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The Honorable Sean P. O'Donnell
Hearing Scheduled: December 31, 2015 at 9:00 a.m.
KING COUNTY SUPERIOR COURT CLERK
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CASE NUMBER: 14-2-07669-0 SEA

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MOVE, INC., a Delaware corporation,
REALSELECT, INC., a Delaware corporation,
TOP PRODUCER SYSTEMS COMPANY, a
British Columbia unlimited liability company,
NATIONAL ASSOCIATION OF
REALTORS®, an Illinois non-profit
corporation, and REALTORS INFORMATION
NETWORK, INC., an Illinois corporation,

Plaintiffs,

v.

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

Defendants.

No. 14-2-07669-0 SEA

**DECLARATION OF
ANDREW CRAIN**

I, ANDREW CRAIN, declare as follows:

1. I am over the age of eighteen and am competent to testify. I have personal knowledge of the facts set forth herein.
2. I am Vice President of Forensics and Collections for Discovia (formerly known as SFL Data), an electronic discovery and computer forensics consulting firm based in San Francisco. I have served as a court-appointed neutral computer forensics examiner and have served as an expert for parties in cases involving neutral examiners.

DECLARATION OF ANDREW CRAIN - 1

SAVITT BRUCE & WILLEY LLP
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1 3. I have previously served as the Forensics Litigation Director at Bridge City
2 Legal, in Portland, Oregon, and the Computer Forensics Lab Director at SafirRosetti, a security
3 consulting, investigative and intelligence firm in San Francisco. I hold a J.D. from the
4 University of Colorado School of Law and I am admitted to the California Bar. I also hold a
5 California private investigator's license. I am an EnCase Certified Computer Examiner and I
6 have completed training courses offered by New Technologies, Inc., Guidance Software, and
7 AccessData, all of which are recognized leaders in the computer forensics industry. As part of
8 my work I regularly perform forensic imaging and analysis of computer hard drives and other
9 electronic storage media. I have conducted hundreds of computer forensics investigations
10 (often involving numerous computers in a single case). These investigations have been in the
11 context of a wide range of legal matters, including employment, intellectual property, trade
12 secrets, and securities regulation. Some of my cases have been referred to federal or state law
13 enforcement for prosecution. I have also spoken at seminars and lectures regarding computer
14 forensics and the use of electronic evidence in legal proceedings and investigations.

15 4. In my experience as both a court-appointed neutral computer forensics examiner
16 and computer forensics expert for litigants, I have accessed cloud accounts (including Apple's
17 iCloud) for purposes of forensic collection and analysis. I have never accessed a person's
18 iCloud account by registering my device to the account (*i.e.*, adding myself as an additional
19 member or new user on the account). I am not aware of anyone on my team at Discovia who
20 has accessed iCloud accounts in such a manner either. Rather, I and my team members have
21 accessed iCloud accounts for purposes of forensic collection and analysis either via (a) a web
22 browser using the account holder's user name and password, or (b) use of a third party
23 forensics tool made by Elcomsoft.

24 5. When a person registers their device to the iCloud account (and thus becomes an
25 additional user on the account via that device (the "new user")), they become linked to all
26 devices, all cell phone numbers and all email addresses connected to the account, unless and
27 until that new user goes into "Settings" and disassociates the other email addresses and cell

1 numbers from their device. In other words, by default, this method of access permits the new
2 user (via their now-linked device) to join as an active participant on the account with all other
3 account members.

4 6. As a result, if an iCloud account is accessed in this manner, and unless the new
5 user does not disassociate any email addresses or cell numbers, that new user is able to monitor
6 and participate in real time, and on an ongoing basis, in everything that goes on in the account.
7 For example, the new user would receive on his or her device a real-time feed of all iMessage
8 (text) communications sent or received by the account members; and, conversely, is able to
9 send iMessages to outsiders from any linked email address or cell number (*i.e.*, may pose as
10 any member of the account). And, likewise with FaceTime videoconferences: the new user is
11 able to videoconference with any account member or seek to videoconference with outsiders
12 from any linked cell number.

13 7. Upon the new user's registration of their device to the account, a pop-up
14 message is generated on the other account members' devices like the one that Mr. Beardsley
15 received on October 28, 2015.

16 8. In regard to this case, Discovia has accessed Mr. Beardsley's iCloud account via
17 a web browser and use of the Elcomsoft software.


18 9. If Mr. Beardsley accessed his iCloud account between the time he changed the
19 password on the account and the time the Neutral completed his collection from the account,
20 the Neutral would be able to determine readily whether Mr. Beardsley had modified or deleted
21 any documents stored in the account. There is a last modified date associated with each
22 document. And, under "Advanced" Settings, there is an option to "Restore Files" that have
23 been deleted in the last 30 days. My understanding is that this feature does not permit a user to
24 clear the list of deleted files; that is, a user is not able to delete a file and then delete the deleted
25 file.

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

DATED this 8th day of December, 2015 at Lake Oswego, Oregon.



Andrew Crain