

THE HONORABLE SEAN P. O'DONNELL
Hearing Date: November 13, 2015
With Oral Argument

FILED
KING COUNTY WASHINGTON

DEC 09 2015

SUPERIOR COURT CLERK
BY Rianne Rubright
DEPUTY

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

Defendants.

Case No. 14-2-07669-0 SEA

~~PROPOSED ORDER GRANTING~~ **IN PART**
NATIONAL ASSOCIATION OF
REALTORS' AND REALTORS
INFORMATION NETWORK, INC.'S
MOTION TO DISMISS ZILLOW'S
COUNTERCLAIMS AND DENYING
IN PART

1 This matter came before the Court on the motion of the National Association of Realtors
2 and Realtors Information Network, Inc. (collectively, "NAR") to dismiss Zillow's counterclaims.
3 The Court has considered NAR's Motion and the attached appendices, Zillow's Response,
4 NAR's Reply Brief, and the argument of counsel. The Court deems itself fully advised.

5 NOW THEREFORE, it is hereby ORDERED:

6 1. NAR's Motion is GRANTED. ~~IN PART AND DENIED IN PART:~~

7 2. ~~The Court holds that the absolute litigation privilege and/or the fair and true~~
8 ~~report privilege bars Zillow's counterclaims for defamation, abuse of process, aiding and~~
9 ~~abetting, interference, and misappropriation of trade secrets.~~

10 3. The Court ~~also~~ holds that Zillow's counterclaim for the breach of the protective
11 order fails because an alleged breach of a protective order does not give rise to an independent
12 cause of action. ~~It is therefore dismissed.~~

13 4. In addition, the Court holds that the following individual counterclaims are
14 dismissed for the following additional reasons:

15 i. Defendant's counter claim # 3 (Intentional Interference with Contractual Relationship)
16 is dismissed with respect to NAR, ^{and BIN} as there have been no facts pled to
17 show that either group knew of a contractual relationship between the anonymous
18 whistle-blower and Zillow or that either induced or encouraged the writer to
19 compose + send the letter.

20 ii. Defendant's second counterclaim is dismissed for the same reasons

21 Dated this 8th December
22 day of November, 2015.



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24 iii. The Court finds that the whistle-blower letter is pertinent to the ongoing litigation.
25 Accordingly, an absolute privilege exists for filing the document (with respect to the defamation
26 counter-claim). The same cannot be said for distributing the letter to the media, under
27 the heightened standard plaintiffs must show on this CR 12(b)(6) motion. While the letter
28 is admissible to a legal proceeding, the issue here is novel: the contents themselves
29 (and their accuracy) are hotly disputed. NAR did not 'report' on the proceeding. It allegedly
30 distributed the offending letter to the media, see Alpine Industries v. Cowles, 114 Kan. App 371 (2002).
31 In so distributing the document, it arguably vouched for its accuracy. Accordingly, the
32 fair reporting privilege does not apply. The motion to dismiss the defamation claim
33 pursuant to CR 12(b)(6) is DENIED.

PROPOSED ORDER

34 iv. The motion to dismiss the abuse of process claim is DENIED.