I did
2 not participate personally.

3 JUDGE HILYER: I'm just wondering if this
4 would be amenable to some sort of an in camera review for me
5 to determine, once I see the documents, whether I think that
6 they ought to be discoverable.

7 MS. FOSTER: Well, then we'd have to go
8 identify all of them.

9 These aren't directed to the issue of did we
10 purchase it because of a tip. This is now that we've
11 decided to do the merger, what would the impact be on Move
12 and competition in general, and that back and forth with the
13 FTC, the internal discussions of that.

14 And all I'm talking about excluding are the
15 documents that relate to that FTC antitrust investigation.

16 If there are documents separately, I
17 understand that they would be responsive. We'd produce
18 those.

19 But I just believe that, one, most of those
20 would be privileged work product anyway, so why put us to
21 the burden of identify that had analysis.

22 But two, they aren't directed toward the
23 trade secret issues.

24 MR. CASLIN: They also impact damages, your
25 Honor, because at trial of this case I'm going to be talking

1 about -- let me give you an example. Our internal analyses,
2 when Move and Trulia were considering a merger and talking
3 about a merger, our internal analyses said this is going to
4 save us \$100,000,000 over the next several years.

5 After the head of M&A for us jumps ship and
6 goes over to them and they suddenly buy Trulia -- I mean it
7 happens so fast -- they put out a press release that
8 literally says we're going to save \$100,000,000. Word for
9 word what we were going to do and then what they're going to
10 do.

11 And at the trial of this case our various
12 damages experts are going to talk about how this impacted
13 the market in a macro way and also specific to these
14 companies. And it sounds like these documents are highly
15 relevant to that, a market analysis of what the market is
16 going to look like afterwards.

17 So it doesn't just go to why they did or did
18 not buy Trulia. It also goes to damages as well.

19 JUDGE HILYER: Do you want to respond to the
20 damages argument?

21 MS. FOSTER: Well, these aren't really
22 damages questions that they're asking here. It's the impact
23 the merger with Trulia would have on Move.

24 And the ones I'm seeking to exclude aren't
25 the ones that are again outside of the antitrust analysis.

1 All I'm seeking to exclude are the ones that
2 are with the FTC analysis that go to the anticompetitive
3 effect of the merger talking about market definition issues,
4 talking about whether Move's included or not included within
5 that market. Again, I'm not seeking to exclude anything
6 other than those FTC antitrust documents.

7 So to the extent that there's documents that
8 talk about that that Mr. Caslin is referring to for damages
9 purposes, those would be produced.

10 MR. CASLIN: Just so we don't lose context
11 here, we're talking about an exception within an exception
12 now. And we're getting very little already with respect to
13 Trulia. So to further eliminate the narrow category that
14 we're already getting is inappropriate in our view.

15 And then secondly, if there's a dispute among
16 the various experts in this case about what impact this
17 merger had on the market, I think Zillow's summary to the
18 U.S. government is probably a very, very good way to figure
19 out or to determine what Zillow believed what impact this
20 would have on the market. These sound like maybe the best
21 documents for us to determine what impact this had on the
22 marketplace for analyzing our damages. I'm not going to
23 rebut the point about this not -- you don't have to say this
24 is a damages RFP for it to be a damages RFP. It talks about
25 the impact on the market.

1 JUDGE HILYER: I'm going to set this one
2 aside and come back to it at the end.

3 All right. The fourth one is defendant
4 Zillow's motion for reconsideration of order granting
5 plaintiff's motion to compel on the non-web communication
6 services.

7 Okay. So this has to do with what I said at
8 the hearing about after I ruled that Zillow did have to
9 include within the discovery the business related e-mails on
10 their noncompany e-mails.

11 And I think I may have used the word
12 "certified" inartfully because I was talking in a different
13 context than the rule talks about. And I did not
14 deliberately mean to say that lawyers had to certify
15 differently than the civil rules provide, because the civil
16 rules are fairly clear that the lawyer only has to certify
17 that a good faith inquiry has been made. They don't have to
18 personally certify that it's accurate. So to that extent,
19 I'm inclined to think that Zillow has a point.

20 However, I'm concerned about the
21 implementation of this order because of some of the language
22 in here about how Zillow is going to do this vis-a-vis its
23 employees. And I don't think -- so to go back to the lawyer
24 thing, I didn't mean the lawyer had to be the guarantor here
25 or put their bar card on the line for what the client does.

1 That was inartful if I led you down that path.

2 But on the other hand, I read somewhere that
3 Zillow is going to ask its employees whether or not. And
4 that's not sufficient either.

5 Because I made sort of a sarcastic comment
6 that someone read back to me about saying I didn't create
7 that problem. And what I was saying was if someone uses
8 their personal e-mail for business, the cry of privacy was
9 not compelling to me because they invited the problem by
10 mixing the two.

11 But whereas I don't want the lawyers to have
12 to guarantee this with their bar card, so to speak, I'm also
13 not satisfied with what Zillow is saying about what it's
14 going to do.

15 And I think what Zillow needs to do -- and
16 I'm also not requiring, at least, and I don't think Move is
17 asking for this yet, is that Zillow has to take everybody's
18 hard drive and do what you did to Samuelson. I'm not saying
19 that.

20 But I think Zillow's got to do more than just
21 ask them for it, which is very permissive sounding. I think
22 Zillow needs to at least direct its employees to provide
23 copies of business e-mails on their personal e-mail.

24 So maybe that was resolves it if I slice it
25 that way by saying it's not the lawyers, it's the client.

1 But the client's got to do it in a way that is directive,
2 not sort of permissive. So it's your motion.

3 MS. O'SULLIVAN: Katie O'Sullivan for Zillow.
4 Thank you.

5 You're spot on, Judge Hilyer, on
6 certification. And I think we frankly misunderstood you.
7 And I was the one that brought up 26(g) earlier, and I was
8 all ready to argue 26(g) doesn't require certification of
9 completeness.

10 And I loved finding the article by the
11 chairman emeritus of Jenner & Block, and we took his advice,
12 saying, "Do not, we counsel you, certify the production as
13 complete."

14 JUDGE HILYER: This is the second time you've
15 been hoisted on your own petard. All this prolific writing.

16 MR. CASLIN: The first time it was entirely
17 my fault. And they cited me again this week, and I have
18 been instructed not to write anything ever again.

19 JUDGE HILYER: Use a pseudonym.

20 MR. CASLIN: I will. I'll be a Perkins Coie
21 lawyer.

22 This can be on the record. This was Mr.
23 Solovy. Mr. Solovy passed away last year. He was our
24 chairman. And he wrote that article after a long trial in
25 Florida in which most of our firm was involved. But we were

1 plaintiffs in a case in which a substantial company was
2 hiding and destroying documents. So I think that that
3 article applies directly here. And if you go and see Mr.
4 Solovy's advice -- and I realize I'm stealing your time and
5 I'm going to give it back to you, I promise. In the article
6 he says, Well, just the certification is sort of meaningless
7 because how can the lawyer confirm that and promise his or
8 her bar card that every single document was found? Instead,
9 make the lawyers certify what they've gone. I have gone to
10 this person and this person. And that's what he suggests.

11 We actually agree with your concern. And
12 maybe we don't have that much of a fight here. But we are
13 concerned that Zillow is not going to do its normal approach
14 to documents that are on the Gmail and Dropbox and
15 non-Zillow servers.

16 And in their reply brief, they even say it.
17 Page 5 says, "As to the former, it's reasonable for Zillow
18 to rely on their counsel, and Zillow should not be required
19 to certify discovery efforts of another party's attorneys."

20 These aren't other parties. These are Zillow
21 employees using non-Zillow based servers for Zillow work.
22 And we respectfully think that Zillow should be responsible
23 for obtaining these documents.

24 And I did cut in, and I apologize, Katie.

25 JUDGE HILYER: So are you fine with what I

1 said?

2 MR. CASLIN: Nearly, except I'm really
3 nervous about who is going to do the search and what they're
4 going to do. But I believe so, yes, sir.

5 JUDGE HILYER: Go ahead.

6 MS. O'SULLIVAN: Thank you.

7 If you look at the Katie Galipeau declaration
8 submitted with our motion, I think it suggests that we're
9 doing more than just asking. And to be perfectly clear to
10 your Honor, we are doing more than just asking.

11 So if you look at the motion and supporting
12 declaration, do you have that?

13 JUDGE HILYER: I've got it here.

14 MS. O'SULLIVAN: So Galipeau paragraph 10, in
15 light of the March 30 order, counsel for Zillow is working
16 to identify which if any additional Zillow custodians used
17 web-based communication services for Zillow business
18 purposes.

19 So step one, we're trying to see from our
20 existing production, do we happen to have in there like a
21 SteveBerkowitz@hotmail on our site. And if we do, we are
22 going to those specific custodians -- because your order was
23 limited to custodians -- and saying, "We've got there
24 personal e-mail reference. If there's anything else, we
25 need it." So it's very much directive.

1 And it's not just limited to personal e-mail
2 accounts. As this paragraph 10 goes on to say, it's Dropbox
3 and others. And if we find responsive documents, we produce
4 them.

5 Our one hesitation is we don't want to,
6 because we think we have no legal right, to say, "Give me
7 your Gmail password" and we'll be the ones to look through
8 there and find what's responsive, because the legal standard
9 here on control is basically do we have a right to demand
10 the documents.

11 And we think we do have the right to demand
12 and direct the Zillow work documents. But we have no right
13 to direct and demand the purely personal.

14 So I think that's just the one thing we
15 wanted clarity on. And we didn't read your initial order to
16 say that we had to get their entire Gmails.

17 But we are very much directing the production
18 of any other responsive documents they have in their
19 personal e-mails or the other, quote/unquote, web-based
20 services.

21 And I don't want to cede all my time. If I
22 breathe, Mr. Caslin may start talking again.

23 But this motion also brings up something that
24 we spent a lot of work to try to get to the bottom of. And
25 we briefed it and we gave it to you all, the other side, all

1 parties and your Honor this morning before noon. So I don't
2 know how much time you've had to go through it. But --

3 JUDGE HILYER: All I read was reply briefs.
4 Is that what you're talking about?

5 MS. O'SULLIVAN: We put in two new
6 declarations today on this motion. And it relates to the
7 burner phone. It relates to --

8 JUDGE HILYER: Oh, yes. I did read that,
9 yes.

10 MS. O'SULLIVAN: -- what really permeates so
11 many of the motions for today, that the defendants, plural,
12 are hiding documents.

13 And it's very hard to prove a negative. But
14 we have jumped through all kinds of hoops to try to
15 conclusively determine that there's no missing phone. I
16 have a quote from our March 11th hearing. Mr. Caslin said,
17 "There's another phone and we don't have it."

18 And I think I raised my voice only because
19 you did last time?

20 JUDGE HILYER: You know, I think I'm real
21 familiar with the state of the record on this. And you
22 still don't agree on this, and there's still a couple of
23 issues why the text messages don't show up on the accounting
24 from the Apple phone.

25 But you don't have to -- I'm not going to

1 rule on it, and you don't have to brief it anymore and you
2 guys don't have to say it anymore unless you want to.

3 But at some point I'm past rhetorical. I'm
4 into the specifics here, you guys. I'm into the specifics.
5 So let's just leave that as it may. And I'm not ruling on
6 the burner phone or why the text messages don't come up.

7 MS. O'SULLIVAN: And we're not asking for
8 ruling to get into the specifics. All we were trying to
9 show is that the -- there was a link to this 778 phone
10 number.

11 JUDGE HILYER: I understand. You have an
12 explanation and they don't completely buy it, and that's
13 where the lawsuit is right now.

14 MR. SLIN: I'm exercising great restraint.

15 JUDGE HILYER: You're doing that.

16 MR. CASLIN: It's very difficult.

17 JUDGE HILYER: But there's about 500 pages of
18 unrestrained stuff over here.

19 So what about the specific issue here? Are
20 you satisfied with clarifying the order to say that Zillow
21 will direct their employees to produce the web-based and the
22 lawyers will then certify that there was a diligent effort
23 made as you normally do under the rule? Is there anything
24 wrong with that?

25 MR. CASLIN: We're pretty close. One thing

1 I'm concerned about is I heard Ms. O'Sullivan say that
2 they're going to talk to their employees and ask them about
3 their personal e-mail accounts. And we don't think that
4 that's the appropriate way to --

5 JUDGE HILYER: I said "direct."

6 MR. CASLIN: Direct to them?

7 JUDGE HILYER: They're going to direct their
8 employees to produce their professional stuff, business
9 stuff on their communication -- non-web -- e-mail and
10 Dropbox and all that other stuff. They're going to direct
11 them.

12 What else can we do?

13 The only thing else we could do, but I don't
14 think you'd gave me legal authority, is to basically do what
15 I made Graham & Dunn do -- or actually Graham & Dunn offered
16 to do it with Mr. Samuelson or the lawyer does it, but she
17 cited me some case law that says you don't have a showing to
18 do that here.

19 And I think in the other instance with Mr.
20 Barnes, he volunteered to do it. I was never in this
21 situation saying "Can you make me do it or not?"

22 So I don't think I can make them do it, do
23 you?

24 MR. CASLIN: I think the one thing we could
25 add to the certification we just discussed is some specifics

1 about who they've talked to and who they have directed. And
2 that was in the article that was quoted to us that said this
3 is what should happen in this circumstance. And the article
4 even cites some cases --

5 JUDGE HILYER: Well, we've identified the
6 custodians. So that's who they're going to direct.

7 MR. CASLIN: Okay. It will be easy to put
8 into the certification. And the reason is because we do --
9 and I'm not going to get into it -- we do have strong views
10 about document destruction.

11 JUDGE HILYER: I understand.

12 MR. CASLIN: And we still think there's
13 documents out there.

14 And because it is relevant to this motion, if
15 I could have two minutes of your time, because it is --

16 JUDGE HILYER: Wait. I just want to know
17 with the relief, aren't we there? Aren't we done here?

18 MS. O'SULLIVAN: If I could just make sure so
19 we don't quibble over it and then say we don't want to waive
20 it. We don't want another motion for reconsideration. I
21 would ask any certification required of the lawyers for
22 Zillow be limited to the reasonable inquiry language that is
23 in Rule 26(g).

24 JUDGE HILYER: Yes. There's a little bit of
25 a finesse on that because of this method that we're using.

1 I think you need to -- well, let me just say
2 I think a reasonable inquiry includes your client -- knowing
3 what your client did, inquiring as to what your client did
4 to implement this order. That's a reasonable inquiry, is to
5 ask your client, "Have you in writing directed these
6 employees to produce these?" That's what it would
7 be. Everybody agree?

8 MR. CASLIN: All right. Yes, sir.

9 MS. O'SULLIVAN: Is the motion then
10 technically granted?

11 JUDGE HILYER: It's denied in part and
12 granted in part.

13 MS. O'SULLIVAN: Thank you.

14 MR. CASLIN: And then we'll quibble.

15 JUDGE HILYER: You do a very good job of
16 coming up with orders after I've ruled. I think we've only
17 had one problem with that.

18 So that's No. 4.

19 And now we're going to tackle the new
20 discovery plan and then tackle the protective order one
21 last. And then I have to come back to that one issue.

22 So here's my beginning take on this, and then
23 you can tell me what differing views you may have.

24 MR. CASLIN: Your Honor, is it okay to take a
25 five-minute break?

1 JUDGE HILYER: Let's take a ten-minute break.

2 (Recess.)

3 JUDGE HILYER: Okay. The new discovery plan.

4 Obviously, we have a new party. We have a new amended
5 complaint. But I'm not going to just carte blanche reopen
6 discovery. We're going to be more targeted at it than that.

7 So my inclination, before I get reactions, is
8 to just give you guidance now as to what would for sure
9 establish good cause, which would be discovery pertaining to
10 a new party; discovery primarily targeted at a new claim;
11 discovery pertaining to allegedly undisclosed evidence;
12 discovery that is a follow-up to other document discovery,
13 although I guess there's sort of an attenuation argument
14 there, but to the extent that one document leads to another
15 document. And that's a nonexclusive list. So that's the
16 first thing.

17 With regard to depositions and just deadlines
18 in general, bearing in mind that you have an October 26th
19 trial date, I'm inclined to say that any new written
20 discovery for which good cause is demonstrated would need to
21 be served by April 30th. That's ten days.

22 But again, it's not the universe. It's the
23 new claims, the new parties. So it seems to me that's
24 doable.

25 If there are objections -- there is sort of a

1 scenario that Move gave in its brief about the normal course
2 of events and how long things would take, which is a good
3 point. But if there are objections based on no good cause,
4 then I would like to have an accelerated schedule for those
5 objections. So it's different than the normal discovery
6 objections. And I think we could ask for those within ten
7 days -- or look at a calendar; maybe the tenth is a weekend
8 -- by the 11th.

9 I didn't see any reason -- you know, in a
10 perfect world you do all the written discovery, and then you
11 do the fact witnesses, and then you do the experts, and then
12 the damages experts last, et cetera. But it's not always a
13 perfect world.

14 And I don't see any reason why you can't get
15 started taking depositions, particularly since the defendant
16 says they're ready to take depositions. I think you need to
17 spend some fair amount of time conferring before you bring
18 me into it, and hopefully you won't at all about the order
19 of the depositions. It certainly seems to me you're going
20 to want your damages people to come at the latter end.
21 Obviously your experts should come at the latter end.

22 But basically the deadlines that I was
23 contemplating was starting fact witness depositions on May
24 4th, expert depositions on July 15th. And it's going to
25 take a lot of cooperation among counsel to figure this out

1 because -- you know what, it would anyway, though. We're on
2 a tight time frame. But these cases always require a lot
3 cooperation. And good lawyers -- I can play with you guys
4 what was done to me as a mediator. Good lawyers work these
5 out. Someone came in to a mediation one time and said to
6 me, "A good mediator wouldn't have given me this proposal."
7 So I'll use this trick with you all. So that's generally
8 what I'm thinking.

9 I guess while you're at it, I'll go ahead and
10 tip my hand on the next one also. I don't see anything
11 special about the deposition of Rachel Glaser as to why that
12 should be postponed or not taken up within the course of
13 this discovery schedule, number one.

14 But the 30(b)(6) deposition that tracks
15 Interrogatory No. 4 needs to be postponed. And we can talk
16 about for how long.

17 And I was also contemplating -- when I -- on
18 the earlier motion there was a follow-up to Interrogatory
19 No. 4 that asked for the specific instances of
20 misappropriation. And I couldn't find in my notes what I
21 had said about that, but my recollection was that I said
22 that that's to follow at some later time in discovery.

23 And what I'm thinking is that the 30(b)(6)
24 designation that basically tracks Interrogatory No. 4 as for
25 misappropriations needs to come after -- not at the very

1 beginning. It should come by maybe the middle the May so
2 that we have a had a chance to digest all the written
3 discovery.

4 I don't think it's sufficient to say, well,
5 give me a 30(b)(6) designation now and then if we find more
6 stuff we'll redepose that person. It's not an efficient way
7 to litigate the case.

8 So that's sort of a jumble of things for you.

9 And can someone remind me, did I not set some
10 kind of a schedule?

11 There was Interrogatory No. 4, and then there
12 was another discovery request that asked about the specifics
13 of misappropriation, wasn't there?

14 MR. CASLIN: You're thinking of damages, I
15 think.

16 JUDGE HILYER: Oh, damages.

17 MR. CASLIN: One was about actions of
18 appropriation from them to us, and then the other was
19 damages.

20 On the first one you said denied but without
21 prejudice. And then we amended, and they're going to ask us
22 again and we're going to work through that.

23 And the second one, you said at this juncture
24 you have to give them categories of damages.

25 JUDGE HILYER: Right. I was confusing that.

1 So just to complete my thought pattern on
2 this, I think that that 30(b)(6) designation on "Give me all
3 the evidence on your claims" needs to be after the document
4 discovery has been completed.

5 But I don't think we have to wait on all of
6 the other depositions. I think there are some depositions
7 we can get out of the way, Rachel Glaser being one of them.
8 But I think that particular one ought to wait until you've
9 got the best chance to have a fully informed deposition.

10 Whose motion was it? Yours?

11 MR. CASLIN: Yes, sir.

12 JUDGE HILYER: So what do you think about --

13 MR. CASLIN: Can we start with the
14 depositions since we just spoke about it and it's fresh in
15 our minds?

16 JUDGE HILYER: Sure.

17 MR. CASLIN: On the Rachel Glaser one, I'll
18 wave the white flag and we'll get dates and give them over.

19 On the 30(b)(6) I will respectfully ask for a
20 few moments.

21 It's not just documents that we need. What
22 we're being asked to do is they're going to ask us to put
23 forth a witness to testify to what they did. And that logic
24 is what's causing the problems here.

25 And I think it's not just after documents. I

1 think it's also later in the deposition schedule so we can
2 at least take a few of their depositions so we can
3 understand what they did and their story under oath of what
4 they did before we have to put forth our witness telling
5 them what they did. In other words, have them tell us and
6 we'll tell them. I think the whole thing is a waste of
7 time, but at least schedule it in that manner.

8 And I want to make clear this isn't the first
9 time they've done this. This is a 30(b)(6) notice from last
10 year. They already deposed witnesses from our side.

11 JUDGE HILYER: On the injunction, or on that
12 show cause hearing, or what?

13 MR. CASLIN: These happened in September of
14 2014.

15 MR. LOVEJOY: No. He's just misspeaking.
16 April.

17 MR. CASLIN: I apologize.

18 JUDGE HILYER: That was for the injunction
19 hearing.

20 MR. CASLIN: Right. But still, there were
21 depositions at the beginning of the case about what the
22 evidence of misappropriation was.

23 JUDGE HILYER: But that's because you wanted
24 an injunction, right?

25 MR. CASLIN: Yes, sir. What I'm saying is we

1 shouldn't have one at the beginning, one in the middle, and
2 one at the end.

3 If we're going to do it, we should do it
4 right so that at least we have all their documents and also
5 time to absorb them.

6 And this is the time, I think, to talk about
7 all the documents that are still missing from the defense
8 side and also that leaves time to take some of their
9 depositions. So I'm only asking for maybe six weeks so I
10 can get more of that information in to prepare my witness
11 for basically, again, telling them what they did. They know
12 what they did.

13 And getting documents is important. And I do
14 want to talk about this. And I recognize that it's new.
15 It's new to me. But at the last hearing, Katie brought
16 several -- sorry; Ms. O'Sullivan brought several new
17 documents and passed them out and talked about them.

18 What this is is a forensic report I got on
19 Friday that reveals that in late --

20 MS. FOSTER: I want to submit my objection
21 for the record.

22 JUDGE HILYER: I've got it.

23 MR. CASLIN: In late October of 2014,
24 Mr. Samuelson used Dropbox to download 7 -- let me get the
25 number right -- 14 documents to his private Dropbox account.

1 Some of those documents -- I haven't actually
2 haven't been through all of them yet. But this was done
3 right as he began speaking with Zillow. We have -- none of
4 them have been produced to us in this case despite the fact
5 that he clearly has them in his Dropbox account. They're
6 very key documents -- as you'll see if you go through, I've
7 given you some examples -- of business strategies, data
8 consistent with what the whistleblower said last week.

9 And the day before he leaves the company, on
10 March 4th, he e-mails his Dropbox credentials to himself.
11 This is the same day he deleted his iPad, the same day he
12 deleted his iPhone, the same day he did a number of things
13 designed to hurt us and we think steal our information.

14 And so we do need time to figure out where
15 the documents are. It's not like documents are going to
16 just end in a few weeks and we can put forward. This will
17 take weeks to source through all the forensic analysis.
18 We're just getting a lot of this stuff for the very first
19 time in the case.

20 So that's why I'm asking for at least six
21 weeks on the 30(b)(6) of us telling them what they think we
22 did.

23 On the discovery plan --

24 JUDGE HILYER: I'm sorry. Six weeks from
25 when, from now?

1 MR. CASLIN: You said May. I think it would
2 be more appropriate near the end of the fact depositions.
3 In other words, we depose Mr. Samuelson, we depose
4 Mr. Beardsley, we depose Mr. Rascoff and the fact witnesses
5 on their side.

6 And then we're required to -- we're going to
7 amend our interrogatory response already. I've already
8 promised that to you and to them.

9 And then we put forward our witness and say,
10 "Here's what we think you did" based on all the evidence
11 we've just taken in through documents, interrogatory
12 responses and through depositions. Here's our case of the
13 actual misappropriation. I think that's the fairest.
14 Because I think --

15 JUDGE HILYER: So specifically when -- this
16 30(b)(6) deposition that is teed up right now, when is it
17 again, do you think?

18 MR. CASLIN: You suggested mid-May, and I'm
19 asking until the end of July. That would give them a full
20 August and some of September if they want to do any
21 follow-up discovery based on what they learn during that.

22 They already have the information in our
23 updated Interrogatory 4 response.

24 And they're going to have it again later on
25 in discovery when we update that again.

1 JUDGE HILYER: And that's primarily based on
2 your contention that you don't have all the documentary
3 evidence now and you think it will take that long to get it,
4 or are you saying something different, which is we should be
5 able to go through discovery and see how the testimony
6 shakes out at different depositions and place it in the
7 middle or at the end of that pack? Which is it?

8 MR. CASLIN: It's both of those things. And
9 you've said it much more succinctly than I did.

10 Those are the two reasons why our 30(b)(6)
11 telling them what they did should happen near the end of
12 discovery, not the beginning.

13 With regard to the discovery plan generally,
14 the practical reality of what you've outlined, while on
15 paper it makes all the sense in the world, is just going to
16 result in a tremendous amount of more litigation over
17 whether or not something, you know, is properly tied back
18 under the two or three reasons you said good cause would
19 exist for new discovery.

20 And so we think a much shorter period that
21 would allow to us serve discovery -- even just the next ten
22 days we can finally get things out -- would be more
23 appropriate, and I think in light of the amended complaint
24 is appropriate under the circumstances. So that's our
25 reaction.

1 JUDGE HILYER: So just to be fair, though, if
2 I were to do that, given the squabble we just had a few
3 minutes ago about the Trulia documents, if you were in their
4 shoes, wouldn't be you be worried about all kinds of
5 Trulia-type issues, yet things that date back to the
6 beginning all of a sudden being proliferating?

7 Isn't that -- is that any way to manage this
8 case, to say, "Well let's just go back"? That just strikes
9 me as more chaotic than case management.

10 MR. CASLIN: I think we're at the end of
11 figuring out which roads should be run down and determined.

12 We've spent the last few months really
13 digging deep into the documents and looking at what is in
14 the case and what's important to us. So there's not going
15 to be a new Trulia or a new Retsly or a new ListHub. We
16 generally have our theories set now.

17 Now that could change a little after we
18 depose some of their people and learn more. But right now I
19 think they're set.

20 And I look it from my shoes. Here's my
21 shoes, your Honor: They destroyed evidence. It's a finding
22 of fact in the case. Their entire computer system for
23 Mr. Samuelson is gone. And so we've been in the dark for a
24 year trying to figure out what they did.

25 And we finally get a forensic report after

1 looking -- this came off of one of his computers that he
2 wouldn't give back to us. And he switched out the hard
3 drive, it looks like. So we finally had a forensic analysis
4 done of that, and after a long time and a lot of hard work
5 figured out he was indeed using Dropbox and he sent his
6 Dropbox credentials to himself on the very last day he
7 worked for us. He's clearly doing something wrong. You
8 don't do that unless you have some sort of motive to do
9 something wrong.

10 So from our shoes, it's not fair to say at
11 the beginning of this case you should have known exactly
12 what roads to run down.

13 And I'm defending Mr. Lovejoy here because he
14 was the one trying to figure all this out last fall. I just
15 came in to the case in January with some fresh eyes, and
16 we've together figured out what we should be focusing on.
17 But it's really unfair to him that he should have figured
18 all this out back in the beginning when there was evidence
19 not coming out, whether or not it's hidden or not, and
20 actual evidence destruction. This is not a case where we're
21 just alleging it. It's a finding of fact. He deleted his
22 computers.

23 JUDGE HILYER: All right. Let's hear from
24 Beardsley and Samuelson first.

25 MR. BARNES: It's kind of hard for me not for

1 raise my voice when I hear that.

2 To start with, there's never been a finding
3 of destruction of evidence. There's never been testimony
4 taken. Samuelson was excluded from the hearing when it was
5 discussed.

6 The finding talks about one thing. The night
7 before he left, what he did was he was trying to separate
8 his personal stuff, financial, medical, religious and other
9 stuff, separate his personal stuff from the stuff that Move
10 would need to go forward, his replacement would need to go
11 forward, from a business standpoint. All of this is about
12 trying to separate his personal stuff from his business
13 stuff.

14 And what he did do was go out of his way to
15 make sure his successor would have the stuff he needed. So
16 that's what he did.

17 He cleaned his stuff, but first he made sure
18 he transferred the information that Move would need to go
19 forward. We're talking about that night. That's all we're
20 talking about.

21 Now what happened after that, as Jack, I'm
22 sure will remember, and I know he'll be honest enough to
23 tell us all, is what happened was we were trying to find a
24 way to return the computers and keep the personal stuff out.
25 We suggested, for instance, giving it to their expert so

1 they could develop search terms.

2 And what we heard back from Jack was no,
3 there's a real standard protocol. We own it.

4 I'm not sure that they own all the
5 information on it about a guy's medical history, his
6 religious -- his church. I'm not sure they own all that.

7 But that's what happened. It didn't come
8 back until -- what happened was -- and then we hear until
9 the court ordered it. Well, here's what really happened:
10 What we did and we couldn't get -- and we couldn't get a
11 standard protocol that people observe in these cases all the
12 time. So we had to move to the judge and say, "Judge,
13 separate this out." There's a standard way to do it
14 supported by our expert who said, "Look, it's easy to do."

15 The judge denied that motion. And of course
16 once that happened, we turned the computers over.

17 Now the other computer they're talking about
18 is the Dell computer sitting under his bed. What happened,
19 Samuelson didn't have that. He turned it over to a vendor
20 to do the very same thing, trying to separate the personal
21 stuff from the business stuff. That's all that's happened
22 there.

23 Now I don't know about this stuff. I do see
24 a really easily observable pattern that what we get is stuff
25 like this right when they're in the middle of a hearing. We

1 get an anonymous tipster. We got this when we walk in here.

2 I'll tell you what: No, I won't. I won't
3 tell you what. I won't tell you what.

4 JUDGE HILYER: Mr. Savitt?

5 MR. SAVITT: Let me make three points if I
6 could.

7 First with regard to the deposition, I
8 submit, your Honor, it's not appropriate to delay our
9 depositions, the depositions that we've now noted and that
10 we said we wanted in accordance with the rules until after
11 the plaintiffs take the depositions they want. In other
12 words, what they want to do now is dictate the order of the
13 depositions. And I don't see why they get to do that.

14 And I think I need to correct a
15 misapprehension. At least it's not where I'm coming from.
16 Your Honor sort of characterized the depositions as "Give me
17 all of the evidence that supports your claims." And
18 Mr. Caslin characterized it as "Tell us what you did." No.
19 It's not that at all.

20 I want to know what the claim is. Because
21 what the trade secrets are -- basically what we've heard so
22 far as to what the trade secrets are is it's, "Well,
23 everything was in your guys' heads; everything you guys
24 know." And they have put down on paper -- and I'm
25 struggling to get up to speed, I will tell the Court.

1 JUDGE HILYER: It takes a while to read that
2 interrogatory answer.

3 MR. SAVITT: There's a trade secret list that
4 has 100. And some of them -- there are a couple of them in
5 there that are sort of specific. Most of them, though, are
6 incredibly vague. They don't give you any idea what the
7 trade secret is.

8 And it's the same in the interrogatories.
9 And this gets at exactly Mr. Caslin's letter, which I read
10 over the last few days and was submitted with one of --

11 JUDGE HILYER: His article, you mean?

12 MR. SAVITT: His article. Because what he
13 talks about -- obviously Mr. Caslin has a practice in which
14 he represents defendants in these matters as well -- is a
15 defendant who doesn't get nailed down right at the outset
16 what exactly the trade secrets are that are allegedly being
17 misappropriated is an idiot -- that's sort of what his
18 letter says -- because otherwise you're going to be flailing
19 in the dark and the plaintiff is going to be free to sort of
20 change what the trade secret is, change up that, change up
21 this.

22 And the notion that Mr. Beardsley should have
23 to sit for his deposition without knowing exactly what the
24 trade secrets are that he allegedly misappropriated is just
25 flat unfair.

1 Again, it's not what he did he needs to be
2 told. What he needs to be told is what are the trade
3 secrets.

4 And again, what plaintiffs have done to date
5 -- and Mr. Caslin alludes to this in his article, too. He
6 says, "You know what they're going to try to do, they're
7 going to try to say something really broad and really vague.
8 And don't let them get away with that."

9 And that's why I believe counsel for Zillow
10 today has said -- or in this notice has said, We're not
11 going to argue anymore about those interrogatory answers or
12 argue anymore about these lists because I think we'll be
13 arguing about that until the sun explodes. Rather, let's
14 get a witness in a chair so they've got to answer some
15 questions and see what they're saying.

16 And again, it's not about what the evidence
17 is. It's about what are the trade secrets.

18 And Zillow identifies one that's of
19 particular importance to me in their papers. There's an
20 allegation that Mr. Beardsley stole a presentation from
21 Move. But nowhere are we told what the -- they obviously
22 know what -- and they say Move employees went and saw it.
23 Well, I'm entitled to know what the presentation is you're
24 talking about.

25 And this applies with about -- you know, if

1 you go down the list of trade secrets they've identified, it
2 applies with regard to many of them.

3 So we as the defendants, to prepare our
4 clients to testify and prepare our defense, are entitled to
5 know what the lay of the land is there as to what is
6 claimed. So that's -- I might have been long-winded but
7 that's point number one.

8 Point number two, I think your Honor is spot
9 on on the good cause on the state of discovery. We're going
10 to have wrangling amongst us regardless of whether or not we
11 have no standard or not. I think giving us guidance that
12 this is the kind of discovery the special master is inclined
13 to find appropriate is the right way for us to go.

14 And then the final point, hopefully as
15 short-winded as I was on the last, one of the problems I
16 have is I sort of look at the papers in this case, and your
17 Honor may have seen that in my -- in the short submission
18 that I put in on this. It's every time -- in every single
19 motion it begins with, "Defendants stole all of this,
20 defendants cheated here."

21 And we have to respond to that because, I
22 mean, we can't let it go. And that's where I think Mr.
23 Barnes is coming from here and why it's so troubling to him.

24 I don't read that finding -- we all can read
25 it differently. I don't read it as a finding that there was

1 an intentional destruction of evidence.

2 I read it as a finding that the court was
3 troubled by something that got destroyed and haven't figured
4 out why or how it happened. It certainly doesn't say
5 "destroyed evidence." It makes very clear that there were
6 deletions to certain documents. And look, we all read it.

7 But it's obviously Mr. Barnes' job to defend
8 Mr. Samuelson, not mine.

9 There's been no finding or anything close to
10 a finding that Zillow destroyed any evidence.

11 There's been no finding or anything close to
12 a finding that my client did anything with improper motive
13 or improper designs.

14 And when we talk about defendants, sometimes
15 it applies to one defendant and not the other. Either we're
16 going to be at every single hearing trying to back out and
17 parse out this defendant did this, this defendant did that,
18 or else we've got to stop this every single time repeating
19 the same stuff that I hear your Honor saying is not relevant
20 to your decisions.

21 JUDGE HILYER: Thank you. Zillow?

22 MS. FOSTER: Your Honor, I'm really tired of
23 the theatrics. If the plaintiffs here really want to
24 uncover evidence, if they have concerns, they would be
25 talking to me. They would not be waiting to lay stuff in

1 front of you. They'd be talking to me. And we'd be
2 resolving it because that's what I do. I hear an
3 allegation, we do our due diligence, we take care of it.

4 This is not about getting information. This
5 is about sitting here to defame Zillow, Beardsley, and
6 Samuelson. And I really object to that. And I object to
7 the entire record on that issue.

8 With respect to the discovery plan, your
9 Honor, first of all, with respect to the 30(b)(6), the issue
10 is that for months we have been asking to know what the
11 claims are. When we were in front of your Honor with
12 respect to the actual misappropriation Interrogatory No. 4,
13 you said you had a, quote, expectation that it would be
14 supplemented.

15 At that hearing we objected to the Beardsley
16 presentation. We said, "You know the Move employees. You
17 know the actual presentation, the event. You know the
18 actual document you claim to be misappropriated. Tell me so
19 that I can then go do my defense."

20 We have lots of other examples where they say
21 they know this, but they're not telling us.

22 I spoke with Mr. Caslin about it afterwards
23 when he first came in. I asked him, "Well, what
24 presentation was it? Where was this done?"

25 And then we got a supplemental response. Now

1 did that supplemental response go into any of the specific
2 claims and give me more information about them? No. It did
3 exactly what Mr. Caslin said in his article. It dumps a
4 bunch of information. In fact, it was a cut and paste from
5 their motion for approval of the second amended complaint,
6 just so that they can say they gave a second supplemental.

7 We're not getting additional information.

8 And I'm facing a discovery cutoff date of September 8th.

9 I've got primary witness disclosures May
10 26th.

11 And I've got expert witnesses that have to
12 get prepared.

13 Now some of this, clearly, the Move employees
14 know. But I told them listen, I'll give you -- I'll let
15 them see these documents because you tell me that the zPro
16 plan misappropriated your trade secrets. But then you give
17 me a list of 80 that you claim are implicated. Well, I look
18 at them and they're the thoughts of our chairman of the
19 board John Hanauer (phonetic). They're things like our
20 advertising plan. They're Find A Realtor.

21 And I'm going what does Find a Realtor have
22 to do with zPro?

23 I can't prepare a defense unless I understand
24 their claims. And once I understand their claims, I can
25 say, okay, this is the trade secret issue. Now I know I

1 need to explore this.

2 But what they're saying is no, wait until the
3 end of July -- which by the way, that's way past my primary
4 witness disclosures. That's after expert discovery starts.
5 -- and then I can start preparing my defense. How am I
6 supposed to prepare my witnesses when I don't know the
7 claims asserted against them?

8 We can't keep doing this, because you know
9 what's going to happen? I'm seeing they keep hiding the
10 ball. They keep holding back evidence. And then they're
11 going to give it to you in a hearing rather than give it to
12 me so I can prep my witnesses. They're going to wait until
13 the very end of this case when I don't have time for a
14 defense.

15 I need to pursue that 30(b)(6). And if
16 they've got additional information, later, fine. That is
17 really fine, your Honor. But let me have a witness so I can
18 try to understand these claims, and frankly, debunk some of
19 them, because I think what they've done is just thrown stuff
20 on paper. They have no intention or belief that some of
21 these are misappropriation. And only by getting a witness
22 in front of me can I cull that type of claim from something
23 that is -- that needs to be pursued and defended. The end
24 of July is simply too late.

25 With respect to the issuance of discovery,

1 I'm fine with what your Honor has said. Good cause, which
2 you've stated, is generally in line.

3 The one thing I would say is I'm very
4 concerned about the supplementation. The rule says that you
5 can have a new request for supplementation. In my
6 experience, what that means is you identify new material
7 information or changes, things like that. And it's
8 targeted.

9 What you've ordered is very broad. If we
10 continue this all the way down through to September 8th,
11 we're going to be in a terrible position in this case. And
12 both of us can be. You know, I can issue a supplementation
13 request to them.

14 But at present, we've got a completely
15 unlevel playing field. They collected their documents March
16 30. We collected ours between October -- excuse me; August
17 and November and produced those. We're being expected to
18 supplement all the way through April. But your Honor has
19 already ruled that I can't get information on those
20 misappropriation claims. So --

21 JUDGE HILYER: I'm sorry. What are you
22 talking about now?

23 MS. FOSTER: We had previously come to you
24 and said, listen, they've produced documents with respect to
25 their misappropriation claims up through March 30th. We

1 need them to produce documents at a later date because
2 there's going to be information in there that reflects, one,
3 it's no longer a trade secret or, two, they've modified
4 their plan so that there's no damages.

5 JUDGE HILYER: You're talking about the flip
6 side of the motion we were talking about earlier?

7 MS. FOSTER: Yes, I am.

8 JUDGE HILYER: Okay.

9 MS. FOSTER: And your Honor, I need that
10 information. And maybe we didn't phrase it as a
11 supplementation, and maybe we need to send that request out
12 and then come back.

13 JUDGE HILYER: It wasn't a supplementation.
14 It was on a motion to compel the first time that we dealt
15 with it.

16 MS. FOSTER: And if that's the case, then
17 I'll issue a request for supplementation and we'll do it
18 that way. But we need a level playing field. Because we
19 can't have a situation where --

20 JUDGE HILYER: You need a finish line that's
21 the same for both.

22 MS. FOSTER: Exactly, your Honor. We really
23 do. We can't have this.

24 And frankly, we really need a finish line
25 that doesn't end on September 8th.

1 Now there may be certain material things that
2 come up, and I would agree that we talk about it and say,
3 yes, you really do need this because of XYZ. Maybe it's an
4 updated financial statement. That's what happens in these
5 cases all the time.

6 But we do need a finish line and it has to
7 apply to both parties for that supplementation.

8 Glaser we've talked about, and proceeding
9 with depositions.

10 JUDGE HILYER: Let's talk about -- I'll go
11 back to you. Give me your responses to some of the
12 deadlines that I suggested. I suggested, for instance, that
13 if there's any new written discovery that it be done -- sent
14 out by April 30th. Any problem with that?

15 MS. FOSTER: I'm fine with that, your Honor,
16 and I'm fine with the ten days.

17 JUDGE HILYER: What about you guys? If you
18 uncover something and you say "We didn't have access,"
19 that's separately analyzed.

20 MR. CASLIN: We're okay with the deadline.

21 We respectfully disagree that's some burden
22 we have to meet before we can issue written discovery after
23 there being a new pleading. But the date, we're okay with,
24 your Honor.

25 MS. FOSTER: The question I have, your Honor,

1 is there is some existing discovery that the plaintiffs have
2 issued. We presented some of that. These time frames, the
3 ten days, we may be into it.

4 JUDGE HILYER: I don't know what you're
5 talking about.

6 MS. FOSTER: So for example, they issued, I
7 believe last week, some new discovery requests, requests for
8 production. Some of them are really quite broad. I believe
9 they would agree that there's no good cause for some of
10 those.

11 But to the extent we do have to come back and
12 argue that there's good cause, I'm just wondering when the
13 ten days would begin to run. Can we say that it begins to
14 run as of today?

15 JUDGE HILYER: You're taking up my suggestion
16 that we have a separate trigger for the good cause, then?
17 We don't just wait 30 days for the objections?

18 What do you think about that?

19 MR. CASLIN: I'm okay with that. Again, I
20 respectfully disagree with good cause, but the timing makes
21 sense.

22 MS. FOSTER: Okay.

23 MR. CASLIN: From the date of -- I'm sorry.
24 You're talking about document requests --

25 JUDGE HILYER: I'd say ten days from today,

1 not ten days from when it was served for something that's
2 already served.

3 MS. FOSTER: Right.

4 MR. CASLIN: We're okay with that.

5 JUDGE HILYER: And I realize that you wanted
6 to start depositions right away. But I suggested that
7 depositions would start -- I think I said May 4th.

8 MS. FOSTER: As a practical matter, I doubt
9 that we could get any noted before then.

10 JUDGE HILYER: And do you think that you guys
11 can figure out a deposition schedule among the lawyers?

12 I mean -- I guess that's kind of a moot
13 point. You're going to have to try. So why talk about it
14 beyond that, I guess.

15 And then so this finish line if you will,
16 this sort of drop dead date for discovery, when do you think
17 that should be?

18 MS. FOSTER: We need to get started on it
19 right away. So it can't be a future date. I would say --

20 JUDGE HILYER: Why can't it be a future
21 date?

22 MS. FOSTER: Because it's a lot of work. If
23 we put it out and we can't even get started --

24 JUDGE HILYER: Why don't we say now like June
25 30th. That's the freeze line.

1 MS. FOSTER: I'd make it April 1, your Honor,
2 because again, it's going to take us time to actually
3 collect the documents, get them processed, and get them out
4 there. And if we're going into depositions in May, we can't
5 wait. We've got to get that work done. Both of us need to
6 supplement immediately.

7 JUDGE HILYER: So you think supplementation
8 should finish --

9 MS. FOSTER: We'd collect as of and produce
10 as of April 1.

11 MR. CASLIN: I think April 1 is past, isn't
12 it?

13 MS. FOSTER: Yes, but you collect and then we
14 produce through April 1.

15 All I want to avoid is just waiting. We're
16 twiddling our thumbs waiting for that date. And it only
17 pushes the information getting collected faster?

18 JUDGE HILYER: Do you have an opinion about
19 that?

20 MR. LOVEJOY: Well, one of the things I
21 mentioned before is that Data Dashboard launched on April
22 7th. So we're interested in what happens with the launch
23 the Data Dashboard.

24 But to get back to the general suggestion of
25 April 1st, I don't see why that's an easier date to work

1 with than April 19th, which is now past.

2 MS. FOSTER: I'm fine with that.

3 JUDGE HILYER: What's your date you
4 preferred?

5 MR. CASLIN: June 30th, the one that you
6 identified, your Honor?

7 JUDGE HILYER: And what about you guys,
8 talking about the end point of supplementation?

9 MS. FOSTER: We can't wait.

10 MR. BARNES: Making it today is acceptable.

11 JUDGE HILYER: Okay. And then the case
12 schedule already said the discovery cutoff is September 8th,
13 right?

14 All right. Were you done? I'm sorry. I
15 didn't mean to interrupt you.

16 MS. FOSTER: I'm done, your Honor.

17 JUDGE HILYER: Do you want to make any more
18 comments about the discovery plan?

19 MR. CASLIN: Do you want me to respond to the
20 various allegations that went around?

21 JUDGE HILYER: I don't really want to hear
22 the argument about destroying evidence, if that's what you
23 mean.

24 I want to talk specifics about how we're
25 going to manage the case.

1 MR. CASLIN: Then let's talk about --

2 JUDGE HILYER: And let me add one more thing.

3 My observation about this is -- I'm going to interrupt you,
4 actually. I'm going to tell you my take. My take generally
5 is I think in commercial cases, the deal is in the
6 documents, almost always. And I think it makes a lot of
7 sense to say let's get the document discovery done. But
8 it's not going to be perfect, and I'm not saying that I am
9 going to hold it all down for that. But I generally like
10 that idea because I think commercial cases tend to rise and
11 fall with the documents. That's point number one.

12 Point number two, I think there are some
13 things you could start doing right now like
14 what's-her-face's deposition I just ruled on, where I don't
15 see that's a real document sensitive issue. And they're
16 ready to go, so why not start some depositions here within
17 the next couple weeks.

18 And then what I think overall, though, is
19 that at some point we're going to have to finish the
20 litigation on what documents are going to be produced in
21 this case and who's going to get an instruction there's a
22 missing document or whatever. We're going to have to have a
23 process to get that resolved. And I think it's going to be
24 mostly here that that happens. And that's going to involve
25 hearings and all that kind of stuff. And I think that's why

1 I got appointed to do that. So we all need to kind of be
2 thinking about that. And we need to think practically about
3 that and not what these rules say. That's why I suggested
4 the ten-day thing.

5 So I think the quicker that everybody tees up
6 all your document issues and we get going, the better off we
7 are. And I'm around, and so we'll have hearings when we
8 need to.

9 And I just hope we don't have to wait, you
10 know, in multiples of 30 days to get at that, because
11 otherwise, what I think is going to cause you the problem is
12 if we get a big backup on a whole bunch of documents and
13 then you get some real sensitive depositions, and now we're
14 in the middle of summer, and people are saying "I've got to
15 have this and I've got to have that." So the more we front
16 load that, the better off everybody is going to be.

17 MR. CASLIN: Thank you, your Honor. And I
18 think everyone, even though we disagree about almost
19 everything, agrees with that.

20 I'll tell you what our concerns are. I'm not
21 going to get into specific details and I'm not going to cite
22 any of my own articles, which again, will never be written
23 again.

24 We have a couple of concerns. One is that
25 we're going to put witnesses up for deposition, and we don't

1 think documents are done. We think there's going to be more
2 documents coming out as we -- I use the verb "extract";
3 they'll use the very "produce" -- as we get more documents
4 from the defendants.

5 And one of our concerns is these documents
6 are going to come out after the depositions, and then in
7 August they're going to say, "We now want to depose your
8 30(b)(6) again."

9 And I'm trying to avoid that so I don't have
10 to put up the same witness multiple times. Again, don't
11 forget, Ms. Glaser, who you just referred to, has already
12 been deposed. I know it was at the beginning, but I don't
13 think we should do beginning, middle, and end. I think
14 beginning and end. That's the more efficient way.

15 I also think -- and that's why we propose a
16 little more time for documents like you do -- that we should
17 get through the documents so everyone is prepared for their
18 depositions, because what I think will happen in this case
19 is they'll take a 30(b)(6) of our witness and say, "Give me
20 all your evidence of actual misappropriation." And then
21 there will be some kind of motion that says they can't come
22 in and say there's anything other than what that witness
23 testified to, or they'll file summary judgment, or something
24 will happen where we will be boxed into that deposition
25 transcript when we're nowhere done with discovery.

1 And to be candid with you, I intend on taking
2 no depositions until late June probably, because I don't
3 want to sit down with Mr. Samuelson or Mr. Beardsley or
4 Mr. Rascoff until I have all of the documents.

5 And I think there's still documents to get.
6 We got a thousand Retsly documents on Friday. We got a
7 thousand from Mr. Samuelson two weeks ago, maybe three weeks
8 ago. Documents are still coming in.

9 Ms. O'Sullivan and the crew at Perkins write
10 me letters all the time asking me for more documents from
11 us, and we're trying to run them down.

12 I just don't think we're done with documents.
13 And that's why we propose more focus on documents for a
14 while and then a more orderly approach to depositions later.

15 And then with respect to my final point, with
16 respect to the 30(b)(6), I have the same concern about doing
17 it now and then doing it again later.

18 I also have a very legitimate concern with
19 our same Rog 4 discussion. And in that Rog 4, it keeps
20 being called a cut and paste. I just went through it. It's
21 13 pages of references to specific testimony, to specific
22 documents, and summaries of what we think the stuff that was
23 misappropriated by the defendants was. It's actually pretty
24 good, I think. We worked hard on it.

25 And I know the defendants are going to

1 disagree, and if I was in their shoes, I would too. But
2 there's lot of information there about specifically what we
3 think was taken from us. And they don't need that to know
4 generally speaking where we are in the case. And they
5 talked about it in this conference room, Trulia, ListHub,
6 things like that.

7 So I think the more appropriate approach to
8 the 30(b)(6) is after we get more, all their documents and
9 then some of their testimony, do that 30(b)(6) later in the
10 discovery period, not sooner.

11 JUDGE HILYER: Anything else down on the end
12 there? Did I get everything from you guys?

13 MR. SAVITT: I think I've made my points,
14 your Honor. Thank you.

15 JUDGE HILYER: Mr. Barnes?

16 MR. BARNES: No, thank you.

17 JUDGE HILYER: Let's take a ten-minute break
18 while I write this down.

19 (Recess.)

20 JUDGE HILYER: Here's the new discovery plan.
21 First of all, as I indicated before, new written discovery
22 will require a showing of good cause, which you already know
23 will be established where it pertains to a new party or
24 primarily a new claim or allegedly undisclosed evidence or
25 as a follow-up to other written discovery. But new areas of

1 exploration will be looked upon with disfavor.

2 Second of all, all written discovery will be
3 filed by April 30th. Now obviously, if something comes up
4 and there's some follow-up to it, there could be an
5 exception to that. But that's going to require good cause
6 on top of good cause.

7 And I've actually revised my thinking just
8 thinking about how to get this resolved. I'm going to
9 require that objections for any reason to the written
10 discovery be filed within ten days. So whether it's good
11 cause or just a Rule 26 objection, you file it within ten
12 days. And the response will be due four days later, within
13 14 days. And then we're going to have a hearing.

14 And motions to compel will need to be filed
15 by May 20th. And my intention then is to have the period
16 between May 20th and May 30th to read it, review it, and
17 have a hearing or get on the phone or do whatever with you
18 that I need to so that -- I realize this is sort of a
19 perfect world, but this is a plan to get the written
20 discovery done by the end of May.

21 As far as the supplementation goes, the
22 supplementation date for everybody will be April 30th. You
23 need to serve your requests anyway, but that will be the
24 cutoff for supplementation. I don't require supplementation
25 beyond that.

1 Now if there's a specific reason why one
2 particular area of discovery needs to be followed up on,
3 then you make a showing as to why that should be an
4 exception. And I'll see -- if there's some particular
5 subject that you say we just have to know what happened in
6 May or June for this subject, then we can handle that on a
7 case by case basis.

8 As far as depositions go, depositions can
9 commence on May 4th, expert depositions on July 15th unless
10 the lawyers collectively agree that you need to change that.
11 Then I'll defer to what you all work out. But if you don't
12 work it out, then that's your default date, is the 15th.

13 And as far as this 30(b)(6) designation goes,
14 I'm going to allow the defendants to take the plaintiff's
15 30(b)(6) deposition on or after June 15th. And it will be
16 before Move has the chance to take the depositions of any of
17 the principals, which includes the corporate designation
18 from in Zillow and includes Mr. Beardsley and Mr. Samuelson.

19 And I think that's it.

20 Any questions about the mechanical
21 questions? I don't want to reargue it.

22 MS. FOSTER: Can I just ask, the objections
23 within ten days and then you say a response, that would be a
24 response from the issuing party as to their view of the
25 objections?

1 JUDGE HILYER: I guess what I ought to say is
2 that -- let's talk about this for a minute. Here's what I
3 want: I want you to meet, but I want you to get your motion
4 to compel -- I want you to act quickly. I want you to make
5 the objections quickly, I want you to meet quickly and try
6 to work it out. And if you can't work it out, I want you to
7 file it. But I don't want to push you so far that you're
8 not trying to work it out.

9 So let's talk about that. I mean, the
10 objections within ten days, I don't think that's a problem.
11 Should I just require that the motion be filed within a week
12 after that?

13 MR. LOVEJOY: I thought you were requiring
14 that it be by 5/20.

15 MS. FOSTER: 5/20 makes sense. And then just
16 a requirement that we meet and confer in good faith and
17 allow time for multiple iterations in the intervening
18 period.

19 MR. BARNES: I'm not sure I understood that.

20 MS. FOSTER: In other words, you have ten
21 days, and then there has to be a meet and confer on that.
22 And that should be promptly so that we can have room for
23 going back and forth a little bit before May 20th.

24 JUDGE HILYER: That's good. I shouldn't
25 micromanage it as much as I did the first time. That's a

1 better way to do it.

2 So motion within ten days, meet and confer,
3 and then motion to compel by May 20th.

4 MR. LOVEJOY: So the part about response four
5 days later, is that off the table?

6 JUDGE HILYER: Yes. Forget that. I was just
7 trying to tee up the discussions.

8 MR. LOVEJOY: And the objections would also
9 -- I understood that response part to be that's the part
10 where you say, "Here's what we are producing." But that's
11 incorporated in the ten day objections, you're also going to
12 say, "Here's what we're going to do."

13 JUDGE HILYER: Yes. Right.

14 MR. LOVEJOY: Great.

15 JUDGE HILYER: But before I said you'd object
16 to the good cause, that's not a good -- we should just say
17 if you have an objection, good cause or other discovery
18 objection, let's get it teed up and have it resolved
19 hopefully before the end of May.

20 And then on the 30(b)(6) designation,
21 everybody understand what I'm doing there?

22 MS. FOSTER: Yes, your Honor.

23 JUDGE HILYER: Okay. You will all put
24 together an order on that.

25 There's one other topic that I have to go

1 back into, and that is the question on the Trulia documents.

2 And --

3 MR. CASLIN: Can I make an offer?

4 JUDGE HILYER: Sure.

5 MR. CASLIN: You may reject it or may accept
6 it.

7 I want to make an offer of proof to you on
8 Trulia and tell you all the evidence that we have that we
9 think lends itself to our claim, because one of your
10 concerns is that we're just fishing. And we think that
11 we're not fishing.

12 JUDGE HILYER: Well, you're about to get a
13 lot of what you want, so maybe you ought to wait.

14 MR. CASLIN: Okay.

15 JUDGE HILYER: Frankly, what I'm influenced
16 by is I'm still a judge at heart. And you don't get
17 reversed for what you let in. You get reversed for what you
18 keep out.

19 So I have a natural inclination, I guess, to
20 say with regard to this -- and we're talking about Request
21 for Production No. 148, right, Mr. Caslin, is that what
22 you're talking about also?

23 MR. CASLIN: Yes, sir.

24 JUDGE HILYER: Which is the documents created
25 between January 1st, 2013 and July 20th, 2014 that analyze,

1 discuss, or otherwise refer to the impact that your merger
2 with Trulia would have on Move.

3 Point number one is I'm reluctant to
4 effectively exclude this by not having it be produced.

5 Point number two is in terms of the burden,
6 when I thought about this, I thought, you know, I think the
7 big burden with the FTC is going through the FTC
8 investigation, not collecting the documents after the fact.
9 So I'm not overwhelmed by the burden.

10 But for the third thing, just to have some
11 check on this, at this point I'm going to order that you
12 assemble the documents and submit them to me for an in
13 camera review. I may -- you may look at them and decide you
14 want to skip that step. Or if you don't, then I'll look at
15 them.

16 And I guess the one other thing that I'm
17 mindful of is the discovery standard is not just admissible
18 evidence, but materials that are reasonably calculated to
19 lead to the admission of evidence.

20 And there's also the damages issue.

21 So that's sort of my thinking. But I'm going
22 to order that you provide that information to me in
23 confidence, directly to me, sealed envelope, and I'll do an
24 in camera review and then determine if it's discoverable.

25 Okay?

1 MR. CASLIN: Thank you.

2 MS. FOSTER: Thank you very much.

3 JUDGE HILYER: So you'll get me an order
4 sometime next week.

5 (Whereupon, the proceedings were
6 concluded at 4:40 p.m.)

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CERTIFICATE OF REPORTER)
STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Elizabeth Patterson Harvey
Certified Court Reporter in
The State of Washington



My license expires December 21, 2015

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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,
and ERROL SAMUELSON, an individual,
CURTIS BEARDSLEY, an individual, and
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

~~PROPOSED~~ ORDER GRANTING-IN-
PART AND DENYING-IN-PART
ZILLOW'S MOTION FOR
RECONSIDERATION OF THE
SPECIAL MASTER'S MARCH 30, 2015
ORDER COMPELLING ZILLOW TO
PRODUCE DOCUMENTS REGARDING
ITS ACQUISITION OF TRULIA

1 THIS MATTER came before the Special Master on Zillow's Motion for Reconsideration
2 of the Special Master's March 30, 2015 Order Compelling Zillow to Produce Documents
3 Regarding Its Acquisition of Trulia. The Special Master, having considered the papers submitted
4 in connection with the Motion, the argument of counsel, and being fully advised, grants-in-part
5 and denies-in-part the motion for reconsideration and **ORDERS** as follows:

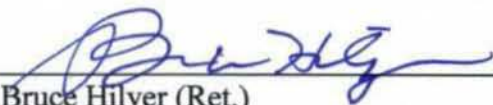
6 **DENIED** with respect to Zillow's request to reconsider the March 30, 2015 Order
7 granting Plaintiffs' Motion to Compel based on arguments that Plaintiffs' Sixth Set of Discovery
8 Requests (Nos. 142-154) are untimely. Plaintiffs' Second Amended Complaint adds claims
9 regarding Zillow's acquisition of Trulia there were not alleged in Plaintiffs' Amended
10 Complaint. Tr. 40:12-22; 42:1-8.

11 **DENIED** with respect to Request Nos. 148, 149, and 150. Tr. 43:20-44:24. Zillow shall
12 produce all non-privileged documents responsive to these document requests with the following
13 exception: documents regarding the FTC's investigation of the impact of the merger between
14 Zillow and Trulia on Move, which Zillow objected to based on the burden to collect the
15 documents and on relevance grounds, shall be submitted to the Special Master for in camera
16 review. The Special Master will determine if the documents should be produced to the plaintiffs.
17 Tr. 103:19-104:25.

18 **GRANTED** with respect to Request Nos. 143-147 and 151-154 on grounds of relevancy,
19 burden, and the sensitive nature of the defendants' trade secrets. Tr. 41:19-43:19

20 **DENIED as MOOT** with respect to Request No. 142 because Zillow previously
21 represented that it produced the requested documents.

22 ENTERED this 11 day of May, 2015.


Hon. Bruce Hilyer (Ret.)
Special Master

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Presented by:

s/ Jack M. Lovejoy

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