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Honorable John Chun
Motion Noted: 4/20/15
Oral Argument Requested
KING COUNTY
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CASE NUMBER: 14-2-07669-0 SEA

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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,

v.

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

Defendants.

Case No. 14-2-07669-0 SEA

SAMUELSON'S RESPONSE TO
PLAINTIFFS' MOTIONS TO REVISE
SPECIAL MASTER ORDERS ON TRULIA-
RELATED SUBPOENAS

SAMUELSON'S RESPONSE TO PLTS' MTNS
TO REVISE SPECIAL MASTER ORDERS RE
TRULIA-RELATED SUBPOENAS

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1 Plaintiffs have again seized an opportunity to present the Court with unwarranted and
2 inflammatory accusations against Samuelson, including—this time—filing an anonymous poison
3 pen letter that has nothing to do with the Trulia issue. Although Samuelson was not directly
4 involved in the motions that led to the Special Master Orders that Plaintiffs seek to revise, we
5 submit this memo to debunk these accusations and to emphasize how important it is for the Court
6 to review the documents Plaintiffs rely on, rather than relying on what Plaintiffs claim they say.

7 **1. There is no secret burner phone.**

8 Samuelson has already explained that he signed up for a monthly cell phone plan (which
9 was “prepaid” in the sense that he pre-authorized charges to his credit card), using his wife’s old
10 iPhone. Ex. A: Samuelson Declaration Opposing Plaintiffs’ Motion to Compel Zillow to Search
11 Employees’ Email (“Samuelson Dec.”) ¶¶ 3-6.¹ He got this new phone number on January 3,
12 2014, recognizing that Move might object to his use of his Move-paid phone for negotiating
13 whether to leave Move and join Zillow. The new phone number: 778-997-6502. Ex. B: invoice
14 for phone. Two days later, he notified Kathleen Phillips of Zillow about this “prepaid personal
15 cell phone.” And thereafter she (and others) called him on that 778 number. Ex. C: Declaration
16 of Robert Mittenthal Supporting Samuelson's Response to Motion to Compel Compliance with
17 Show Cause Order (“Mittenthal Dec.”) (*see* Ex. A thereto). Zillow sometimes jokingly referred to
18 this phone as Errol’s secret phone: “[Errol’s] secret Zillow cell is 778-997-6502.” Ex. D:
19 Zillow0003999.

20 The existence of this phone, and the phone number, were revealed to Plaintiffs in
21 discovery months ago; the invoices and the responsive phone records recovered forensically
22 were produced by the December 1, 2014 deadline. Ex. C: Mittenthal Dec. ¶ 12.

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¹ All exhibits are attached to the Barnes Declaration Supporting Samuelson's Response to Motions to Revise Special Master Orders re Trulia-Related Subpoenas, filed herewith.

1 **2. There was no "Trulia tip."**

2 With these Plaintiffs, it is very important to read the documents, not rely on what
3 Plaintiffs claim the documents say. The context of the supposed "tip" letter is that Samuelson
4 was negotiating about what his compensation would be if he took a job at Zillow. What
5 Plaintiffs argue is a "tip" about merger discussions between Zillow and Trulia is a tortured
6 interpretation of Samuelson's discussion about how evolution of the industry could affect the
7 value of Zillow's stock, which was to be a large part of Samuelson's compensation package.

8 What Samuelson actually wrote in the January 6, 2014 email was this: "the future we
9 discussed included an implicit assumption that there will be no significant moves by Zillow
10 competitors, the real estate industry or other constituents. I believe that the market is in only
11 temporary stasis. I expect that both the industry and the large online players (in real estate,
12 rentals, and finance) will behave and respond differently in 2014 / 2015." Singer Ex. 3 at EGS
13 0004247. He's talking about known activities and predictions for the real estate and on-line
14 landscape; it's not a "tip" about a proposed Move/Trulia merger. But to make it look like a tip,
15 Plaintiffs replace the actual parenthetical that follows the phrase "the large online players,"
16 which reads "(in real estate, rentals, and finance)," with their own parenthetical: "(Move and
17 Trulia)." Motion to Revise the Special Master's Order Quashing part of the Trulia Subpoena
18 ("Trulia Subpoena Motion") at page 2, line 24.

19 The phrase Plaintiffs rely on from Samuelson's email encompasses much more than the
20 Move and Trulia real estate portals. And Plaintiffs' replacement of Samuelson's actual
21 parenthetical with their own shows just how far they must go to make this email about the
22 general state of the real estate industry and Zillow's stock performance look like an insider "tip."

23 **3. Compensation and Indemnification.** Plaintiffs try to make it look like Zillow
24 set Samuelson's salary and agreed to indemnify him for inadvertent disclosures as a quid pro quo
25 for the hypothetical Trulia "tip" by saying that those terms were agreed to "[w]ithin days" of the
26 January 6, 2014 email. Trulia Subpoena Motion at page 3, lines 1-2. But the earliest email in

1 Singer Ex. 4, which is cited to support this statement, is dated February 27, 2014, almost eight
2 weeks later.

3 **4. "Private" email accounts.**

4 This claim has to do with Samuelson's personal gmail accounts. These accounts were
5 identified in Samuelson's answers to Plaintiffs' very first discovery requests, back in May 2014;
6 the reasons for and use of these accounts have been explained—several times; and thousands of
7 pages of responsive emails from these accounts have been produced to Plaintiffs. *See* Ex. A:
8 Samuelson Dec. ¶ 7; Ex. C: Mittenthal Dec. ¶¶ 2-6. After the court, at Plaintiffs' insistence, did
9 not allow Samuelson to see his own email to defend himself in the case (and excluded him from
10 the Preliminary Injunction hearing), the password to Samuelson's personal gmail account
11 (Samuelson@gmail.com), which he had been using before he left Move, was changed so
12 Samuelson could not have access to it. *Id.* at: Samuelson Dec. ¶ 7; Mittenthal Dec. ¶ 7. This was
13 done to avoid criticism that Samuelson was accessing his own Move-related email. *Id.* As a
14 result, Samuelson began using a different gmail account, errolgsamuelson@gmail.com, which
15 had previously been inactive. *Id.*

16 By then, Samuelson also had a Zillow email account. Ex. A: Samuelson Dec. ¶ 7. To
17 avoid Samuelson seeing emails he was supposed to be removed from under the preliminary
18 injunction, anything that came to him on his Zillow email account was automatically redirected
19 to Kathleen Phillips, then General Counsel for Zillow. *Id.* She screened the information to
20 determine if it was something that he should see in light of the preliminary injunction. *Id.* Those
21 emails he was allowed to see were then forwarded to the errolgsamuelson@gmail.com account
22 (which Samuelson began using on or about July 7, 2014 when he gave up access to his previous
23 personal email account). *Id.* There is nothing nefarious about Samuelson's personal email
24 accounts. There are very few people left in this country who do not have at least one personal
25 email account, and many of them—including senior executives at Move—use them at times for
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1 work. See Ex. E: Examples of multiple documents produced by Move in which high-level Move
2 executives have transmitted sensitive Move materials using personal email accounts.

3 **5. "Wiping" devices with "evidence erasure software."**

4 Samuelson has repeatedly recounted the detailed sequence of events with regard to his
5 Move devices, beginning with his April 2, 2014 declaration ¶¶ 13-18, in which he explains the
6 actions he took to preserve the privacy of personal information, such as financial and tax records
7 and sensitive materials about family, healthcare, and religious matters, which he had stored on
8 his Move-issued devices, while at the same time preserving for Move the business-related
9 information on those devices. Ex. F: Excerpts from 4/2/14 Samuelson Declaration. Contrary to
10 Plaintiffs' unsupported and vituperative reference to "evidence erasure software," Samuelson
11 simply followed advice he received from a Vancouver computer store that the best way to
12 achieve this was to "copy the personal data to a USB drive and to transfer the business data, and
13 then to delete my computer-user profile, using the Mac OS's secure deletion option." *Id.* at ¶ 14.

14 He created a copy of his personal information and then worked with Move personnel to
15 copy the Move data to a DVD or to Move's network for Move's use. After several attempts to
16 do so failed, they instead copied the Move data to a USB drive, which they used to transfer the
17 information to Cree's computer at Move. Samuelson then attempted to delete the Move
18 information from the USB drive, and he returned the work devices to Move.² *Id.* at ¶ 15.
19 Samuelson fully disclosed those actions to Move when he resigned.

20 After Samuelson resigned, Move inquired about an old laptop that had been replaced
21 several months earlier. Samuelson told Carol Brummer, Move's Executive Vice President of
22 Human Resources, that he had found the computer and would return it to Move after deleting
23 any personal information. And that's what he set out to do. When Judge Linde heard argument
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25 ² During Samuelson's process of transferring Move's electronically stored information, Samuelson inadvertently
26 retained a limited number of presentations on an external hard drive, which he did not access, and the drive has since
been returned to Move. His contact list, which also remained on the drive, and which is the only data he copied
from it, has since been purged from all of his devices.

1 **DECLARATION OF SERVICE**

2 The undersigned declares: on the 13th day of April, 2015, a copy of the foregoing
3 document was served on the parties' counsel, via email, at the addresses set forth below.

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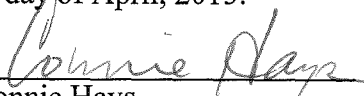
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21 I declare under penalty of perjury under the laws of the state of Washington that the
22 foregoing is true and correct.

23 Signed at Seattle, Washington this 13th day of April, 2015.

24 
25 Connie Hays
26 Legal Assistant