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CASE NUMBER: 14-2-07669-0 SEA

THE HONORABLE SEAN O'DONNELL
Trial Date: June 6, 2016

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MOVE, INC.,

Plaintiffs,

v.

ZILLOW, INC.,

Defendants.

No. 14-2-07669-0 SEA

DEFENDANT ZILLOW'S TRIAL BRIEF

PUBLIC REDACTED VERSION

DEFENDANT ZILLOW'S TRIAL BRIEF

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I. INTRODUCTION

Defendants Samuelson and Beardsley used to work for Plaintiff Move and now work for Defendant Zillow. Plaintiffs claim that Samuelson and Beardsley took and then used at Zillow trade secrets belonging to the Plaintiffs. They have no proof—zero—as to Samuelson, but Beardsley apparently referred to a Move listing of basic, publicly available information about Multiple Listing Services (MLSs). From that thin reed, Plaintiffs have constructed fanciful allegations intended to tarnish Defendants’ reputations, impede fair competition, and excuse Move’s own failings to innovate, execute, and compete on the merits.

Plaintiffs have overlitigated the lawsuit and exaggerated their circumstantial arguments and alleged damages in the hope that big defense costs and damages numbers would coerce settlement. Move never intended such behavior to be tested at trial, but now the bill comes due. Zillow is eager. The evidence will show that Plaintiffs’ supposed “secrets” were ideas well-known in the real estate industry (due largely to Plaintiffs’ own disclosures of what they now claim as trade secrets) and were usually first conceived by others. Move has not suffered any harm from the claimed misappropriation. Plaintiffs’ common law claims (breach of fiduciary duty and tortious interference) are as flawed as their trade secret claims. And Plaintiffs’ billion-dollar damages theory is a house of cards.

Move’s story of a plot to steal its trade secrets makes no sense and, as Move admits, is supported by no direct evidence. Two years of intensive discovery and parsing of metadata has turned up not a single Move confidential document or idea in hundreds of thousands of Zillow emails and planning documents. By the time it reached out to Samuelson, Zillow had catapulted past Move and was widening its lead every month. It had no need to steal someone else’s ideas, much less steal from Move, a company perceived even by its own executives as a relic and trade association tool that was fortunate to be acquired and somewhat reinvigorated by News Corp.

1 Zillow had established the plan needed to support its direct feed efforts, and the industry was
2 moving away from dependence on Move's ListHub, a dependence that Move overplayed in its
3 desperation for an unlevel playing field. Zillow needed a new quarterback to implement its plan,
4 which is why it recruited Samuelson. The last thing it needed was Move's failed playbook.
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8 II. FACTS 9

10 A. The Parties 11

12 Plaintiff National Association of Realtors (NAR) is the largest trade association in the
13 country. NAR owns the website realtor.com ("the official website of the National Association of
14 REALTORS®"),¹ which is operated by plaintiff Move, Inc. Move rode that relationship to
15 dominance in the on-line real estate industry, but it rested on its laurels and its leveraging of its
16 NAR relationship. New competitors, with new energy and ideas, entered the market.
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22 Zillow is the most successful of the upstarts, founded in 2004 with a vision of bringing
23 real estate data to the fingertips of consumers—serving them, not realtors. Zillow's founders are
24 entrepreneurs who successfully launched the on-line travel industry while at Microsoft and then
25 Expedia. Zillow was once a small Seattle start-up, but by 2011, it had surpassed Move in the
26 ultimate metric of on-line success: web traffic. By March 2014, when Move filed this lawsuit,
27 Zillow had more than *double* the visits from consumers of realtor.com. Zillow's many
28 innovations, like "Zestimates" (home price estimates) and real estate agent reviews, endear it to
29 consumers, but are detested by many realtors, who perceive Zillow as a threat to their role in real
30 estate transactions. Move's effort to exploit that perception rather than compete on the merits
31 was failing in the marketplace.
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41 Errol Samuelson clashed with Move's CEO, Steve Berkowitz. Even though Samuelson
42 was a free agent who felt his team had an outdated playbook and a failed coach, it was still a
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¹ See <http://marketing.move.com/>.

1 very hard decision to jump to a rival. And for a time Samuelson hoped either that he would be
2 chosen to replace Berkowitz or that [REDACTED]
3 [REDACTED]

4 [REDACTED] But in March 2014, with progress stalled on both fronts,
5 Samuelson left Move for Zillow, which needed his credibility and persuasiveness to improve
6 Zillow's relationships in the real estate industry. Zillow later hired Curt Beardsley to expand
7 Samuelson's team. Zillow wanted their industry credibility and talents—not Move's secrets.
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10 Well before Zillow recruited Samuelson, Zillow had already come up with a package of
11 incentives to offer MLSs in exchange for direct access to listings data ("direct feeds"), the "oil"
12 needed to fuel a real estate website. Zillow's breakthrough came in October 2013 with the
13 Northern Alabama MLS, a Huntsville-based MLS fed up with ListHub's deficiencies and willing
14 to agree to a direct feed to Zillow (and Trulia) in exchange for incentives that Move was not
15 willing to offer. Samuelson, and later Beardsley and several other new hires, were to "scale
16 Huntsville," by using their decades of experience and deep relationships in the industry. Move
17 hesitated for a year before agreeing to terms with Huntsville and refused to offer these incentives
18 to the rest of the industry until May 2015, 20 months after Zillow.
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29 **B. Procedural History**

30 **1. The Initial Complaint Names Only Zillow and Samuelson**

31 On March 17, 2014, days after Samuelson left Move for Zillow, Plaintiffs filed suit,
32 naming Zillow and Samuelson as defendants. (Beardsley was also a Zillow employee as of the
33 filing of the initial complaint, but he was not added as a defendant for a year.)
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39 The original complaint asserted a violation of the Washington Uniform Trade Secret Act
40 (UTSA), breach of contract, and other common law claims including conspiracy to violate the
41 UTSA, breach of fiduciary duty, tortious interference with contract, tortious interference with
42 business expectancy, conversion, trespass to chattels, and unjust enrichment. As Plaintiffs
43 represented to the Court, "A single nucleus of facts runs through the various liability and
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1 damages claims.”²

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3 **2. A Preliminary Injunction is Issued But Deemed “Probable Error” on Appeal**

4 The Court initially denied Plaintiffs’ request for a preliminary injunction, but on June 30,
5 2014, the Court granted Plaintiffs’ second motion. The injunction order effectively precluded
6 Samuelson from working for Zillow for a year, with some restrictions expiring after six months
7 and some lasting until trial.³ The Court of Appeals quickly took discretionary review and ruled
8 that the preliminary injunction order was “probable error.” In exchange for dismissal of the
9 appeal, Move soon agreed to continue the trial date and to early expiration of the preliminary
10 injunction restrictions.⁴ Plaintiffs subsequently agreed, and the Court ordered, that Plaintiffs
11 would not “assert any claim or seek any damages or other relief for contempt or violation of the
12 Preliminary Injunction.”⁵ Tellingly, Plaintiffs have abandoned most of the alleged trade secrets
13 upon which the erroneous preliminary injunction was based.
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24 **3. The Court Repeatedly Orders Plaintiffs to Define Their Trade Secret Claims,**
25 **and Plaintiffs Repeatedly Fail to Comply**

26 Though Plaintiffs’ core theory of liability is trade secret misappropriation, from the
27 beginning that has been a theory in futile search of evidence. Within ten days of the lawsuit,
28 Zillow issued Interrogatory No. 1 asking that each Plaintiff identify each involved trade secret
29 “with reasonable particularity.” Plaintiffs stalled for six months. Zillow filed the first of many
30 motions to compel a response, resulting in the first of many orders compelling Plaintiffs to
31 answer.
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² Dkt. No. 731 (Letter from Plaintiffs’ counsel Richard L. Stone to Court, dated June 25, 2015).

³ Dkt. No. 201 (Findings of Fact and Conclusions of Law and Order for Preliminary Injunction, dated June 30, 2014).

⁴ Dkt. No. 360 (Order Re: Trial Date and Preliminary Injunction, dated Feb. 4, 2015).

⁵ Dkt. No. 510 (Stipulation and Order, dated March 27, 2015).

1 [REDACTED] The list was deficient in too many ways to count. Plaintiffs coughed up another
2 version. Reading like a novel, not a legal document, it failed to identify a single specific trade
3 secret. The Court and Discovery Master deemed the failings of the new list “readily apparent.”⁶
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6 Having successfully avoided identifying the trade secrets at issue for more than a year
7 and a half, Plaintiffs tried a different obfuscation tactic, issuing a 270-page “Supplemental Trade
8 Secret Disclosure.” The document increased the weight but not specificity and substance of
9 disclosure. The Court, for a third time, ruled that Plaintiffs’ disclosure failed to adequately
10 respond to Zillow’s discovery requests and again ordered Plaintiffs to do so, and to distinguish
11 between background information and the alleged trade secret information, to separately identify
12 each claimed trade secret, and to identify all “combination” trade secrets.⁷ Yet Plaintiffs’
13 February 2016 disclosure continued to be vague and overbroad.
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16 After two years of discovery, nine iterations of a trade secret list, over 60 days of
17 deposition (many devoted to exploring exactly what trade secrets were being alleged at that
18 time), and more than a dozen expert reports issued on the trade secrets as articulated by
19 Plaintiffs, the civil rules, the law, and fundamental fairness prohibit Plaintiffs from switching
20 tracks again. But lacking any substance to their claims, they will have to try. The Court must
21 not allow them to silently concede that their stated trade secrets are not real, and instead assert
22 that “something else” (whether newly alleged or hidden in excess verbiage Plaintiffs were
23 ordered to remove) is the “actual trade secret.” The hiding the ball strategy has so far deprived
24 the Defendants of an opportunity to summarily prevail (especially as a result of Plaintiffs’ failure
25 to produce thousands of responsive documents until the month before trial). At trial Plaintiffs
26 must be held to the scope of their Court-ordered final trade secret list, the February 2016
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44 ⁶ Dkt. No. 793 (Order Adopting Aug. 14, 2015 Report and Recommendations of Special Master Re: Defendant
45 Zillow’s Motion to Compel (Trade Secret Specificity), dated Aug. 26, 2015).

46 ⁷ Dkt. No. 1103A (Order Adopting February 9, 2016 Report and Recommendations of Special Master Re: Defendant
47 Zillow’s Motion to Compel (Additional Specificity), dated Feb. 16, 2016).

1 disclosure.

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3 **4. The Court's Summary Judgment Rulings Narrow the Case**

4 So far, the Court has narrowed the issues for trial as follows:

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6 *First*, because the UTSA expressly “displaces conflicting tort, restitutionary, and other
7 law of this state pertaining to civil liability for misappropriation of a trade secret,” RCW §
8 19.108.900, the Court dismissed several of Plaintiffs’ claims: Plaintiffs’ claim for conspiracy to
9 violate the UTSA against all Defendants, the aiding and abetting breach of fiduciary duty claim
10 against Zillow, and the unjust enrichment claim against Zillow, as well as claims for trespass to
11 chattels and conversion of data and computer devices against Samuelson. (Plaintiffs then agreed
12 to dismiss the remaining portions of their trespass and conversion claims against Samuelson.)
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16 *Second*, the Court dismissed Plaintiffs’ claims for breach of contract against Samuelson
17 and Beardsley because Plaintiffs failed to establish valid contractual obligations on which to base
18 their claims. And because Plaintiffs’ claim for tortious interference with contract against Zillow
19 is premised in part on the theory that Zillow induced Samuelson and Beardsley to breach those
20 contracts, that portion of the tortious interference with contract claim against Zillow fails.
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24 *Third*, in opposition to Defendants’ motions for summary judgment, the Plaintiffs
25 conceded the lack of viability of various of their claimed trade secrets and dropped them.
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29 *Fourth*, the Court dramatically narrowed the issues for trial by granting much of the relief
30 requested in Defendants’ summary judgment motions earlier today. The Court granted
31 Defendants’ MPSJ on Plaintiffs’ AppHub Claims, dismissing with prejudice all causes of actions
32 “to the extent that they are based on Plaintiffs’ AppHub allegations, including Plaintiffs’ trade
33 secrets denominated O128, O129, O130, O131, O133, and O134, as well as the AppHub sections
34 of D52 of their January 2016 Trade Secret Disclosures.”⁸ The Court also dismissed all
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⁸ The Court also granted Defendants’ motion to strike portions of Plaintiffs’ Feb. TS List relating to AppHub.

1 remaining Retsly-related claims against Zillow by granting in part Defendants' Retsly MPSJ,
2 dismissing with prejudice Plaintiffs' misappropriation claims to the extent they are based on
3 misappropriation of trade secrets related to Retsly (specifically O132).⁹ With regard to Trulia,
4 the Court granted Defendants' MPSJ on Trulia-related misappropriation in part, dismissing
5 Plaintiffs' Trulia claims for actual damages (but permitting Plaintiffs to seek unjust enrichment
6 damages on a theory proposed by Plaintiffs, that one may recover unjust enrichment without
7 proof of causation). The Court also ruled on motions filed by Samuelson and Beardsley,
8 granting Beardsley's and Samuelson's MPSJs dismissing trade-secret and contract claims based
9 on "contact information" and granting Beardsley's and Samuelson's MPSJs on Plaintiffs' duty of
10 loyalty claims insofar as they rely on AppHub as a trade secret, Retsly as a trade secret, Outlook
11 contracts as a trade secret, breach of Move's confidentiality agreement, or (for Beardsley) the
12 sale of Move stock prior to leaving Move.
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14 Multiple motions for summary judgment and to exclude or cabin Plaintiffs' damages
15 expert remain pending before the Court that, if granted, will further narrow the issues and scope
16 of damages Plaintiffs may seek at trial.
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18 **5. The Court Denies Plaintiffs' Motion for Spoliation Against Zillow and**
19 **Samuelson, Granting It Only in Part as to Beardsley**
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21 On May 17, 2016, after an unprecedented six-day evidentiary hearing, the Court entered
22 Findings of Fact, Conclusions of Law, and an Order largely denying Plaintiffs' Motion for
23 Spoliation Sanctions. As to Zillow, the Court found that "Zillow took early and appropriate
24 steps to notify its employees, including Samuelson and Beardsley, of their obligations to
25 preserve evidence." The Court denied the motion entirely with respect to Zillow and Samuelson,
26 and granted it in part with respect to Beardsley. The Court ruled that an adverse inference
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⁹ The Court denied Defendants' Retsly MPSJ to the extent it sought dismissal of Plaintiffs' breach of fiduciary duty (corporate opportunity) claim against "Defendants." The breach of fiduciary duty claims are asserted against only the individual defendants only, as the aiding and abetting breach of fiduciary claim against Zillow was dismissed in the preemption summary judgment order. In other words, there are no Retsly claims remaining against Zillow.

1 instruction should be given in connection with the loss of metadata from five devices, which
2 would permit, but not require, the jury to infer that the missing metadata would be unfavorable to
3 Beardsley's case.
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6 Despite the Court's ruling that neither Zillow nor Samuelson engaged in sanctionable
7 conduct, the imposition of that severe sanction against Beardsley threatens to unfairly taint the
8 proceedings against his co-defendants.¹⁰ Accordingly, to ensure a fair trial for Defendants
9 Zillow and Samuelson, the Court should divide the presentation of evidence into two phases.
10 During the first phase, no evidence of or reference to spoliation should be permitted. This will
11 be the major phase of the trial, in which the claims and defenses will be fully tried on the merits
12 based on all available evidence.
13

14 At the end of this phase, the jury would be asked to complete the special verdict form.
15 Only if the jury returns a verdict in favor of Beardsley on any claim that could be implicated by
16 the missing metadata would it be necessary to proceed to the short second phase. In the second
17 phase, the jury would hear what could have been shown by the missing metadata, and then
18 (through the use of an appropriate adverse inference instruction) be asked to assess whether the
19 potential inference results in different findings with respect to Beardsley. Courts employ such a
20 phased approach to avoid unfair prejudice.¹¹
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22 In addition to minimizing unfair prejudice, bifurcation would promote efficiency by
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37 ¹⁰ See, e.g., *Donato v. Fitzgibbons*, 172 F.R.D. 75, 85 (S.D.N.Y. 1997) ("I am concerned about the possible spillover
38 effect of my adverse inference ruling on [an aligned party], who has no responsibility for the spoliation of the evidence").

39 ¹¹ See, e.g., *id.* at 85 (severing the trial of a police officer after entry of an adverse inference spoliation sanction against
40 an aligned party, i.e., the municipality that employed the officer); CR 20(b) ("The court . . . may order separate trials or make
41 other orders to prevent delay or prejudice"); CR 21 ("[a]ny claim against a party may be severed and proceeded with
42 separately"); CR 42(b) ("[t]he court, in furtherance of convenience or to avoid prejudice, . . . may order a separate trial of any
43 claim . . . or of any separate issue . . . always preserving inviolate the right of trial by jury"); see also *E.E.O.C v. Dial Corp.*,
44 259 F. Supp.2d 710 (N.D. Ill. 2003) (employing a phased bifurcated trial structure in which a jury in Phase I addressed
45 whether a pattern or practice of discrimination existed and, if so, when; then in Phase II addressed whether any such pattern or
46 practice was done with malice or reckless indifference, and if so, the amount, if any, of punitive damages to award to the
47 class; Phase III would then address compensatory damages in the cases of individual defendants; and Phase IV would involve
a final apportionment by the judge of any punitive damages).

1 avoiding the unnecessary introduction of evidence on spoliation in the initial phase. If Beardsley
2 is found liable on Plaintiffs' misappropriation claims, then the non-introduction of the spoliation
3 evidence would be immaterial—Plaintiffs would already have a judgment against him. If
4 Beardsley is found not liable, Plaintiffs would not be disadvantaged, as they would have “a
5 second bite at the apple” at proving his liability in the second phase with respect to claims (if
6 any) implicated by the missing metadata.
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12 **6. Other Key Anticipated Evidentiary Issues**

13 In addition to evidentiary issues that will be involved in Plaintiffs' predictable effort to
14 get a “second bite” at their spoliation motion, Zillow anticipates numerous other evidentiary
15 battles that will require the Court's intervention.
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19 **a. Plaintiffs' Excessive and Irrelevant Trial Exhibits**

20 Plaintiffs have a boundless view of relevance, as they have listed as trial exhibits
21 documents on numerous topics having nothing to do with this litigation, but included only in an
22 attempt to prejudice or embarrass Defendants. Because Plaintiffs' exhibit list was served (per
23 the case schedule) after motions in limine, Defendants did not have the opportunity to move to
24 exclude these unpredictable exhibits prior to trial. Some of the categories of irrelevant,
25 prejudicial, and hearsay documents include:
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32 (a) press coverage of Move's claims and other irrelevant, inflammatory allegations;¹²
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34 (b) pleadings, declarations, reports and recommendations, and orders in this case;¹³
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38 ¹² See, e.g., TX 0079 (“In Which I Speak to Steve Berkowitz, CEO of Move, Inc.” relating Mr. Berkowitz's thoughts
39 regarding Mr. Samuelson's departure); TX 0083 (“NAR Joins MOVE, Inc. Lawsuit Against Zillow, Samuelson”); TX 0097
40 (“Court chastises Zillow exec for interfering with investigation”); TX 0049 (“Zillow sued for racist cotton tampon jokes
41 targeting black employees”); TX 1367 (“Zillow Accused of Subjecting Female Employees to ‘Sexual Torture’”); TX 0077
42 (“Zillow Can't Duck Harassment Claims of ‘Frat House’ Office”); TX 0088 (“Judge Certifies Zillow Unpaid Overtime Class
43 Action Lawsuit”).

44 ¹³ See, e.g., TX 0519 (Complaint (March 17, 2014)); TX 0045 (Declaration of B. Owens regarding, among other things,
45 C. Crocker's administrative leave); TX 0157 (Declaration of B. Owens regarding designation of documents as “outside
46 counsel eyes only”); TX 0251 (Declaration of S. Rascoff regarding negotiation of Mr. Samuelson's employment contract);
47 TX 0435 (Declaration of P. Flint regarding proposed Trulia/Move merger and the Trulia/Zillow merger); TX 0548
(Declaration of B. Owens in support of Zillow's motion for protective order (JP Morgan & Goldman Sachs Subpoenas)).

1 (c) correspondence between counsel;¹⁴
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3 (d) correspondence between counsel for Zillow and Chris Crocker;¹⁵ and
4
5 (e) various other documents intended to prejudice Zillow by portraying Zillow executives
6 as rich and Zillow as litigation-prone or hypocritical.¹⁶
7

8 **b. Plaintiffs' Repeated Relitigation of Dismissed Claims**
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10 The Court should be watchful of Plaintiffs' effort to try to resuscitate dismissed or
11 abandoned claims. Four examples: *First*, the Court has ruled that Plaintiffs are bound by their
12 February 2016 trade secret list. Evidence regarding "trade secrets" that are not on that list is
13 irrelevant and should not be admitted. *Second*, the Court dismissed Plaintiffs' common law
14 claim for conspiracy to violate the UTSA. There is no conspiracy claim remaining in the case.¹⁷
15 For that reason, and because such terms are at best argumentative, Plaintiffs should be precluded
16 from arguing that there was a conspiracy among the defendants, and from using the word
17 "conspiracy" or "co-conspirator" or the like in their opening (or closing) or in questions of
18 witnesses. This is not just a terminology issue but one of proof, as Plaintiffs will present
19 evidence of a few documents written or reviewed by Beardsley that were never seen by
20 Samuelson or Zillow, who are not responsible for Beardsley's musings, especially words he
21 wrote to himself while still at Move in considering whether to join Zillow.¹⁸ *Third*, the Court
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34 ¹⁴ See, e.g., TX 0025 (letter from J. Jennison to J. Lovejoy regarding expert document production and attaching list of
35 materials relied on by counter-claim expert Michael Kamins); TX 0071 (letter from R. Solomon to Plaintiffs' counsel
36 regarding a document production by C. Beardsley); TX 0807 (letter from B. Cross to J. Lovejoy regarding Zillow's access to
37 unredacted copies of the preliminary injunction); TX 1654 (email between J. Jennison and L. Kohn regarding redlines to
38 proposed draft neutral protocol).

39 ¹⁵ See TX 0031 (email chain between S. Foster and C. Crocker with attachment regarding proposed Crocker
40 declaration); TX 0030 (same); TX 0032 (same).

41 ¹⁶ See, e.g., TX 0621, TX 1547 (email discussing S. Rascoff's uncle who owns "all the blimps in the US." and how
42 Zillow should consider hiring a blimp for advertising purposes); TX 0376-79 (emails regarding private jet expenses); TX
43 1993 (document entitled "Why Armageddon Is Necessary?" including quotes from scripture); TX 0212-213, TX 1760, TX
44 1819 (SEC filings by Zillow containing descriptions of pending litigation); TX 0214 (Zillow Code of Conduct).

45 ¹⁷ Despite the absence of any remaining conspiracy claim, the Court's May 27, 2016 Order regarding the Trulia claims
46 against Beardsley mistakenly refers to the presence of such a claim.

47 ¹⁸ E.g., TX 0066 (what Plaintiffs have called—but should be precluded from this re-labeling game before the jury—the
"Attack ListHub" memo).

1 dismissed Plaintiffs' claims for breach of contract against Samuelson and Beardsley. Plaintiffs
2 should be precluded from trying to "get in through the back door" evidence that Samuelson or
3 Beardsley owed contractual confidentiality obligations to Move.¹⁹ Otherwise Zillow would be
4 prejudiced because a tortious interference with contract claim technically remains as an issue at
5 trial against Zillow. *Finally*, Plaintiffs should be held to their agreement, ratified by the Court's
6 Order, that they would not "otherwise assert *any* claim or seek *any* damages *or other* relief for
7 contempt or violation of the Preliminary Injunction."²⁰ Plaintiffs attempted to do exactly that in
8 the spoliation hearing, and a number of their proposed trial exhibits can be explained only as part
9 of such an effort.

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III. ANALYSIS

The evidence at trial will show that Plaintiffs' remaining claimed "trade secrets," like those that have been dismissed or abandoned along the way, were not secrets to begin with, and none was misappropriated by the Defendants. Plaintiffs' only temporarily remaining common law claims against Zillow, for tortious interference, are equally meritless. (The individual defendants will explain the lack of merit to the breach of fiduciary duty claims asserted against them.)

A. Legal Standards

1. Burden of Proof

With respect to each claimed trade secret, each Plaintiff bears the ultimate "burden of proving that [a] legally protectable secret[] exist[s]," as well as that Defendants intentionally misappropriated that trade secret, causing harm to each Plaintiff claiming misappropriation of that trade secret.²¹

¹⁹ *E.g.*, TX 0317–0321, TX 1078, TX 1509, TX 1619–1623, TX 1624, TX 5383.

²⁰ Dkt. No. 510 (emphasis added). Pursuant to the Stipulation and Order, the jury should not hear evidence that would go only to infringement during the period of the preliminary injunction.

²¹ *Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 439 (1999); WPI § 351.01; RCW § 19.108.030(1).

2. Elements of a Legally Cognizable Trade Secret

The Uniform Trade Secret Act (UTSA) requires the following elements: (1) a trade secret owned by the plaintiff; (2) misappropriation of the trade secret by the defendant; and (3) harm to the plaintiff proximately caused by the defendant's misappropriation.²²

To establish the first element, that a protectable trade secret exists, the plaintiff must prove two things, that the information (a) "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use"; and (b) "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."²³ Central to these requirements is that a trade secret be "undisclosed or disclosed only on the basis of confidentiality."²⁴ Mere business possibilities, goals, or plans are not protectable trade secrets.²⁵ Nor are, as discussed in more detail below, combinations of features or processes generally known or used in the relevant industry.²⁶

The second element, misappropriation, requires "acquisition, disclosure, or use of a trade secret without the express or implied consent of the owner of the trade secret," and by "improper means."²⁷ "Improper means" include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means."²⁸

²² RCW § 19.108.010; RCW § 19.108.030(1); WPI § 351.01.

²³ RCW § 19.108.010; *Precision Moulding & Frame, Inc. v. Simpson Door Co.*, 77 Wn. App. 20, 25 (1995).

²⁴ *Buffets, Inc. v. Klinker*, 73 F.3d 965, 968 (9th Cir. 1996) (citation & quotation marks omitted); see also *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 749 (1998) (casino's profitability not trade secret where it could "be generally ascertained by visiting the casino site, through newspaper articles about the casino, or" other means).

²⁵ E.g., *Bradbury Co. v. Teissier-duCros*, 413 F. Supp. 2d 1209, 1223 (D. Kan. 2006) (no trade secret where "strategy consisted of nothing more than a plan"); *Chomerics, Inc. v. Ehrreich*, 421 N.E.2d 453, 459 (Mass. Ct. App. 1981) ("no authority for the proposition that an ultimate goal or purpose, as distinguished from the means of achieving it, can be classified as a trade secret"); *DS Parent, Inc. v. Teich*, 2014 WL 546358, at *8 (N.D.N.Y. Feb. 10, 2014) ("information consisting simply of business possibilities or goals is not a trade secret") (quotations omitted).

²⁶ *Vendo Co. v. Stoner*, 245 N.E.2d 263, 278 (Ill. Ct. App. 1969) (no trade secret where "individual features which [defendant] wanted to combine . . . were long and widely used in the industry").

²⁷ WPI § 351.03; RCW § 19.108.10

²⁸ RCW § 19.108.10.

1 Improper means do not include, however, observing the information in public use or display, or
2 the independent invention or discovery of the information.²⁹
3

4 The final element again has multiple parts, specifically (1) harm to the plaintiff, (2)
5 proximately caused by the defendant's misappropriation. Recoverable harm can take the form of
6 profits lost by the plaintiff or unjust enrichment of the defendant.³⁰ To recover either, Plaintiffs
7 must show proximate cause because the UTSA specifically provides that, to recover damages for
8 actual loss or restitution for unjust enrichment, a plaintiff must show that the harm was "caused
9 by misappropriation."³¹
10

11 Proximate cause "means a cause which in a direct sequence unbroken by any superseding
12 cause, produces the event complained of and without which such event would not have
13 happened,"³² and requires that Plaintiffs establish both "but for" (or cause in fact) and "legal"
14 cause.³³ More specifically, to establish "but for" causation, Plaintiffs must "establish that the act
15 complained of probably caused the subsequent" injury.³⁴ Legal cause requires both a reasonable
16 certainty and "a certain degree of proximity . . . between the act done . . . and the harm
17 sustained."³⁵ There is no legal cause where the chain of causation is interrupted by the
18 independent action(s) of a third party or third parties, or other intervening factors.³⁶ Further, to
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32 ²⁹ *Ed Nowogroski Ins.*, 137 Wn.2d at 437 (employee with knowledge of former employer's trade secrets does not
33 misappropriate those trade secrets unless and until employee uses or discloses the former employer's trade secret
34 information); *Woo v. Fireman's Fund Ins. Co.*, 137 Wn. App. 480, 490–91 (2007) (there can be no misappropriation of
35 information available through public disclosure, display, trade journals, or advertising).

36 ³⁰ RCW § 19.108.030.

37 ³¹ RCW § 19.108.030(1); *see also, e.g., Petters v. Williamson & Assocs., Inc.*, 151 Wn. App. 154, 164 (2009) (holding
38 that trade secret plaintiff is entitled to "revenue obtained through the transfer of the trade secret" that was attributable to the
39 transfer (emphasis added)).

40 ³² WPI § 15.01.

41 ³³ WPI § 15.01 & cmt.; RCW § 19.108.030(1) (damages limited to "actual loss caused by misappropriation"); *e.g., Kim*
42 *v. Budget Rent A Car Sys., Inc.*, 143 Wn.2d 190, 203–04, 206 (2001) (summary judgment on proximate cause grounds);
43 *Miller*, 109 Wn. App. at 145.

44 ³⁴ *Daugert v. Pappas*, 104 Wn.2d 254, 261 (1985).

45 ³⁵ *Eckerson v. Ford's Prairie Sch. Dist. No. 11*, 3 Wn.2d 475, 482 (1940); *see also Cook v. Seidenverg*, 36 Wn.2d 256,
46 263 (1950) (plaintiff must demonstrate causation in "natural and continuous sequence" of events).

47 ³⁶ *E.g., W. Coast, Inc. v. Snohomish Cty.*, 112 Wn. App. 200, 212–16 (2002) (no legal cause where chain of causation
interrupted by independent action of third party); *RLM Commc'ns, Inc. v. Tuschen*, 66 F. Supp. 3d 681, 698 (E.D.N.C. 2014)

1 prove causation by circumstantial evidence, the circumstances “must be of such a nature and so
2 related to each other” that a finding of causation “*is the only conclusion that fairly or reasonably*
3 *can be drawn from them.*”³⁷

4 5 6 **3. Legal Requirements for a “Combination” Trade Secret**

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8 Plaintiffs assert that some of their trade secrets are “combination” trade secrets. The
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10 Court required Plaintiffs to identify, by February 19, 2016, “whether a trade secret is being
11 claimed as a combination trade secret” by “clearly identify[ing] each individual and each
12 combination trade secret.”³⁸ For each claimed combination trade secret, Plaintiffs were required
13 to “identify the specific components constituting the combination, which of those components
14 they contend are not public, and specifically what about the combination itself . . . is unique.”³⁹

15
16 A “combination” trade secret is a trade secret that consists of a combination of elements,
17 some of which may be in the public domain, that, taken together, combine to form a process or
18 operation that is unique and novel in the use of the business or trade.⁴⁰ That one or more
19 elements is itself an individual trade secret does not mean that the combination of elements is a
20 combination trade secret.⁴¹ Rather, Plaintiffs must identify how the elements interact to create *a*
21 *combination* that is itself unique and novel.⁴² Plaintiffs must further prove that the unique and
22 novel aspects of the combination (1) derive independent economic value, actual or potential,
23 from not being generally known to, and not being readily ascertainable by proper means by,
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35 (summary judgment on trade secret claim because “[w]hether or not plaintiff . . . could win or will win” contract bid “is
36 speculative and dependent on multiple intervening factors,” including other “bidders, their respective capacities relative to the
37 bidding requirements, and the presence of an objective third-party decisionmaker”).

38 ³⁷ *Schmidt v. Pioneer United Dairies*, 60 Wn.2d 271, 276 (1962) (emphasis added).

39 ³⁸ Dkt. No. 1103A (Order Adopting February 9, 2016 Report and Recommendations of Special Master Re: Defendant
40 Zillow’s Motion to Compel (Additional Specificity), dated Feb. 16, 2016).

41 ³⁹ *Id.*

42 ⁴⁰ RCW § 19.108.010(4); *Machen, Inc. v. Aircraft Design, Inc.*, 65 Wn. App. 319, 327 (1992), *overruled on other*
43 *grounds by Waterjet Tech., Inc. v. Flow Int’l Corp.*, 140 Wn.2d 313 (2000); *Woo*, 137 Wn. App. at 488–89 (2007); *see also*
44 *Computer Care v. Serv. Sys. Enters. Inc.*, 982 F.2d 1063, 1074–75 (7th Cir. 1992) (rejecting trade secret for combination
45 claim when combination “is readily replicable by anyone who has been exposed to its various components; one need not also
46 have knowledge of a special formula or technique for combining those components”).

47 ⁴¹ *Woo*, 137 Wn. App. at 488–89.

⁴² *Id.*

1 other persons who can obtain economic value from the disclosure or use of the combination, and
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3 (2) are the subject of efforts that are reasonable under the circumstances to maintain their
4
5 secrecy.⁴³ And Plaintiffs must prove that it was the *unique and novel aspects* of the combination
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7 that were misappropriated; misappropriation of a combination trade secret does not occur if only
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9 one or more elements of the combination were improperly acquired, disclosed, or used, even if
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11 one or more of those elements are individual trade secrets.⁴⁴

12 **4. Inevitable Disclosure**

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14 Even in jurisdictions, unlike Washington, where the “inevitable disclosure” theory of
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16 trade secrets is recognized, the theory is inapplicable at trial.⁴⁵ To recover damages, a plaintiff
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18 must show that a cognizable trade secret was actually misappropriated.⁴⁶ As a general rule, an
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20 employee who has not signed an agreement not to compete is free, upon leaving employment, to
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22 engage in competitive employment.⁴⁷ In doing so, the former employee may freely use general
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24 knowledge, skills, and experience acquired during his former employment. There is no need for
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26 the employee to wipe clean the slate of his memory.⁴⁸ And it is not wrongful for a company to
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28 hire an at-will employee of its competitor.⁴⁹ Washington law protects employees and makes
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30 their pursuit of employment of choice more important than the business interests of employers.⁵⁰

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32 ⁴³ *Id.*; RCW § 19.108.010(4).

33 ⁴⁴ *Woo*, 137 Wn. App. at 488–89 (unique and novel combination of elements makes trade secret a combination trade
34 secret).

35 ⁴⁵ The concept of inevitable disclosure may be relevant at the preliminary injunction stage, where the record and
36 evidence are not fully developed, but has no place at trial, where actual misappropriation must be shown. *Temco Metal*
37 *Prods. v. GT Dev. Corp.*, 2000 WL 556607, at *3 (D. Or. May 5, 2000) (applying Washington law and holding that, even
38 though inevitable disclosure could be applied to support issuance of preliminary injunction, trade secret plaintiff had to show
39 actual use of trade secret at trial); *see also, e.g., Janus et Cie v. Kahnke*, 2013 WL 5405543, at *2 (S.D.N.Y. Aug. 29, 2013)
40 (“[S]tate and federal case law refer to the doctrine of inevitable disclosure exclusively in the context of preliminary
41 injunctions.”).

42 ⁴⁶ RCW § 19.108.030.

43 ⁴⁷ *Ed Nowogroski Ins.*, 137 Wn.2d at 437 (clarifying rights of employees who do not have noncompete agreements).

44 ⁴⁸ *Id.*

45 ⁴⁹ *Id.*

46 ⁵⁰ *Knight, Vale, & Gregory v. McDaniel*, 37 Wn. App. 366, 370 (1984) (stressing important public policy “concerns of
47 freedom of employment and free access of the public to professional services”); *Whyte v. Schlage Lock Co.*, 101 Cal. App.
4th 1443, 1463 (2002) (rejecting inevitable disclosure doctrine because it would prevent employees from working for
employer of their choice).

1 **5. The Court, Not the Jury, Must Decide Whether to Award Exemplary**
2 **Damages.**

3 Plaintiffs have indicated that they will seek punitive damages for Defendants' allegedly
4 "willful and malicious" misappropriation, but that determination cannot be made by the jury at
5 trial. Washington law provides that "the court" may award such damages; the jury is given no
6 such authority.⁵¹ Case law and other authorities confirm that this is not a jury issue.⁵² Thus,
7 there is no basis for the jury to consider such damages or be asked to deem Defendants' alleged
8 misappropriation "willful and malicious," as Plaintiffs have requested in their proposed jury
9 instructions and verdict form.⁵³ Allowing the jury to make those determinations will introduce
10 unnecessary and prejudicial issues into the trial and invade the Court's statutory discretion to
11 award such damages post-trial.
12

13 **B. Plaintiffs' Claimed Trade Secrets Are Flawed from Top to Bottom**

14 The evidence does not support any of Plaintiffs' UTSA claims.

15 **1. Plaintiffs' Claimed Trade Secret Plans and Strategies Were Not Secret**

16 The necessary predicate of any UTSA claim is that there be a "secret." Plaintiffs'

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⁵¹ RCW § 19.108.030(2) ("If wilful and malicious misappropriation exists, *the court* may award exemplary damages in an amount not exceeding twice any award made under subsection (1) [actual damages or unjust enrichment].") (emphasis added).

⁵² See *Thola v. Henschell*, 140 Wn. App. 70, 89–90 (2007) (noting that the UTSA "allows a trial court to award exemplary damages" in its discretion if "willful and malicious misappropriation exists") (emphasis added); see also Uniform Trade Secret Act With 1985 Amendments § 3 cmt. ("This provision follows federal patent law in leaving discretionary trebling to the judge even though there may be a jury[.]") (emphasis added); ABA Model Jury Instr. Business Torts Litigation (4th ed., p. 426) (explaining that there should be no jury instruction on exemplary damages unless state law expressly authorizes jury to make such an award; the UTSA reserves authority to award exemplary damages for the court). Indeed, the drafters of the UTSA, on which RCW § 19.108.030(2) is based, originally proposed that the "trier of fact" would decide exemplary damages, but struck that language and expressly provided that only the court had such authority. Compare NCCUSL Comm. Proceedings, at 28 (Aug. 3, 1978) (providing that a "trier of fact also may award punitive damages" "if willful and malicious appropriation exists") with NCCUSL Comm. Proceedings, at 48 (Aug. 6–7, 1979) (providing that "exemplary damages may be awarded by the court" "if willful and malicious appropriation exists.").

⁵³ Consistent with the statute and Washington's general prohibition of punitive damages, there is no Washington case law mandating that a jury determine whether misappropriation was willful or malicious as a factual matter, and there is no Washington Pattern Instruction stating that a jury should decide the question of willfulness or maliciousness. See WPI § 351.01 cmt. (acknowledging that court, not jury, has authority to award exemplary damages, and that it is "unclear as to whether the threshold finding of willful and malicious misappropriation in a jury case is to be made by the judge or the jury.").

1 claimed “trade secrets” were not secret, or theirs, to begin with.

2 [REDACTED] 2008 “MLS 5.0” manifesto
3 published online by an influential real estate broker named Saul Klein as part of an industry-wide
4 discussion.⁵⁴ Klein—who did not work for Move—published his ideas two years before Move
5 acquired ListHub, and almost five years before Samuelson and Beardsley left Move. His
6 concepts included (1) “Open APIs that provide access to listing data,” (2) allowing applications
7 to be “built cost-effectively,” (3) “leverag[ing] property information from various sources
8 accumulated over time,” (4) “provid[ing] a single point of entry for listing data . . . [b]ased upon
9 the election of brokers or their agents” and (5) “distribut[ing] that information to web portals,
10 newspapers, radio and television, and applications, and then track[ing] and return[ing]
11 information about prospects to the broker.”⁵⁵ Klein’s “manifesto” was “widely distributed” back
12 in 2008, and these concepts [REDACTED] had been
13 publicly discussed for years.
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25 [REDACTED]
26 [REDACTED] Indeed, it was repeatedly
27 forced to publicize its future plans in response to criticism that it was dithering in actual
28 implementation of anything. In 2011 public presentations, Move labeled its [REDACTED] either
29 “Future Strategic Picture” or “Total Solution” [REDACTED]
30 [REDACTED] and depicted various data sources (MLS databases,
31 Move user data, social media data, and other third party data) coming together in a
32 “Consolidated Move Data Store.”⁵⁶
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41 Move also publicly disclosed [REDACTED]
42 [REDACTED]
43 [REDACTED]
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45 ⁵⁴ TX 3026.

46 ⁵⁵ *Id.* at 1, 5, 6.

47 ⁵⁶ TX 3084 at slide 14; TX 5362 at slide 18.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4
5 Undoubtedly the blatant copying when it came to AppHub made it easy for the Court to dismiss
6 the AppHub claims on summary judgment. In a last-ditch effort to avoid summary judgment on
7 related aspects of their “platform” claims, Plaintiffs conceded their public disclosures of the
8 individual components of their platform claims, [REDACTED]
9 [REDACTED]
10 [REDACTED] especially when considered in combination,
11 that warranted trade secret protection. Too late, and wrong again. Even if these claims reach the
12 jury, it will learn that the “details” of the strategy are irrelevant because they provide no logical
13 basis for Zillow to react differently than how it would have reacted, if at all, from knowledge of
14 the strategy itself. Zillow didn’t want or need any of Move’s “secrets” to begin with, and it
15 didn’t want, need, or use any of the “details.”

24 **2. Plaintiffs’ Trulia Claim Is Meritless**

25 There was no “tip” from Samuelson to Zillow that Move was engaged in merger
26 discussions with Trulia. No tip. Period.

27 Move’s theory requires the jury to believe that not just Samuelson but a dozen Zillow and
28 Trulia executives are lying and that not a trace of evidence would have been created in Zillow’s
29 files. But a much more natural explanation will be shown by the evidence. In the years before
30 and after this lawsuit was filed, the three major competitors considered merging with one
31 another. [REDACTED]
32 The possibility of a
33 combination was speculated about regularly by all three players, Wall Street, and the industry,
34 and Zillow was patient but watchful.

35 Zillow repeatedly considered acquiring Trulia *before* recruiting Samuelson, with Zillow

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45 ⁵⁷ See TX 3082 at MOVE_EGS_DELL0000872–875.

46 ⁵⁸ Compare TX 5373 at slide 14 with TX 3173 at MOVE_ESI00379594.

47 ⁵⁹ TX 3966.

1 having made its first offer for Trulia in 2008, and further formal offers in 2012. When the “ad
2 wars” broke out and the share price between Zillow and Trulia diverged in February 2014,
3 Trulia’s CEO publicly signaled that consolidation had become even more logical. The share
4 price differential continued to widen, and by June the time was right.
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8 Plaintiffs ignore Trulia’s active role in these events. Trulia spurned Move by terminating
9 merger discussions in February 2014 (without any binding commitment to reinstate them, much
10 less to eventually acquire Move) and willingly accepted Zillow’s offer to merge in June 2014.
11 That Zillow and Trulia shared two major investors only made the merger more obvious.
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15 The Court granted Defendants’ motion for partial judgment on Plaintiffs’ Trulia claim
16 with respect to Plaintiffs’ actual damages claim because Plaintiffs could not establish causation.
17 In so doing, the Court found (a) that the Move-Trulia merger discussions ended in February
18 2014, with Trulia leaving an “open door” for possible re-initiation of merger discussions at a
19 later date; (b) that Move and Trulia continued to discuss non-merger collaboration into the spring
20 of 2014; (c) that Move and Trulia did not agree to any deal terms and had not sought NAR’s
21 approval of a merger; (d) that Trulia had made no offer to acquire Move; and (e) that Move was
22 aware that a merger with Trulia was uncertain. As a result, the Court concluded (order at 5) that
23 “Plaintiffs’ hypothesis of Move and Trulia’s future merger after February 2014, absent Zillow’s
24 intervention, is speculative. The presence of an independent intervening factor, NAR, makes the
25 speculation even more acute.” Due to Plaintiffs’ failure to establish causation, summary
26 judgment was thus correctly entered on Plaintiffs’ (UTSA) Trulia claim for actual damages.
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30 Although the Court was apparently persuaded by Plaintiffs that an unjust enrichment
31 claim based on trade secret misappropriation, in contrast to a damages claim, can go to a jury
32 without proof of causation, respectfully this is wrong as a matter of law. The Court cited two
33 cases, *Kelley v. Microsoft*, 2009 WL 413509 (W.D. Wash. Feb. 18, 2009), and *Baillie*
34 *Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn. App. 151 (1991), in support of its
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1 ruling that Plaintiffs' unjust enrichment claim related to the Trulia Claim could go forward.
2 Neither case addresses UTSA causation, and their limited discussions of common law unjust
3 enrichment hardly trump the plain language of the UTSA.
4

5
6 *Kelley* involved a stand-alone unjust enrichment claim, not one under the UTSA, so that
7 the court had no opportunity to consider the UTSA's provision stating that a trade secret plaintiff
8 "may recover for the unjust enrichment *caused by misappropriation*."⁶⁰ That is the same
9 language the UTSA employs to define recoverable "damages for actual loss,"⁶¹ which the Court
10 found in its order to require a showing of causation (which was lacking). *Kelley*'s statement that
11 (common law) "unjust enrichment does not require proof of causation" cannot be squared with
12 the plain language of the statute.⁶² Moreover, the *Kelley* court effectively required causation
13 when it held that "the trier of fact will need to inquire whether Microsoft actually deceived
14 consumers . . . to determine whether any benefit conferred on Microsoft was unjust."⁶³
15 Precisely such an inquiry is required here: Did Zillow take something that Move had in the but-
16 for world, and the Court has already answered as a matter of law. And, finally, *Kelley*
17 considered unjust enrichment in the context of whether to decertify a class—it did not engage in
18 any in-depth analysis of causation.
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31 *Baillie Communications* is even less helpful to Plaintiffs. First, in identifying the three
32 elements of a (non-UTSA) unjust enrichment claim, the court stated that unjust enrichment
33 requires "[a] benefit conferred upon the defendant by the plaintiff,"⁶⁴ which at the very least
34 implies an element of causation. Second, like *Kelley*, *Baillie Communications* did not involve a
35 claim for unjust enrichment under the UTSA, so that the court had no reason to consider the
36 UTSA language. Third, there is nothing in *Baillie Communications* that says causation is *not*
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44 ⁶⁰ RCW § 19.108.030(1) (emphasis added).

45 ⁶¹ *Id.*

46 ⁶² 2009 WL 413509, at *8.

47 ⁶³ *Id.*

⁶⁴ 61 Wn. App. at 159.

1 required for an unjust enrichment claim. And fourth, causation was not an issue in *Baillie*
2
3 *Communications* for two reasons: First, the court was addressing the availability of prejudgment
4 interest on an unjust enrichment claim, and second, and more importantly, the court had
5 previously found causation: “This court [previously] stated that, as a result of this fraud,
6 [defendant] has been unjustly enriched.”⁶⁵
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10 In contrast to the two cases cited by the Court, the plain language of the statute as well as
11 Washington case law and other authorities demonstrate that proximate causation is required
12 before a plaintiff can recover for unjust enrichment. A plaintiff can only recover, for example,
13 “revenues obtained through the transfer of the trade secret” that are “in fact, attributable to the
14 transfer.”⁶⁶ Consequently, as a legal matter, Plaintiffs’ Trulia claims (whether pleaded under the
15 UTSA, as tortious interference, or breach of fiduciary duty, whether seeking damages or unjust
16 enrichment) fail for lack of causation.
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19 Plaintiffs’ claims also fail for lack of common sense. There can be no unjust enrichment
20 where the undisputed evidence shows that consolidation was obvious, constantly discussed, and
21 had benefits that were unrelated to any impact on Move. Even if Plaintiffs’ circumstantial
22 evidence was sufficient to imply a “tip” from Samuelson, it would not have added to the din of
23 the bankers making the same point. Zillow had been pursuing Trulia for years, and would have
24 eventually succeeded. The alleged “tip” did not change Trulia’s willingness, and Plaintiffs have
25 no answer to why Zillow waited for five months (until June 2014) to act on a tip supposedly
26 made in January.
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⁶⁵ *Id.* at 155.

⁶⁶ *Petters*, 151 Wn. App. at 164; *see also, e.g., In re Nortel Networks Inc.*, 2016 WL 491639, at *9 (D. Del. Bankr. Feb. 8, 2016) (applying virtually identical provision of Delaware UTSA in granting summary judgment for defendant on plaintiff’s unjust enrichment claim because plaintiff had not met its burden of establishing proximate cause; stating that “plaintiff bears the burden of demonstrating that the defendant’s misappropriation proximately caused its unjust enrichment”); *see also, e.g.,* Restatement (Third) of Unfair Competition § 45(1), (2)(a) (1995 & Supp. 2016) (trade secret plaintiff may be entitled to “the actor’s own pecuniary gain *resulting from the appropriation*” (emphasis added)); *id.* cmt. c (referring to “loss to the plaintiff *resulting from the appropriation*,” “losses *attributable to the appropriation of a trade secret*,” and unjust enrichment “*as a result of the appropriation of plaintiff’s trade secret*” (emphases added)).

1 **3. Plaintiffs' Retsly Claim Is Unfounded**

2 Although no Retsly-related claims remain against Zillow, because the Retsly-related
3 breach of fiduciary claims remain against the individual defendants, they are addressed here.
4 Trulia's existence and availability was no secret in 2014. Retsly was much less visible but not
5 because it was Move's secret. [REDACTED]

6 [REDACTED] Retsly had developed a
7 set of tools to facilitate development of applications that used real estate data, and related means
8 to normalize the data and provide real-time access to it. [REDACTED]

9 [REDACTED] Retsly was seeking
10 funding from NAR, and in November 2013, Retsly held a large and public "hackathon" at a
11 NAR conference attended by hundreds of developers and industry executives. Retsly was no
12 secret. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Further, Samuelson did not seek out the meeting with Retsly after he joined Zillow. To
18 the contrary, Samuelson had no interest in Retsly when he joined Zillow. Matthew Moore, a
19 good friend of Samuelson's and of many other Move executives, had become an angel investor
20 after leaving Move, and was considering an investment in Retsly. Moore asked Samuelson, as a
21 favor to Moore, to meet with Retsly and give Moore his insights before Moore made an
22 investment decision. As Moore explained in a deposition just last Friday, this was nothing new:
23 Moore had asked Samuelson to meet with, or provide Moore his thoughts on, new start-ups more
24 than a dozen times. The meeting with Retsly was the first time that Samuelson learned about the
25 technology that Retsly had developed, some of which he found unique and interesting.

26 Independent of Samuelson's meeting, Zillow's CEO was contacted by two individuals

1 about Retsly: an investment banker who had seen a Retsly investment pitch and a venture
2 capitalist considering an investment. Zillow—unlike Move—acted quickly; it looked into the
3 company, did its due diligence, and ultimately purchased Retsly for a few million dollars. [REDACTED]
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6 [REDACTED]
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8 [REDACTED]
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10 **4. Move Is the Cause of Its Own Failure to Execute**

11 Discovery revealed—and the jury will see—that Move’s own bumbling, the constraints
12 of its NAR relationship, and its desire to control and leverage rather than compete on the merits
13 caused its decline. The jury won’t need to take Zillow’s word for it. [REDACTED]
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16 [REDACTED]
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26 [REDACTED]
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28 [REDACTED]
29 [REDACTED]
30 [REDACTED]

31 [REDACTED] Decisiveness had finally arrived, but it turned out to be a bad
32 bet. MLSs and brokers facing the prospect of losing access to the #1 (Zillow) and #2 (Trulia)
33 websites in real estate flocked to sign direct feed agreements with Zillow.⁶⁹ [REDACTED]
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36 [REDACTED]
37 [REDACTED]
38 [REDACTED]
39 [REDACTED]
40 [REDACTED]
41 [REDACTED]
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43 ⁶⁷ TX 3164.

44 ⁶⁸ TX 4696 at MOVE_ESI00737637.

45 ⁶⁹ See Defendants’ Motion for Partial Summary Judgment on ListHub Claims (“L Trade Secrets”), filed March 25,
46 2016, Appendix B.

47 ⁷⁰ TX 4869 at MOVE_ESI00751574.

[REDACTED]

Move's latest excuse is that Samuelson is the one who didn't lead or execute at Move, but the jury will see through that when it reads the emails from the top executives at Move, and will understand that the frustratingly non-innovative and floundering workplace is part of why Samuelson exercised his right to jump to the league-leading team.

5. Move's Failures Are Also Due to Competition from Its Co-Plaintiff NAR

The jury will also learn that the relationship between Move and NAR has moved beyond an awkward "forced marriage" (the words of NAR's CEO) into outright competition. Move's co-plaintiff NAR has launched a new initiative, the Advanced Multi-list Platform (AMP), and announced it would use AMP to partner with a coalition of brokerages called "Project

⁷¹ TX 3973.

⁷² TX 4873 at 3.

1 Upstream.” Upstream seeks to create a single data-entry point that agents and brokers can use to
2 input listings, rather than inputting listings directly to the MLSs and then sending them on to
3 ListHub. Upstream intends for this information to be stored in a consolidated database, which
4 would normalize the real estate information. Brokers can then use Upstream and AMP to
5 distribute this data to broker websites, MLSs, and real estate websites like Realtor.com and
6 Zillow. And, they plan to offer the data to third party developers.
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12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
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25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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29 **6. The MLS Spreadsheet at Most Saved Beardsley a Bit of Effort and Did Not**
30 **Benefit Zillow**
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32 A parade of Zillow witnesses will testify that nothing from Plaintiffs infected their work
33 in the relevant areas. Plaintiffs’ only evidence of even a possible misappropriation is
34 Beardsley’s review of a portion of the MLS spreadsheet in April 2014 to quickly obtain rough
35 approximations of listing count information, which is publicly available. Beardsley did this
36 without Zillow’s knowledge and contrary to its express instructions. Plaintiffs have seized on
37 and exaggerated the import of this document (calling it a “database” rather than a spreadsheet
38 and claiming it was full of secret details of Move’s contracts), while ignoring the facts. The only
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⁷³ Ex. A (O’Hara Dep. (Jan. 15, 2016)) at 144:11-19. Exhibits are attached to the Appendix filed with this brief.

1 information accessed from the spreadsheet was MLS listing counts. Zillow had its own sources
2 of MLS listing counts and Beardsley only included the counts in a memorandum as background
3 information; as corroborating evidence demonstrates, the information was not used to identify
4 priority MLSs. Moreover, the listing counts are publicly available, and change daily. The data
5 in the spreadsheet was last updated in January 2014 and listing counts vary month to month,
6 sometimes fairly dramatically.
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10 The reality is that Beardsley's review of the spreadsheet did not benefit Zillow and even
11 if it did, Zillow could have created its own MLS spreadsheet at a cost of about \$6,000.
12 Beardsley's error in judgment does not justify the big score Plaintiffs are seeking to harm Zillow
13 as a competitor.
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20 **C. Plaintiffs' Few Remaining Common Law Claims Are Also Meritless**

21 Plaintiffs tag-along claims against Zillow for tortious interference with business
22 expectancy and contract are equally meritless. Neither of them should go to the jury.
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25 A claim for tortious interference has five required elements: "(1) the existence of a valid
26 contractual relationship or business expectancy; (2) that defendants had knowledge of that
27 relationship; (3) an intentional interference inducing or causing a breach or termination of the
28 relationship or expectancy; (4) that defendants interfered for an improper purpose or used
29 improper means; and (5) resultant damages."⁷⁴
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35 Intentional interference requires "an improper objective or the use of wrongful means that
36 in fact cause injury to the [plaintiff's] contractual relationship" or business expectancy.⁷⁵ Factors
37 to be considered include: Zillow's conduct and motive, the interests of Plaintiffs with which
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42 ⁷⁴ *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 157 (1997); WPI § 352.01; WPI § 352.02.01.

43 ⁷⁵ *Leingang*, 131 Wn.2d at 157; WPI § 352.03; *Pleas v. City of Seattle*, 112 Wn.2d 794, 803–804 (1989) ("[A] cause of
44 action for tortious interference arises from either the defendant's pursuit of an improper objective of harming the plaintiff or
45 the use of wrongful means that in fact cause injury to plaintiff's contractual or business relationships."); *Newton Ins. Agency*
46 *& Brokerage, Inc. v. Caledonian Ins. Grp., Inc.*, 114 Wn. App 151, 158 (2002) ("Interference with a business expectancy is
47 intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as
a result of his action.") (quotation omitted).

1 Zillow allegedly interfered, the interests sought to be advanced by Zillow, the social interests in
2 protecting Zillow's freedom of action and Plaintiffs' business expectancy, the proximity or
3 remoteness of Zillow's conduct to the interference, and the relations between Zillow and
4 Move.⁷⁶ Importantly, "[e]xercising in good faith one's legal interests is not improper
5 interference."⁷⁷ Finally, to establish either tort, just as with the UTSA claim, Plaintiffs must
6 show that Zillow's alleged actions were the proximate cause of Plaintiffs' alleged damages.⁷⁸
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10 **1. Tortious Interference With Business Expectancy**

11 Plaintiffs' claim of interference with a business expectancy is based exclusively on its
12 allegation that Move expected to merge with Trulia. Since the Court has already ruled, in
13 granting Defendants' motion for summary judgment regarding the Trulia actual damages claim,
14 that "Plaintiffs' hypothesis of Move and Trulia's future merger after February 2014 . . . is
15 speculative,"⁷⁹ it is clear that Plaintiffs cannot prevail on this claim. Remaining pending is the
16 motion for summary judgment on Plaintiffs' non-UTSA Trulia claims.
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25 To establish a business expectancy, Plaintiffs must, in addition to the elements discussed
26 above, show that the future opportunity with which they claim interference as well as the future
27 profits claimed "are a reasonable expectation and not based on merely wishful thinking."⁸⁰ As
28 the Court has held, Plaintiffs' tortious interference with business expectancy claim is exactly
29 that: wishful thinking that it could have merged with Trulia. It is not legally actionable.
30 Plaintiffs will not establish the elements of the claim (causation again being the most obvious
31 failing). But even if they could, the claim is subject to the defense of lawful competition.
32 Zillow's conduct in approaching and merging with Trulia was justified since it occurred during
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42 ⁷⁶ WPI § 352.03.

43 ⁷⁷ *Leingang*, 131 Wn.2d at 157.

44 ⁷⁸ WPI § 15.01; *Pleas*, 112 Wn.2d at 807.

45 ⁷⁹ Order Granting in Part Defendant's Motion for Partial Summary Judgment on Trulia Claims With Respect to Actual
46 Damages, at 5 (May 27, 2016).

47 ⁸⁰ *Sea-Pac Co. v. United Food & Comm. Workers Local Union 44*, 103 Wn.2d 800, 805 (1985).

1 competition with Move.⁸¹

2. Tortious Interference With Contract

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4 Plaintiffs' tortious interference with contract claim relies on three contracts: Samuelson
5 and Beardsley's alleged confidentiality contracts with Move; and the Move-Trulia non-
6 disclosure agreement (NDA).⁸² The Court dismissed Move's claims for breach of contract
7 against Samuelson and Beardsley.⁸³ As for the Move-Trulia NDA, Move complains that its
8 then-employee Samuelson disclosed the preliminary merger discussions. Trulia, as the party to
9 whom the non-disclosure obligation was owed, is the only party that could maintain this claim.
10

11
12 In any event, there is no evidence of interference. There is no evidence that Samuelson
13 disclosed to Zillow any information about Move's early-2014 discussions with Trulia or about
14 the existence of the NDA—and, in fact, Move itself disclosed its discussions with Trulia in the
15 second half of March 2014, shortly after Samuelson left Move.⁸⁴ There thus was no breach (by
16 Samuelson, or induced by Zillow) of the NDA's provision precluding the disclosure of
17 "Confidential Information," which included "the fact that the Parties [that is, Trulia and Move]
18 are having discussions."⁸⁵ And since Zillow did not know of the existence of the NDA,
19 Plaintiffs cannot show that it had knowledge of that relationship or contract, as required to
20 establish the claim.⁸⁶ Plaintiffs' NDA-based claim also fails.
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D. Plaintiffs Have Suffered No Damages.

22 Plaintiffs cannot establish liability. But even if they could, Plaintiffs' focus on spoliation
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38 ⁸¹ WPI § 352.05; *Commodore v. Univ. Mech. Contractors, Inc.*, 120 Wn.2d 120, 137; *Belden Corp v. InterNorth, Inc.*,
39 413 N.E.2d 98, 102 (Ill. App. 1980) ("lawful competition . . . constitutes a privileged interference with another's business"
40 and plaintiffs "have no cause of action against a bona fide competitor unless the circumstances indicate unfair competition").

41 ⁸² Plaintiffs' Second Amended Complaint at 31.

42 ⁸³ See *Leingang*, 131 Wn.2d at 157 (noting that two of the elements of a tortious interference claim are "the existence of
43 a valid contractual relationship" and "an intentional interference inducing or causing a breach or termination of the
44 relationship").

45 ⁸⁴ Dkt No. 11 (Declaration of Steven Berkowitz In Support of Plaintiffs' Motion for Preliminary Injunction, filed March
46 26, 2014) at ¶ 32.

47 ⁸⁵ TX 3897 at 1.

⁸⁶ *Leingang*, 131 Wn.2d at 157.

1 at the expense of evidence of actual misappropriation or actual damage will come to haunt them.
2 A damages claim in Washington “must be based upon tangible evidence rather than upon
3 speculation and hypothetical situations.”⁸⁷ And an expert cannot “merely parrot[] the predictions
4 of [an interested party’s] executives.”⁸⁸ Plaintiffs’ damages expert, Bradford Cornell, was
5 unconstrained by these rules: he does not believe applicable legal standards are “germane to
6 what [he] was doing,”⁸⁹ he has no opinion as to “whether the [alleged] acts, in fact, would have
7 caused the damage that [he] provid[ed] an analysis for,”⁹⁰ and it is “not relevant to” him if
8 Move’s actions have been inconsistent with its representations to him.⁹¹ Cornell acted as a
9 conduit for assumptions that washed away risk and uncertainty, converting the unlikely, the
10 absurd, and the impossible into \$1.7 billion in claimed damages.
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20 Cornell’s assumed world exists separate and apart from this litigation—he assumes “bad
21 acts,” but has no interest in what those acts are, or what relation they have to the ten-figure
22 damages he claims on behalf of Plaintiffs. The Court expressed concern at the May 6 hearing
23 about Cornell’s failure to apportion damages, and the concern is well-grounded: when trade
24 secrets are dismissed and an expert has not apportioned damages, “expert testimony regarding
25 damages for misappropriation of all trade secret[s] [is] useless to the jury.”⁹² Recognizing the
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32 ⁸⁷ *Larsen v. Walton Plywood Co.*, 65 Wn.2d 1, 19 (1964); *see also Columbia Park Golf Course, Inc. v. City of*
33 *Kennewick*, 160 Wn. App. 66, 87–88 (2011) (claimed profits of a new business are “generally too speculative, uncertain, and
34 conjectural to become a basis for the recovery of damages”) (quotations omitted); *Sargon Enters., Inc. v. Univ. of S. Cal.*, 288
35 P.3d 1237, 1256 (Cal. 2012) (lost profits projection subject to heightened scrutiny where expert projected established
36 company would become “global leader”); *Meterlogic, Inc. v. KLT, Inc.*, 368 F.3d 1017, 1019 (8th Cir. 2004) (damages
37 opinion “of no value to the finder of fact” where expert “predicted financial results ten years into the future” and assumed
38 “30% market share ... [with] no market research”).

39 ⁸⁸ *Fail-Safe, L.L.C. v. A.O. Smith Corp.*, 744 F. Supp. 2d 870, 888–89 (E.D. Wis. 2010) (reliability of “early hopes”
40 about “market potential ... should have been ‘independently verified’ before the witness opined on the ‘plaintiff’s future
41 sales’”); *Argus Inc. v. Eastman Kodak Co.*, 612 F. Supp. 904, 926 (S.D.N.Y. 1985) (excluding opinion based on “conclusory
42 statements of management” without “independent evaluation of the facts”).

43 ⁸⁹ Ex. B (Cornell Dep. (Feb. 17, 2016)) at 67:16–68:3; *see also id.* at 86:13–23.

44 ⁹⁰ *Id.* at 56:15–19.

45 ⁹¹ *Id.* at 229:5–9.

46 ⁹² *O2 Micro Intern., Ltd. v. Monolithic Power Sys., Inc.*, 399 F. Supp. 2d 1064, 1077 (N.D. Cal. 2005); *Children’s*
47 *Broad. Corp. v. Walt Disney Co.*, 245 F.3d 1008, 1018 (8th Cir. 2001) (expert’s “assertion that any or all of the alleged
wrongful acts would have caused the same outcome [was] dubious”; “testimony ... based on a report prepared before ...

1 inadequacy of his opinion, Cornell submitted a series of untimely “rebuttal” and “supplemental”
2 reports. The most recent installment, submitted nearly two weeks after the second hearing on his
3 damages opinions, purports—by Cornell’s admission—only to place the trade secrets in
4 “buckets,” without offering *any* new opinion on whether any trade secret is tied to any event that
5 allegedly damaged Plaintiffs.⁹³
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10 Cornell’s last-minute opinion is desperate window dressing, not apportionment, and it
11 does nothing to remedy the fatal disconnect between Plaintiffs’ claims and their alleged
12 damages. Twenty-two trade secrets and six of Plaintiffs’ ten claims have been dismissed or
13 abandoned since Cornell issued his opinion on February 1, 2016—and yet the amount of
14 supposed damages in each of Cornell’s opinions have not changed as a result. And according to
15 Cornell, “if the jury were to decide that one or more of the trade secrets in each of [his] ‘buckets’
16 were not secrets, it could just delete them from a bucket,” and “would then need to decide
17 whether the remaining trade secrets or Move’s other causes of action are sufficient to trigger the
18 damages I calculated.”⁹⁴ This leaves the jury in *exactly* the same untenable position it was in
19 before—staring at an amorphous group of trade secrets (many of which are apparently valueless,
20 yet others of which add up to \$1.7 billion) with no basis whatsoever to determine what
21 “trigger[s]” Plaintiffs’ purported damages. When asked at a deposition earlier this week what he
22 would advise the jury if they find that some but not all of the alleged trade secrets were
23 misappropriated, Cornell said, “As I sit here now, I don’t have an opinion on how I’d advise
24 them.”⁹⁵ He went on to explain that “my damages model assumes that the bad acts were
25 sufficient to cause the damages that I calculate. If the jury thinks that some subset was not
26 sufficient, they would have to tell me what subset, why they think it’s not sufficient, and *I could*
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44 claims were narrowed for trial” was error that necessitated new trial).

45 ⁹³ Ex. C (Cornell Supp. Rpt. (May 18, 2016)) at ¶¶ 3, 7–21; Ex. D (Cornell Dep. (May 25, 2016)) at 514:12–516:1.

46 ⁹⁴ *Id.* ¶ 16.

47 ⁹⁵ Ex. D (Cornell Dep. (May 25, 2016)) at 436:18–24.

1 go back and attempt to haircut the damages.”⁹⁶ But Plaintiffs already rejected the bifurcation of
2 liability and damages⁹⁷; they can’t have Cornell issue yet another (this would be the fifth)
3 supplemental opinion *after* the jury has reached a verdict.
4
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6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
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11 [REDACTED]
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37 [REDACTED]
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40 ⁹⁶ *Id.* at 437: 9-14 (emphasis added); *see also id.* at 426:7-23 (Q: “If the jury finds that less than all of the five trade
41 secrets you were told to assume are relevant to the Zillow unjust enrichment and Move lost synergies claim, do you know
42 how that would affect the damages or unjust enrichment that you projected?” A: “Well, again, it depends on what the jury
43 finds.... Or they may come back and say that in light of the fact they only found a subset, they feel a haircut is appropriate on
44 the damage, number, at which point I would have to compute a haircut, if that’s the way the trial played out.”).

45 ⁹⁷ Dkt. No. 731 at 6–8 (Letter from Plaintiffs’ counsel Richard L. Stone to Court, dated June 25, 2015).

46 ⁹⁸ TX 4903 at MOVE_ESI00492199.

47 ⁹⁹ *See* TX 0826 at Exhibit R10e.

¹⁰⁰ Ex. B (Cornell Dep. (Feb. 17, 2016)) at 358:18–359:1.

1 Cornell's damages "opinion" actually consists of multiple separate opinions, detailing the
2
3 allegedly component parts of Move's damages, but each is fatally flawed, as is the sum total.

4
5 Zillow briefed the failings in separate *Frye* motions; a summary is provided below.

6 **1. The ListHub Opinions Are Based on Fantasy and Junk Methodology**

7 [REDACTED]
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9 [REDACTED]
10 [REDACTED]
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31 [REDACTED]
32 [REDACTED]
33 [REDACTED]
34 [REDACTED]
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36 [REDACTED]
37 [REDACTED]

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39 ¹⁰¹ Ex. E (Cornell Rebuttal Rpt. (April 25, 2016)) at ¶ 32.

40 ¹⁰² Plaintiffs' Opposition to Zillow, Inc.'s Motion to Exclude Damages Expert Bradford Cornell's Testimony Relating
41 to "ListHub 2.0," at 14 (submitted under seal April 25, 2016).

42 ¹⁰³ Ex. F

43 ¹⁰⁴ *Id.* at 429:20-25; 480:11-22
44 [REDACTED]
45 [REDACTED]

46 Ex. B (Cornell Dep. (Feb. 17, 2016)) at 181:7-12, 20-23.

47 ¹⁰⁶ *Id.* at 181:13-18.

¹⁰⁷ *Id.* at 183:5-184:17 [REDACTED]

[REDACTED]

2. The Trulia Opinions Are Based on Assumed Conclusions, but Not the Law

[REDACTED]

Plaintiffs' Opposition to Zillow, Inc.'s Motion to Exclude Damages Expert Bradford Cornell's Testimony Relating to Lithub "Original," at 8, 10 (submitted under seal April 25, 2016).

[REDACTED]

3. The Realtor.com Claim Is Based on a Chain of False Assumptions

[REDACTED]

¹¹¹ *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wn. App. 151, 159 (1991) (emphasis added).

¹¹² Ex. G (Cornell Rebuttal. Rpt. (April 11, 2016)) at ¶¶ 98–99 [REDACTED]

TX 1856 at 2.

¹¹⁴ TX 5223 at [REDACTED]

[REDACTED]

¹¹⁵ TX 4869 at MOVE_ESI00751574; TX 4903 at MOVE_ESI00492199.

¹¹⁶ TX 4903 at MOVE_ESI00492199.

¹¹⁷ Ex. I [REDACTED]

See Declaration of Susan Athey ISO Zillow, Inc.'s Motions to Exclude Expert Testimony, dated April 12, 2016, at ¶ 116 (Zillow was able to almost immediately replace ListHub listings).

¹¹⁹ Ex. B (Cornell Dep. (Feb. 17, 2016)) at 317:9–318:6; TX 5223, Ex. 12 [REDACTED]

Ex. B (Cornell Dep. (Feb. 17, 2016)) at 32:2–34:3; *id.* at 34:13–35:10.

¹²¹ *Id.* at 331:12–25; 333:11–21; 334:11–15 [REDACTED]

See Ex. J (Charap Dep. (Feb. 26, 2016)) at 281:9–15 [REDACTED]

[REDACTED] 279:8–23 [REDACTED]; Ex. I (Cornell Rpt. (Feb. 15, 2016)) at ¶ 123; TX 5223, Ex. 12.

1 **4. The Cost Claim Is Based on Amorphous, Ordinary Business Expenses**

2 [REDACTED]
3 [REDACTED]
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24 **IV. CONCLUSION**

25 Zillow looks forward to trial, to an end to this case, and to returning the Move-Zillow
26 competition to the arena where it belongs: the marketplace.
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44 ¹²³ Ex. B (Cornell Dep. (Feb. 17, 2016)) at 340:8–341:1; 341:18–21.

45 ¹²⁴ *Id.* at 341:12–16; 349:8–13; *see also* Ex. J (Charap Dep. (Feb. 26, 2016)) at 290:19–291:4; 293:3–15.

46 ¹²⁵ Ex. B (Cornell Dep. (Feb. 17, 2016)) at 342:8–17; 345:16–347:5; 348:3–349:1; Ex. J (Charap Dep. (Feb. 26, 2016))
47 at 292:19–294:10.

¹²⁶ *See* Ex. J (Charap Dep. (Feb. 26, 2016)) at 292:19–293:1; 259:13–20; 263:3–6.

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CERTIFICATE OF SERVICE

On May 27, 2016, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document DEFENDANT ZILLOW'S TRIAL BRIEF.

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1 I certify under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.
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5 DATED this 27th day of May, 2016.
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7
8 /s/ June Starr
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10 June Starr, Legal Secretary
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