

FILED
KING COUNTY, WASHINGTON

SEP 30 2015

SUPERIOR COURT CLERK
BY Andy Groom
DEPUTY

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,

vs.

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

Defendants.

No. 14-2-07669-0 SEA

ORDER ADOPTING SEPTEMBER 19, 2015
SPECIAL DISCOVERY MASTER REPORT
AND RECOMMENDATION REGARDING
THE PROTOCOL TO GOVERN THE
COURT SUPERVISED NEUTRAL
FORENSIC EXAMINATION FOR
ELECTRONIC EVIDENCE

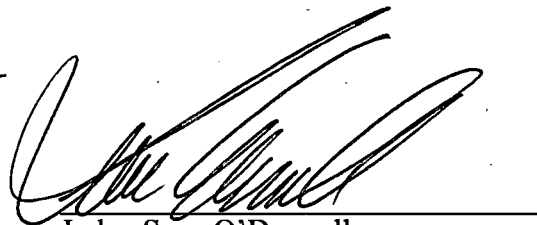
Special Master Hilyer filed his "Special Master Discovery Report" dated September 19, 2015 regarding the above-referenced issues.

The matter is now before me. See CR 53.3 and this Court's June 15, 2015 Order Re: Amendment to Order Appointing Special Master.

Having reviewed the Special Master's report and recommendations, the Court ADOPTS Special Master Hilyer's September 19, 2015 Report and Recommendations.

1 IT IS SO ORDERED.

2 DATED: Sept 30, 2015

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5 Judge Sean O'Donnell
6 King County Superior Court
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HILYER DISPUTE RESOLUTION

September 19, 2015

Judge Sean O'Donnell
KCSC, Judge's Mailroom #C-203
516 Third Avenue
Seattle, WA 98104
E: parkin.erica@kingcounty.gov

Re: *Move et al. v. Zillow et al.*, KCSC No. 14-2-07669-0 SE; Special Discovery Master Report and Recommendation regarding the protocol to govern the Court supervised neutral forensic examination for electronic evidence

Dear Judge O'Donnell:

Pursuant to your Orders in this case dated July 15, 2015, July 28, 2015, and those filed September 15, 2015, regarding the procedures surrounding discovery motions, and these motions in particular, contained herein please find one of several of my Reports and Recommendations to you. These matters having been referred by the court and having come before the Discovery Master ("DM") regarding the determination of an appropriate protocol to guide the Court appointed forensic expert examination, the DM has considered all briefing, including Defendants' Brief in Support of Their Proposed Protocol for Neutral Forensic Expert; Declaration of Joseph M. McMillan in Support of Defendants' Brief re: Neutral Protocol; Declaration of Andrew Crain in Support of Zillow's Brief Regarding Neutral Protocol; [Proposed] Report and Recommendation Adopting Defendants' Proposed Neutral Protocol; Plaintiffs' Brief in Support of Their Proposed Forensic Examination Protocol; Declaration of David Singer in Support of Plaintiffs' Brief in Support of Their Proposed Forensic Examination Protocol; [Proposed] Report and Recommendation Regarding Forensic Examination Protocol; Plaintiffs' Reply in Support of Their Proposed Forensic Examination Protocol; Declaration of Brent Caslin in Support of Plaintiffs' Reply in Support of Their Proposed Forensic Examination Protocol; Defendants' Supplemental Brief on Access to Web-Based Email Accounts through the Neutral Protocol; Declaration of Joseph M. McMillan in Support of Defendants' Supplemental Brief on Access to Web-Based Email Accounts Through the Neutral Protocol; Defendant Samuelson's Brief re: Examination of Cloud-Based Email Accounts; Declaration of Brian Esler; Memorandum of Defendant Curt Beardsley Regarding Exclusion of Personal Email Accounts from Forensic Examination; Declaration of Caitlin K. Hawks; Reply Memorandum of Defendant Curt Beardsley Regarding Forensic Examination of Personal Web-Based Email Accounts; Plaintiffs' Brief in Support of Forensic Examination; Declaration of Michael Rosenberger;

Declaration of Byron Lloyd-Jones; Defendants' Joint Response to Plaintiffs' Brief in Support of Forensic Examination; Plaintiffs' Reply in Support of Forensic Examination of Cloud-Based Email Accounts; Second Declaration of Michael Rosenberger; .

Oral argument was held on August 5, 2015 and August 31, 2015, at the offices of Hilyer Dispute Resolution, 1000 – Second Avenue, Suite 3000, Seattle, WA 98104. The DM reports and recommends as follows:

After the parties negotiated the form of the Protocol, the following issues remained:

1. The role of the Neutral. Defendants wanted the Neutral to only respond to specific technical requests of the parties, but I agreed with Plaintiffs that the Neutral should not be so limited and may himself suggest approaches to the forensic examination while still maintaining his neutrality.
2. The scope and purpose of the investigation. I decided to add language to recognize that the purpose of the examination includes protection of privileged and confidential materials.
3. What to do with materials produced by the forensic examination to which the producing party objects based on relevance. With regard to privileged materials, the producing party will have the opportunity to review the materials first and will produce a privilege log to permit evaluation of the privilege claim. But for relevance objections, the burden shall be on the producing party to move for a protective order before the Discovery Master, and to provide privilege log type of information for the opposing party, with in camera review of the documents by the Discovery Master
4. The devices subject to the forensic review. This issue was negotiated by the parties, and included the computer of Zillow employee Will Hebard

based upon his deposition testimony. I also included a "catch-all" provision suggested by Plaintiffs that the examination included "Any other computer or devices used by Curt Beardsley or Errol Samuelson to access cloud storage accounts subject to this protocol."

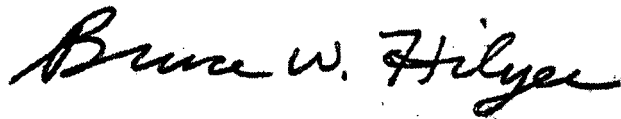
5. The allocation of expenses. The Plaintiffs proposed 50/50 cost sharing between all Plaintiffs and all Defendants, but I agreed with Defendants that the party initiating the particular request should bear the costs in order to incentivize the most cost effective approach. This initial allocation does not address whether a different reimbursement approach is warranted as a sanction depending upon what is revealed in the entire process

DM recommends that the attached Order and Protocol for Forensic Examination be adopted. The attached "Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts" is my recommendation following my review and consideration of briefing by all parties and a hearing devoted exclusively to assist me to formulate this protocol.

6. The only remaining issue to be determined is whether the forensic expert will be allowed to review web-based email accounts as Plaintiffs have requested. Defendants object that this is duplicative of prior efforts supervised by counsel. I have concluded that the determination regarding email searches will be better informed after the neutral forensic expert has been appointed.

For the reasons summarized above, I recommend adoption of the attached "Protocol Governing Neutral Review and Handling of Certain Electronic Devices and Cloud accounts."

IT IS SO REPORTED AND RECOMMENDED THIS 19th day of September, 2015.

A handwritten signature in black ink, reading "Bruce W. Hilyer". The signature is written in a cursive, flowing style.

Judge Bruce W. Hilyer (Ret.)
Special Discovery Master

Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts

The Neutral Expert's Role

1. The Neutral Expert ("the Neutral") is appointed by the Court and serves as an officer of the Court. The Neutral must avoid the appearance of impropriety. The Neutral works under the supervision of the Discovery Master and does not work for any party. The Neutral must act in conformity with the procedures set forth in this protocol, must not advocate on behalf of or advise any party, and may only provide factual information and analysis arising from forensic research tasks delegated to him, or determined by him in the exercise of his best professional judgment as the most effective forensic procedures to accomplish the objectives of this forensic examination. Except as specifically provided in this protocol, all information disseminated and/or transmitted by the Neutral to any party must be transmitted to all parties. Disclosure of any device, account, file, email or other information to the Neutral will not be construed as a waiver of attorney-client privilege, work product protection, common interest or joint defense privilege, trade secret protection or any other privilege or immunity. Once appointed, the Neutral must sign the agreement to be bound by the terms of the protective order in this case as well as this Protocol.
2. The Neutral is appointed by the Court for the following purposes:
 - a. To promote and facilitate the efficient and transparent forensic analysis of certain devices and accounts at issue in this litigation, including investigation of alleged deletion(s) of potential evidence and/or alleged misappropriation of Move, Inc. documents or data;
 - b. To ensure that privileged information remains privileged and is not inadvertently or otherwise produced or disclosed to non-privileged parties, persons, or entities; and to avoid unwarranted disclosure of personal, private or competitively sensitive information.

Any work performed by the Neutral must be directly related to the express purposes identified above.

3. The parties have agreed on the appointment of Andy Reisman as the Neutral. Should that person for any reason fail to complete the work as described in this protocol, then his replacement shall be chosen by procedures established by the Discovery Master for discovery. The Neutral can only be discharged upon the recommendation of the Discovery Master and approval of the Court.

Devices Covered by this Protocol

4. The following electronic devices and web-based cloud storage accounts (excluding the web-based email accounts previously searched) listed below are subject to this protocol to the extent they are in the producing party's possession or control; however, other devices or accounts may be made subject to the protocol by agreement of the parties or order of the Discovery Master or the Court:

Specific USB Devices

- a) USB flash drive labeled "ADATA" with serial number SN#1242709152180068 that was connected to Mr. Samuelson's Move-issued Dell laptop in March 2014.
- b) SanDisk Cruzer USB device with serial number 20052242801E0E900E9E that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- c) SanDisk Cruzer USB device with serial number 4C530300221117101305 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- d) General USB Flash Disk USB device with serial number 00000000000015AA that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- e) General UDisk USB device with serial number 1104090309500035117100 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- f) WD 1600BEV External USB device with serial number 5758453330384A3432333337 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- g) Any other storage device that has been connected to a Move computer after October 31, 2013, or connected to another device that was connected to a Move computer after October 31, 2013.

Mr. Samuelson represents that he does not possess the USB device identified in subparagraph (a) above. Mr. Beardsley represents that he does not possess the USB devices identified in subparagraphs (c), (d), (e), and (f) above. In the event any of such devices come into any defendant's possession, they will become subject to this protocol.

Cloud Accounts

Although cloud accounts listed below may be associated with a web-based email account, the associated web-based email accounts previously searched are not subject to review under this protocol unless specifically approved by the Discovery Master.

- a) Errol Samuelson
 - i. Dropbox – errol@move.com
 - ii. Google Drive – Samuelson@gmail.com and errolgsamuelson@gmail.com
- b) Curt Beardsley
 - i. Google Drive – curtbeardsley@gmail.com
 - ii. iCloud – curt_online@yahoo.com
 - iii. Dropbox – curt_online@yahoo.com
Microsoft One-Drive – curt_online@yahoo.com
- c) Will Hebard
 - (1) Google Drive – willhebard@gmail.com

Computers and Other Devices

- a) Zillow computer(s) used by Errol Samuelson
- b) Zillow computer(s) used by Curt Beardsley
- c) Zillow computers(s) used by Will Hebard
- d) Mr. Beardsley's home office Dell desktop computer
- e) Mr. Beardsley's Apple iPad Mini

- f) Mr. Samuelson's Apple iPhone and iPad that Mr. Samuelson used at Move and later returned to Move following termination of his employment at Move
- g) Any other computers or devices used by Curt Beardsley or Errol Samuelson to access cloud storage accounts subject to this protocol.

Forensic Procedures

- 5. Within one week of the appointment of the Neutral, the parties will make the computers, USB storage devices, and other devices listed above available to the Neutral to examine and forensically image onsite at a mutually agreeable location, or if not so agreed, then as determined by the Neutral. For cloud storage accounts, defendants will provide the username, email account, password, or other information necessary to access the account to the Neutral within one week of the appointment of the Neutral, which information shall not be shared with any other party. The Neutral shall exercise his discretion to determine all accommodations reasonably necessary to minimize the interruption of the producing party's business caused by the imaging process. In addition to allowing the Neutral to make images of the referenced devices/computers, defendants will also provide the Neutral with access to any existing images that defendants or their experts have already made of these devices/computers.
- 6. The Neutral and the parties' experts will schedule a date upon which the imaging and initial inspection will occur, which shall be no later than one week after the appointment of the Neutral unless otherwise agreed to by the parties. Once the imaging is complete, as determined by the Neutral, then the producing party is free to take steps (such as changing passwords) to re-secure the device or account.
- 7. The parties' outside counsel and experts may communicate directly with the Neutral by email, provide that all such emails are copied to opposing counsel on those communications. Where email communication is inadequate or impractical, phone calls with the Neutral are also permitted, but the opposing counsel and expert must be given a reasonable opportunity to participate in those phone calls.
- 8. All parties, acting through their experts or counsel, may make suggestions to the Neutral regarding how to conduct his investigation, to which he shall give due consideration, but he is not required to justify any particular decision that he makes. After providing reasonable notice to the parties' experts, and/or designated attorney contact for each party, the Neutral shall determine, in the exercise of his sole discretion which specifically defined forensic tasks or tests he shall undertake
- 9. To the extent that it does not have a material adverse impact on the forensic examination, or is not impracticable, the Neutral shall endeavor to permit on-site, or equivalent remote access with live monitoring capability, of the parties' experts during his forensic activities. In making this determination, the Neutral shall give due consideration to avoiding any serious risk that permitting on-site or remote live observance of such tasks not result in the disclosure of the content of any active or deleted files likely to contain privileged materials, which shall require the most vigilance to guard against disclosure, or

personally or competitively sensitive materials, which should also be reasonably safeguarded but to a lesser degree than for privileged materials. If a party reasonably believes that a task or test may result in the disclosure of privileged material or personally or competitively sensitive material, the party shall give notice of such objection to the Neutral and all other parties. After receiving such objection, the Neutral shall consider whether it is necessary to exclude all others from being present while the task or test is performed, or whether other safeguards can be taken, and his decision shall be determinative, unless the Discovery Master recommends and the Court orders otherwise..

b) Notwithstanding the foregoing, the parties' forensic experts may be present, or be allowed equivalent live remote access, when the Neutral conducts his analysis on deleted files or other forms of discarding or covering up electronic data, but may not disclose the content of any files that may be viewed during such analysis. Rather, if the Neutral determines that such files are relevant to the purposes of this protocol as set forth in paragraph 2, he/she shall provide copies of those files to the producing party for disposition as set forth in paragraph 15 below.

c) A party's forensic expert may not be present (remotely or otherwise) for the Neutral's work unless the opposing party's (or parties') forensic expert is provided a reasonable opportunity to be present also.

10. The Neutral's initial tasks may include the following inspections/analyses:

a) USB Devices, Computers and Other Devices:

- i. File hash searching (comparing all files against known hash set to identify identical copies)
- ii. File listings of common document types for comparison review (PDF, CSV, TSV, XLS, XLSX, DOC, DOCX, PPT, PPTX, OST, PST, EML, MSG, etc.)
- iii. Analysis of external devices (identifying recent and historical activity of external devices used)
- iv. Keyword searching (identify relevant data based on unique keywords) based on keywords supplied after all parties meet and confer to determine an agreed list. Any dispute regarding search terms or key words not so resolved shall be presented to the Discovery Master for resolution. Testing by the Neutral to assess reasonableness (for example, running preliminary "hit reports") is permissible.
- v. Link file analysis (review active and historical user interaction of files and folders and to also aid with identifying use of external devices)
- vi. Wiping tools analysis (searching with known hash set, searching for common artifacts, key-word search of common wiping tools)
- vii. Extraction and indexing of all identifiable active and easily recoverable user data from each device (the process referred to as "harvesting")
- viii. Data carving (performing file data recovery over the unallocated space of forensic images for additional review)
- ix. Internet history analysis (analysis of user internet history and cloud account access)

- x. Registry analysis (review of registry keys to corroborate other forensic findings)
 - xi. Event log analysis (review of event log data to corroborate other forensic findings, for example USB analysis, deletion analysis, etc.)
 - xii. Deletion analysis (searching for evidence of specific file/email deletion across devices)
 - xiii. Timeline analysis (review of user profile usage, software installation, login activity, etc.)
- b) Cloud Accounts:
- i. Full analysis of event logs and user history
 - ii. OCR of cloud account screenshots (make the screenshots keyword searchable)
 - iii. File hash search (comparing all download files against known hash set to identify identical copies)
 - iv. Generate file listings including metadata of all content stored within the cloud account for comparison review
 - v. Generate a text searchable index of all content preserved from the cloud account
 - vi. Keyword search (identify relevant data based on unique keywords) based on agreed keywords or search terms, or as otherwise determined by the Discovery Master. Testing by the Neutral to assess reasonableness (for example, running preliminary "hit reports") is permissible.
 - vii. Deletion analysis (review of cloud activity logs to identify historic or recent deletion history).
11. The parties' experts may request follow-up forensic inspection as desired by contacting the Neutral and experts for the other parties. Any follow-up inspection and analyses shall be scheduled, if feasible, within two (2) business days of the request, unless the experts or parties agree otherwise.
12. Upon request by any party or party's representative, the Neutral must disclose to all parties' outside counsel and experts (1) the specific tasks performed, (2) the party that requested the task be performed, (3) the specific steps taken to perform the task, and (4) all other information sufficient to allow another forensic expert to duplicate the task.
13. The Neutral must keep detailed logs showing the step-by-step process used to view or analyze information contained in any device or account. The log shall be sufficiently detailed to allow another forensic expert to duplicate the analysis.
14. The Neutral shall promptly provide copies of the results of any forensic analysis, including file listings, files, and screenshots, to the producing party who will then have 7 business days to review the information for privilege, designate materials appropriately under the protective order, and produce to the requesting parties' outside counsel all non-privileged forensic reports (including anything relating to potentially responsive deleted material) and, if applicable, non-privileged materials responsive to existing Requests for Production. If the volume of documents is more than 1,000 pages the producing party shall review and produce the additional documents on a rolling basis as promptly as possible not to exceed 10 business days absent extraordinary circumstances. The producing party shall also promptly prepare

and produce a privilege log listing all materials received from the Neutral that have been redacted or withheld from production based upon privilege. For any documents that the Producing Party does not disclose based upon relevance, or asserted confidentiality, the burden shall be upon that party to move for and obtain a protective order recommendation from the Discovery Master which shall be filed within 3 business days of the production. In addition to the information normally provided on a privilege log, the moving party shall submit the primary documents to the Discovery Master under seal and shall also provide, to the maximum extent feasible consistent with the privacy interest asserted, a redacted form of the document(s) at issue to be served on all other parties. The withheld material shall be identified in a manner sufficient to apprise the requesting party of the nature of the documents or information withheld and the reason for the withholding.

15. If a disagreement over the production, designation, withholding, or redaction of materials cannot be resolved, the parties will, after a meet-and-confer on the issue, submit the dispute to the Discovery Master, who may review withheld information in camera.
16. If the producing party claims that privileged or irrelevant information or documents have been inadvertently produced, then the producing party can demand the return of those materials consistent with paragraph 14 of the Second Amended Protective Order, and the receiving party is bound to comply with the terms of that provision.
17. Notwithstanding any other section of this protocol, the Neutral may not perform any work in any cloud account until the Neutral takes screen shots and memorializes all file listings and information showing last accessed or modified dates to the extent those dates are available, and provides those screen shots to the producing party's outside counsel or forensic experts.
18. Notwithstanding any other section of this protocol, the Neutral may not perform any work on an image of any device until the Neutral ensures that the producing party has a duplicate image of the device that the Neutral will be examining.
19. All devices and accounts subject to this protocol, including all content on those devices or accounts and all analysis performed on those devices or accounts, will be initially treated as Outside Counsel Eyes Only under the Second Amended Protective Order governing this litigation until the parties agree or the Court orders otherwise.
20. The Neutral must use industry-standard equipment and best practices.
21. Plaintiffs will be responsible for costs associated with the review of any devices or accounts produced by defendants. Defendants will be responsible for costs associated with the review of any devices or accounts produced by plaintiffs. The plaintiffs and defendants will equally share the cost and fees of any review not associated with a particular device or account, or any task assigned to the Neutral by the Discovery Master or the Court. This cost sharing arrangement does not address whether or not, depending upon the results of this forensic investigation, a reallocation of costs is warranted as a sanction.

22. The fact that the Neutral obtained or retrieved any evidence is not an agreement that the evidence is admissible, nor does it constitute any waiver of any applicable attorney-client, work-product or other privilege.
23. The parties stipulate that the Neutral may not offer any expert opinions at trial. Trial testimony by the neutral expert, if any, will be limited to fact testimony on the specific tasks performed on particular devices.
24. This forensic investigation is not intended to replace or create new discovery obligations on any party except as specifically provided regarding this forensic examination under this Protocol. Therefore, there is no requirement that any party review the existing discovery requests or its existing responses with respect to materials that are produced through this forensic examination. However, the documents that come to light through this investigation shall be produced as provided here in irrespective of whether they were required or not previously in specific discovery requests by any party.
25. In the event that the Neutral seeks to pose a question or requires guidance from the Discovery Master regarding the Protocol, he may do so by email provided that he also copies counsel for all parties. Before any response by the Discovery Master, he will allow comments and suggested responses, if any, from all Counsel. Telephone contact with the Discovery Master by conference call with all counsel, while not preferable, may be considered (sparingly) to address any unforeseen urgent matters.

Certification by Neutral Expert:

I, Andy Reisman, swear and affirm under oath that I will abide by the above Protocol.

[Add Expert Name & Address]
