

FILED
KING COUNTY, WASHINGTON

The Honorable Sean P. O'Donnell
Noted for Consideration: November 24, 2015

JAN 05 2016

SUPERIOR COURT CLERK
BY David Witten
DEPUTY

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,
ERROL SAMUELSON, an individual, and
CURT BEARDSLEY, an individual,

Defendants.

NO. 14-2-07669-0 SEA

**DEFENDANT CURT BEARDSLEY'S
RESPONSE TO PLAINTIFFS'
MOTION TO MODIFY SECOND
AMENDED PROTECTIVE ORDER**

Plaintiffs' motion does not seek relief from Mr. Beardsley, but we submit this response to address the immaterial and unsupported allegations made against him in it.

The motion continues Plaintiffs' efforts to maintain a steady drumbeat of unsupported allegations masquerading as facts, both to influence the Court's view of the case (as referenced by Plaintiffs' counsel at the recent hearing) and to provide fodder for the extensive coverage this action continues to receive in the real estate press.

1 Plaintiffs here move for a modification of the protective order to deal with one aspect of
2 Zillow's counterclaim: Plaintiffs' republication of Mr. Crocker's statements about Zillow's use
3 of IDX feeds of listing information. The other allegations in Mr. Crocker's letter to Plaintiffs'
4 counsel are not at issue, as demonstrated both by the summary of Plaintiffs' argument in their
5 introduction (Mtn. at 1-2) and the substance of the arguments that they seek to advance. (*Id.* at
6 8-12.) The assertions in the so-called statement of facts beginning at 2:16 and continuing until
7 4:6 simply have nothing to do with the relief requested or the matters at issue.

8 The immaterial and irrelevant matter would simply be a distraction to the Court were it
9 not an effort to discredit Mr. Beardsley (and Zillow and Mr. Samuelson) both to the Court and
10 to the real estate industry. Mr. Beardsley joins both in Zillow's and in Mr. Samuelson's
11 opposition, and notes further that the allegations at pp. 2-4 of the motion are unsupported by the
12 evidence cited. While we make no attempt here to provide a comprehensive response or to
13 address each allegation – that is the purpose of trials – we note the following:

14 • There is no evidence that Zillow's CEO, or anyone else at Zillow, had any
15 communications with Mr. Beardsley in late 2013 or at any time before March 2014.

16 • Mr. Samuelson's suggestion to Mr. Beardsley that they be careful in their
17 written communications made quite clear why, in a passage Plaintiffs decline to tell the Court
18 about: the concern that someone would later seek to twist the true meaning of those
19 communications—a concern that is borne out by this very lawsuit and the unsupported
20 allegations Plaintiffs continue to make.

21 • There is no evidence that Mr. Beardsley had knowledge of Move's M&A plans,
22 much less any that he discussed with Zillow.

23 • In connection with his departure from Move, Mr. Beardsley made efforts to
24 delete his personal information from Move devices and to delete Move information from his
25 personal accounts and devices—and he told Move about it contemporaneously, without any
26 complaint from Move.

1 • In Exhibit 2 to Plaintiffs’ motion, which are personal and private notes of Mr.
2 Beardsley written to himself, he pondered about a potential move to Zillow—he didn’t want to
3 make such a significant jump only to fail or be marginalized in a new company. There is no
4 evidence that Beardsley shared this document with anyone or that he acted contrary to Move’s
5 interests before his departure. Nor is there evidence that Beardsley accessed this document
6 after joining Zillow; to the contrary, the evidence shows that he deleted its content *before*
7 leaving Move. Further, and importantly, it reflects not deep knowledge about Move’s business,
8 but rather general knowledge of what was going on in the real estate business.

9 • Mr. Beardsley could not locate some thumb drives that Plaintiffs have only
10 recently alleged are relevant for no other reason than they were connected at some point to his
11 Move laptop; that a few of these small, cheap devices have been lost is not surprising or
12 evidence of anything. (Indeed, if he still had them, Plaintiffs would be arguing that he had
13 “stolen” the information on them.)

14 • Mr. Crocker, who was unhappy that Mr. Beardsley’s hiring at Zillow displaced
15 him, effectively admitted that he was speculating: his basis for believing that Mr. Beardsley
16 used a stolen spreadsheet was his alleged observation, once, of Mr. Beardsley using a
17 spreadsheet that Crocker didn’t recognize and thus just assumed came from Move. This is not
18 evidence. Moreover, Mr. Crocker’s story at deposition contradicted the statement he’d given
19 earlier, in which he said he had no reason to believe that Mr. Beardsley had done anything
20 wrong.

21 • The allegation that “stolen MLS databases” were hidden in cloud accounts is
22 false. Yes, there was an old spreadsheet containing MLS information found in Mr. Beardsley’s
23 Google Drive account, a cloud account. But it was there only because a Move employee
24 “shared” it with Mr. Beardsley *years before his departure*, not because it was “stolen. Further,
25 it contained and reflected information *from 2011*: outdated information of no use to anyone in
26 2014.

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RESPECTFULLY SUBMITTED: November 20, 2015.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 20, 2015, I served the documents described below:

- 3 • **DEFENDANT CURT BEARDSLEY'S RESPONSE TO PLAINTIFFS'**
4 **MOTION TO MODIFY SECOND AMENDED PROTECTIVE ORDER**

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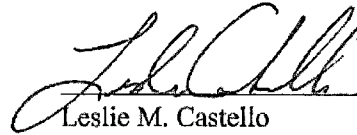
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED on November 20, 2015 at Seattle, WA.



Leslie M. Castello