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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,
and ERROL SAMUELSON, an individual,
CURT BEARDSLEY, an individual, and
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

REPLY OF MOVE, INC., REAL SELECT,
INC., AND TOP PRODUCER SYSTEMS
COMPANY TO ZILLOW'S
COUNTERCLAIMS

1 Move, Inc., Real Select, Inc., and Top Producer Systems Company (“Responding
2 Parties”) hereby reply to Defendant Zillow’s counterclaims as follows:

3 **REPLY**

4 1. Responding Parties admit that Move, Inc. (“Move”) operates the website relator.com; that
5 RealSelect, Inc. and Top Producer Systems Company are subsidiaries of Move; and that
6 Realtors Information Network is a subsidiary of NAR. The remainder of this paragraph
7 contains allegations and characterizations that are too vague to be admitted or denied.

8 2. Admit.

9 3. Responding Parties admit that hundreds of thousands of pages of documents have been
10 produced in discovery and otherwise deny Zillow’s characterizations of discovery.

11 Responding Parties admit that they have sought to protect the confidentiality of some
12 information during this lawsuit and otherwise deny Zillow’s characterizations.

13 Responding Parties admit there is a Protective Order and that the content of that order
14 speaks for itself.

15 4. Responding Parties admit that both Plaintiffs and Defendants have requested that
16 documents be filed under seal multiple times in this lawsuit.

17 5. Responding Parties admit that their counsel received a letter (“The Whistleblower
18 Letter”) on or about April 9, 2015. The contents of the Whistleblower Letter speak for
19 themselves. Responding Parties deny Zillow’s characterization of the Whistleblower
20 Letter’s contents.

21 6. Responding Parties admit that a Notice of Supplemental Support was filed in connection
22 with discovery motions on April 10, 2015. Responding Parties admit that the
23 communications department of Move, Inc., forwarded the Notice of Supplemental

1 Support to the following reporters at third party news organizations: Blair Frank
2 (Geekwire); Ben Lane (Housingwire); Andrea Brambila (Inman); and Beth McGuire
3 (RISMedia). The remainder of Zillow's allegations and characterizations in this
4 paragraph are denied.

5 7. Responding Parties admit that, on April 10, 2015, a Notice of Supplemental Support was
6 filed in connection with discovery motions. Responding Parties admit the second and
7 third sentences of this paragraph.

8 8. Zillow's legal conclusion regarding RCW 9A.72.085 is too vague to be admitted or
9 denied. Responding Parties deny that the Whistleblower Letter was irrelevant to the
10 pending discovery motions. To the contrary, the statements in the Whistleblower Letter
11 were relevant to the pending discovery motions because, among other things, they
12 revealed unlawful conduct by Zillow, the apparent violation of court orders, and that
13 Zillow was hiding evidence from the legal process.

14 9. Denied.

15 10. Denied.

16 11. Denied.

17 12. Denied.

18 13. Responding Parties admit that the communications department of Plaintiff Move, Inc.,
19 forwarded the Notice of Supplemental Support to the following third party news
20 organizations: Blair Frank (Geekwire); Ben Lane (Housingwire); Andrea Brambila
21 (Inman); and Beth McGuire (RISMedia). Responding Parties deny the remainder of
22 Zillow's allegations and characterizations.
23

1 14. Responding Parties admit that some media outlets commented on the Whistleblower
2 Letter. Otherwise, Zillow's allegations are denied.

3 15. Denied.

4 16. Denied.

5 17. Denied.

6 18. Denied on the ground that there is no trade secret information revealed in the
7 Whistleblower Letter.

8 19. Denied.

9 20. Responding Parties admit that Zillow filed a motion to seal on April 13, 2015, but deny
10 that portions of the Whistleblower Letter are confidential or trade secrets of Zillow.
11 Responding Parties admit that on an expedited basis, a judge who was not then assigned
12 to the case made an initial decision to allow parts of the Whistleblower Letter to be
13 redacted and invited the parties to revisit the issue with the assigned judge. The Court's
14 orders speaks for themselves.

15 21. Responding Parties deny that Zillow's demands pertaining to the Whistleblower Letter
16 were consistent with the protective order or that Plaintiffs refused to take any actions
17 required by the protective order.

18 22. Responding Parties admit that the unredacted Whistleblower Letter is publicly available
19 and has, in fact, been filed publicly by Zillow. The Special Master's May 15, 2015 order
20 speaks for itself.

21 23. Denied.

22 24. Responding Parties deny the Whistleblower Letter contains trade secret information and
23 deny Zillow's other allegations due to lack of information.

1 25. Responding Parties admit that Realtor.com uses listings data from agents and MLSs,
2 among others, and otherwise deny Zillow's characterizations.

3 26. Denied.

4 27. Responding Parties admit that the Whistleblower Letter contains the acronyms "LSS"
5 and "LSSv2" but deny that the Whistleblower Letter reveals trade secret or confidential
6 information about those programs and otherwise deny Zillow's allegations.

7 28. Responding Parties lack information necessary to admit or deny many of these
8 allegations but deny that the information in these allegations appears in the
9 Whistleblower Letter.

10 29. Responding Parties lack information necessary to admit or deny many of these
11 allegations but deny that the information in these allegations appears in the
12 Whistleblower Letter.

13 30. Denied.

14 31. Responding Parties lack information necessary to admit or deny these allegations.

15 32. Denied.

16 33. Denied.

17 34. Denied.

18 35. Responding Parties lack information necessary to admit or deny these allegations.

19 36. Denied.

20 37. Denied.

21 38. Denied.

22 39. Denied.

23 40. Denied.

1 41. Denied.

2 42. Denied.

3 43. Denied.

4 44. Denied.

5 45. Denied. The footnote to paragraph 45 is also denied.

6 46. The Whistleblower Letter speaks for itself. Responding Parties deny damage to Zillow's
7 reputation. Responding Parties lack information necessary to admit or deny the
8 remaining allegations.

9 47. The Whistleblower Letter speaks for itself. Responding Parties deny Zillow's
10 characterization of the Whistleblower Letter and deny damage to Zillow's reputation.

11 48. Responding Parties lack information necessary to admit or deny the first sentence. The
12 remaining allegations are denied.

13 49. The Whistleblower Letter speaks for itself. The second sentence is denied. Responding
14 Parties lack information necessary to admit or deny the third sentence. The remaining
15 allegations are denied.

16 50. The Whistleblower Letter speaks for itself. The remaining allegations are denied.

17 51. The Whistleblower Letter speaks for itself. Responding Parties deny Zillow's allegations
18 that the Whistleblower Letter is false or disparaging. Responding Parties lack information
19 necessary to admit or deny the remaining allegations.

20 52. The Whistleblower Letter speaks for itself. Responding Parties deny Zillow's allegations
21 that the Whistleblower Letter is false or disparaging and lack information necessary to
22 admit or deny the remaining allegations.
23

1 53. The first two sentences are admitted. Responding Parties lack information necessary to
2 admit or deny the remaining allegations.

3 54. Responding Parties lack information necessary to admit or deny these allegations.

4 55. These allegations constitute a legal conclusion to which no response is necessary.

5 56. Responding Parties lack information necessary to admit or deny the remaining
6 allegations.

7 57. Responding Parties admit that they have told the Court the Whistleblower Letter was
8 written by Mr. Crocker.

9 58. The first sentence is denied. Responding Parties admit initiating contact with Mr.
10 Crocker after he announced he was no longer employed by Zillow. The third sentence is
11 denied—Zillow told Plaintiffs Mr. Crocker was still a Zillow employee. The remaining
12 allegations are denied.

13 59. Denied.

14 60. Denied.

15 61. Responding Parties incorporate by reference their responses to previous paragraphs.

16 62. Denied.

17 63. Denied

18 64. Denied.

19 65. Denied.

20 66. Responding Parties incorporate by reference their responses to previous paragraphs.

21 67. Denied.

22 68. Responding Parties lack information necessary to admit or deny these allegations.

23 69. Denied.

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70. Denied.

71. Responding Parties incorporate by reference their responses to previous paragraphs.

72. Responding Parties lack information necessary to admit or deny Zillow’s legal conclusions. This paragraph is otherwise denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Responding Parties incorporate by reference their responses to previous paragraphs.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Responding Parties incorporate by reference their responses to previous paragraphs.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Responding Parties incorporate by reference their responses to previous paragraphs.

1 92. Responding Parties admit they were bound by the operative protective order but deny that
2 the Protective Order covered the Whistleblower Letter. At the time of the filing of the
3 Whistleblower Letter, the operative protective order was the Second Amended Protective
4 Order, which was entered over the plaintiffs' objection. The final sentence of this
5 paragraph is too vague to be admitted or denied.

6 93. Denied.

7 94. Denied.

8 95. Denied.

9 **REPLY TO PRAYER FOR RELIEF**

10 Responding Parties deny that Zillow is entitled to any of the relief it seeks.

11 **DEFENSES**

- 12 1. Zillow's counterclaims fail to state a claim upon which relief can be granted.
 - 13 2. Plaintiffs have used litigation process for appropriate ends.
 - 14 3. Plaintiffs' acts in the use of the legal process were proper in the regular prosecution
15 of proceedings.
 - 16 4. The information in the Whistleblower Letter is not trade secret information.
 - 17 5. Plaintiffs did not believe the Whistleblower Letter contained trade secret information
18 and could not be expected to believe that the Whistleblower Letter contained trade
19 secret information. The author of the Whistleblower Letter, Chris Crocker, has
20 testified that his letter did not reveal any trade secret information.
 - 21 6. The Whistleblower Letter describes conduct that cannot be a trade secret because it is
22 unlawful.
- 23

- 1 7. The Whistleblower Letter describes conduct that cannot be a trade secret because it is
2 tortious or violates civil statutes.
- 3 8. Zillow's trade secret claim is defeated by its claim that the content of the letter is
4 untrue.
- 5 9. Zillow's counterclaims are displaced or preempted in whole or in part by RCW
6 19.108.060.
- 7 10. Zillow's trade secret claim is barred by its failure to establish misappropriation.
- 8 11. To the extent any Zillow trade secret information is identified in the counterclaims,
9 that information is not in the Whistleblower Letter.
- 10 12. To the extent any Zillow trade secret information is identified in the counterclaims,
11 that information was publicized voluntarily by Zillow.
- 12 13. The information in the Whistleblower Letter was not protected from disclosure by the
13 Second Amended Protective Order.
- 14 14. The information in the Whistleblower Letter is substantially true.

15 Zillow's reaction to the Whistleblower Letter was to try to strike it from the Court file
16 and seal it from the public. In response, the author of the Whistleblower Letter came forward
17 publicly on April 20, 2015. The whistleblower is Chris Crocker, Zillow's former Vice President,
18 Strategic Partnerships. Mr. Crocker filed a declaration affirming, under oath, that each and every
19 statement in the Whistleblower Letter was true and correct to the best of his knowledge and was
20 based on his personal observations and experiences.

21 Mr. Crocker also explained that, while he was an employee of Zillow, he was aware that
22 Move and the National Association of Realtors were having difficulty obtaining complete
23 discovery responses in this case from Zillow, Errol Samuelson, and Curt Beardsley. Mr. Crocker

1 also observed conduct and actions on the parts of the defendants that he believed were unlawful
2 and violated an order that had been entered in this lawsuit. In fact, the first six paragraphs of the
3 Whistleblower Letter, which Zillow does not challenge in its counterclaims, all relate to Mr.
4 Crocker's belief that Mr. Samuelson violated this Court's June 30, 2014 Preliminary Injunction
5 and took steps to make sure he would not be caught for that misconduct.

6 Mr. Crocker explained he was worried about retribution and retaliation from Zillow but
7 later testified he had sent the Whistleblower Letter because "I felt it was the right thing to do"
8 and Move and NAR had a right to know what was set forth in the Whistleblower letter.

9 15. To the extent any aspect of the Whistleblower Letter is not accurate, it is no more
10 damaging to Zillow than the truth.

11 The Whistleblower Letter alleges that Errol Samuelson violated this Court's Preliminary
12 Injunction. Even if untrue, this statement is no more damaging than the fact that, in response to a
13 motion from the Plaintiffs, the Superior Court ordered Mr. Samuelson and Zillow to show cause
14 why they should not be held in contempt for violating the Preliminary Injunction.

15 The Whistleblower letter says that Samuelson was careful to hide his wrongful conduct.
16 This statement is no more damaging to Zillow than the fact that this Court's Preliminary
17 Injunction found that Samuelson agreed to a deal with Zillow about most terms of his
18 employment with and stock grants in Zillow and then continued to serve as an executive officer
19 of Move for two more weeks while he harvested more Move trade secret information; the fact
20 that Samuelson erased the memory from his Move-issued iPad and iPhone and took steps to
21 erase data from his Move-issued Apple computer; the fact that in its Preliminary Injunction, this
22 Court drew negative inferences from Samuelson's handling of electronic information prior to and
23 after his resignation from Move; the fact that the Court found in its Preliminary Injunction that

1 Samuelson took an electronic version of his contact lists without authorization; the fact that
2 Samuelson refused to return a Move-issued computer until after he was ordered to do so by the
3 Court; the fact that email files were deleted from Beardsley's Move-issued computer before he
4 returned it to Move; the fact that every memory device that Move has been able to identify as
5 being connected to Beardsley's Move-issued computer in his final days of employment at Move
6 has been lost or destroyed by Beardsley; and the fact that a forensic examination is being
7 implemented of devices used by Samuelson, Beardsley, and Zillow employee Will Hebard as a
8 result of evidence destruction by the defendants.

9 The Whistleblower letter says Beardsley has copies of Move's private MLS contact
10 database, listing count database and other databases stolen from Move and uses a google docs
11 account to keep them off of his work computer. This statement is no more damaging to Zillow
12 than the fact that discovery has revealed that Beardsley is in fact in possession of Move's private
13 data relating to MLSs and listing counts. Beardsley produced in this case one of Move's own
14 MLS databases erroneously identified by his counsel as one of his documents when it was in
15 reality a stolen Move database.

16 16. The public disclosure of the information in the Whistleblower Letter did not make
17 Zillow's reputation any worse.

18 17. Plaintiffs' actions are protected by the fair and true report privilege.

19 18. Zillow's claims, including its defamation claim, are barred because it is a public
20 figure and Plaintiffs did not act with actual malice.

21 19. Zillow's claims, including its defamation claim, are barred because the allegedly
22 defamatory statements relate to a matter of public interest and Plaintiffs did not act
23 negligently.

- 1 20. Zillow's claims, including its defamation claim, are barred because some or all of the
2 allegedly defamatory statements are nonactionable opinion.
- 3 21. Zillow's claims, including its defamation claim, are barred because some or all of the
4 allegedly defamatory statements are rhetorical hyperbole.
- 5 22. Zillow's claims are barred because its alleged damages were caused by one or more
6 third parties.
- 7 23. Zillow's claims are barred because its alleged damages were not proximately caused
8 by Plaintiffs' actions or were the result of intervening acts of third parties or other
9 intervening causes.
- 10 24. Zillow's claims are barred by the doctrine of estoppel.
- 11 25. Zillow's claims are barred by waiver.
- 12 26. Zillow's claims are barred by the doctrine of laches.
- 13 27. Zillow's claims are barred by the doctrines of ratification, acquiescence, and
14 assumption of risk.
- 15 28. Zillow's claims are barred by its unclean hands.
- 16 29. Failure to mitigate damages.
- 17 30. Zillow's counterclaims are brought in bad faith.
- 18 31. Zillow's claims are frivolous and advanced without reasonable cause.
- 19 32. Plaintiffs conduct is protected by litigation privilege.
- 20 33. Plaintiffs are immune from suit.
- 21 34. Zillow's request for injunctive relief is barred because it published the letter itself.
- 22 35. Zillow's request for injunctive relief is barred because it cannot demonstrate any
23 threat of imminent harm or actual and substantial injury.

1 36. Zillow's request for injunctive relief is barred because it would constitute a prior
2 restraint on speech.

3 37. Zillow's sixth cause of action fails because alleged breach of the Court's Protective
4 Order does not give rise to a private cause of action.

5 38. Zillow's sixth cause of action is barred because the Whistleblower Letter was not
6 protected by the Protective Order.

7 **PRAYER FOR RELIEFF**

8 Having stated its defenses, Responding Parties request the following relief:

- 9 1. All relief requested in its Second Amended Complaint;
10 2. Dismissal with prejudice of Zillow's counterclaims;
11 3. Entry of judgment in favor of Plaintiffs on the counterclaims;
12 4. An award of attorney fees, costs, and expenses incurred in defending against the
13 counterclaims under RCW 19.108.040, RCW 4.84.185, or as otherwise deemed just by
14 the Court; and
15 5. Such other relief that the Court deems just and equitable.

16 DATED September 8, 2015, at Seattle, Washington.

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 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.

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

3 DATED at Seattle, Washington on September 8, 2015.

4
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