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CASE NUMBER: 14-2-07669-0 SEA

HONORABLE SEAN O'DONNELL

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,  
CURTIS BEARDSLEY, an individual, and  
DOES 1-20,

Defendants.

No. 14-2-07669-0 SEA

DEFENDANT ZILLOW'S AMENDED  
ANSWER AND COUNTERCLAIMS TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT

**PUBLIC REDACTED VERSION**

Defendant Zillow, Inc. ("Zillow") amends its Answer to Plaintiffs' Second Amended  
Complaint to update its affirmative defenses and assert counterclaims against Plaintiffs.

DEFENDANT ZILLOW'S AMENDED ANSWER AND  
COUNTERCLAIMS TO PLAINTIFFS' SECOND  
AMENDED COMPLAINT – 1

LEGAL127453394.1

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1 Zillow's Answer to Plaintiffs' Second Amended Complaint, filed on March 26, 2016, is  
2 otherwise unchanged.  
3

## 4 5 **COUNTERCLAIMS**

6  
7 By way of further response, Zillow alleges as follows and asserts the following  
8 counterclaims against Plaintiffs:  
9

## 10 11 **FACTUAL ALLEGATIONS**

### 12 13 **A. Background**

14  
15 1. This is a trade secrets case involving the highly-charged and rapidly changing  
16 online real estate industry. Move, Inc. ("Move") and Zillow are fierce competitors in the  
17 online real estate market. Move operates its real estate portal, realtor.com, on behalf of the  
18 National Association of Realtors ("NAR"). RealSelect, Inc. and Top Producers Systems  
19 Company are subsidiaries of Move; Realtors Information Network is a subsidiary of NAR.  
20

21  
22 2. On March 17, 2014, Plaintiffs filed suit against Zillow, Errol Samuelson, and  
23 Does 1-20, alleging, amongst other things, misappropriation of trade secrets, breach of  
24 fiduciary duty, and breach of contract. On March 16, 2015, Plaintiffs amended the  
25 Complaint to add additional claims against the Defendants, and to add an additional party,  
26 Curt Beardsley.  
27

28  
29 3. Given the nature of this case, hundreds of thousands of pages of highly  
30 confidential documents have been produced in discovery, and more such documents will be  
31 produced as the case progresses. Throughout the litigation, the parties have acknowledged  
32 the need to zealously protect this highly confidential information, both from each other and  
33 from public disclosure. To address this need, the parties entered into a detailed multi-  
34 layered confidentiality agreement that was approved by the Court ("Protective Order") to  
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1 ensure that both parties' confidential information is protected from public disclosure,  
2 including by filing it under seal. Among other things, the Protective Order requires that  
3 each party "will mark as 'CONFIDENTIAL,' 'ATTORNEYS' EYES ONLY,' or  
4 'OUTSIDE COUNSEL EYES ONLY' another party's materials containing trade secret  
5 information" or "information protected by a written non-disclosure or confidentiality  
6 agreement."  
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12 4. Pursuant to the Protective Order, both parties repeatedly have filed  
13 confidential materials under seal during the course of litigation.  
14  
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16

17 **B. Plaintiffs Receive an Anonymous Letter Containing Zillow's Highly**  
18 **Confidential Information, and Proceed to Publicly File and Publicize the Letter.**  
19

20 5. On April 9, 2015, Plaintiffs' counsel received an anonymous letter in the mail  
21 ("the Letter"). The Letter informs the reader that it is a "treasure map" of clues about  
22 Zillow's "secret programs" and highly confidential business strategies. The Letter advises  
23 the reader to "shred [the Letter] once you have read it."  
24  
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26

27 6. Capitalizing on the opportunity, and intent on disparaging Zillow and  
28 disclosing its secrets, Plaintiffs' counsel forwarded the Letter to Plaintiffs who distributed it  
29 within their organizations. With reckless disregard to the veracity of the Letter or the  
30 confidentiality of its content, Plaintiffs then rushed to publicize the Letter to the world by  
31 filing it with the Court in a bogus court filing and then by distributing the Letter to certain  
32 third parties whom Plaintiffs knew would widely disseminate the Letter to the general  
33 public.  
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41 7. Within hours, Plaintiffs filed a Notice of Supplemental Support ostensibly in  
42 connection with two pending discovery motions. The unsigned two-page Letter was  
43 submitted as Exhibit A to the Declaration of David Singer ("Singer Declaration") in support  
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47

1 of the Notice of Supplemental Support. The Letter, which was filed in the public record,  
2 was not filed under seal and was not filed with any redactions.  
3

4  
5 8. The Letter contains none of the requirements of RCW 9A.72.085 for filing an  
6 unsworn statement, and had no relevance to the pending discovery motions.  
7

8  
9 9. On its face, the Letter reveals Zillow's confidential and trade secret  
10 information. Yet Plaintiffs did not provide Zillow any advance notice that they would be  
11 filing the Letter in open court or distributing it to the public. Nor did Plaintiffs notify Zillow  
12 that they had received the Letter before filing it, even though the Letter was responsive to  
13 several pending discovery requests that Zillow had served on Plaintiffs. The Letter also  
14 contains false and defamatory statements about Zillow.  
15  
16

17  
18 10. In fact, given the discovery they had received during this litigation, Plaintiffs  
19 knew or had reason to know that Zillow had previously designated several topics discussed  
20 in the Letter as confidential under the parties' Protective Order.  
21

22  
23 11. Instead of complying with their obligations under the Protective Order or  
24 investigating the veracity of the Letter's allegations, Plaintiffs chose to ambush Zillow and  
25 cause it maximum harm by publicly filing a document containing both Zillow's highly  
26 confidential and trade secret information and false and defamatory statements about Zillow.  
27  
28 As the Court later determined, the Letter had no relevance to the pending discovery motions  
29 that Plaintiffs had used as a nominal basis for filing the Letter. Plaintiffs thus had no  
30 plausible reason to file the Letter in open court other than to cause Zillow harm, while trying  
31 to whitewash their actions under color of judicial authority.  
32  
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34  
35 12. Zillow immediately took action to protect its confidential information. After  
36 discovering that Plaintiffs had publicly filed the Singer Declaration attaching the Letter,  
37 Zillow advised Plaintiffs that it should have been submitted under seal and requested that  
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1 Plaintiffs immediately stipulate to file the Singer Declaration under seal. Zillow provided  
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3 Plaintiffs a proposed stipulation for sealing the document, in a form that had previously been  
4  
5 used by the parties. But over the course of the afternoon—when time was of the essence to  
6  
7 remove a document that Plaintiffs intentionally and maliciously had put in the court record,  
8  
9 but which had not yet appeared on the Court’s publicly available Electronic Court Records  
10  
11 (“ECR”) system—Plaintiffs would not stipulate to sealing the Letter.  
12

13 13. Shortly after filing the Letter, but before the ECR system had made the Letter  
14  
15 available for download to the public, Plaintiffs (or an agent acting on Plaintiffs’ behalf)  
16  
17 distributed to third parties the Notice of Supplemental Support it had filed in its entirety,  
18  
19 including the Letter, in a manner calculated to ensure that it would be publicized to as large  
20  
21 an audience as possible in the industry, so as to inflict the greatest harm possible to Zillow.  
22  
23 But for a delay of several days between the date of filing and the date when the filing was  
24  
25 available for public download on ECR, Zillow would never have learned of Plaintiffs’  
26  
27 intentional distribution of the Letter to third parties and the general public. But because of  
28  
29 this delay it is readily apparent that Plaintiffs purposely and intentionally distributed the  
30  
31 Letter to third parties in a manner designed to ensure the Letter was widely disseminated.  
32

33 14. As a result of Plaintiffs’ decision to publicly disseminate the Letter to third  
34  
35 parties, the Letter was published and republished in full on several online news outlets, such  
36  
37 as inman.com and geekwire.com, with some sites even featuring audio or video reporting  
38  
39 regarding the Letter. Several of these outlets quoted a Move spokesperson regarding the  
40  
41 contents of the Letter.  
42

43 15. Move’s comments on the Letter, which were publicly repeated and widely  
44  
45 disseminated, intentionally caused further harm to Zillow because the comments necessarily  
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1 implied that Zillow had destroyed evidence relevant to the case. Zillow has not intentionally  
2 destroyed evidence.  
3

4 16. Plaintiffs deliberately disclosed and misappropriated Zillow's confidential  
5 information even after Zillow put Plaintiffs on notice that the Letter contained confidential  
6 and trade secret information.  
7  
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10 17. Plaintiffs deliberately and recklessly publicized false and defamatory  
11 statements about Zillow, even after Zillow put Plaintiffs on notice that the Letter contained  
12 many inaccuracies.  
13  
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15

16 18. Through their counsel, Plaintiffs have acknowledged that they would not be  
17 "ashamed or embarrassed" of their decision to publicize the Letter and the confidential and  
18 trade secret information of Zillow that is contained in the Letter.  
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22 19. The publication of the Letter has had serious negative effects on both  
23 Zillow's reputation and its ability to compete against Move and others.  
24  
25  
26

27 **C. The Letter Discloses Zillow's Highly Confidential and Trade Secret**  
28 **Information.**  
29

30 20. The first court day following Plaintiffs' filing of the Letter, Zillow filed an  
31 emergency motion to seal the confidential portions of the Letter. After briefing and  
32 argument, the Court found that the Letter contained Zillow's confidential information and  
33 trade secrets, and ordered that the public version of the Letter be redacted. The Court later  
34 affirmed its conclusion that the Letter contains Zillow's confidential information and trade  
35 secrets, and made clear that the Letter is subject to the Protective Order governing this  
36 action.  
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43 21. Pursuant to the Protective Order, Zillow demanded that Plaintiffs treat the  
44 Letter as confidential, mandating that the unredacted Letter be recovered and no longer  
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47



1 circulated within the Plaintiffs' organizations, and that Plaintiffs take steps necessary to  
2 recover the unredacted Letter from those to whom it was distributed. Despite the clear  
3 Court ruling holding that the Letter contained Zillow's trade secrets, Plaintiffs refused.  
4

5  
6 22. As a result of Plaintiffs' actions, the unredacted Letter to this day remains  
7 available on the Internet and, on information and belief, within Plaintiffs' organizations. On  
8 May 15, 2015, the Special Master entered an Order finding that the Protective Order applies  
9 to the Letter "which has been found by the Court to contain Zillow's confidential  
10 information and trade secrets." The Special Master also ordered Plaintiffs to comply with  
11 the Protective Order by, amongst other things, (a) disclosing the known and identifiable  
12 recipients of the Letter, (b) informing those recipients that the Letter contains confidential  
13 and trade secret information subject to the Protective Order, (c) taking all reasonable steps to  
14 obtain the return or removal of the Letter from the recipients (including their websites), (d)  
15 providing a statement of pertinent facts relating to Plaintiffs' disclosure of the Letter, and (e)  
16 making reasonable efforts to prevent *further* disclosure.  
17  
18

19 23. Although the Letter contains many inaccuracies and false and defamatory  
20 statements, it also discloses highly confidential and trade secret information about Zillow's  
21 proprietary systems, programs, business practices, and strategies. As found by the Court,  
22 these trade secrets are set forth in two of the final three paragraphs of the Letter, which  
23 discuss internal programs, practices, and strategies Zillow uses to maintain its competitive  
24 positioning as a real estate portal, as well as a previously unannounced new product and  
25 strategy.  
26

27 24. The few employees who were made privy to the confidential and trade secret  
28 information referenced in these paragraphs of the Letter had previously signed a  
29 confidentiality agreement as a condition of employment at Zillow to ensure that this  
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1 information is not misappropriated, even after such individuals are no longer Zillow  
2 employees. And as a general practice, Zillow takes care of its confidential information by  
3 limiting access to certain individuals, requiring computers to be password protected, and  
4 locking and storing sensitive documents and files in safe locations.  
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9 **1. The Third to Last Paragraph in the Letter Discloses Highly Confidential**  
10 **Trade Secret** [REDACTED]  
11 [REDACTED]  
12

13 25. The main real estate portals (Homes.com, Trulia.com, Zillow.com, and  
14 Move's Realtor.com) depend in large part on real estate listings data, which is generated by  
15 millions of individual real estate agents, aggregated by roughly 800 different Multiple  
16 Listing Services ("MLSs") and then distributed to hundreds of online platforms. The data is  
17 dynamic, becoming stale quickly as homes sell or prices change. Consumers, agents, and  
18 brokers demand complete and accurate information, and that demand fuels the competition  
19 within the industry. As a result of its strategic affiliation with the National Association of  
20 Realtors ("NAR"), Move has long claimed a data accuracy advantage and, indeed, Move's  
21 advertising focuses on data accuracy, claiming that realtor.com has the most "accurate" and  
22 complete listings data and is updated every 15 minutes.  
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32 26. [REDACTED]  
33 [REDACTED]  
34 [REDACTED]  
35 [REDACTED]  
36 [REDACTED]  
37 [REDACTED]  
38 [REDACTED]  
39 [REDACTED]  
40 [REDACTED]  
41 [REDACTED]  
42 [REDACTED]  
43 [REDACTED]  
44

45 27. The third to last paragraph of the Letter contains many inaccuracies, but it  
46 also discusses and reveals various proprietary systems, practices, business information and  
47



1 trade secrets of Zillow relating to its [REDACTED] Specifically, this paragraph  
2 reveals the existence of LSS and LSSv2, [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8  
9 28. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22  
23 29. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED]  
30 [REDACTED]  
31 [REDACTED]  
32 [REDACTED]  
33 [REDACTED]  
34 [REDACTED]

35 [REDACTED] LSSv2 does not  
36 compare data obtained from realtor.com or any other site. Nor does LSSv2 use offshore  
37 labor. [REDACTED]  
38 [REDACTED]  
39 [REDACTED]  
40 [REDACTED]  
41 [REDACTED]

42  
43 30. The Letter reveals not only the existence of these confidential programs by  
44 identifying them by name, but also reveals that they relate to Zillow's efforts to maintain  
45 listing quality in a market where listing quality is a key competitive differentiator and [REDACTED]  
46  
47

[REDACTED]

31. Zillow spent a considerable amount of resources developing these programs.

[REDACTED]  
[REDACTED] knowledge and information about the LSS and LSSv2 programs have been kept highly confidential by Zillow and is only disclosed within Zillow on a very limited need-to-know basis.

32. Zillow guarded this confidential and trade secret information so closely because, in addition to the above, if Zillow's competitors were to find out about either LSS or LSSv2, those competitors could use such knowledge to compete against Zillow by, among other things, comparing and critiquing the methods used by Zillow to their own (e.g., Realtor.com obtains listings direct from MLSs as a result of its relationship with National Association of Realtors) or developing similar systems for their own sites (e.g., Homes.com and other non-Move related sites have similar [REDACTED]). Upon

1 information and belief, such outcomes are occurring now as a result of Plaintiffs'  
2 disclosures.  
3

4 33. Plaintiffs' decision to disclose and publicize the third to last paragraph of the  
5 Letter has already caused Zillow harm by straining the relationships Zillow maintains with  
6 its key third party partners, including agents, and by damaging Zillow's reputation in the  
7 industry.  
8  
9

10 34. In short, the details revealed in the third to last paragraph of the Letter were  
11 not publicly known, and Zillow derived significant economic value from having this  
12 information remain confidential.  
13  
14

15 35. Neither Curt Beardsley nor Errol Samuelson were involved in the creation,  
16 development, or implementation of these programs.  
17  
18

19 36. Throughout this litigation, Zillow has designated similar information relating  
20 to its listings accuracy strategies and programs as confidential under the Protective Order.  
21 Plaintiffs therefore knew or had reason to know that the information in this paragraph was  
22 confidential under the Protective Order.  
23  
24

25 **2. The Last Paragraph in the Letter Discloses Highly Confidential and**  
26 **Trade Secret Information Relating to Zillow's Efforts to Compete**  
27 **Against Move's ListHub Product.**  
28

29 37. The last paragraph of the Letter discusses various proprietary and highly  
30 confidential systems, practices, and business information of Zillow.  
31  
32

33 38. Specifically, this paragraph references a highly confidential and ongoing  
34 product development effort at Zillow. Earlier this year, Zillow announced the launch of  
35 Zillow Data Dashboard, which allows MLSs and brokers to provide Zillow with direct feeds  
36 and provides limited reporting functionality. [REDACTED]  
37  
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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6  
7 39. Zillow derives economic benefit by not having this new capability being  
8 prematurely announced. With this knowledge ListHub and others may change their  
9 competitive positioning vis-à-vis Zillow. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18  
19 40. This paragraph reveals several operational details about Zillow's Dashboard  
20 project that were highly confidential and/or trade secret information, including (a) the  
21 previously unannounced fact that Zillow was developing a product intended to compete  
22 directly with ListHub; (b) the identity of those who developed this program and these  
23 practices, which itself is valuable information for competitors wishing to replicate or  
24 frustrate Zillow's efforts by recruiting or "outing" these employees; and (c) the business  
25 strategies and contingency plans that Zillow had prepared in anticipation of its contract  
26 negotiations with ListHub.  
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34 41. Now that Plaintiffs have disclosed and publicized this information, Zillow's  
35 competitors, particularly Move, Inc., will have the ability to preempt this product within the  
36 industry by, for instance, upgrading its ListHub offering, modifying the requirements for  
37 using ListHub, or otherwise frustrating the product's appeal in the industry. This has caused  
38 and will cause Zillow significant harm.  
39  
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44 42. [REDACTED]  
45 [REDACTED]  
46 [REDACTED]  
47 [REDACTED]

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5 43. Even if the Letter's author had not himself confirmed within the Letter that  
6 the information in the letter included "secret" Zillow information, Zillow has designated  
7 throughout this litigation similar information relating to its listings accuracy strategies and  
8 programs as confidential under the Protective Order. Therefore, Plaintiffs at all times knew  
9 or should have known upon the Letter's receipt that the information in this paragraph was  
10 confidential under the Protective Order.  
11

12  
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15  
16 44. Nothing about the product referenced in the last paragraph of the Letter was  
17 developed based on Plaintiffs' confidential information.  
18  
19  
20

21 **D. The Letter Contains False and Defamatory Statements about Zillow.**

22  
23 45. The Letter also contains numerous false and defamatory statements about  
24 Zillow, some of which are discussed in more detail below.<sup>1</sup>  
25

26  
27 46. The Letter states that Jessica Manni "was terminated mysteriously around the  
28 time [Plaintiffs] started asking for background on Errol's whereabouts," which is false, and  
29 implies that Zillow was involved in a cover-up, which disparages Zillow's reputation.  
30 Ms. Manni was a contract employee whose departure from Zillow was unrelated to this  
31 litigation.  
32  
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36  
37 47. The Letter states that Mr. Beardsley "has copies of Move's private MLS  
38 contact database, listing count database and other databases stolen from Move. He uses a  
39 google docs account to keep them off of his work computer." Those statements necessarily  
40  
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43

44  
45 <sup>1</sup> The Letter also contains several false and defamatory statements alleging that Zillow and  
46 Mr. Samuelson violated the Preliminary Injunction. As the parties' agreed to settle all claims  
47 regarding compliance with the Preliminary Injunction, Zillow is not relying on those allegations to  
pursue the claims stated herein.

1 imply that Zillow has participated in and intentionally benefited from multiple databases that  
2  
3 Mr. Beardsley allegedly took with him when he left Move and routinely used in the course  
4  
5 of his work, further disparaging Zillow's reputation.

6 48. Further, Will Hebard (not "Hebbard") is Zillow's Manager, Listing Quality  
7  
8 Data, and is responsible for maintaining a Zillow spreadsheet (not a database) on Google  
9  
10 Drive, which is entitled "MLS/Broker Feed Availability." This is not a "stolen" Move  
11  
12 database; nor was it created from a "stolen" Move database. The contrary statements in the  
13  
14 Letter necessarily imply, falsely, that Zillow has participated in and intentionally benefited  
15  
16 from "stolen" databases that Mr. Beardsley took with him from Move, also disparaging  
17  
18 Zillow's reputation.  
19

20 49. The Letter also states that with respect to "secret programs called 'LSS' and  
21  
22 'LSSv2'[,]. . . . Zillow illegally uses the realtor.com website to benchmark their listing  
23  
24 count and figure out what listings are missing." The statement that Zillow acts "illegally" is  
25  
26 false and disparages Zillow. [REDACTED]  
27

28 [REDACTED] Neither of these programs, nor any others operated  
29  
30 by Zillow, "illegally use[ ] the realtor.com website to benchmark their listing count and  
31  
32 figure out what listings are missing." That statement is false.  
33

34 50. The Letter states that "They also illegally access IDX listing data from the  
35  
36 Diverse Solutions sub company (stolen from agent websites) to compare against data  
37  
38 scraped from realtor.com. It's run from offshore so it can't be traced back to Seattle. The  
39  
40 program was improved after Errol [Samuelson] arrived at Zillow and uses offshore labor to  
41  
42 steal the data." Those statements are false and disparage Zillow insofar as they accuse  
43  
44 Zillow of acting illegally, using "offshore" labor to operate supposedly illegal programs  
45  
46 covertly, and stealing data.  
47

1           51.     The Letter states that “The listing quality is also generated from this [stolen]  
2 data and output to the executives via a report in a system called Tableau. The tableau listing  
3 quality reports were used to plan the assault on ListHub by determining exactly who was  
4 sending data to Zillow via listhub via the scraping efforts and comparing to the agent IDX  
5 data used against the terms of service for that data.” These statements are false and further  
6 imply, falsely, that Zillow uses and benefits from “stolen” data, which disparages Zillow.  
7 Tableau is a web-hosted software program that Zillow licenses for use by its employees to  
8 construct reports and/or present information. Reports from Tableau are not constructed  
9 using stolen data. Nor is Zillow’s lawful strategy of pursuing listing data from sources other  
10 than ListHub the result of “scraping efforts.”  
11

12           52.     The Letter states that “The sales team also scrapes the customer lists from  
13 realtor.com to use as target customer call lists for the Zillow sales team. . . . (David Lindau .  
14 . . imported the stolen data into the Zillow salesforce database). Jon Mabe used his email  
15 account to share these files around to multiple people at Zillow.” Those statements are false  
16 and accuse Zillow of using and benefiting from stolen data, which disparages Zillow.  
17 Zillow does not “scrape[ ] . . . customer lists from realtor.com.” [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20           [REDACTED] This information was neither a customer list,  
21 nor stolen information. This information was not uploaded to a salesforce.com database.  
22 Moreover, neither the salesforce.com administrators, Jon Mabe, nor David Lindau were  
23 involved in this program.  
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1 **E. Chris Crocker Acknowledges Writing the Letter, Despite his Contractual and**  
2 **Statutory Obligations Not to Disclose Zillow's Confidential Information.**

3  
4 53. Chris Crocker wrote and sent the Letter to Plaintiffs. Until recently, Zillow  
5  
6 employed Mr. Crocker as its Vice President of Strategic Relations beginning in December  
7  
8 2012. On February 11, 2015, Zillow relieved Mr. Crocker of his employment duties and  
9  
10 placed him on paid administrative leave. His paid administrative leave ended on April 13,  
11  
12 2015—after he wrote the Letter to Plaintiffs and Plaintiffs disclosed it.

13  
14 54. As a condition of his employment, Mr. Crocker signed and entered into a  
15  
16 binding contract with Zillow entitled “Confidential Information, Inventions, Nonsolicitation  
17  
18 and Noncompetition Agreement” (“CINNA”). Pursuant to the CINNA, Mr. Crocker agreed  
19  
20 to be bound by the confidentiality restrictions (and other obligations) “[i]n consideration of  
21  
22 [his] employment as an employee with Zillow . . . any stock or stock options which may be  
23  
24 granted to [him], and other good and valuable consideration, the receipt and sufficiency of  
25  
26 which are hereby acknowledged.” By its terms, the agreement survives even though Mr.  
27  
28 Crocker is no longer employed by Zillow. Mr. Crocker's Separation Agreement and  
29  
30 General Release also reaffirmed his obligation to maintain the confidentiality of Zillow's  
31  
32 confidential information.

33  
34 55. The CINNA contains a valid and enforceable confidentiality provision, which  
35  
36 explicitly defines confidential information to include information that relates to Zillow's  
37  
38 business, is not generally available to the public, and was conceived, compiled, developed,  
39  
40 discovered or received by, or made available to, Mr. Crocker during his employment with  
41  
42 Zillow.

43  
44 56. The CINNA also provides that Mr. Crocker is prohibited from using,  
45  
46 disclosing, publishing, or distributing any confidential information without written  
47

1 authorization from Zillow. The CINNA requires that Mr. Crocker maintain Zillow's  
2 information as confidential regardless of whether such information constitutes a trade secret.  
3

4  
5 57. Plaintiffs acknowledged in court filings its awareness of the fact that a  
6 current or former employee of Zillow wrote the Letter.  
7

8  
9 58. Plaintiffs were aware at the time they received Mr. Crocker's Letter that  
10 many Zillow employees have signed confidentiality agreements similar to the CINNA.  
11 Indeed, before receiving and filing the Letter, Plaintiffs had previously communicated with  
12 Mr. Crocker and asked to interview him about his knowledge of the case. At that time they  
13 were advised by Zillow that Mr. Crocker was subject to a confidentiality agreement and that  
14 they must respect his obligations. As a result of the discovery process, Plaintiffs had  
15 received significant information about Mr. Crocker and knew or should have known that the  
16 information discussed in the Letter was known to only a small group of individuals,  
17 including Mr. Crocker. Additionally, at the time Plaintiffs received the Letter, Plaintiffs  
18 were aware that a Zillow employee, past and present, would owe a duty to Zillow to  
19 maintain the secrecy of its trade secrets. Finally, regardless of whether they directly  
20 solicited the Letter, at minimum, Plaintiffs knew or should have known that the Letter was  
21 likely authored by Mr. Crocker.  
22

23  
24 59. Plaintiffs knew the information contained in the Letter was not publicly  
25 known and knew, or should have known, that disclosure would cause competitive harm to  
26 Zillow. On its face, the Letter provided Plaintiffs notice that it contained Zillow's  
27 confidential and trade secret information, in part because the Letter stated that it contained  
28 Zillow's "secret" information, and advised Plaintiffs to "shred" the Letter upon receipt.  
29

30  
31 60. Plaintiffs' actions in filing and distributing the letter were willful and  
32 malicious.  
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**FIRST COUNTERCLAIM**  
**Abuse of Process**

61. Zillow incorporates by reference all the allegations stated above as if fully set forth in this First Counterclaim.

62. By filing an unauthenticated, unsigned letter in open court containing both false statements about and trade secret information of Zillow and which had no relevance to the pending motions (as the Court itself determined), Plaintiffs acted with an improper ulterior purpose: to disparage and embarrass Zillow publicly and to cause Zillow harm competitively and in the court of public opinion. Likewise, by distributing the Letter to third parties and representing it as an official court filing, Plaintiffs further abused the legal process by using the judicial imprimatur of a court filing for the purpose of giving credence to the Letter's content in order to maximize the harm to Zillow. Further, in the brief they filed with the Court contemporaneously with the Letter and which they also distributed to third parties, in addition to their allegations against individual defendants, Plaintiffs also falsely represent and necessarily imply that the Letter "confirms" that Zillow has stolen multiple documents and entire databases, is intentionally and repeatedly using that stolen information, and is intentionally and systematically hiding evidence of its crimes in the cloud. These statements necessarily imply, falsely, that the Letter establishes the truth of prior allegations of criminal conduct, namely that Zillow is intentionally and systematically hiding and intentionally and repeatedly using information that it knowingly stole from Move. Finally, the brief falsely represents that the Court has already found that Zillow destroyed evidence. These statements and their necessary implications in the brief are false and highly disparaging, and have caused and continue to cause damage to Zillow. Plaintiffs'

1 primary purpose in filing the brief and the Letter was not a proper objective within the  
2 proper scope of the judicial process.

3  
4 63. Plaintiffs' acts in the use of this legal process were not proper in the regular  
5 prosecution of proceedings, and constitute an abuse of the civil process. Plaintiffs' actions  
6 were not privileged insofar as the content of the unsigned, inadmissible letter was not  
7 relevant to the proceeding, and neither material nor pertinent to the redress or relief sought  
8 by Plaintiffs' in this action.  
9

10 64. Zillow has suffered damage as a result of Plaintiffs' abuse of process.  
11

12 65. Zillow is entitled to recover damages for Plaintiffs' abuse of process from  
13 Plaintiffs.  
14

15  
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21 **SECOND COUNTERCLAIM**  
22 **Aiding and Abetting a Breach of the Duty of Confidentiality**  
23

24 66. Zillow incorporates by reference all the allegations stated above as if fully set  
25 forth in this Second Counterclaim.  
26

27 67. Mr. Crocker owed an enforceable duty of confidentiality to Zillow while he  
28 was an employee of Zillow and after his employment ended.  
29

30 68. During his employment with Zillow, Mr. Crocker had access to confidential  
31 and/or trade secret information of Zillow that he had an obligation to keep secret.  
32

33 69. Mr. Crocker breached his duty of confidentiality to Zillow by sending the  
34 Letter to Plaintiffs while still an employee of Zillow and by vouching for the accuracy of the  
35 contents of the letter after his employment with Zillow ended. The Letter contains Zillow's  
36 confidential and/or trade secret information.  
37

38 70. Plaintiffs aided and abetted Mr. Crocker's breach of confidentiality by filing  
39 the Letter in open court and providing it to the third parties for publication, and are liable to  
40  
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47

1 Zillow for the damages proximately caused by Mr. Crocker's breach. Plaintiffs' actions  
2  
3 were not privileged insofar as the content of the unsigned, inadmissible letter is not relevant  
4  
5 to the proceeding, and neither material nor pertinent to the redress or relief sought by  
6  
7 Plaintiffs' in this action.  
8  
9

10 **THIRD COUNTERCLAIM**  
11 **Intentional Interference with Contractual Relationship**  
12

13 71. Zillow incorporates by reference all the allegations stated above as if fully set  
14  
15 forth in this Third Counterclaim.  
16

17 72. Zillow and Mr. Crocker entered into the CINNA, which is a valid and  
18  
19 binding contract supported by valuable consideration. The obligations imposed by the  
20  
21 CINNA are not restricted to Mr. Crocker's period of employment, but are ongoing.  
22

23 73. Plaintiffs at all relevant times have had knowledge of this contractual  
24  
25 relationship or business expectancy between Zillow and Mr. Crocker.  
26

27 74. Plaintiffs at all relevant times have also had knowledge that Zillow  
28  
29 employees were under an obligation not to reveal Zillow's trade secrets and/or confidential  
30  
31 information. Plaintiffs at all relevant times were also aware the Zillow employees were  
32  
33 subject to confidentiality agreements. Plaintiffs knew the Letter most likely came from a  
34  
35 current or former Zillow employee who would be under an obligation not to reveal Zillow's  
36  
37 trade secrets and confidential information.  
38

39 75. Plaintiffs unjustifiably and intentionally interfered with the contractual  
40  
41 relationship between Mr. Crocker and Zillow when Plaintiffs filed the Letter containing  
42  
43 Zillow's confidential and/or trade secret information in open court and released the  
44  
45 unredacted Letter to third parties. Plaintiffs' actions were not privileged insofar as the  
46  
47

1 content of the unsigned, inadmissible letter was not relevant to the proceeding, and neither  
2 material nor pertinent to the redress or relief sought by Plaintiffs' in this action.  
3

4 76. Plaintiffs' act of interfering with Zillow's contractual relationship with Mr.  
5 Crocker has directly and proximately damaged, and will continue to damage, Zillow in an  
6 amount to be proven at trial.  
7  
8  
9

10 **FOURTH COUNTERCLAIM**  
11 **Defamation**  
12

13 77. Zillow incorporates by reference all the allegations stated above as if fully set  
14 forth in this Fourth Counterclaim.  
15

16 78. Plaintiffs have published directly and indirectly and have caused to be  
17 republished false statements that have disparaged Zillow. Plaintiffs have done so with  
18 knowledge or reckless disregard of the truth or falsity of the statements causing the  
19 disparagement.  
20  
21  
22  
23  
24

25 79. By publishing information that reflects negatively on Zillow's business and  
26 professional reputation, Plaintiffs intended to cause harm to Zillow's pecuniary interests, or  
27 either recognized or should have recognized that their actions were likely to cause such  
28 harm.  
29  
30  
31  
32

33 80. Plaintiffs' false statements were unprivileged assertions of fact, or statements  
34 which necessarily imply an unprivileged, false statement of fact.  
35  
36

37 81. Zillow has suffered injury to its business and to its reputation as a result of  
38 Plaintiffs' false and defamatory statements in an amount to be proven at trial.  
39  
40

41 82. Plaintiffs' actions were not privileged insofar as the content of the unsigned,  
42 inadmissible letter was not relevant to the proceeding, and neither material nor pertinent to  
43 the redress or relief sought by Plaintiffs' in this action.  
44  
45  
46  
47



**FIFTH COUNTERCLAIM**  
**Violation of the Washington Trade Secrets Act, RCW 19.108**

83. Zillow incorporates by reference all the allegations stated above as if fully set forth in this Fifth Counterclaim.

84. The information in the Letter, which Plaintiffs filed as Exhibit A to the April 10, 2015 Singer Declaration, includes Zillow's confidential, proprietary trade secret information. This information was kept confidential by Zillow.

85. The trade secrets derive independent economic value for Zillow because they are not generally known to, and are not readily ascertainable by, Zillow's competitors.

86. Zillow takes reasonable efforts to maintain the secrecy of its trade secrets.

87. Plaintiffs knew the information in the Letter contained Zillow's trade secret information. Plaintiffs also knew or should have known that the information in the Letter came from a Zillow employee, and knew or should have known that an employee would owe a duty to Zillow to maintain the secrecy of its trade secrets. Despite this knowledge, Plaintiffs intentionally disclosed Zillow's trade secrets by filing the Letter, unsealed, in open court, and by providing the Letter to third parties for purposes of it being widely disseminated to the general public. Plaintiffs then frustrated Zillow's efforts to seal the Letter, even after being put on notice that Zillow was designating the Letter confidential under the Protected Order.

88. As a proximate result of Plaintiffs' disclosure of its trade secrets, Zillow has been damaged in an amount to be proven at trial.

89. Plaintiffs' filing in open court of confidential or trade secret material is not privileged under the facts presented here because privilege does not apply when: a) the



1 disclosure was intentional and there was no effort to correct the erroneous filing; and b) the  
2 information was distributed directly to the press by the party.  
3

4  
5 90. Plaintiffs' actions were not privileged insofar as the content of the unsigned,  
6 inadmissible letter was not relevant to the proceeding, and neither material nor pertinent to  
7 the redress or relief sought by Plaintiffs' in this action.  
8  
9

10  
11 **SIXTH COUNTERCLAIM**  
12 **Breach of the Protective Order**  
13

14 91. Zillow incorporates by reference all the allegations above as if fully set forth  
15 in this Sixth Counterclaim.  
16

17  
18 92. Zillow and Plaintiffs were both bound by the provisions of the Protective  
19 Order, which were agreed to between the parties and submitted to the Court for approval.  
20 The Protective Order applies to the Letter.  
21  
22

23  
24 93. Plaintiffs' actions as alleged above constitute a violation of the agreements  
25 contained within the Protective Order.  
26

27  
28 94. Plaintiffs also violated the Protective Order by, among other things, quoting  
29 from and filing the Letter, in unredacted form and without any confidentiality designations,  
30 in support of their briefs in this matter, in support of discovery, and as a deposition exhibit.  
31  
32

33  
34 95. Plaintiffs' breaches of the agreements contained within the Protective Order  
35 have directly and proximately damaged, and will continue to damage, Zillow in an amount  
36 to be proven at trial.  
37  
38  
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41

42 **PRAYER FOR RELIEF**  
43

44 WHEREFORE, Defendant and Cross-Claimant Zillow demands the following relief:  
45

46 A. Entry of judgment in favor of Defendants and against Plaintiffs;  
47

- 1 B. Dismissal of Plaintiffs' Second Amended Complaint with prejudice;  
2  
3 C. Monetary damages in an amount to be proven at trial;  
4  
5 D. An award of costs and reasonable attorneys' fees in favor of Defendants and  
6  
7 against Plaintiffs;  
8  
9 E. Entry of such additional equitable, injunctive, or other relief in favor of  
10  
11 Defendants and against Plaintiffs as Defendants may request in the future; and  
12  
13 F. Entry of such further relief in favor of Defendants as the Court deems just  
14  
15 and equitable.  
16

#### 17 **AMENDED DEFENSES AND AFFIRMATIVE DEFENSES**

18 Having set forth its counterclaims to Plaintiffs' Second Amended Complaint above,  
19  
20 and based on the knowledge and information available to date, Zillow asserts the following  
21  
22 defenses and amended affirmative defenses. By stating these defenses and affirmative  
23  
24 defenses, Zillow does not admit that it has the burden of proof on any of them.  
25

- 26 A. Plaintiffs' Second Amended Complaint fails to state a claim upon which  
27  
28 relief may be granted.  
29  
30 B. Plaintiffs' alleged trade secrets are readily ascertainable.  
31  
32 C. Plaintiffs' trade secret claims are barred, in whole or in part, by their failure  
33  
34 to show any unlawful use of their alleged trade secrets by Zillow.  
35  
36 D. Plaintiffs' claims are or may be barred by the doctrines of estoppel, waiver,  
37  
38 laches, ratification and/or acquiescence, accord and satisfaction, assumption of risk, and  
39  
40 unclean hands.  
41  
42 E. Plaintiffs' claims for damages are barred, in whole or in part, by the failure to  
43  
44 mitigate damages and settlement and release.  
45  
46  
47

1 F. Plaintiffs' claims of misappropriation are made in bad faith, entitling Zillow  
2 to an award of its attorneys' fees under RCW 19.108.040.

3  
4 G. Plaintiffs' claims are frivolous and advanced without reasonable cause,  
5  
6 entitling Zillow to an award of its attorneys' fees under RCW 4.84.185.  
7

8 H. Zillow's challenged actions were taken in good faith, and were made in its  
9  
10 best business judgment and with reasonable basis under the law.  
11

12 I. Plaintiffs' claims are barred, in whole or in part, because Zillow's actions  
13  
14 were privileged.  
15

16 J. Plaintiffs' claims are preempted, in whole or in part, by state or federal law,  
17  
18 including under RCW 19.108.060.  
19

20  
21 DATED: August 27, 2015

*s/ Susan E. Foster*

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CERTIFICATE OF SERVICE

On August 27, 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.

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17 I certify under penalty of perjury under the laws of the State of Washington that the  
18  
19 foregoing is true and correct.  
20

21 DATED this 27th day of August, 2015.  
22

23 /s/Brie Carranza  
24

25 Brie Carranza, Legal Secretary  
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