

KING COUNTY  
THE HONORABLE JOHN CHEN  
SUPERIOR COURT CLERK  
ORAL ARGUMENT REQUESTED  
NOTED FOR HEARING 4/28/15  
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  
CURTIS BEARDSLEY, an individual, and  
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

**DECLARATION OF JAMES S.  
CAULFIELD IN SUPPORT OF  
PLAINTIFFS' MOTION TO UNSEAL  
THE SINGER DECLARATION AND  
ATTACHED WHISTLEBLOWER  
LETTER**

CONTAINS INFORMATION  
PROTECTED BY PROTECTIVE ORDER

EXHIBIT 3 SEALED PER COURT ORDER  
DATED \_\_\_\_\_

1 I, James S. Caulfield, declare as follows:

2 1. I am the Executive Vice President, General Counsel, and Secretary of Move, Inc.  
3 ("Move"). I have personal knowledge of the facts stated herein and could and would testify to  
4 them in Court if called upon to do so.

5 2. A true and correct copy of a letter our counsel sent to Zillow, Inc.'s Chairman and  
6 Board of Directors on September 11, 2008 is attached as Exhibit 1.

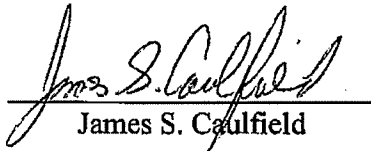
7 3. A true and correct copy of a letter sent by Zillow's counsel in reply on  
8 September 18, 2008 is attached as Exhibit 2.

9 4. A true and correct copy of the "Platform Services Agreement" executed between  
10 Threewise Corporation and Zillow in April 2011 is attached as Exhibit 3. At the time,  
11 Threewise Corporation operated ListHub, the nation's largest online real estate syndicator.

12 5. In September 2010, Move Sales, Inc., a wholly-owned subsidiary of Move,  
13 acquired Threewise Corporation. Move continues own and operate the ListHub business.

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

16 DATED April 17, 2015, in Westlake Village, California.

17   
18 James S. Caulfield

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to the following individuals registered to receive electronic notices by email transmission at the email addresses provided thereto.

**CM/ECF Participants:**

Susan E. Foster  
Kathleen M. O'Sullivan  
Katherine G. Galipeau  
Mary P. Gaston  
PERKINS COIE LLP  
*Counsel for Zillow, Inc.*

Clemens H. Barnes  
Esteria Gordon  
MILLER NASH GRAHAM & DUNN LLP  
*Counsel for Errol Samuelson*

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

David J. Burman  
Judith B. Jennison  
Joseph McMillan  
PERKINS COIE LLP  
[dburman@perkinscoie.com](mailto:dburman@perkinscoie.com)  
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*Counsel for Zillow, Inc.*

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*Counsel for Curt Beardsley*

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

DATED at Seattle, Washington on April 20, 2015.

/s/ Joanie Kohn  
Joanie Kohn, Legal Assistant  
Katy Albritton, Legal Assistant  
CABLE, LANGENBACH, KINERK & BAUER, LLP  
[joanie@cablelang.com](mailto:joanie@cablelang.com)  
[kalbritton@cablelang.com](mailto:kalbritton@cablelang.com)

# **EXHIBIT 1**

Weston Benshoof  
the Los Angeles Office of

# ALSTON & BIRD LLP

333 South Hope Street  
16th Floor  
Los Angeles, CA 90071-1410

213-576-1000  
Fax: 213-576-1100  
www.alston.com

Michael Zweiback

Direct Dial: 213-576-1163

E-mail: michael.zweiback@alston.com

September 11, 2008

***VIA OVERNIGHT MAIL***

Attn: Richard Barton - CEO and Chairman  
Zillow, Inc.  
999 Third Ave., Suite 4600  
Seattle, WA 98104

***Re: Unauthorized and Unlawful Misappropriation, Trespass and Use***

Dear Mr. Barton:

We are writing on behalf of our client, Move, Inc. and its affiliates ("Move").

As you know, Move operates a network of websites featuring a wide range of information on topics including listings of homes for re-sale, new construction, apartments for rent, moving, residential communities, finance, home improvement and more. In addition to the Move.com website, Move's network of websites includes the REALTOR.com® website, which Move operates on its own behalf and also on behalf of the National Association of Realtors (NAR). Move, along with its licensors, has gone to great lengths and significant investment to establish, maintain and offer the REALTOR.com® website and the other sites comprising its network of websites and is committed to protecting its associated rights, property and interests.

Move has become aware of, and objects to, Zillow's misappropriation of valuable content from, trespass to, and other unauthorized and unlawful use of, the REALTOR.com® website and associated systems and personal property. For example, Move has obtained information showing that on and after Wednesday, September 3, 2008, Zillow perpetrated a concerted campaign of content scraping from the REALTOR.com® website. IP (Internet Protocol) addresses from which this campaign was perpetrated include several registered directly to Zillow and also include several additional IP addresses apparently used by Zillow personnel acting via means external to Zillow's technology environment. We are also investigating additional content scraping occurring prior to the above-indicated timeframe.

The above-described conduct has diverted Move resources, has deteriorated the performance of the REALTOR.com® website, and perhaps other Move network websites, and has harmed Move and its businesses. Moreover, much of the content provided through the Move network of websites is licensed from third parties and the above-cited conduct not only damages Move's business and interests but theirs as well, threatens to disrupt and harm Move's contractual and business relationships, rights and interests with its licensors, and exceeds the scope of the authorized use of licensed and proprietary property alike.

Zillow is already well aware that any and all misappropriation, content scraping and trespassory conduct is expressly prohibited as to the REALTOR.com® website and all other Move network websites, by virtue of the terms and conditions that govern use of the site as well as state and federal laws. In particular access to and use of any Move website, including the REALTOR.com® website, is governed by the Terms of Use for the Move Family of Web Sites. Those Terms of Use provide in part:

You agree not to... except with the express permission of Move... transfer or sell any information, software, lists of users, databases or other lists, products or services provided through or obtained from the Move Network, including without limitation, *engaging in the practices of "screen scraping," "database scraping,"* or any other activity with the purpose of obtaining lists of users or other information (Emphasis added).

You are hereby put on notice that Zillow's actions against the REALTOR.com® Web site constitute a clear breach of the Terms of Use, trespass in violation of state law and computer fraud and abuse in violation of federal and state law, including 18 U.S.C. § 1030.

On behalf of Move, we demand that all misappropriation, trespassory conduct, content scraping, infringement of intellectual property rights and other unauthorized conduct pertaining to the REALTOR.com® website or any other Move network website cease immediately and permanently insofar as committed, commissioned, ordered, requested, authorized or permitted by Zillow, any Zillow affiliate or any of their respective directors, officers, employees, agents, consultants, contractors or representatives (each, a "Zillow Operative").


On behalf of Move, we further demand that Zillow, within ten (10) days of the date of this letter and in a signed writing addressed to Move, commit that it will at all times in the future comply with the above demands of this letter and that all data, images and other content gathered by or on behalf of any Zillow Operative from the REALTOR.com® website or any other Move network website, and all copies, excerpts and derivatives thereof, have been destroyed, as have all results whatsoever of any use of any of the foregoing.

Zillow, Inc.  
September 11, 2008  
Page 3

Nothing in this letter is to be construed as a full statement of all relevant facts, events and harms, nor as a waiver or compromise of, a release under, or in any way prejudicial to, any of Move's legal or equitable rights and remedies. Move specifically reserves all rights and remedies it may have against any and all Zillow Operatives and other responsible persons for any past, present or future loss or injury resulting from any and all unauthorized conduct, including an accounting of all sales attributable to all unauthorized use of the REALTOR.com® website, other Move network websites and all related content, and including recovery of Move's attorneys fees and other enforcement costs.

We look forward to receiving most promptly the signed statement referenced above and to your compliance otherwise with this letter.

Very truly yours,



Michael Zweiback

cc: Zillow's Board of Directors:  
Lloyd Frink  
Erik Blachford  
Bill Gurley  
Jay Hoag  
Gregory Maffei  
Gordon Stephenson

# EXHIBIT 2



September 18, 2008

David A. Bateman  
D (206) 370-6682  
david.bateman@klgates.com

**VIA EMAIL AND REGULAR MAIL**

Michael Zweiback  
Alston & Bird LLP  
333 South Hope Street  
16<sup>th</sup> Floor  
Los Angeles, CA 90071-1410

Dear Mr. Zweiback:


We are counsel to Zillow, Inc. and we write to thank you for your letter of September 11, 2008, alerting Zillow to the incident discussed therein. Although we do not agree with your characterization of that incident, we have investigated and determined that a Zillow employee did, indeed, access the Realtor.com website during early September. We can assure you that this employee was acting far beyond the scope of his authority in his collection of information from the Realtor.com site.

Pursuant to your request, Zillow has collected and destroyed all information obtained from the Realtor.com site during this incident, as well as any copies or derivative materials. Zillow has also instructed the employee about the proper collection of Internet materials, and is confident that this will not happen again.

Once again, we thank you for bringing this matter to our attention. As an online service provider, Zillow is equally committed to the protection of its intellectual property and legal rights, and respects the rights of others.

Very truly yours,

K&L GATES LLP

By   
David A. Bateman

DAB:ao

cc: Liam Lavery  
Richard Barton

# **EXHIBIT 3**

**FILED UNDER SEAL**