

FILED
KING COUNTY WASHINGTON

JAN 08 2016

SUPERIOR COURT CLERK
BY Susan Bone
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 DECEMBER 20, 2015
SPECIAL MASTER REPORT AND
RECOMMENDATION ON PLAINTIFFS'
MOTION TO COMPEL ZILLOW TO
PRODUCE DIRECT LISTING FEED
AGREEMENTS AND ZILLOW'S CROSS
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS RELATING TO DIRECT
FEED LISING AGREEMENTS

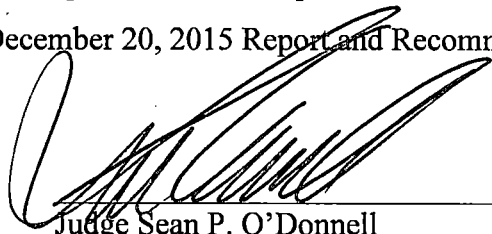
Special Master Hilyer filed his "Special Master Discovery Report" dated December 20, 2015 regarding the above-referenced issues

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 December 20, 2015 Report and Recommendations.

IT IS SO ORDERED.

DATED January 7, 2016



Judge Sean P. O'Donnell

H | D | R

HILYER DISPUTE RESOLUTION

December 20, 2015

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

Re: *Move et al. v. Zillow et al.*, KCSC No. 14-2-07669-0 SE; Special Discovery Master Report and Recommendation on Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements AND Zillow's Cross Motion to Compel Production of Documents relating to Direct Feed Listing Agreements

Dear Judge O'Donnell:

Pursuant to your Orders in this case dated July 15, 2015 and July 28, 2015, regarding the procedures surrounding discovery motions, 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 Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements AND the Cross Motion to Compel Documents Relating to Direct Listing Feed Agreements, the DM has considered all briefing, including: Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements; Declaration of John Lee in Support of Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements; [Proposed] Report and Recommendation Granting Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements; Zillow's Response to Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements and Cross Motion to Compel Documents Relating to Direct Listing Feed Agreements; Declaration of Katherine G. Galipeau in Support of Zillow's Response to Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements and Cross-Motion to Compel Documents Relating to Direct Feed Listing Agreements; Plaintiffs' Reply in Support of Motion to Compel Zillow to Produce Direct Listing Feed Agreements; Zillow's Response to Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements and Cross Motion to Compel Documents Relating to Direct Listing Feed Agreements; Declaration of Katherine G. Galipeau in Support of Zillow's Response to Plaintiffs' Motion to Compel Zillow to Produce Direct Listing Feed Agreements and Cross-Motion to Compel Documents Relating to Direct Feed Listing Agreements; Plaintiffs' Opposition to Zillow's Cross Motion to Compel Documents Relating to Direct

Feed Listing Agreements; Declaration of John S. Lee in Support of Plaintiffs' Opposition to Zillow's Cross Motion to Compel Documents Relating to Direct Feed Listing Agreements; [Proposed] Report & Recommendation Denying Def Zillow's Cross Motion to Compel Documents Relating to Direct Feed Listing Agreements; Zillow's Reply in Support of Cross Motion to Compel Documents Relating to Direct Feed Listing Agreements; Supplemental Declaration of Katherine G. Galipeau in Support of Zillow's Reply in Support of Cross Motion to Compel Documents Relating to Direct Feed Listing Agreements.

Oral argument was held on December 14, 2015, at the offices of Hilyer Dispute Resolution, 1000 Second Avenue, Suite #3000, Seattle, WA 98104. The DM reports and recommends as follows:

RELIEF REQUESTED ON PLAINTIFFS' MOTION TO COMPEL ZILLOW TO PRODUCE DIRECT LISTING FEED AGREEMENTS:

REQUEST FOR PRODUCTION NO. 310: All MLS direct feed agreements to which Zillow was a party between June 2013 and the present.

GRANTED.

ANALYSIS: Initially, Zillow objected arguing that it had produced sufficient "sample" direct feed agreements that were sufficient for Plaintiffs' discovery needs. Under Plaintiffs' theories, the direct listing agreements are needed to show that the reason Zillow improved so dramatically in obtaining direct feed agreements was because of the misuse of Plaintiffs' trade secrets allegedly misappropriated by Beardsley and Samuelson. In its later briefing and at the discovery hearing, Zillow conceded that its direct feed agreements could be produced but argued that the production should be reciprocal and filed a Cross Motion to Compel Production of the Plaintiffs' direct feed agreements. Thus, Zillow has essentially acquiesced that this motion should be granted IF its Cross Motion is also granted [SEE BELOW].

INTERROGATORY NO. 22: State the total number of MLS direct feed agreements to which Zillow was a party: (i) as of March 5, 2014; (ii) as of March 17, 2015; and (iii) in each month from June 2013 to the present.

GRANTED.

ANALYSIS: See above analysis for RFP # 310. The information sought in direct feed agreements is relevant and the burden to produce is low and the invasion of proprietary interests is low.

RELIEF REQUESTED ON ZILLOW'S CROSS MOTION TO COMPEL DOCUMENTS RELATED TO DIRECT FEE AGREEMENTS:

Zillow's 11th Set of RFPs

REQUEST FOR PRODUCTION NO. 1: Please produce draft and executed copies of all direct feed agreements between Move and a Multiple Listing Service ("MLS"), including but not limited to DCPA agreements or similar agreements, that were or are in effect from 2013 to present.

GRANTED.

ANALYSIS. See discussion below.

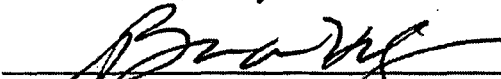
REQUEST FOR PRODUCTION NO. 2: Please produce all communications from 2013 to present relating to Move's direct feed and DCPA agreements with Multiple Listing Services ("MLSs"), including but not limited to internal communications at Move and external communications between Move and third parties regarding these or similar agreements, and communications relating to or attaching draft agreements.

GRANTED.

ANALYSIS: In its response brief and at oral argument, Plaintiffs contended that since it is willing to produce their direct feed agreements as is Zillow, this cross motion is moot. However, Plaintiffs are not willing to produce their documents related to their direct feed agreements which they contend are not relevant, but this argument is unpersuasive. The competition between Plaintiffs and Zillow to obtain direct feed agreements for real estate listings is hotly contested in the marketplace and in this litigation. And this subject has evolved during the litigation as Zillow, and its more recent acquisition Trulia, no longer contract with Plaintiff Move's business List Hub to obtain listings. Plaintiffs contend that Zillow has only been successful in obtaining listings without relying on List Hub because it used trade secret information obtained from Move when Beardsley and Samuelson worked for Move and oversaw List Hub. Zillow contends that the MLSs and real estate brokers generally flocked to provide direct feed to Zillow as an alternative to List Hub because Zillow offered better terms

than Move and List Hub. The bottom line is that by Plaintiffs conceding the discovery relevance of their direct feed agreements, the same logic leads to the discoverability of the related documents. Since the competition for direct feed listing agreements is part of this litigation from several different angles, then it follows that the related third party documents which may provide information about the concerns and assessments from the perspective of the "customers" (the MLSs and real estate brokers and agents) is reasonably calculated to lead to discoverable evidence. Recognizing the fast paced nature of the changes in the market for internet real estate listings, the scope of these related documents to be produced is limited back to June, 2013.

IT IS SO REPORTED AND RECOMMENDED THIS ²⁰ day of December, 2015.



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