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THE HONORABLE JOHN CHUN
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CASE NUMBER: 14-2-07669-0 SEA

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND 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. .

NO. 14-2-07669-0 SEA

**RESPONSE TO PLAINTIFFS’
OPPOSITION TO ZILLOW’S
MOTION TO STRIKE PLAINTIFFS’
NOTICE OF SUPPLEMENTAL
SUPPORT AND DECLARATION**

1 The underlying motion here is Plaintiffs' effort to overturn the Special Master's ruling
2 on the scope of discovery regarding Zillow's acquisition of Trulia, a dispute that does not
3 involve Mr. Beardsley. But the allegations in Plaintiffs' response to Zillow's motion to strike
4 require Mr. Beardsley to submit this brief reply.

5 Mr. Beardsley was served in this case on March 17, 2015. He has been a party less than
6 one month. The Court has not issued any injunction against Mr. Beardsley; Plaintiffs' assertion
7 that a preliminary injunction issued against all of the defendants is wrong. The Court has not
8 drawn any negative inferences against Mr. Beardsley. And the Court has not concluded that
9 Mr. Beardsley (or anyone else, so far as we can tell on our review of the record) intentionally
10 destroyed evidence. Plaintiffs' representations in this regard are untrue.

11 Mr. Beardsley denies that he stole any database from Move, that he stole any data from
12 Move, or that he assisted anyone to violate the preliminary injunction; none of this is true. If
13 the Court wants to have an early trial on these issues, let's have it. But these allegations are
14 just that – allegations. More than that, the trumpeting of the allegations in the anonymous letter
15 has the hallmark of a star chamber: the accuser is unwilling even to acknowledge who he or
16 she is; and the anonymous letter's snide references to a "treasure map" and "Good hunting"
17 suggest vindictiveness as a motive for the letter.

18 While insisting that much of the case be filed under seal, Plaintiffs have nonetheless
19 leaked information of their choosing to the industry and business press, including the
20 anonymous letter. This is part of Plaintiffs' apparent strategy to use this case to try to discredit
21 Mr. Beardsley in the industry, to distract attention from the dysfunction at Move that was the
22 root cause of Mr. Beardsley's departure and much of Move's business failings. This explains
23 why Plaintiffs argue so hard to keep the anonymous letter in the public eye: once wrongfully
24 smeared a reputation is difficult to restore, because the damage is done. Mr. Beardsley reserves
25 all rights and remedies.

26 The notion that the anonymous letter is both false and yet still contains Zillow trade
27 secrets is neither "ironic", as Plaintiffs assert, nor difficult to grasp. An accusation that

1 discloses proprietary information and also claims, incorrectly, that such information was stolen
2 accomplishes both a falsehood and the disclosure of protected data. That is the situation with
3 the anonymous letter. By way of example, the letter describes what it itself characterizes as
4 secret databases within Zillow, but its allegations that the databases were stolen is false. The
5 reason that Plaintiffs haven't received anything in discovery about Mr. Beardsley's use of
6 stolen Move databases or data is simple: Mr. Beardsley has not used stolen Move databases or
7 data.

8 None of Plaintiffs' rhetoric explains why they filed the anonymous letter now.¹ It has
9 absolutely nothing to do with the discovery regarding Trulia and Goldman Sachs that is at
10 issue. Nothing in the anonymous letter relates in any way to Zillow's acquisition of Trulia or to
11 anything at all about Trulia or Goldman. Nothing in the letter suggests any destruction of
12 evidence—to the contrary, it alleges the continuing existence of evidence. These uncredited,
13 anonymous allegations have no place in the record on this motion.

14
15 ¹ The anonymous letter is plainly hearsay. Plaintiffs argue that statements in the letter are not
16 hearsay because they are “made with an executive’s knowledge” and “are Zillow
17 admissions.” (Opp. at 7:3-6.) Plaintiffs are incorrect. Washington Evidence Rule 801(d)(2)
18 provides, in relevant part, that a statement is not hearsay if it “is offered against a party and is
19 ... (iv) a statement by the party’s agent or servant acting *within the scope of the authority to*
20 *make a statement for the party*[.]” (Emphasis added.) This hearsay exception “applies to
21 situations where the agent was authorized *to make the statement* on behalf of the
22 principal.” *Barrie v. Hosts of America, Inc.*, 94 Wn.2d 640, 644 (1980) (emphasis
23 added). There is no evidence in the record here that the anonymous letter writer is or was a
24 speaking agent for Zillow, i.e., one who had the authority to make the statements therein. The
25 letter is therefore inadmissible hearsay. ER 801(d)(2)(iv); *Barrie*, 94 Wn.2d at 644-45
26 (affirming summary judgment; holding hearsay statements by business manager contained in
27 declaration not admissible under ER 801(d)(2)(iv) where no evidence of authorization to make
statements at issue on behalf of defendant entity); *Blodgett v. Olympic Sav. and Loan Ass’n*, 32
Wn. App. 116, 126, 646 P.2d 139 (1982) (holding hearsay statements by employee of
defendant company not admissible under ER 801(d)(2)(iv) because no evidence that employee
was “a speaking agent acting within the scope of his authority at the time of the
statement”). Plaintiffs’ reliance on *Sea-Land Serv., Inc. v. Lozen Int’l, LLC*, 285 F.3d 808, 821
(9th Cir. 2002) (*see* Opp. at 7:3-6), is misplaced. *Sea-Land* interprets and applies Federal Rule
of Evidence 801(d)(2)(D), which differs significantly from Washington Evidence Rule
801(d)(2)(iv). Among other things, unlike Washington ER 801(d)(2)(iv), the Federal ER
801(d)(2)(D) does not impose the speaking agent requirement.

