

FILED

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The Honorable Sean P. O'Donnell
Hearing Scheduled: December 11, 2013 at 9:00 a.m.
KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 14-2-07669-0 SEA

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

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

Plaintiffs,

v.

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

Defendants.

No. 14-2-07669-0 SEA

**DECLARATION OF
CURT BEARDSLEY**

I, CURT BEARDSLEY, declare as follows:

1. I am over the age of eighteen and am competent to testify. I have personal knowledge of the facts set forth herein.

2. My iCloud account is shared with and used by the members of my family: my wife Joy Beardsley, my 20-year-old son Simon Beardsley, and my 13-year-old daughter Maren Beardsley. That is, each of my family members' devices (and each of their associated cell

1 phone numbers) and their email addresses are available to and may be linked with the other
2 devices that are also registered to the same iCloud account.

3 3. At or about 7:20 a.m. in the morning of Wednesday October 28, 2015, I and
4 each member of my family received the following message on our phones and other devices.

5 **Your Apple ID and phone**
6 **number are now being used**
7 **for iMessage and FaceTime**
8 **on a new Mac.**

9 If you recently signed into "Andrew's
10 MacBook Pro" you can ignore this
11 notification.

12 OK

13 A true and correct copy of the picture of this message that I took on my phone at the time I saw
14 it is attached hereto as *Exhibit A*.

15 4. I was not at home at the time – I was out of town on business – and did not see
16 the message when it appeared. Instead, I received a text message from my daughter Maren
17 about it and then gave her a call. During that call, Maren told me that my wife Joy was on the
18 phone right then calling A&T (our cellular service provider) because Joy believed and was
19 concerned that the account had been hacked by someone named "Andrew." I indicated to
20 Maren that I believed he was someone having to do with this lawsuit, she then relayed that to
21 my wife.

22 5. I am aware that Defendants' forensic expert (Andy Crain or a member of his
23 team) has accessed the iCloud account prior to October 2015 in connection with this lawsuit.
24 However, neither I nor my family had ever received such a message as a result of that prior
25 access. I was not advised to expect such a message.

26 6. As a result, although I knew it likely that the Neutral expert would be accessing
27 the iCloud account sometime that week, that message was unexpected and a surprise to me and
was even more so my family members, who had no idea what it was about.

1 7. I did not warn my wife or children about the Neutral's forthcoming access to the
2 iCloud account because, based on prior experience, I had no reason to expect that they would
3 receive such a message or otherwise be impacted in any way. And, as I note above, I was not
4 otherwise advised that we should expect to receive such a message. In addition I had never told
5 my family members the Neutral's name, as it never occurred to me there was a reason to. So,
6 my family did not know who "Andrew" was, although the message made it appear (correctly
7 so) that he had real-time surveillance of intra-family communications via iMessage (text
8 messages) and also could engage in FaceTime (videoconferencing) with the family.

9 8. Also, when the message came in, I did not recall the Neutral's first name, so was
10 not certain whether "Andrew" was the Neutral or not. I assumed it likely "Andrew" was the
11 Neutral but was still concerned about why it was necessary to gain access to the iCloud account
12 and all the family devices in such an intrusive manner when that had never been necessary
13 before. I was also concerned that, if this wasn't the Neutral, then it really was a hacking
14 incident.

15 9. After talking with my daughter and seeing the message on my own phone, I
16 emailed one of my attorneys, Michele Stephen, to alert her to the message everyone in my
17 family had received and the fact that it seemed the Neutral (assuming "Andrew" was the
18 Neutral) had registered on the account and connected to all of my family's phones, and because
19 I questioned why such an intrusive manner of access was necessary. (I do not address here the
20 substance of our discussion to protect the attorney-client privilege.)

21 10. The afternoon of that same day (October 28, 2015), I spoke with Ms. Stephen
22 about my concerns, and about my changing the password to the account while the access and
23 scope of collection issues were resolved in order to guard against what I believed was an
24 unnecessary intrusion on my family's devices and ongoing communications. (Again, I do not
25 address here the substance of our discussion to protect the attorney-client privilege.) I
26 understood from that conversation that the Neutral had agreed to stop his work in the account
27 briefly given the issues that had been raised. I also understood that my counsel was going to

1 advise the Neutral and all parties that I would be changing the password on that account so that
2 my family's private communications would not be subject to ongoing monitoring while the
3 issue was resolved, and would provide the new password as soon as the issues were resolved.

4 11. Further to that conversation with counsel, at about 9:50 p.m. that evening and
5 with the understanding that the Neutral put his work in the account on hold and thus did not
6 need access to my account at that time, I changed the password to the iCloud account and then
7 sent Ms. Stephen an email with the new password.

8 12. I did not change the password as an act of rebellion against the requirements of
9 the neutral expert protocol, and did not believe I was violating any provision of any court order.
10 Nor did I change the password for any nefarious reason. For example, I did not change it in
11 order to take some action as to the documents or information in the account prior to the Neutral
12 completing his work in that account. I knew that the Neutral would be accessing the accounts
13 under the procedures governing his work, and I obviously could have (but didn't) take this kind
14 of action before giving him access to the accounts.

15 13. I met with Ms. Stephen on October 30, 2015 to discuss the scope of collection
16 issue, among other things. I agreed that not only the documents stored in the iCloud account,
17 but also all data in all other applications provided by iCloud and used by me and my family
18 (*e.g.*, Contacts, Calendar, Photos, Notes, Reminders, Pages, etc.) – except email, which had
19 already been excluded in the protocol – may be collected and reviewed by the Neutral,
20 provided that the Neutral first attempt collection by accessing the account via use of a web
21 browser and only register his computer to the account if he determines it is necessary and some
22 notice is provided. I agreed to this expansive scope of collection not because I understand that
23 it is within the scope of the Neutral's review but rather in a good faith effort to make this
24 process as efficient as possible and keep it moving forward. For these same reasons, I agreed
25 to subject all USB devices I could locate to the Neutral's review, regardless of whether they
26 were within the scope of devices subject to his review.

1 14. The following Tuesday, November 3, 2015, I received an email at 2:52 p.m.
2 from Apple/icloud.com advising that my user name was used to sign in to iCloud via the
3 Chrome web browser. Attached hereto as **Exhibit B** is a true and correct copy of that email,
4 redacted for my communication with Ms. Stephen. I understood this message to mean that the
5 Neutral was logging into my account. This confirmed my understanding that the Neutral did
6 not have to register his device to the iCloud account to gain the access he needed to the
7 account.

8 15. I understand that the Neutral advised my counsel on November 6, 2015 that he
9 had completed collection from my cloud accounts. My family did not receive another message
10 indicating "Andrew" had registered his device to the account after the one received on October
11 28, 2015 because, I understand, he used a different, less intrusive, but equally effective for his
12 purposes means of access.

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

15 DATED this 8th day of December, 2015 at Seattle, Washington.

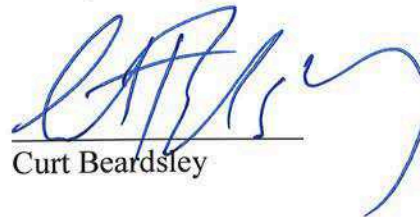
16
17
18 
Curt Beardsley

EXHIBIT A

Edit

Alarm



6:35 AM

Alarm



6:45 AM

Your Apple ID and phone number are now being used for iMessage and FaceTime on a new Mac.

If you recently signed into "Andrew's MacBook Pro" you can ignore this notification.

OK

7:30 AM

Alarm



World Clock



Alarm



Stopwatch



Timer

EXHIBIT B

Michele Stephen

From: Curt Beardsley <curtbonline@gmail.com>
Sent: Tuesday, November 03, 2015 4:53 PM
To: Michele Stephen
Subject: Suspected Spam:Fwd: Your Apple ID was used to sign in to iCloud via a web browser.

Hi Michele,

Curt

----- Forwarded message -----

From: Apple <noreply@insideicloud.icloud.com>
Date: Tue, Nov 3, 2015 at 2:52 PM
Subject: Your Apple ID was used to sign in to iCloud via a web browser.
To: curt_online@yahoo.com



Dear Curtis Beardsley,

Your Apple ID (curt_online@yahoo.com) was used to sign in to iCloud via a web browser.

Date and Time: November 3, 2015, 2:52 PM PST
Browser: Chrome
Operating System: Windows

If the information above looks familiar, you can disregard this email.

If you have not signed in to iCloud recently and believe someone may have accessed your account, go to Apple ID (<https://appleid.apple.com>) and change your password as soon as possible.

Apple Support

[Apple ID](#) | [Support](#) | [Privacy Policy](#)

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