

FILED
KING COUNTY WASHINGTON

JAN 08 2016

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

SUPERIOR COURT 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., an Illinois corporation,

Plaintiffs,

vs.

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

Defendants.

No. 14-2-07669-0 SEA

ORDER ADOPTING DECEMBER 23, 2015
SPECIAL DISCOVERY MASTER REPORT
AND RECOMMENDATION ON
DEFENDANT ZILLOW'S MOTION TO
COMPEL (RESPONSES TO ZILLOW'S
TENTH REQUESTS FOR PRODUCTION,
RFPs 1-3 (LISTHUB AGREEMENTS))

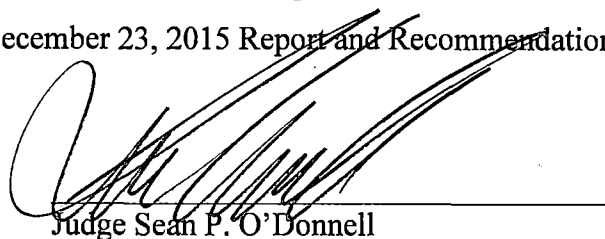
Special Master Hilyer filed his "Special Master Discovery Report" dated December 23, 2015 regarding the above-referenced issues

The matter is now before me. See CR 53.3 and this Court's June 15, 2015 Order Re: Amendment to Order Appointing Special Master.

Having reviewed the Special Master's report and recommendations, the Court ADOPTS Special Master Hilyer's December 23, 2015 Report and Recommendations.

IT IS SO ORDERED.

DATED January 8, 2016



Judge Sean P. O'Donnell

H | D | R

HILYER DISPUTE RESOLUTION

December 23, 2015

Judge Sean O'Donnell
KCSC, Judge's Mailroom #C-203
516 Third Avenue
Seattle, WA 98104
E: parkin.eric@kingcounty.gov

Re: *Move et al. v. Zillow et al.*, KCSC No. 14-2-07669-0 SE; Special Discovery Master Report and Recommendation on Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)).

Dear Judge O'Donnell:

Pursuant to your Orders in this case dated July 15, 2015 and July 28, 2015, regarding the procedures surrounding discovery motions, contained herein please find one of several of my Reports and Recommendations to you. These matters having been referred by the court and having come before the Discovery Master ("DM") regarding Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)), the DM has considered all briefing, including: Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)); Declaration of Katherine Galipeau in Support of Zillow, Inc.'s Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)); [Proposed] Order Granting Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)); Plaintiffs' Opposition to Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)); Declaration of Jack M. Lovejoy Re: Plaintiffs' Opposition to Defendant Zillow's Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements)); Defendant Zillow's Reply in Support of Motion to Compel (Responses to Zillow's Tenth Requests for Production, RFPs 1-3 (ListHub Agreements))

Oral argument was held on December 22, 2015, at the offices of Hilyer Dispute Resolution, 1000 Second Avenue, Suite #3000, Seattle, WA 98104. The DM reports and recommends as follows:

RELIEF REQUESTED ON DEFENDANT ZILLOW'S MOTION TO COMPEL (RESPONSES TO ZILLOW'S TENTH REQUESTS FOR PRODUCTION, RFPS 1-3 (LISTHUB AGREEMENTS)):

REQUEST FOR PRODUCTION NO. 1: Please produce an executed copy of the most recent agreement between ListHub and each online publisher with which ListHub currently has a Platform Services Agreement or similar contract.

DENIED.

ANALYSIS: Plaintiffs contend that their ListHub 2.0 strategy was thwarted by Defendants. Zillow contends that ListHub 2.0 strategy was unsuccessful in part because neither Zillow nor other "online publishers" were willing to grant Plaintiffs the access to their data that ListHub 2.0 would require. But since all agree that the ListHub 2.0 program was never implemented there is no cognizable discovery benefit to compel disclosure of the existing platform services Agreement. Thus, the discovery need is low, the invasion of current proprietary interest is high, and on balance the request to review the sensitive contracts is not warranted.

REQUEST FOR PRODUCTION NO. 2: Please produce executed copies of all current agreements between Plaintiffs and Homes.com.

DENIED.

ANALYSIS: This RFP presents the same issues as RFP No. 1 above, except that it narrows the request from about 160 third parties to one, arguably one of the most significant outside of the parties themselves. However, while the burden is lower, the discovery relevance is still lacking. Granting this request will disclose the terms of the current publisher's agreement with ListHub, but there is no information to be gained regarding the reasons why ListHub 2.0 did not succeed. Whatever data access provisions are in the current contracts are of obvious business interest between competitors, but it would not tend to prove or rebut Plaintiffs' claims nor would it be reasonably calculated to lead to the discovery of admissible evidence.

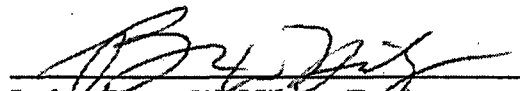
REQUEST FOR PRODUCTION NO. 3: Please produce executed copies of all current agreements between ListHub and a Multiple Listing Service ("MLS").

DENIED.

ANALYSIS: Analysis is the same as for RFP#1, except that the RFP applies to MLSs which there are approximately 800 throughout the country and which are also the subject of fierce

competition between Plaintiffs and Defendant Zillow. Thus, the concern over disclosure of proprietary data, in this case the terms of the contracts with the MLSs is relatively high, and without knowing the exact number of these agreements, it is safe to say that there are many, and the burden of production while not enormous would still be not de minimus.

IT IS SO REPORTED AND RECOMMENDED THIS 23 day of December, 2015.



Judge Bruce W. Hilyer (Ret.)
Special Discovery Master