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KING COUNTY
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CASE NUMBER: 14-2-07669-0 SEA

THE HONORABLE SEAN O'DONNELL
SET FOR ORAL ARGUMENT: December 11, 2015
9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

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

Defendants.

No. 14-2-07669-0 SEA

**DECLARATION OF JOSEPH M.
MCMILLAN IN SUPPORT OF
ZILLOW'S OPPOSITION TO THE
NOVEMBER 5 REPORT AND
RECOMMENDATION OF THE
SPECIAL DISCOVERY MASTER**

MCMILLAN DECLARATION RE: NOVEMBER 5
REPORT AND RECOMMENDATION

56920-0025/128912817.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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2 I, JOSEPH M. MCMILLAN, declare as follows:

3
4 1. I am an attorney at Perkins Coie LLP, representing Defendant Zillow, Inc. in
5
6 the above captioned action. I am over 21 years old, and I have personal knowledge of the
7
8 facts herein.

9
10 2. Attached as **Exhibit A** is a true and correct copy of the September 30, 2015,
11
12 Order adopting the Special Discovery Master's Report and Recommendation regarding a
13
14 forensic examination by a Neutral Forensic Expert. The Neutral Protocol governing the
15
16 forensic examination is attached to the Order. The court-appointed Neutral Forensic Expert
17
18 in this matter ("the Neutral") is Mr. Andrew Reisman. I have been directly involved in
19
20 implementing the Neutral Protocol and communicating with Mr. Reisman as counsel for
21
22 Zillow in this case.

23
24 3. On October 14, 2015, pursuant to the Neutral Protocol, a member of Mr.
25
26 Reisman's firm made forensic images of computers and other electronic devices produced
27
28 by Defendants in Seattle. On October 20, 2015, the Neutral (or one of his associates) made
29
30 forensic images of computers and other electronic devices produced by Plaintiffs in Los
31
32 Angeles.

33
34 4. During the last two weeks in October, in close cooperation with the Neutral,
35
36 all parties produced log-in credentials (*e.g.*, passwords) associated with web-based storage
37
38 accounts under their respective control, in order to provide the Neutral with the ability to
39
40 access and collect data from those accounts. While the Neutral Protocol recited that those
41
42 credentials should be provided "within one week of the appointment of the Neutral," *neither*
43
44 side strictly complied with that requirement. The Neutral consented to this modified
45
46 schedule, which did not delay the neutral forensic examination. Attached as **Exhibit B** is a
47

1 true and correct copy of an October 29, 2015, email from Plaintiffs' counsel noting that
2
3 Plaintiffs were, on that day, providing credentials to a DropBox account under their control.
4

5 5. Throughout October 2015, the parties and their experts participated in
6
7 telephonic and email communications with the Neutral to coordinate the data collection and
8
9 discuss the Plaintiffs' proposed Instruction Set for the Neutral's examination of relevant
10
11 electronic devices. Through October 28, that process was characterized by cooperation and
12
13 professional courtesy on all sides, and the issues were being addressed in a substantive,
14
15 diligent, and timely manner.
16

17 6. Attached as **Exhibit C** is true and correct copy of an email string dated
18
19 October 23-30, 2015, relating to Plaintiffs' Instruction Set #1 for the neutral forensic
20
21 examination. Attached as **Exhibit D** is true and correct copy of an email dated November 3,
22
23 2015, forwarding the final "clean copy" of Plaintiffs' Instruction Set #1 to the Neutral.
24

25 7. Plaintiffs' Instruction Set #1 dealt exclusively with electronic *devices*
26
27 (computers, tablets, thumb drives, etc.) subject to the Neutral Protocol. It did not propose
28
29 any forensic tasks associated with the *web-based accounts* subject to the Protocol. Attached
30
31 as **Exhibit E** is true and correct copy of Plaintiffs' Instruction Set #1 to the Neutral. To
32
33 date, Plaintiffs have not proposed any forensic tasks relating to the web-based accounts.
34

35 8. On October 28, as implementation of the Neutral Protocol was proceeding
36
37 normally, I participated in a teleconference with the Neutral and all parties (along with their
38
39 respective forensic experts) to discuss status. At that point, Plaintiffs' Instruction Set #1 was
40
41 not yet finalized, as Plaintiffs had not responded to proposed revisions. During the course of
42
43 the call, counsel for Mr. Beardsley raised a concern relating an unexpected, anomalous, and
44
45 frankly unsettling event that had occurred that morning, which was apparently associated
46
47 with the Neutral's access to Mr. Beardsley's web-based iCloud account, for which

1 credentials previously had been provided. Specifically, the Neutral's access to the iCloud
2 account generated automated messages to the iPhones of Mr. Beardsley's family members
3 (his wife, his 20-year-old son, and his 13-year-old daughter), stating that "Your Apple ID
4 and phone number are now being used for iMessage and FaceTime on a new Mac," which
5 was identified as "Andrew's MacBook Pro."
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11 9. Attached as **Exhibit F** is a true and correct copy of the Response filed by
12 Defendant Curt Beardsley on November 2, 2015, responding to Plaintiffs' Emergency
13 Application to Enforce the Neutral Forensic Inspection Protocol.
14

15
16 10. During the October 28 call with the Neutral, Mr. Beardsley's counsel also
17 raised a question concerning the *scope* of the Neutral's collection from Mr. Beardsley's
18 iCloud account; specifically, whether the Neutral Protocol – which expressly excluded the
19 collection of web-based email messages (*see supra* Ex. A – Neutral Protocol at ¶ 4) – also
20 excluded the collection of similar communications such as iMessages.
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26
27 11. In light of (1) the unexpected intrusion into real-time family communications,
28 and (2) the legitimate question concerning the scope of data collection under the Neutral
29 Protocol, Mr. Beardsley's counsel *requested* (she did not "order," "direct," "demand," or
30 "instruct") that there be a brief halt to the collection of data from the iCloud account until
31 counsel could address the issue to see if an agreement could be reached. Plaintiffs' counsel
32 objected and urged the Neutral to proceed. The Neutral, exercising the discretion afforded
33 to him under the Neutral Protocol (at ¶ 8), agreed to halt the collection from the iCloud
34 account until the issue could be resolved, as it would not create any genuine delay in the
35 forensic examination (*i.e.*, the Instruction Set for analyzing the *devices* had not even been
36 finalized, much less an Instruction Set for analyzing the *accounts*). Plaintiffs have still not
37 proposed Instructions relating to web-based accounts.
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1 12. Attached as **Exhibit G** is a true and correct copy of an October 28, 2015,
2 email string between counsel for Mr. Beardsley and the Neutral, with copies to all parties.
3

4 13. Attached as **Exhibit H** is a true and correct copy of the transcript of the
5 November 2, 2015, telephonic hearing before the Special Master on Plaintiffs' Emergency
6 Application to Enforce the Neutral Protocol.
7
8

9 14. Attached as **Exhibit I** is a true and correct copy of an email sent by Mr.
10 Beardsley's counsel (Michele Stephen) on the evening of October 28, 2015, notifying the
11 Neutral and all parties that "Mr. Beardsley is changing is iCloud password tonight."
12
13

14 15. Neither the Neutral nor Plaintiffs communicated any objection to the
15 understandings or actions proposed by Ms. Stephen in her October 28 emails. Attached as
16 **Exhibit J** is a true and correct copy of an email sent by the Neutral at 11:10 a.m. on October
17 29, 2015, to all parties. Attached as **Exhibit K** is a true and correct copy of an email sent by
18 the Neutral at 12:27 p.m. on October 29, 2015, to all parties. The latter email noted that
19 action on the Beardsley iCloud account was "on hold pending counsel discussions /
20 resolution" and closed by saying "Thanks everyone for your cooperation!" Thus, to all
21 appearances, everything was proceeding normally with the neutral forensic examination at
22 that point, and the Neutral did not believe any party was obstructing his efforts.
23
24

25 16. Attached as **Exhibit L** is a true and correct copy of an email string on the
26 afternoon of October 29, 2015, initiated by Plaintiffs' counsel, stating that Plaintiffs
27 intended to file a motion on shortened time seeking "an order enforcing the neutral forensic
28 examination protocol." The attorney for Plaintiffs who sent that email had not been on the
29 October 28 call with the Neutral, nor involved in any of the joint communications about the
30 Neutral Protocol. Perhaps due to his lack of involvement in the process, Plaintiffs' attorney
31 failed to use the agreed-upon email circulation list for matters relating to the Neutral
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1 Protocol. Defendants' counsel were surprised and perplexed by this email, and asked for
2 clarification. As part of this email string (at 4:06 p.m.), Mr. Beardsley's counsel informed
3 all parties that the new password had been provided to the Neutral that afternoon, and
4 that he had been advised he could proceed with data collection from the iCloud account.
5
6 Mr. Beardsley's counsel also repeated a request for a meet-and-confer with Plaintiffs on the
7 issues associated with the account (which at this point appeared to be resolved).
8
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12 17. Attached as **Exhibit M** is a true and correct copy of Plaintiffs' October 29,
13 2015 (4:26 p.m.) cover email to the Special Master, submitting their Emergency Application
14 to Enforce the Neutral Protocol, requesting that it be considered on shortened time.
15
16

17
18 18. Attached as **Exhibit N** is a true and correct copy of Plaintiffs' Emergency
19 Application to Enforce the Neutral Protocol.
20
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23 19. The Special Master set a telephonic hearing on Plaintiffs' Emergency
24 Application for Monday, November 2. Prior to the call, Mr. Beardsley's counsel filed a
25 Response to Plaintiffs' motion (*see supra*, **Exhibit F**), in which the other Defendants joined.
26 Mr. Beardsley's Response explained the circumstances, noted that the password and data
27 collection issues relating to the iCloud account had been resolved, and objected to Plaintiffs'
28 unjustified haste in filing a motion without a meet-and-confer, despite ample communication
29 from Mr. Beardsley's counsel indicating that they were diligently addressing the issues, and
30 their express request for a meet-and-confer.
31
32

33
34 20. During the November 2 telephonic hearing, in light of the mootness of
35 Plaintiffs' requested relief (*i.e.*, the access/scope-of-collection issues were fully resolved and
36 the new password was in the Neutral's hands), Plaintiffs abruptly altered course, demanding
37 new and different relief for the first time. Specifically, Plaintiffs' counsel requested that an
38 order be entered admonishing Mr. Beardsley for changing the iCloud password.
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1 21. Attached as **Exhibit O** is a true and correct copy of the Special Master's
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3 November 5, 2015, Report and Recommendation re Plaintiffs' Emergency Application to
4
5 Enforce Neutral Forensic Inspection Protocol.
6

7 22. Attached as **Exhibit P** is a true and correct copy of the cover email and
8
9 alternative Proposed Order submitted by Defendants to the Special Master on November 3,
10
11 2015.
12

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15 **I declare under penalty of perjury of the State of Washington that the foregoing**
16 **is true and correct.**
17

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19
20 Signed at Seattle, Washington, December 8, 2015.
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25 /s/ Joseph M. McMillan
26 Joseph M. McMillan
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CERTIFICATE OF SERVICE

On December 8, 2015, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document entitled DECLARATION OF JOSEPH M. MCMILLAN IN SUPPORT OF ZILLOW'S OPPOSITION TO THE NOVEMBER 5 REPORT AND RECOMMENDATION OF THE SPECIAL DISCOVERY MASTER.

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16
17 I certify under penalty of perjury under the laws of the State of Washington that the
18
19 foregoing is true and correct.

20
21 DATED December 8, 2015.

22
23 /s/ June Starr
24 June Star, Legal Secretary
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EXHIBIT A

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8 SUPERIOR COURT OF WASHINGTON
9 FOR KING COUNTY

10 MOVE, INC., a Delaware corporation,
11 REALSELECT, INC., a Delaware corporation,
12 TOP PRODUCER SYSTEMS COMPANY, a
13 British Columbia unlimited liability company,
14 NATIONAL ASSOCIATION OF
15 REALTORS®, an Illinois non-profit corporation,
16 and REALTORS® INFORMATION
17 NETWORK, INC., an Illinois corporation,
18
19 Plaintiffs,

20 vs.

21 ZILLOW, INC., a Washington corporation,
22 ERROL SAMUELSON, an individual, CURT
23 BEARDSLEY, an individual, and DOES 1-20,
24
25 Defendants.
26

No. 14-2-07669-0 SEA

ORDER ADOPTING SEPTEMBER 19, 2015
SPECIAL DISCOVERY MASTER REPORT
AND RECOMMENDATION REGARDING
THE PROTOCOL TO GOVERN THE
COURT SUPERVISED NEUTRAL
FORENSIC EXAMINATION FOR
ELECTRONIC EVIDENCE

Special Master Hilyer filed his "Special Master Discovery Report" dated September 19, 2015 regarding the above-referenced issues.

The matter is now before me. See CR 53.3 and this Court's June 15, 2015 Order Re: Amendment to Order Appointing Special Master.

Having reviewed the Special Master's report and recommendations, the Court ADOPTS Special Master Hilyer's September 19, 2015 Report and Recommendations.

1 IT IS SO ORDERED.

2 DATED: Sept 30, 2015

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5 Judge Sean O'Donnell
6 King County Superior Court
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H | D | R

HILYER DISPUTE RESOLUTION

September 19, 2015

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

Re: *Move et al. v. Zillow et al.*, KCSC No. 14-2-07669-0 SE; Special Discovery Master Report and Recommendation regarding the protocol to govern the Court supervised neutral forensic examination for electronic evidence

Dear Judge O'Donnell:

Pursuant to your Orders in this case dated July 15, 2015, July 28, 2015, and those filed September 15, 2015, regarding the procedures surrounding discovery motions, and these motions in particular, contained herein please find one of several of my Reports and Recommendations to you. These matters having been referred by the court and having come before the Discovery Master ("DM") regarding the determination of an appropriate protocol to guide the Court appointed forensic expert examination, the DM has considered all briefing, including Defendants' Brief in Support of Their Proposed Protocol for Neutral Forensic Expert; Declaration of Joseph M. McMillan in Support of Defendants' Brief re: Neutral Protocol; Declaration of Andrew Crain in Support of Zillow's Brief Regarding Neutral Protocol; [Proposed] Report and Recommendation Adopting Defendants' Proposed Neutral Protocol; Plaintiffs' Brief in Support of Their Proposed Forensic Examination Protocol; Declaration of David Singer in Support of Plaintiffs' Brief in Support of Their Proposed Forensic Examination Protocol; [Proposed] Report and Recommendation Regarding Forensic Examination Protocol; Plaintiffs' Reply in Support of Their Proposed Forensic Examination Protocol; Declaration of Brent Caslin in Support of Plaintiffs' Reply in Support of Their Proposed Forensic Examination Protocol; Defendants' Supplemental Brief on Access to Web-Based Email Accounts through the Neutral Protocol; Declaration of Joseph M. McMillan in Support of Defendants' Supplemental Brief on Access to Web-Based Email Accounts Through the Neutral Protocol; Defendant Samuelson's Brief re: Examination of Cloud-Based Email Accounts; Declaration of Brian Esler; Memorandum of Defendant Curt Beardsley Regarding Exclusion of Personal Email Accounts from Forensic Examination; Declaration of Caitlin K. Hawks; Reply Memorandum of Defendant Curt Beardsley Regarding Forensic Examination of Personal Web-Based Email Accounts; Plaintiffs' Brief in Support of Forensic Examination; Declaration of Michael Rosenberger;

Declaration of Byron Lloyd-Jones; Defendants' Joint Response to Plaintiffs' Brief in Support of Forensic Examination; Plaintiffs' Reply in Support of Forensic Examination of Cloud-Based Email Accounts; Second Declaration of Michael Rosenberger; .

Oral argument was held on August 5, 2015 and August 31, 2015, at the offices of Hilyer Dispute Resolution, 1000 - Second Avenue, Suite 3000, Seattle, WA 98104. The DM reports and recommends as follows:

After the parties negotiated the form of the Protocol, the following issues remained:

1. The role of the Neutral. Defendants wanted the Neutral to only respond to specific technical requests of the parties, but I agreed with Plaintiffs that the Neutral should not be so limited and may himself suggest approaches to the forensic examination while still maintaining his neutrality.
2. The scope and purpose of the investigation. I decided to add language to recognize that the purpose of the examination includes protection of privileged and confidential materials.
3. What to do with materials produced by the forensic examination to which the producing party objects based on relevance. With regard to privileged materials, the producing party will have the opportunity to review the materials first and will produce a privilege log to permit evaluation of the privilege claim. But for relevance objections, the burden shall be on the producing party to move for a protective order before the Discovery Master, and to provide privilege log type of information for the opposing party, with in camera review of the documents by the Discovery Master
4. The devices subject to the forensic review. This issue was negotiated by the parties, and included the computer of Zillow employee Will Hebard

based upon his deposition testimony. I also included a "catch-all" provision suggested by Plaintiffs that the examination included "Any other computer or devices used by Curt Beardsley or Errol Samuelson to access cloud storage accounts subject to this protocol."

5. The allocation of expenses. The Plaintiffs proposed 50/50 cost sharing between all Plaintiffs and all Defendants, but I agreed with Defendants that the party initiating the particular request should bear the costs in order to incentivize the most cost effective approach. This initial allocation does not address whether a different reimbursement approach is warranted as a sanction depending upon what is revealed in the entire process

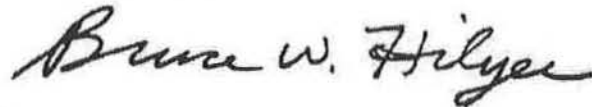
DM recommends that the attached Order and Protocol for Forensic Examination be adopted. The attached "Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts" is my recommendation following my review and consideration of briefing by all parties and a hearing devoted exclusively to assist me to formulate this protocol.

6. The only remaining issue to be determined is whether the forensic expert will be allowed to review web-based email accounts as Plaintiffs have requested. Defendants object that this is duplicative of prior efforts supervised by counsel. I have concluded that the determination regarding email searches will be better informed after the neutral forensic expert has been appointed.

Re: *Move v. Zillow*
September 19, 2015
Page 4

For the reasons summarized above, I recommend adoption of the attached
"Protocol Governing Neutral Review and Handling of Certain Electronic Devices and
Cloud accounts."

IT IS SO REPORTED AND RECOMMENDED THIS 19th day of September,
2015.

A handwritten signature in black ink that reads "Bruce W. Hilyer". The signature is written in a cursive, flowing style.

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

Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts

The Neutral Expert's Role

1. The Neutral Expert ("the Neutral") is appointed by the Court and serves as an officer of the Court. The Neutral must avoid the appearance of impropriety. The Neutral works under the supervision of the Discovery Master and does not work for any party. The Neutral must act in conformity with the procedures set forth in this protocol, must not advocate on behalf of or advise any party, and may only provide factual information and analysis arising from forensic research tasks delegated to him, or determined by him in the exercise of his best professional judgment as the most effective forensic procedures to accomplish the objectives of this forensic examination. Except as specifically provided in this protocol, all information disseminated and/or transmitted by the Neutral to any party must be transmitted to all parties. Disclosure of any device, account, file, email or other information to the Neutral will not be construed as a waiver of attorney-client privilege, work product protection, common interest or joint defense privilege, trade secret protection or any other privilege or immunity. Once appointed, the Neutral must sign the agreement to be bound by the terms of the protective order in this case as well as this Protocol.
2. The Neutral is appointed by the Court for the following purposes:
 - a. To promote and facilitate the efficient and transparent forensic analysis of certain devices and accounts at issue in this litigation, including investigation of alleged deletion(s) of potential evidence and/or alleged misappropriation of Move, Inc. documents or data;
 - b. To ensure that privileged information remains privileged and is not inadvertently or otherwise produced or disclosed to non-privileged parties, persons, or entities; and to avoid unwarranted disclosure of personal, private or competitively sensitive information.

Any work performed by the Neutral must be directly related to the express purposes identified above.

3. The parties have agreed on the appointment of Andy Reisman as the Neutral. Should that person for any reason fail to complete the work as described in this protocol, then his replacement shall be chosen by procedures established by the Discovery Master for discovery. The Neutral can only be discharged upon the recommendation of the Discovery Master and approval of the Court.

Devices Covered by this Protocol

4. The following electronic devices and web-based cloud storage accounts (excluding the web-based email accounts previously searched) listed below are subject to this protocol to the extent they are in the producing party's possession or control; however, other devices or accounts may be made subject to the protocol by agreement of the parties or order of the Discovery Master or the Court:

Specific USB Devices

- a) USB flash drive labeled "ADATA" with serial number SN#1242709152180068 that was connected to Mr. Samuelson's Move-issued Dell laptop in March 2014.
- b) SanDisk Cruzer USB device with serial number 20052242801E0E900E9E that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- c) SanDisk Cruzer USB device with serial number 4C530300221117101305 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- d) General USB Flash Disk USB device with serial number 00000000000015AA that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- e) General UDisk USB device with serial number 1104090309500035117100 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- f) WD 1600BEV External USB device with serial number 5758453330384A3432333337 that was connected to Mr. Beardsley's Move-issued Dell laptop in March 2014.
- g) Any other storage device that has been connected to a Move computer after October 31, 2013, or connected to another device that was connected to a Move computer after October 31, 2013.

Mr. Samuelson represents that he does not possess the USB device identified in subparagraph (a) above. Mr. Beardsley represents that he does not possess the USB devices identified in subparagraphs (c), (d), (e), and (f) above. In the event any of such devices come into any defendant's possession, they will become subject to this protocol.

Cloud Accounts

Although cloud accounts listed below may be associated with a web-based email account, the associated web-based email accounts previously searched are not subject to review under this protocol unless specifically approved by the Discovery Master.

- a) Errol Samuelson
 - i. Dropbox – errol@move.com
 - ii. Google Drive – Samuelson@gmail.com and errolgsamuelson@gmail.com
- b) Curt Beardsley
 - i. Google Drive – curtbeardsley@gmail.com
 - ii. iCloud – curt_online@yahoo.com
 - iii. Dropbox – curt_online@yahoo.com
 - Microsoft One-Drive – curt_online@yahoo.com
- c) Will Hebard
 - (1) Google Drive – willhebard@gmail.com

Computers and Other Devices

- a) Zillow computer(s) used by Errol Samuelson
- b) Zillow computer(s) used by Curt Beardsley
- c) Zillow computers(s) used by Will Hebard
- d) Mr. Beardsley's home office Dell desktop computer
- e) Mr. Beardsley's Apple iPad Mini

- f) Mr. Samuelson's Apple iPhone and iPad that Mr. Samuelson used at Move and later returned to Move following termination of his employment at Move
- g) Any other computers or devices used by Curt Beardsley or Errol Samuelson to access cloud storage accounts subject to this protocol.

Forensic Procedures

- 5. Within one week of the appointment of the Neutral, the parties will make the computers, USB storage devices, and other devices listed above available to the Neutral to examine and forensically image onsite at a mutually agreeable location, or if not so agreed, then as determined by the Neutral. For cloud storage accounts, defendants will provide the username, email account, password, or other information necessary to access the account to the Neutral within one week of the appointment of the Neutral, which information shall not be shared with any other party. The Neutral shall exercise his discretion to determine all accommodations reasonably necessary to minimize the interruption of the producing party's business caused by the imaging process. In addition to allowing the Neutral to make images of the referenced devices/computers, defendants will also provide the Neutral with access to any existing images that defendants or their experts have already made of these devices/computers.
- 6. The Neutral and the parties' experts will schedule a date upon which the imaging and initial inspection will occur, which shall be no later than one week after the appointment of the Neutral unless otherwise agreed to by the parties. Once the imaging is complete, as determined by the Neutral, then the producing party is free to take steps (such as changing passwords) to re-secure the device or account.
- 7. The parties' outside counsel and experts may communicate directly with the Neutral by email, provide that all such emails are copied to opposing counsel on those communications. Where email communication is inadequate or impractical, phone calls with the Neutral are also permitted, but the opposing counsel and expert must be given a reasonable opportunity to participate in those phone calls.
- 8. All parties, acting through their experts or counsel, may make suggestions to the Neutral regarding how to conduct his investigation, to which he shall give due consideration, but he is not required to justify any particular decision that he makes. After providing reasonable notice to the parties' experts, and/or designated attorney contact for each party, the Neutral shall determine, in the exercise of his sole discretion which specifically defined forensic tasks or tests he shall undertake
- 9. To the extent that it does not have a material adverse impact on the forensic examination, or is not impracticable, the Neutral shall endeavor to permit on-site, or equivalent remote access with live monitoring capability, of the parties' experts during his forensic activities. In making this determination, the Neutral shall give due consideration to avoiding any serious risk that permitting on-site or remote live observance of such tasks not result in the disclosure of the content of any active or deleted files likely to contain privileged materials, which shall require the most vigilance to guard against disclosure, or

personally or competitively sensitive materials, which should also be reasonably safeguarded but to a lesser degree than for privileged materials. If a party reasonably believes that a task or test may result in the disclosure of privileged material or personally or competitively sensitive material, the party shall give notice of such objection to the Neutral and all other parties. After receiving such objection, the Neutral shall consider whether it is necessary to exclude all others from being present while the task or test is performed, or whether other safeguards can be taken, and his decision shall be determinative, unless the Discovery Master recommends and the Court orders otherwise..

b) Notwithstanding the foregoing, the parties' forensic experts may be present, or be allowed equivalent live remote access, when the Neutral conducts his analysis on deleted files or other forms of discarding or covering up electronic data, but may not disclose the content of any files that may be viewed during such analysis. Rather, if the Neutral determines that such files are relevant to the purposes of this protocol as set forth in paragraph 2, he/she shall provide copies of those files to the producing party for disposition as set forth in paragraph 15 below.

c) A party's forensic expert may not be present (remotely or otherwise) for the Neutral's work unless the opposing party's (or parties') forensic expert is provided a reasonable opportunity to be present also.

10. The Neutral's initial tasks may include the following inspections/analyses:

a) USB Devices, Computers and Other Devices:

- i. File hash searching (comparing all files against known hash set to identify identical copies)
- ii. File listings of common document types for comparison review (PDF, CSV, TSV, XLS, XLSX, DOC, DOCX, PPT, PPTX, OST, PST, EML, MSG, etc.)
- iii. Analysis of external devices (identifying recent and historical activity of external devices used)
- iv. Keyword searching (identify relevant data based on unique keywords) based on keywords supplied after all parties meet and confer to determine an agreed list. Any dispute regarding search terms or key words not so resolved shall be presented to the Discovery Master for resolution. Testing by the Neutral to assess reasonableness (for example, running preliminary "hit reports") is permissible.
- v. Link file analysis (review active and historical user interaction of files and folders and to also aid with identifying use of external devices)
- vi. Wiping tools analysis (searching with known hash set, searching for common artifacts, keyword search of common wiping tools)
- vii. Extraction and indexing of all identifiable active and easily recoverable user data from each device (the process referred to as "harvesting")
- viii. Data carving (performing file data recovery over the unallocated space of forensic images for additional review)
- ix. Internet history analysis (analysis of user internet history and cloud account access)

- x. Registry analysis (review of registry keys to corroborate other forensic findings)
 - xi. Event log analysis (review of event log data to corroborate other forensic findings, for example USB analysis, deletion analysis, etc.)
 - xii. Deletion analysis (searching for evidence of specific file/email deletion across devices)
 - xiii. Timeline analysis (review of user profile usage, software installation, login activity, etc.)
- b) Cloud Accounts:
- i. Full analysis of event logs and user history
 - ii. OCR of cloud account screenshots (make the screenshots keyword searchable)
 - iii. File hash search (comparing all download files against known hash set to identify identical copies)
 - iv. Generate file listings including metadata of all content stored within the cloud account for comparison review
 - v. Generate a text searchable index of all content preserved from the cloud account
 - vi. Keyword search (identify relevant data based on unique keywords) based on agreed keywords or search terms, or as otherwise determined by the Discovery Master. Testing by the Neutral to assess reasonableness (for example, running preliminary "hit reports") is permissible.
 - vii. Deletion analysis (review of cloud activity logs to identify historic or recent deletion history).
11. The parties' experts may request follow-up forensic inspection as desired by contacting the Neutral and experts for the other parties. Any follow-up inspection and analyses shall be scheduled, if feasible, within two (2) business days of the request, unless the experts or parties agree otherwise.
12. Upon request by any party or party's representative, the Neutral must disclose to all parties' outside counsel and experts (1) the specific tasks performed, (2) the party that requested the task be performed, (3) the specific steps taken to perform the task, and (4) all other information sufficient to allow another forensic expert to duplicate the task.
13. The Neutral must keep detailed logs showing the step-by-step process used to view or analyze information contained in any device or account. The log shall be sufficiently detailed to allow another forensic expert to duplicate the analysis.
14. The Neutral shall promptly provide copies of the results of any forensic analysis, including file listings, files, and screenshots, to the producing party who will then have 7 business days to review the information for privilege, designate materials appropriately under the protective order, and produce to the requesting parties' outside counsel all non-privileged forensic reports (including anything relating to potentially responsive deleted material) and, if applicable, non-privileged materials responsive to existing Requests for Production. If the volume of documents is more than 1,000 pages the producing party shall review and produce the additional documents on a rolling basis as promptly as possible not to exceed 10 business days absent extraordinary circumstances. The producing party shall also promptly prepare

and produce a privilege log listing all materials received from the Neutral that have been redacted or withheld from production based upon privilege. For any documents that the Producing Party does not disclose based upon relevance, or asserted confidentiality, the burden shall be upon that party to move for and obtain a protective order recommendation from the Discovery Master which shall be filed within 3 business days of the production. In addition to the information normally provided on a privilege log, the moving party shall submit the primary documents to the Discovery Master under seal and shall also provide, to the maximum extent feasible consistent with the privacy interest asserted, a redacted form of the document(s) at issue to be served on all other parties. The withheld material shall be identified in a manner sufficient to apprise the requesting party of the nature of the documents or information withheld and the reason for the withholding.

15. If a disagreement over the production, designation, withholding, or redaction of materials cannot be resolved, the parties will, after a meet-and-confer on the issue, submit the dispute to the Discovery Master, who may review withheld information in camera.
16. If the producing party claims that privileged or irrelevant information or documents have been inadvertently produced, then the producing party can demand the return of those materials consistent with paragraph 14 of the Second Amended Protective Order, and the receiving party is bound to comply with the terms of that provision.
17. Notwithstanding any other section of this protocol, the Neutral may not perform any work in any cloud account until the Neutral takes screen shots and memorializes all file listings and information showing last accessed or modified dates to the extent those dates are available, and provides those screen shots to the producing party's outside counsel or forensic experts.
18. Notwithstanding any other section of this protocol, the Neutral may not perform any work on an image of any device until the Neutral ensures that the producing party has a duplicate image of the device that the Neutral will be examining.
19. All devices and accounts subject to this protocol, including all content on those devices or accounts and all analysis performed on those devices or accounts, will be initially treated as Outside Counsel Eyes Only under the Second Amended Protective Order governing this litigation until the parties agree or the Court orders otherwise.
20. The Neutral must use industry-standard equipment and best practices.
21. Plaintiffs will be responsible for costs associated with the review of any devices or accounts produced by defendants. Defendants will be responsible for costs associated with the review of any devices or accounts produced by plaintiffs. The plaintiffs and defendants will equally share the cost and fees of any review not associated with a particular device or account, or any task assigned to the Neutral by the Discovery Master or the Court. This cost sharing arrangement does not address whether or not, depending upon the results of this forensic investigation, a reallocation of costs is warranted as a sanction.

22. The fact that the Neutral obtained or retrieved any evidence is not an agreement that the evidence is admissible, nor does it constitute any waiver of any applicable attorney-client, work-product or other privilege.
23. The parties stipulate that the Neutral may not offer any expert opinions at trial. Trial testimony by the neutral expert, if any, will be limited to fact testimony on the specific tasks performed on particular devices.
24. This forensic investigation is not intended to replace or create new discovery obligations on any party except as specifically provided regarding this forensic examination under this Protocol. Therefore, there is no requirement that any party review the existing discovery requests or its existing responses with respect to materials that are produced through this forensic examination. However, the documents that come to light through this investigation shall be produced as provided here in irrespective of whether they were required or not previously in specific discovery requests by any party.
25. In the event that the Neutral seeks to pose a question or requires guidance from the Discovery Master regarding the Protocol, he may do so by email provided that he also copies counsel for all parties. Before any response by the Discovery Master, he will allow comments and suggested responses, if any, from all Counsel. Telephone contact with the Discovery Master by conference call with all counsel, while not preferable, may be considered (sparingly) to address any unforeseen urgent matters.

Certification by Neutral Expert:

I, Andy Reisman, swear and affirm under oath that I will abide by the above Protocol.

[Add Expert Name & Address]

EXHIBIT B

McMillan, Joseph M. (Perkins Coie)

From: Singer, David R. <DSinger@jenner.com>
Sent: Thursday, October 29, 2015 4:55 PM
To: 'Andy Reisman'
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen; Andy Crain; McMillan, Joseph M. (Perkins Coie)
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Thanks, Andy. In a separate, private email, we will send you the last known username and password for the errol@move.com Dropbox account.

Regards,

David

From: Andy Reisman [mailto:andy.reisman@elijaht.com]
Sent: Thursday, October 29, 2015 12:27 PM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen
Subject: Re: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

Here is an update on the cloud accounts we have yet to access for purposes of creating screenshots per the protocol:

1. Beardsley Microsoft One-Drive: We have attempted to sign in using the Microsoft security code, but so far requests have timed out. We have advised regarding bypassing two-factor authentication temporarily in order to avoid this issue.
2. Hebard Google Drive: We have the password, but need to coordinate getting the security code with Hebard/counsel in order to access, or disabling two factor authentication.
3. Samuelson Dropbox: Was informed that this account (associated with login errol@move.com) is under the control of Move, and that Samuelson does not have the password. We will need this provided by counsel for Move. If enabled, we'd suggest temporarily disabling two factor authentication.
4. Samuelson Google Drive x2: Received a password, but determined it does not work - we will need this checked on by Samuelson/counsel. If enabled, we'd suggest temporarily disabling two factor authentication.
5. Beardsley iCloud account: On hold pending counsel discussions/resolution.

Apologies if I missed any communications that provided information listed above, but I believe this is all correct. Thanks everyone for your cooperation!

Regards,

Andy Reisman, CEO
Elijah Ltd.
312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Reisman

Sent: Thursday, October 29, 2015 2:09 PM

To: Andy Crain; McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen;

AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen

Subject: Re: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

I have attached an updated status sheet per our conversation yesterday. It has tabs at the bottom to break out the images we received, the images we created, and the cloud screenshots we have completed.

We are ready to start shipping out copies of the images we created and the screenshots we have collected to date to the producing parties. **As I want to be 100% sure to send the images/screenshots for each custodian only to the person who should be receiving those images/screenshots, please let me know for each custodian the name and address we should be sending the images/screenshots to per the protocol.** Thanks!

Regards,

Andy Reisman, CEO

Elijah Ltd.

312-492-4108 direct

866-354-5240 main

847-722-6363 cell

312-423-1934 fax

andy.reisman@elijaht.com

www.elijaht.com

From: Andy Reisman

Sent: Wednesday, October 28, 2015 2:12 PM

To: Andy Crain; McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen;

AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

For purposes of your discussions about iCloud, I have confirmed that we are able to select documents and not select other artifacts such as calendars, contacts, Safari bookmarks, etc. Also, please clarify if Notes should be included, as those are treated differently than documents.

Regards,

Andy Reisman, CEO

Elijah Ltd.

312-492-4108 direct

866-354-5240 main

847-722-6363 cell

312-423-1934 fax

andy.reisman@elijaht.com
www.elijaht.com

From: Andy Crain [<mailto:andy@discovia.com>]

Sent: Tuesday, October 27, 2015 8:10 PM

To: Andy Reisman <andy.reisman@elijaht.com>; McMillan, Joseph M. (Perkins Coie) <JMcmillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Mr. Reisman, Counsel, and Stroz team:

Along with Defendants' counsel, today I reviewed the proposed instructions prepared by Jenner and Stroz. In advance of our scheduled call tomorrow, please find attached a redlined version of those instructions, reflecting our initial comments / suggested revisions. It is our hope that providing this redlined version now can increase the productivity of our discussion tomorrow. We may have more suggested comments / revisions as this process moves along.

Regards,
Andy

Andy Crain

VP - Forensics & Collections

415.392.2900 | Main

415.321.8205 | Direct

415.640.3385 | Cell

andy@discovia.com

www.discovia.com

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From: Andy Reisman [mailto:andy.reisman@elijaht.com]

Sent: Saturday, October 24, 2015 2:19 PM

To: McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Sounds good – we'll start making the copies per the protocol on Monday, and will look for the separate emails with the Hebard Google Drive and Zillow laptop credentials. Best times for me for a call next week are Monday afternoon, Wednesday morning and any time on Friday. If none of those ranges work for everyone else just let me know what does, and I will try to shuffle things around to accommodate. Thanks!

Regards,

Andy

From: McMillan, Joseph M. (Perkins Coie) [mailto:JMcMillan@perkinscoie.com]

Sent: Saturday, October 24, 2015 3:26 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Andy Crain (andy@discovia.com) <andy@discovia.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Andy:

I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

The Neutral Protocol is attached to this email (as a pdf) for reference.

Finally, Defendants agree with your suggestion to arrange a conference call next week with all counsel/experts to discuss the work flow issues discussed in your email below. Defendants obviously need some time to review the very extensive set of Instructions proposed by Plaintiffs yesterday afternoon. Accordingly, we think it makes sense to arrange for a call sometime mid-week, if that works for you.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]
Sent: Saturday, October 24, 2015 7:12 AM
To: Kohn, Lisa J.
Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

Regards,
Andy

From: Andy Reisman
Sent: Friday, October 23, 2015 5:01 PM
To: 'Kohn, Lisa J.' <LKohn@jenner.com>
Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie)

<JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Thanks Lisa, I will put together a spreadsheet of device imaging/account collection status that tracks the item in the original Word document, and will circulate it on completion.

On a related note, and with apologies if I overlooked an email conveying any of the below, here is a list of the remaining items for which we need passwords/passcodes:

1. Curt Beardsley
 - a. Google Drive
 - b. iCloud
 - c. Dropbox
 - d. Microsoft One Drive
2. Will Hebard
 - a. Bit locker encrypted Dell Latitude, Bit locker ID: {2261916D-4AC1-4ECF-8237-6B8BBBBCB1F7}
 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
 - a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

An alternative for your consideration is that each side in consultation with their expert proposes instructions, which I can then discuss jointly with the experts in the event I think any of the instructions require technical clarification. I'd thereafter carry out the instructions without needing to coordinate observation of the associated work. Again, I am happy to proceed as originally contemplated, but wanted to alert you to the availability of a more efficient option that would accomplish the contemplated objectives. Perhaps you can discuss amongst yourselves and let me know your thoughts, or we can have a conference call to discuss options together.

Regards,
Andy

From: Kohn, Lisa J. [mailto:LKohn@jenner.com]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

Now that the imaging has been performed in Seattle and Los Angeles, we would like to confirm that you have the devices and preexisting images identified in the chart plaintiffs sent to you on October 9 (attached for your reference). Can you please identify / confirm all of the images you have? In particular, plaintiffs would like clarification regarding what images were provided by Discovia on Apricorn Aegis Padlock 3 P2T203898 and P2T204022. The device chart indicates that defendants imaged various computers and USB devices, but we do not have information regarding which images are contained on those two drives.

In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn

Jenner & Block LLP
633 West 5th Street
Suite 3600, Los Angeles, CA 90071 | jenner.com
+1 213 239 2224 | TEL
L.Kohn@jenner.com
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EXHIBIT C

McMillan, Joseph M. (Perkins Coie)

From: Singer, David R. <DSinger@jenner.com>
Sent: Friday, October 30, 2015 9:30 AM
To: 'Andy Reisman'; McMillan, Joseph M. (Perkins Coie); Esler, Brian
Cc: Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Andy Crain; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen; Jack Lovejoy; Mike Rosenberger
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert
Attachments: REVISED Neutral Protocol Instruction Set #1.DOCX

All:

As promised during our last call, here is our revision to **Instruction Set #1**. We have accepted most of defendants' requested edits. Regarding keyword searches, we prefer to simply track the language used by the Court in the Protocol.

Please let us know if this version is acceptable to everyone, and we will circulate a final version. We would like Andy to get started on this instruction set as soon as possible.

Also, we understand that counsel for Mr. Beardsley has given some new instructions to Andy regarding the imaging of Mr. Beardsley's iCloud account. Please send us a copy of those instructions as we never received a copy.

Thanks,

David

From: Andy Reisman [mailto:andy.reisman@elijaht.com]
Sent: Friday, October 30, 2015 7:40 AM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

Just following up to find out where to ship each custodian's the duplicate copy of the images for each of the respective producing parties. Paragraph 18 of the protocol precludes us from starting work on any of those images until we confirm that the producing party has a duplicate copy.

For Samuelson, it's just one image, the MacBook Air.

For Hebard, it's just one image, the Dell Latitude.

For Beardsley, I won't re-list everything from the spreadsheet here, but please let me know if there is a producing party other than Beardsley different than Beardsley for any of the Beardsley devices. Otherwise I will ship all of the Beardsley images to whichever one contact you tell me.

I know this might seem like a lot of ink to spend on shipping details, but as I'm sure you'll understand, I don't want to inadvertently send any images where they don't belong!

Regards,
Andy

From: Andy Reisman

Sent: Thursday, October 29, 2015 2:10 PM

To: Andy Crain <andy@discovia.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>; Matthew Feilen <matthew.feilen@elijaht.com>

Subject: Re: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

I have attached an updated status sheet per our conversation yesterday. It has tabs at the bottom to break out the images we received, the images we created, and the cloud screenshots we have completed.

We are ready to start shipping out copies of the images we created and the screenshots we have collected to date to the producing parties. **As I want to be 100% sure to send the images/screenshots for each custodian only to the person who should be receiving those images/screenshots, please let me know for each custodian the name and address we should be sending the images/screenshots to per the protocol.** Thanks!

Regards,

Andy Reisman, CEO
Elijah Ltd.
312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Reisman

Sent: Wednesday, October 28, 2015 2:12 PM

To: Andy Crain; McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen;

AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

For purposes of your discussions about iCloud, I have confirmed that we are able to select documents and not select other artifacts such as calendars, contacts, Safari bookmarks, etc. Also, please clarify if Notes should be included, as those are treated differently than documents.

Regards,

Andy Reisman, CEO
Elijah Ltd.
312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Crain [<mailto:andy@discovia.com>]

Sent: Tuesday, October 27, 2015 8:10 PM

To: Andy Reisman <andy.reisman@elijaht.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Mr. Reisman, Counsel, and Stroz team:

Along with Defendants' counsel, today I reviewed the proposed instructions prepared by Jenner and Stroz. In advance of our scheduled call tomorrow, please find attached a redlined version of those instructions, reflecting our initial comments / suggested revisions. It is our hope that providing this redlined version now can increase the productivity of our discussion tomorrow. We may have more suggested comments / revisions as this process moves along.

Regards,

Andy

Andy Crain

VP - Forensics & Collections

415.392.2900 | Main

415.321.8205 | Direct

415.640.3385 | Cell

andy@discovia.com

www.discovia.com

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From: Andy Reisman [mailto:andy.reisman@elijaht.com]
Sent: Saturday, October 24, 2015 2:19 PM
To: McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Sounds good – we'll start making the copies per the protocol on Monday, and will look for the separate emails with the Hebard Google Drive and Zillow laptop credentials. Best times for me for a call next week are Monday afternoon, Wednesday morning and any time on Friday. If none of those ranges work for everyone else just let me know what does, and I will try to shuffle things around to accommodate. Thanks!

Regards,
Andy

From: McMillan, Joseph M. (Perkins Coie) [mailto:JMcMillan@perkinscoie.com]
Sent: Saturday, October 24, 2015 3:26 PM
To: Andy Reisman <andy.reisman@elijaht.com>
Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>; Andy Crain (andy@discovia.com) <andy@discovia.com>
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Andy:

I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

The Neutral Protocol is attached to this email (as a pdf) for reference.

Finally, Defendants agree with your suggestion to arrange a conference call next week with all counsel/experts to discuss the work flow issues discussed in your email below. Defendants obviously need some time to review the very extensive set of Instructions proposed by Plaintiffs yesterday afternoon. Accordingly, we think it makes sense to arrange for a call sometime mid-week, if that works for you.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Saturday, October 24, 2015 7:12 AM

To: Kohn, Lisa J.

Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

Regards,
Andy

From: Andy Reisman

Sent: Friday, October 23, 2015 5:01 PM

To: 'Kohn, Lisa J.' <LKohn@jenner.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Thanks Lisa, I will put together a spreadsheet of device imaging/account collection status that tracks the item in the original Word document, and will circulate it on completion.

On a related note, and with apologies if I overlooked an email conveying any of the below, here is a list of the remaining items for which we need passwords/passcodes:

1. Curt Beardsley
 - a. Google Drive
 - b. iCloud
 - c. Dropbox
 - d. Microsoft One Drive
2. Will Hebard
 - a. Bit locker encrypted Dell Latitude, Bit locker ID: {2261916D-4AC1-4ECF-8237-6B8BBBBBCB1F7}
 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
 - a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

An alternative for your consideration is that each side in consultation with their expert proposes instructions, which I can then discuss jointly with the experts in the event I think any of the instructions require technical clarification. I'd thereafter carry out the instructions without needing to coordinate observation of the associated work. Again, I am happy to proceed as originally contemplated, but wanted to alert you to the availability of a more efficient option that would accomplish the contemplated objectives. Perhaps you can discuss amongst yourselves and let me know your thoughts, or we can have a conference call to discuss options together.

Regards,
Andy

From: Kohn, Lisa J. [mailto:LKohn@jenner.com]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

Now that the imaging has been performed in Seattle and Los Angeles, we would like to confirm that you have the devices and preexisting images identified in the chart plaintiffs sent to you on October 9 (attached for your reference). Can you please identify / confirm all of the images you have? In particular, plaintiffs would like clarification regarding what images were provided by Discovia on Apricorn Aegis Padlock 3 P2T203898 and P2T204022. The device chart indicates that defendants imaged various computers and USB devices, but we do not have information regarding which images are contained on those two drives.

In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn

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LKohn@jenner.com
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EXHIBIT D

McMillan, Joseph M. (Perkins Coie)

From: Glickstein, Ethan A. <EGlickstein@jenner.com>
Sent: Tuesday, November 03, 2015 10:27 AM
To: McMillan, Joseph M. (Perkins Coie); Singer, David R.; Michele Stephen; Esler, Brian; Duffy Graham
Cc: Andy Reisman; Gray, John H. (Perkins Coie); AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen; Andy Crain
Subject: RE: Move, et al. v. Zillow, et al. - Instruction Set for forensic examination
Attachments: CHICAGO-#2396473-v1-Instruction_Set_with_Changes_Accepted.docx

Andy,

Attached is a clean copy of Instruction Set 1.

Thanks,
Ethan

From: McMillan, Joseph M. (Perkins Coie) [mailto:JMcMillan@perkinscoie.com]
Sent: Tuesday, November 03, 2015 10:04 AM
To: Singer, David R.; Michele Stephen; Esler, Brian; Duffy Graham
Cc: Andy Reisman; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen; Andy Crain
Subject: RE: Move, et al. v. Zillow, et al. - Instruction Set for forensic examination

David:

Defendants have no objection to the minor revisions in the Instruction Set that you circulated on Friday. Please feel free to forward a clean copy of that Instruction Set to Andy Reisman.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

-----Original Message-----

From: Singer, David R. [mailto:DSinger@jenner.com]
Sent: Tuesday, November 03, 2015 8:43 AM
To: McMillan, Joseph M. (Perkins Coie); Michele Stephen; Esler, Brian; Duffy Graham
Cc: Andy Reisman; Glickstein, Ethan A.; Gray, John H. (Perkins Coie);
AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Kohn, Lisa J.; Fandel, Mike;

Matthew Feilen; Andy Crain

Subject: Re: Move, et al. v. Zillow, et al. - Mr. Beardsley's One Drive account

Thank you, Michelle. I'd like to hear from Andy re why he is having trouble accessing the account. If Andy thinks it's necessary to have a real-time call to discuss getting access only, then the call may proceed.

Separately, it appears there are no objections to the latest version of plaintiffs' instruction set #1. If I am wrong, please let us know. Otherwise we will circulate a clean copy. As you know, we are eager for Andy to commence his forensic analysis.

David

On Nov 3, 2015, at 7:44 AM, Michele Stephen
<mstephen@sbwllp.com<<mailto:mstephen@sbwllp.com>>> wrote:

Andy and all:

As noted in my email last Friday, there have been multiple attempts by Andy's team to access Mr. Beardsley's One Drive account but Microsoft's security features appeared to be timing out and prohibiting such access.

Pursuant to Andy's recommendation, last week Mr. Beardsley disabled the two-step verification process.

Andy: please advise whether that disabling worked and you have secured access. This morning Mr. Beardsley received an email from Microsoft security advising of "Unusual sign-in activity." (See below.)

Please confirm that was you and if so, please advise when you have completed your work in that account and advise that Mr. Beardsley may re-secure it with the two-step verification process and a new password.

If you have not been able to gain access, as noted last Friday, I seek to arrange a telephone call with you (or a member of your team) and Mr. Beardsley so that you all can work in real-time to secure the access.

Counsel: I again ask – is there any objection to that phone call proceeding if necessary? Please confirm by reply email your agreement that such a call may proceed if needed.

Thank you.

Michele

<image001.png>

Michele L. Stephen | Savitt Bruce & Willey llp

Joshua Green Building | 1425 Fourth Avenue, Suite 800 | Seattle, WA 98101-2272 |

Tel: 206/749-0500 | Fax: 206/749-0600 |

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[3A www.sbwllp.com](http://www.sbwllp.com) &d=CwlGaQ&c=XRWvQHnpdBDRh-

[yzrHjqLpXuHNC 9nanQc6pPG SpT0&r=W1J-IS-](http://www.sbwllp.com)

[XxPoARUr0kHX6hIVOCzAYtMwXH9suXmPCEds&m=sNuGbzsn4k1X8gsL FzN9rPbxBmuGeAlaAsHEvZMf4&s=q9Z6l0-mz4r2qQnFdBLRVR4069gCKmETubxts0mG67U&e=>](http://www.sbwllp.com)

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David R. Singer

Jenner & Block LLP

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Suite 3600, Los Angeles, CA 90071-

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[3A www.jenner.com](http://www.jenner.com)&d=CwlGaQ&c=XRWvQHnpdBDRh-

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sHEvZMf4&s=cmOivb0Yk4kO22v4uDj7TYZ2P9LvSgaIRHfGoStPL1A&e= >

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EXHIBIT E

Plaintiffs' Instruction Set 1 – October 28, 2015

Overview

The purpose of this document is to supplement the Neutral Forensic Examination Protocol, providing analysis instructions to be performed by the Neutral Expert on the following forensic images (in current order of priority):

Custodian Name	Device	Make	Model	Serial Number
Errol Samuelson	Laptop	Apple	MacBook Air	C02M93QSF6T6
Curt Beardsley	Laptop	Dell	Latitude E7440	7C15WZ1
Curt Beardsley	Home PC HDD	Seagate	ST1000DM003	S1DH6K4G
Curt Beardsley	Family PC HDD	Seagate	ST2000DM001	S1E1GHHY
Will Hebard	Laptop	Dell	Latitude E7440	n/a
Curt Beardsley	Thumb Drive	SanDisk	Cruzer	20052242801E0E900E9E
Curt Beardsley	Thumb Drive	Generic Blue	N/A	1104090309500035117100
Curt Beardsley	Thumb Drive	Generic Zillow	N/A	00000F5163403286
Curt Beardsley	Thumb Drive	Generic Stratus Data Streams	N/A	2010300949A3C07
Curt Beardsley	Thumb Drive	Monkey	N/A	070F24160C950F28
Curt Beardsley	Thumb Drive	Generic Blue	N/A	1308241829156488351502
Curt Beardsley	Thumb Drive	Union Bank	N/A	C086ECFD
Curt Beardsley	Thumb Drive	Realtor.com	N/A	CCCB8999988887777
Curt Beardsley	Thumb Drive	Lexar	N/A	AALT31A648454NFA
Curt Beardsley	Thumb Drive	SCSI Disk 1234	N/A	2013121315040630
Curt Beardsley	Thumb Drive	Generic Silver	N/A	1963DF81
Curt Beardsley	Thumb Drive	Generic Staples	N/A	07180112000832
Curt Beardsley	Tablet	Apple	iPad Mini A1454	F4KK53F6F19H
Discovia Neutral custodian images 1	USB External HDD	Apricorn	Aegis Padlock 3 A25-3PL256-2000	P2T203898
Discovia Neutral custodian images 2	USB External HDD	Apricorn	Aegis Padlock 3	P2T204022

Unless otherwise stated, the primary forensic software used for analysis is Encase V6.19.7. In some instances, additional 3rd party tools have been used to assist with the analysis and these will be mentioned below. This document will provide instructions covering the following topics:-

- **Harvesting User Data** (Page 2)
- **File Hash Analysis** (Page 4)
- **Deletion Analysis** (Page 5)
- **Secure Deletion/Wiping Analysis** (Page 6)
- **External Device Analysis** (Page 8)
- **Internet History Analysis** (Page 9)
- **Keyword Search Preparation** (Page 10)

Harvesting User Data

This process will identify active and easily recoverable user data within the forensic images and result in the separation of a large majority of non-user and system files and folders, allowing for more efficient processing, searching and hashing.

Encase Instructions:-

1. First ensure that the Encase Hash Library is updated with the latest NSRL hash set, at the time of writing this the latest available version is RDS 2.49.
2. Next add the evidence files into Encase and perform "Recover Folders" over all identifiable partitions in each forensic image. Verify that the process executed successfully and all identified files were re-added into the Encase view.
3. Next select all items in the Encase view, ensuring that all Recovered items are also selected.
4. Perform "File Signature Analysis" and calculate Hash values for all selected items.
5. Sort all items based on the "Hash Set" column and deselect any files identified as a match with the NSRL 2.49 Hash set.
6. Next sort the remaining selected items based on the "Hash Value" column and deselect any item that does not have a calculated Hash value.
7. Next sort the remaining selected items based on the "Signature" column, deselecting the following signature types:-
 - ! Bad Signature
 - Unknown
8. Using the following file extensions listed on the next page, filter the remaining selected items based on the file types which you believe would likely represent user created files, and should include, but is not necessarily limited to, all of the file extensions listed.
9. For all items that are not included in the file extension filtered, re-sort the items based on the "Signature" column and reselect any items which have the following signature types:-
 - * Adobe PDF
 - * Compound Document File
 - * ZIP Compressed
 - * Outlook PST File
 - * Generic Email Message
 - * HyperText Markup Language 1 File
10. You should now be left with items selected based on the file extension filter and also signature types mentioned above. For these selected items, perform a "Copy Folders" process to a suitable sized TrueCrypt container. This extracted set of data will be known as the Harvested data.
11. Perform this process for each forensic image being reviewed. The Harvested data will then be used for the File Hash Analysis and also the Keyword Searching.

File Extensions for Windows PCs:

- **E-mail:** Outlook E-mail (.pst, .ost); Netscape Email; Lotus Notes E-mail (.nsf); Outlook Message Files (.msg, .oft, .rtf); Outlook Express 5 and 6 message stores (.dbx); Outlook Express Saved Messages (.eml); Blackberry Sync File (.ipd, .bbb); Eudora/Thunderbird (.mbx)
- **Word Processing:** Word Document (.doc, .dot, .docx, .docm, .dotx, .dotm, .asd); Pocket Word Document (.pwd); MS OneNote (.one); Word Perfect Documents (.wp, .wp4, .wp5, .wp6, .wpd, .wbk, .wkb); Rich Text Format (.rtf); Write Document (.wri); Word Text File (.msw); Publisher (.pub); Text Document (.txt); Evernote (.enb, .enex, .exb, .reco, .top, .enml)
- **Spreadsheets:** Excel Document (.xis, .xlsx, .xlsm, .xlsb, .xltx, .xltm, .xlc, .xlk, .xlw, .xlb, .xlt); Pocket Excel Worksheet (.pxl); MS Works File (.wps); Lotus 1-2-3 File (.wkl, .wk2, .wk3, .wk4, .wrk, .wks); Comma Separated Value (.csv)
- **PowerPoint Document** (.ppt, .pptx, .pptm, .pps, .ppsx, .ppsm, .pot)
- **HTML Document** (.html, .htm, .mht, .mhtml)
- **Databases:** MS Access data file (.mda); MS Access database (.mdb, .accdb)
- **Compressed/compound files:** ZIP Files (.zip); G-zip compressed file (.gz); Archive file (.tar)
- **Adobe PDFs** (.pdf)
- **Microsoft XPS** (.xps)
- **Image Files** (.tif, .tiff, .mdi)

File Extensions for Macs:

- **E-mail:** MacMail; Netscape Mail; Outlook E-mail (.pst, .ost, .olm); Entourage (.vrgemessage, .vrgecontact, .vrgeevent, .vrge08message, .vrge08contact, .vrge08event); Lotus Notes E-mail (.nsf); Outlook Message Files (.msg); Outlook Express 5 and 6 message stores (.dbx); Outlook Express Saved Messages (.eml, .emlx, .emlxpart); Blackberry Sync File (.ipd); Eudora/Thunderbird (.mbx, .mailbox, .mbox)
- **Calendars/Contacts:** iCalendar (.ical, .icaltodo, .icalevent); Apple Address Book Contacts (.abccddb)
- **Electronic Fax:** eFax (.efx)
- **Chat:** iChat file (.ichat)
- **Word Processing:** Word Document (.doc, .dot, .docx, .docm, .dotx, .dotm, .asd); -Pocket Word Document (.pwd); Word Perfect Document (.wp, .wp4, .wp5, .wp6, .wpd, .wbk, .wkb);

Rich Text Format (.rtf, .rtfd); Write Document (.wri); Word Text File (.msw); Publisher (.pub); Text Document (.txt); Pages (.pages); Evernote (.enb, .enex, .exb, .reco, .top, .enml)

- **Spreadsheets**: Excel Document (.xis, .xlsx, .xlsm, .xlsb, .xltx, .xltm, .xlc, .xlk, .xlw, .xlb, .xlt); Pocket Excel Worksheet (.pxl); MS Works File (.wps); Lotus 1-2-3 File (.wkl, .wk2, .wk3, .wk4, .wrk, .wks); Comma Separated Value (.csv); Tab Separated Value (.tab); Numbers (.numbers)
- **Presentations**: PowerPoint Document (.ppt, .pptx, .pptm, .pps, .ppsx, .ppsm, .pot); Keynote (.key)
- **HTML Document** (.html, .htm, .mht, .mhtml, .webarchive)
- **Databases**: MS Access data file (.mda); MS Access database (.mdb, .accdb), Filemaker Pro (.fp7, .fp9, .fp5, .fp50)
- **Compressed/compound files**: ZIP Files (.zip); G-zip compressed file (.gz); Archive file (.tar, .tgz, .bz2, .7z)
- **Adobe PDFs** (.pdf)
- **Microsoft XPS** (.xps)
- **Image Files** (.tif, .tiff, .mdi)
- **Disk Images**: Generic (.hdd, .vhd), Parallels (.pvs, .pvm); Apple disk image (.dmg, .dmgpart, .sparsebundle)

File Hash Analysis

This process will compare and identify if known files currently located on Errol Samuelson's and Curt Beardsley's Move computers are present on any forensic images of devices which have not been provided to Stroz Friedberg. The identification process will be based on the comparison of the MD5 hash value calculated for every file located in the forensic images of devices which have not been provided to Stroz Friedberg.

Encase instructions:-

1. Using the "KNOWN" Encase Hash Set provided by Stroz Friedberg Rebuild the Encase Hash library (deselect any other selected hash sets before rebuilding). Stroz Friedberg shall simultaneously provide this "KNOWN" Encase Hash Set to both the Neutral Expert and Defendants' computer forensic expert, Discovia.
2. For each set of Harvested data produced from the forensic images, add the data back into Encase and make sure that all items visible in the Encase view are selected and then perform Hash Analysis over all items to calculate their MD5 Hash values.
3. On completion of the Hash analysis, sort all the data on the "Hash Set" column and select all files and folders that have a matching hash value to the "KNOWN" Hash set.

4. Produce an export listing of identified matching files for review. Repeat the steps above to create individual matching file listings for each forensic image provided for review.

Deletion Analysis

For purposes of this instruction set, deletion activity is defined as files or folders that are deleted using native methods, for example emptying the Recycle Bin, hard deletion of data by bypassing the Recycle Bin or the action of clearing Temporary files.

Recent deleted data using native methods should in most instances be commonly recoverable, providing the data has not been overwritten by other indirect actions, for example the use of TRIM command utilized on SSDs.

This analysis will look for and identify files or folders that have been deleted from the forensic images, in particular during the timeframe of interest, starting from October 2013 to Present.

Encase Instructions:-

1. Use Encase to run "Recover Folders" process over all identified partitions within the forensic images to scan for and identify metadata stored within deleted folders. Verify that the process executed successfully and all identified files were re-added into the Encase view.
2. Use Encase to review identified "Lost Files" and all other files and folders identified as "Is Deleted"
3. Produce a spreadsheet file listing of all identified deleted files and folders for review. This spreadsheet should also de-duplicate those entries that may be identified in Encase as "Is Deleted" but for which the forensic image currently contains an active file analog (i.e. by the same file name). That is, the spreadsheet produced should contemplate and account for the known behaviour under more recent versions of the Windows operating system whereby MFT records can include the "Is Deleted" attribute, when in fact the document has never been deleted at all. The de-duplication process should be performed using both the filename and the last modified date and time of the files.
4. Produce a separate spreadsheet file listing of all files and folders located in any local Recycle Bins in the forensic images.

Forensic image review:-

- Recycle Bin analysis:-
 - Windows XP – Parse and review for active and deleted INFO2 records. Generate a spreadsheet file listing of all identified records for review.
 - Windows Vista/7 – Parse and review for active and deleted \$I and \$R system files. Generate a spreadsheet file listing of all identified records for review.
- \$USNJRL analysis:-

- Parse and review the current \$USNJRNL file in the forensic image if present. Recommended tool to use for this process is the program "ANJPv3.11.06_FE.exe".
- Produce export listing spreadsheet of parsed records and review for recent file and folder deletion.
- System Backup analysis:-
 - Windows XP – System Restore Points – Less likely to store user data
 - Windows Vista/7 – Volume Shadow Points – These will contain snapshots of data at relevant points in time and can be used to recover previously deleted data or perform differential analysis against current contents to identify deleted content.
 - Using Encase or a similar tool, mount the forensic images within Windows and use the native "VSSadmin" command line tool to identify and mount any Volume Shadow Copies to an accessible drive letter. Using Encase, add the mounted logical volume(s) into Encase for Hash Analysis and Keyword searching.
 - Another recommended tool for Volume Shadow analysis is VSC Toolset which can be used for performing differential analysis against the native file system or historical snapshots.

User Activity review:-

- Perform a review of recent user activity on the computer and comparison of information to current active files and folders located on the forensic image. This part links in with the output analysis of other points in the inspection such as Link file analysis, Shellbag analysis, Jump list analysis and USB analysis.

Additional areas of review:-

- Review files and folders on the forensic image to identify batch ".bat" files and any associated usage of said files. For any batch files identified, review the contents of the files for scripts containing known native deletion programs, in particular scripts using the native "cleanmgr.exe" program (also known as "DiskCleanup").
- Perform a review of Program files and folders to identify any specific software that could be used to aid a user with file and folder deletion.

Secure Deletion/Wiping Analysis

For purposes of this instruction set, we define secure deletion as files and folders securely deleted using wiping tools/applications which are purpose-built to erase files and folders beyond recovery and can be considered anti-forensic in nature.

This analysis will identify the use of 3rd party wiping tools as well as the potential use of native OS processes on the forensic image and potentially what data has been securely erased.

Mac OSX – Secure Erase process:-

- When deleting files and folders in a Mac OSX environment, the user has two options of deletion, a simple delete or Secure Erase. The default option in Mac OSX is a simple delete, whereby the deleted files and folders are automatically placed into the User's Trash, similar to the Recycle Bin on Windows OS.
- The second option, Secure Erase, works by writing random patterns of data over a trashed file immediately after it has been emptied or removed from the file system. The user can change settings within MacOX so that files are automatically securely erased when deleted.
- To identify if a user has enabled Secure Erase within MacOSX, identify and review the following Plist file shown below, and check the "EmptyTrashSecurely" value. If the value is set to YES then automatic Secure Erase is enabled.

○ <User> | Library | Preferences | com.apple.finder.plist

Windows OS – Cipher Wipe process:-

- A native process within Windows OS named "Cipher.exe" is commonly used to encrypt and decrypt data on drives that use the NTFS file system and to view the encryption status of files and folders from a command prompt, however it also has a "wipe" option ("/w" switch within the Cipher command) to securely delete data by overwriting any unallocated space on the hard drive.
- Cipher is a command line based program and wiping commands involving the Cipher program can be scripted and placed into ".bat" batch files, to allow for easy and continued use.
- Perform a review of identified ".bat" batch files on the forensic image to identify any potential use of the Cipher program and the "/w" wipe switch on the forensic image. Also review "RunMRU" values located in the LOCAL Registry databases for evidence of the execution of the Cipher.exe program.

3rd Party tools Review:-

- Perform a cursory review of the Unallocated Space to look for and identify any potentially obvious sections of repetitive patterns, for example large sections of the disk area showing as all "FF" or "0" zeros or other repetitive characters.
- Review the "Program Files", "Program Files (x86)" and AppData folders for common wiping tool programs to identify evidence of current or historical installations.
- Perform Prefetch file analysis over active and recoverable Prefetch files to identify wiping program execution on the forensic image.

- Using Encase run Recover Folders to scan for and identify deleted metadata within deleted folders to identify traces of previous files on the computer.
- Using Encase, review "Lost Files" and "Recovered Folders" and all other files and folders identified as "Is Deleted" to identify any common wiping tool program files.
- Perform a review of all files and folders to identify any common artefacts such as large groups of odd/random patterns in deleted filenames or large groups of files and folders that are the same or very similar in size with very similar file system dates and times.
- Perform Registry analysis using the "RegRipper" tool to identify and extract common registry keys and review the output for evidence of wiping tool usage.
- Parse the "AppCompatCache" (also known as the "ShimCache") and identify the "RecentFileCache.bcf" file to review for evidence of recent or historical wiping tool program executions.
- Perform a keyword search of common wiping tool programs to identify any references which may identify historical usage.
- Use NSRL to identify files associated to known wiping tools – Rebuild the hash library in Encase using the most recent NSRL set and then perform Hash Analysis over all files and folders. Sort on the Hash Set column and review results to identify any files or folders that match potential wiping tools.

External Device Analysis

This process will identify the use External devices on the computer forensic images, for example the identified usage of external USB storage device or the use of a Mobile device by known users.

Windows OS analysis:-

For each computer forensic image provided which contains a Windows OS, perform a review of the SYSTEM and LOCAL Registry databases as well as the Plug and Play log files, extracting potentially relevant information for review such as the external device's Vendor, Product, and Version information along with any recorded Serial numbers. Also determine the first and most recent time a device was plugged into the computer.

- SYSTEM and LOCAL Registry database locations:-
 - SYSTEM\CurrentControlSet\Enum\USBSTOR
 - SYSTEM\CurrentControlSet\Enum\USB
 - \CurrentControlSet\Enum\USBSTOR\Ven_Prod_Version\USB
 - SYSTEM\MountedDevices
 - NTUSER.DAT\Software\Microsoft\Windows\CurrentVersion\Explorer\MountPoints2
- Plug and Play log files locations:-
 - Windows XP - C:\Windows\setupapi.log
 - Windows 7/8 - C:\Windows\inf\setupapi.dev.log

When an External device or Mobile device is connected to a Windows 7 OS, a number of event records will be generated within known Event logs. Perform a review of the following Windows OS Event logs:-

- **Microsoft-Windows-DriverFrameworks-UserMode/Operational** - To identify Connection and Disconnection Event ID's, in particular Event ID's 2003/2004 and 2100/2102 regarding the use of external devices on the computers.
- **Microsoft-Windows-WPD-MTPClassDriver** - To identify MTP (Media Transfer Protocol) Connections and Disconnections Event ID's, in particular Event ID's 1000 and 1002 regarding the use of Mobile devices on the computers.
- This USB analysis can also be subsidised with the output analysis of other points such as Link file analysis, Shellbag analysis and Jump list analysis, which can be used to identified artefacts generated from external USB device usage.

Mac OSX analysis:-

For each computer forensic image provided which uses Mac OSX, perform a review of known system log files and system "Plist" files listed below for evidence of external device usage on the computer.

- /private/var/log/system.log – Search for log entries containing 'USBMSC Identifier'
- /private/var/log/daily.out
- /private/var/log/weekly.out
- /private/var/log/monthly.out
- /private/var/log/fsck_hfs.log
- /Users/<user>/Library/logs/DiskUtility.log
- /Users/<user>/Library/logs/fsck_hfs.log
- /Users/<user>/Library/Preferences/com.apple.sidebarlists.plist
- /Users/<user>/Library/Preferences/com.apple.iPod.plist

Extract relevant information identified for review, such as the external device's vendor, product, and version information along with any recorded serial numbers. Also determine the first and most recent time a device was plugged into the computer.

Additional Analysis of External Device images:-

For each forensic image of an external device provided for review, perform the following additional analysis to identified User Usage history and also Format history of the external devices.

- **User Usage History** – Perform a review of all identified MAC dates and times (created, last accessed and last written) to identify patterns of user history, such as mass copying or moving of data to the External device. Export a full file listing including all associated metadata of all items in the forensic image for review.
- **Format History** – If the external device has an NTFS file system, review the dates and times of System files located on the forensic image, such as the "\$MFT" or the "\$LogFile" to determine the date and time the external device was last formatted. For other identified file

system, review the created and last written dates and times for other batches of file and folders associated with first usage activity.

Internet History Analysis

This process will search for and identify active and easily recoverable Internet History and extract relevant information for review, for example browser activity, search history, URL history, Internet cache history and Internet temporary download history.

Internet Evidence Finder "IEF"

The simplest and most efficient way to identify and preview all active and easily recoverable Internet History on the forensic images is to use the tool Internet Evidence Finder "IEF". IEF will perform a comprehensive search of the forensic image, reviewing all files and folders on all identified volumes/partitions, including Volume Shadow snapshots where present on a Windows OS forensic image.

Once IEF has been used to search for and identify active and easily recoverable Internet History on the forensic images, perform a review of the output and search for potential evidence of the following:-

- Visiting URL's related to deletion/wiping tools;
- Internet download history related to deletion/wiping tools;
- Search engine activity, for example using Google or Bing to search for deletion/wiping tools or methods to wipe data;
- Access of Cloud storage accounts such as Dropbox, Google Drive, etc;
- Access of Webmail accounts such as Gmail, Yahoo or Hotmail/Outlook.com;
- Instant messaging and chat apps usage to transfer files and/or delete messages, for example GoogleTalk and Skype;

For all identified relevant information, perform an export of the data to a spreadsheet for further review.

Keyword Search – Preparation

This process will prepare the forensic images for keyword searching. A list of keyword search terms will be provided following mutual agreement by counsel for the parties.

A keyword search will identify files or folders that are responsive to mutually-agreed keywords. The Encase keyword search will result in a greater number of search hits due to the inclusion of searching system files and folders and also the Unallocated Space of each forensic image.

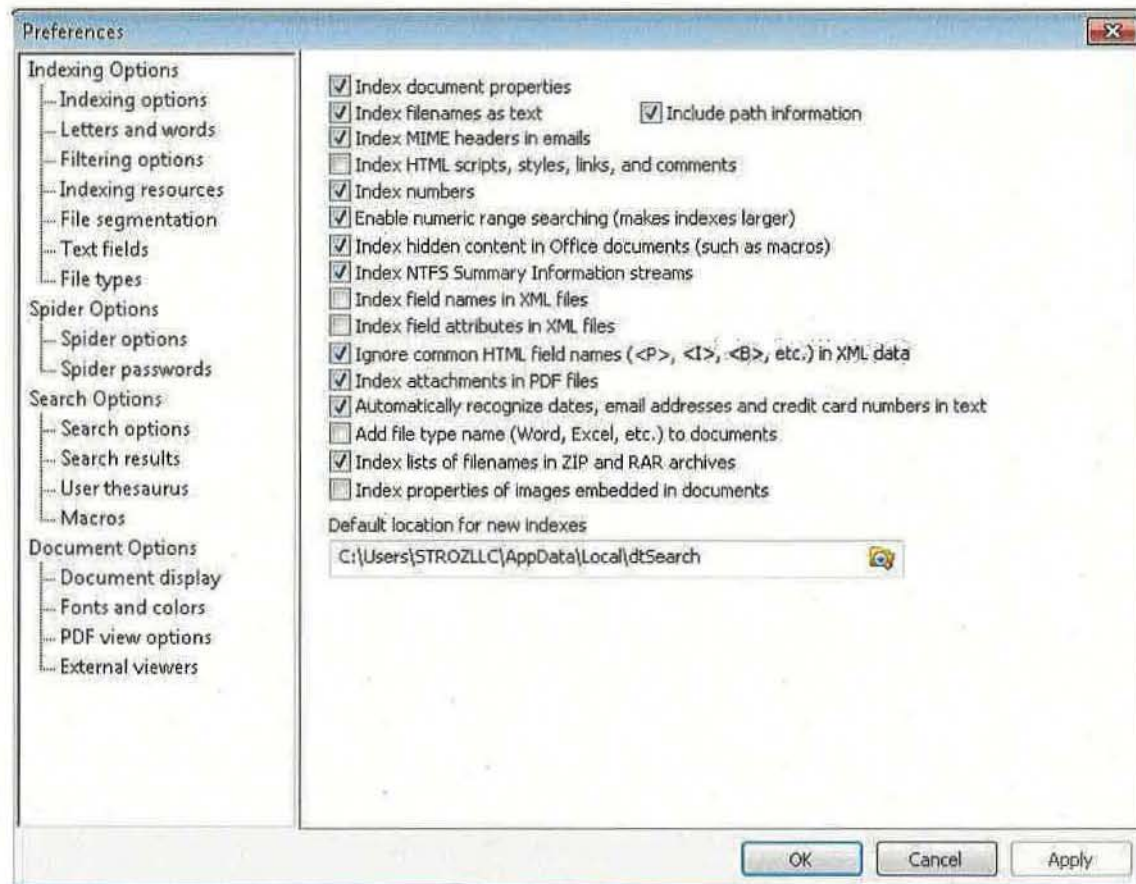
In accordance with the Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts (and specifically, for example, sections 10(a)(iv) and 10(b)(vi)), testing by the Neutral to assess reasonableness (for example, running quantitative hit reports showing the volume of hits by keyword, by device/account) is permissible. Counsel shall confer and mutually agree regarding how to address any keywords that generate voluminous hit counts. Similarly, counsel and/or the Neutral Expert may suggest variations to the keywords' syntax as a method for reducing the hit volumes.

Encase Preparation:-

1. First add the evidence file into Encase.
2. Next run the forensic process "File Mounter" to identify and expand the following archive file types (DOCX, GZ, PPTX, PST, RAR, TAR, TGZ, XLSX and ZIP) within the output harvested data for each forensic image. If OST files are present then this will need to be mounted separately in the standard Encase view.
3. Using the keywords which will be provided in the next instruction set, import them into Encase or add them as a keyword list.
4. Ensure that all keywords have the following options selected:-
 - ANSI Latin-1
 - Unicode
 - UTF-8
 - Outlook Compressible Encryption - Code page 65003
5. Ensure that all items are selected in the evidence files. The forensic image is now prepared for running the keyword search within Encase.

DtSearch Preparation:-

1. For each set of Harvested data created from the forensic images, use the program DtSearch to create a text searchable index of the Harvested data.
2. Ensure that the DtSearch preferences are the same as those shown in the following screenshot:



3. Ensure that Binary files are set to not be indexed, and that "Hyphens" are indexed as spaces and searchable characters.
4. Once the DtSearch preferences have been changed, create a text searchable index of the Harvested data.
5. On completion, you are now prepared for running the keyword searches over the indexed data.

EXHIBIT F

1 DISCOVERY MASTER
2 THE HONORABLE BRUCE HILYER (RET.)
3 Telephonic Hearing: November 2, 2015 at 12:00 p.m.
4
5
6
7

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

10 MOVE, INC., a Delaware corporation,
11 REALSELECT, INC., a Delaware corporation,
12 TOP PRODUCER SYSTEMS COMPANY, a
13 British Columbia unlimited liability company,
14 NATIONAL ASSOCIATION OF
15 REALTORS®, an Illinois non-profit
16 corporation, and REALTORS®
17 INFORMATION NETWORK, INC., an Illinois
18 corporation,

19 Plaintiffs,

20 v.

21 ZILLOW, INC., a Washington corporation,
22 ERROL SAMUELSON, an individual, and
23 CURT BEARDSLEY, an individual,

24 Defendants.
25
26
27

NO. 14-2-07669-0 SEA

**DEFENDANT CURT BEARDSLEY'S
RESPONSE TO PLAINTIFFS'
"EMERGENCY" APPLICATION TO
ENFORCE NEUTRAL FORENSIC
INSPECTION PROTOCOL**

I. INTRODUCTION

When the Court-appointed forensic neutral expert tried to access Mr. Beardsley's iCloud account, Mr. Beardsley's wife and children received messages stating that their devices were also being accessed. When Mr. Beardsley alerted the neutral to that problem, the neutral himself agreed to suspend any further review of the iCloud account until the problem could be resolved.

Instead of cooperating with Mr. Beardsley and the neutral to help resolve the issue, Plaintiffs filed their "emergency" application to enforce the neutral forensic protocol less than 48 hours after the concerns at issue arose, while Mr. Beardsley's counsel and the neutral were still trying to resolve the issue, in the face of meet and confer requests which Plaintiffs ignored, and after Plaintiffs were advised that Mr. Beardsley had addressed part of the relief they rushed to seek. Had Plaintiffs provided Mr. Beardsley that same amount of time to investigate and consider the issues that arose only this past Wednesday, and had they met and conferred as contemplated in the protocol and civil rules, their motion and this response would have been unnecessary and the Discovery Master's time not wasted holding the upcoming hearing about an order that is not needed. Put simply, Plaintiffs' application is not about an emergency, is without merit, and has itself delayed the neutral expert's collection process.

We appreciate the Discovery Master's willingness to be available promptly for a telephonic hearing on these issues. This notwithstanding, given the diatribe filed by Plaintiffs, Mr. Beardsley is once again compelled to file a written response to correct an inaccurate and self-serving record Plaintiffs needlessly created. And, in an effort to facilitate the process that Plaintiffs themselves delayed by their motion, Mr. Beardsley herein makes a proposal that likely moots that motion or, if not, provides a fair resolution.

II. AUTHORITY AND ARGUMENT

A. The Protocol's Provisions regarding Cloud Accounts.

The Protocol Governing Neutral Expert Review and Handling of Certain Electronic Devices and Cloud Accounts (the "Protocol") permits access by the neutral to certain web-

1 based cloud storage accounts, including Mr. Beardsley's iCloud account. (Singer Decl., Ex. A
2 at 1-2.) However, the Discovery Master recommended (and the Court subsequently ruled) that
3 web-based email accounts that may be associated with cloud accounts were excluded from
4 review unless specifically approved by the Discovery Master. (*Id.* at 2.)

5 The Protocol does not specify exactly *how* documents stored in cloud accounts shall be
6 collected by the neutral and does not specify whether data in *other* applications associated with
7 cloud accounts (*i.e.*, data beyond documents stored in the account and web-based email) are
8 subject to it. The parties did not negotiate or brief those issues and neither the Discovery
9 Master nor the Court has either considered or expressly ruled upon those issues. As
10 demonstrated by what happened when the neutral expert went to collect from Mr. Beardsley's
11 iCloud account, those latent ambiguities raised unexpected concerns and an issue as to the
12 scope of collection.

13 **B. The Neutral Expert's Collection Proceeded Apace and Mr. Beardsley Did Not**
14 **"Withhold" Access Credentials to His Cloud Accounts.**

15 Upon the Court's entry of the Protocol on September 30, 2015, the parties began the
16 not-insignificant task of complying with paragraphs 5 and 6 of the Protocol: that is,
17 coordinating (i) how to make the 24 devices at issue¹ in disparate locations available to the
18 Chicago-based neutral expert for imaging, and at a time when Plaintiffs' expert could also
19 monitor that imaging, (ii) how to provide the neutral expert with already-made images of those
20 devices (some devices were imaged multiple times), and (iii) how to permit the neutral expert's
21 access to the cloud storage accounts.

22
23

24 ¹ Note that, pursuant to Plaintiffs' request, Mr. Beardsley included in the list of devices subject to the neutral
25 expert's review an additional 10 USB devices that he had located to date, beyond those expressly listed in
26 subparagraphs (b) and (e) of the "Devices Covered by this Protocol" section of the Protocol. By including those
27 additional 10 devices, Mr. Beardsley advised that he is not admitting that each was connected to his Move laptop
at some point after October 31, 2013 or that any are otherwise within the scope of the devices subject to the neutral
expert's review. In a good faith effort to make this process as efficient as possible and also in the interest of full
disclosure, Mr. Beardsley agreed to subject these additional 10 devices to the neutral expert's review. Similarly,
Mr. Samuelson voluntarily provided an image of his wife's laptop so that the Plaintiffs could confirm through the
neutral that her laptop was not connected to a relevant storage device or cloud account.

1 As it turns out, the Protocol's timing for all such actions – within one week of the
2 neutral expert's appointment (which the parties had agreed upon and suggested) – was
3 ambitious given the logistics required to accomplish those actions. The parties thus made
4 reasonable accommodations to each other to navigate the logistical hurdles related to the
5 devices, and they were imaged and prior images of them provided to the neutral within less
6 than three weeks – by October 20. (Stephen Decl., Ex. A at 1.)

7 Given the coordination and time required to image the devices, and the fact that cloud
8 accounts could be collected from anywhere, the neutral expert indicated there was “no
9 urgency” to getting the access information to those accounts at the same time he was obtaining
10 images of the devices. (Stephen Decl., Ex. A at 5, Mr. Reisman's 10/14/2015 5:32 p.m. email))
11 And, none of the parties objected as the focus remained on completing the necessary processes
12 on the devices. (*Id.* (see, e.g., Mr. Singer's response to Mr. Reisman's 10/14/2014 5:32 p.m.
13 email: “Thanks, Andy.”) On October 23, 2015, Plaintiffs provided their proposed instructions
14 to the neutral expert and the other parties and also sought confirmation as to the devices
15 imaged. (*Id.* at Ex. B at 7.) The neutral responded later that afternoon with an update on the
16 collection process and items needed to complete it, which included access credentials to the
17 parties' cloud accounts subject to the Protocol. (*Id.* at 6.) The next day, Saturday October 24,
18 2015, Mr. Beardsley's counsel provided access information to his cloud accounts to the neutral
19 expert. (Singer Decl., Ex. B.)

20 Thus, contrary to Plaintiffs' accusations, Mr. Beardsley did not “withhold” his
21 passwords; he promptly provided them upon the neutral expert's request, at the time when the
22 neutral wanted them.

23 Moreover, Plaintiffs' misrepresentation of the circumstances is doubly troubling given
24 Plaintiffs themselves did not provide the password to Mr. Samuelson's DropBox account –
25 which Plaintiffs have controlled since Spring 2014 – until only few days ago (on or after
26 October 29, 2015). (Stephen Decl., Ex. B at 1.) Further, as explained by Zillow in its
27 Response to Plaintiffs' Motion to Shorten Time, the initial instruction set for the neutral

1 expert's examination is not even finalized, as Defendants were awaiting *Plaintiffs'* response to
2 proposed revisions sent earlier last week. (See Zillow's Response at 1:36-43.) Plaintiffs
3 provided those this past Friday, October 30, 2015. Finally, as explained further below, had
4 Plaintiffs not ignored Mr. Beardsley's requests to meet and confer and rushed to file their
5 motion, the neutral expert likely could have already completed or at least begun the remaining
6 collection needed from Mr. Beardsley's iCloud account. That is, Plaintiffs' motion itself has
7 delayed the process. In sum, Plaintiffs' rant of delay purportedly caused by Mr. Beardsley is
8 disingenuous and misleading.

9 **C. Mr. Beardsley's Actions Were Appropriate Given the Unexpected Intrusion into**
10 **His Family's Devices and Issues about the Scope of Collection.**

11 Mr. Beardsley's iCloud account is shared with and used by members of his family: his
12 wife, his 20-year old son, and his 13-year old daughter. Early last Wednesday morning,
13 October 28, 2015, Mr. Beardsley and each of his family members received the following
14 message on their devices



out of the blue:

15
16
17
18
19
20 Mr. Beardsley's family members were understandably surprised by this and it
21 understandably caused alarm. The family did not know who "Andrew" was, although it
22 appeared (correctly) he now had real-time surveillance of intra-family communications via
23 iMessage and also could engage in FaceTime (live video chat) with Mr. Beardsley's family,
24 including his 13-year old daughter. Believing that their account had been hacked, Mr.
25 Beardsley's wife called their cell service provider about this. Mr. Beardsley was not at home at
26 the time – he was out of town on business. When he learned about this, he immediately
27 contacted his counsel as he wasn't certain whether "Andrew" was the neutral expert or if he

1 was, why such access to his family and their devices was necessary or was taken without any
2 notice or warning.

3 No one expected this to happen – neither Mr. Beardsley, his counsel, nor, it seems, the
4 neutral expert. Not all access of Mr. Beardsley's iCloud account causes this message and
5 intrusion to result. Apparently the real-time access to family communications, and the
6 message, happened because Mr. Reisman registered his Mac computer to the account in order
7 to access it (*i.e.*, became a participating "member" of the account), rather than accessing the
8 account on a PC via a web browser and passively viewing the information in the account.

9 Later that morning during the parties' scheduled call with the neutral expert, Mr.
10 Beardsley's counsel raised the concerns prompted by registration to the account and also the
11 scope of collection issue (*i.e.*, whether not only documents in the iCloud account but also all
12 data in all other applications provided by iCloud were within the scope of review), because,
13 *e.g.*, data in other applications included not only Mr. Beardsley's but also that of his family
14 members. At Mr. Beardsley's counsel's request, the neutral expert agreed to halt collection
15 until the issues raised could be resolved. (Stephen Decl., Ex. C at 1-2.) Later that evening, Mr.
16 Beardsley's counsel emailed all parties and the neutral expert:

17 **Andy:**

18 Further to our call today and the concerns raised with respect to Mr. Beardsley's iCloud
19 account (which, as I mentioned, is shared by his family), Mr. Beardsley is changing his
20 iCloud password tonight. I will promptly provide the new password once we have
21 resolved the scope of collection issues and related process. We are endeavoring to
22 address these issues with our client and Plaintiffs promptly.

23 Also, please confirm when collections from Mr. Beardsley's DropBox and Google
24 Drive are complete so that the passwords to those accounts may be changed. Thank
25 you.

26 **David [Singer]:**

27 I will be in touch with you on the scope of collection issue in the very near term.

(*Id.* at 1.) A couple hours later, Mr. Beardsley changed his password to the iCloud account.
Plaintiffs did not respond to counsel's email in the interim, later that evening—or ever.

1 The next day (October 29) at 2:47 p.m., Defendants received a vague email from
2 Plaintiffs advising that they intended to file a motion on shortened time and that the underlying
3 motion "will seek an order enforcing the neutral forensic examination protocol." (Stephen
4 Decl., Ex. D at 3.) After prompting, Plaintiffs advised of their intended motion. (*Id.* at 2-3.)
5 Mr. Beardsley's counsel replied at 4:06 p.m. stating, among other things: (i) they were
6 endeavoring to promptly address the issue with Mr. Beardsley, (ii) of further specifics
7 regarding the concerns raised by the method used to access the account that unexpectedly
8 intruded on the family's privacy and ongoing communications and prompted the change in Mr.
9 Beardsley's password to his iCloud account, (iii) that a new password had been provided to Mr.
10 Reisman for purposes of collecting documents in that account, and (iv) a reiteration of the
11 request to meet and confer on the scope of collection issue. (*Id.* at 1.) Ignoring all of this,
12 Plaintiffs filed their motion at 4:26 p.m.

13 Plaintiffs' motion also disingenuously ignores the access-and-intrusion issue that raised
14 serious concerns, and the fact that the materials belonging to Mr. Beardsley's wife and other
15 family materials were potentially subject to the collection procedure if data in all other iCloud
16 applications was deemed within scope. Instead Plaintiffs did what they have done throughout
17 this action: make unsupported allegations about Mr. Beardsley's actions and intentions with
18 their "sky is falling" refrain. And, unbelievably, it seems Plaintiffs' position in fact is that all
19 Beardsley family data is unequivocally subject to collection and review and, moreover, that
20 real-time access to intra-family communications (and indeed, the family members themselves
21 via live video chat) is also within the scope of the Protocol. Plaintiffs' disregard for the alarm
22 caused and intrusion resulting from what happened unexpectedly is distasteful.

23 Similarly inappropriate was Plaintiffs' rush to file within less than 48 hours of the issues
24 arising and failure to allow any time for Mr. Beardsley to consult with his counsel, and the
25 failure to respond to repeated requests to meet and confer. These actions smack of a disregard
26 of the civil rules and of professional courtesy.
27

1 **D. Mr. Beardsley's Proposal Moots or Resolves Plaintiffs' "Emergency" Application.**

2 Having had the opportunity to confer with his counsel and his own forensic expert, Mr.
3 Beardsley has a proposal that, had he been permitted to make it to Plaintiffs and the neutral
4 expert, likely moots Plaintiffs' request for relief. And, to boot, had Plaintiffs not unnecessarily
5 rushed to file their motion last Thursday afternoon but instead met and conferred to hear the
6 proposal, the remaining collection from Mr. Beardsley's iCloud account likely could have
7 already been completed or at least begun last Friday. Mr. Beardsley proposes as follows:

- 8 1. In addition to the documents stored in the Beardsley family iCloud account, the
9 neutral expert may also collect and review all data in all other applications provided
10 by iCloud and used by Mr. Beardsley and his family (e.g., Contacts, Calendar,
11 Photos, Notes, Reminders, Pages, etc.), except email; provided that,
12 2. The neutral expert shall first undertake collection from the Beardsley family iCloud
13 account by accessing that account on a PC via use of a web browser (as opposed to
14 registering his Mac computer to the account and participating as a "member" of the
15 account). If the neutral expert determines that he must also register his computer to
16 the account to complete the collection process, he shall provide 24-hours' notice to
17 Mr. Beardsley's counsel of such need and propose a time period in which it will
18 take place, so that counsel may advise Mr. Beardsley (and he may advise his family)
19 and the family may act accordingly during that time that the neutral is privy to their
20 real-time communications. The neutral expert shall make all efforts to complete the
21 collection via this latter means of access as expeditiously as possible and promptly
22 advise when it is complete.

23 By including within the neutral expert's review all data in all other applications (except
24 email) provided by iCloud (which includes data that is Mr. Beardsley's and also data of his
25 family members), Mr. Beardsley is not admitting that such is properly within the scope of the
26 neutral expert's review. Rather, Mr. Beardsley is agreeing to such in a good faith effort to
27 make this process as efficient as possible and keep it moving.

28 **III. CONCLUSION**

29 For the reasons stated herein, Mr. Beardsley requests that the Discovery Master
30 recommend (a) that the scope and methodology for collection from Mr. Beardsley's iCloud
31 account proceed as set forth in Section II(D) above, and (b) an order directing Plaintiffs to meet
32 and confer as contemplated by paragraph 15 of the Protocol and otherwise comply with the

1 requirements set forth in Civil Rule 26(i) if there is a disagreement as to the implementation of
2 any aspect of the Protocol.

3 RESPECTFULLY SUBMITTED: November 2, 2015.

4 SAVITT BRUCE & WILLEY LLP

5 By /s/ Michele L. Stephen

6 James P. Savitt, WSBA #16847

7 Michele L. Stephen, WSBA #39458

8 Duffy Graham, WSBA #33103

9 1425 Fourth Avenue, Suite 800

10 Seattle, WA 98101-2272

11 Email: jsavitt@sbwllp.com

12 mstephen@sbwllp.com

13 dgraham@sbwllp.com

14 Attorneys for Defendant Curt Beardsley

EXHIBIT G

McMillan, Joseph M. (Perkins Coie)

From: Michele Stephen <mstephen@sbwllp.com>
Sent: Wednesday, October 28, 2015 11:40 AM
To: Andy Reisman; Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Andy:

Thank you for the below, and also for your time this morning. We'll be back in touch after discussions with Plaintiffs about the scope of collection from Mr. Beardsley's iCloud account. In the meantime, we understand that collection won't proceed until you've heard back from us.

Michele

MICHELE L. STEPHEN | SAVITT BRUCE & WILLEY LLP | www.sbwllp.com

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From: Andy Reisman [mailto:andy.reisman@elijaht.com]
Sent: Wednesday, October 28, 2015 11:12 AM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

For purposes of your discussions about iCloud, I have confirmed that we are able to select documents and not select other artifacts such as calendars, contacts, Safari bookmarks, etc. Also, please clarify if Notes should be included, as those are treated differently than documents.

Regards,

Andy Reisman, CEO
Elijah Ltd.
312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Crain [mailto:andy@discovia.com]

Sent: Tuesday, October 27, 2015 8:10 PM

To: Andy Reisman <andy.reisman@elijaht.com>; McMillan, Joseph M. (Perkins Coie) <JMcmillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Mr. Reisman, Counsel, and Stroz team:

Along with Defendants' counsel, today I reviewed the proposed instructions prepared by Jenner and Stroz. In advance of our scheduled call tomorrow, please find attached a redlined version of those instructions, reflecting our initial comments / suggested revisions. It is our hope that providing this redlined version now can increase the productivity of our discussion tomorrow. We may have more suggested comments / revisions as this process moves along.

Regards,
Andy

Andy Crain

VP - Forensics & Collections

415.392.2900 | Main

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From: Andy Reisman [mailto:andy.reisman@elijaht.com]

Sent: Saturday, October 24, 2015 2:19 PM

To: McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen;

AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Sounds good – we'll start making the copies per the protocol on Monday, and will look for the separate emails with the Hebard Google Drive and Zillow laptop credentials. Best times for me for a call next week are Monday afternoon, Wednesday morning and any time on Friday. If none of those ranges work for everyone else just let me know what does, and I will try to shuffle things around to accommodate. Thanks!

Regards,
Andy

From: McMillan, Joseph M. (Perkins Coie) [mailto:JMcMillan@perkinscoie.com]

Sent: Saturday, October 24, 2015 3:26 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Andy Crain (andy@discovia.com) <andy@discovia.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Andy:

I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

The Neutral Protocol is attached to this email (as a pdf) for reference.

Finally, Defendants agree with your suggestion to arrange a conference call next week with all counsel/experts to discuss the work flow issues discussed in your email below. Defendants obviously need some time to review the very extensive set of Instructions proposed by Plaintiffs yesterday afternoon. Accordingly, we think it makes sense to arrange for a call sometime mid-week, if that works for you.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]
Sent: Saturday, October 24, 2015 7:12 AM
To: Kohn, Lisa J.
Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

Regards,
Andy

From: Andy Reisman
Sent: Friday, October 23, 2015 5:01 PM
To: 'Kohn, Lisa J.' <LKohn@jenner.com>
Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcmillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Thanks Lisa, I will put together a spreadsheet of device imaging/account collection status that tracks the item in the original Word document, and will circulate it on completion.

On a related note, and with apologies if I overlooked an email conveying any of the below, here is a list of the remaining items for which we need passwords/passcodes:

1. Curt Beardsley
 - a. Google Drive

- b. iCloud
 - c. Dropbox
 - d. Microsoft One Drive
2. Will Hebard
- a. Bit locker encrypted Dell Latitude, Bit locker ID: {2261916D-4AC1-4ECF-8237-6B8BBBBBCB1F7}
 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
- a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

An alternative for your consideration is that each side in consultation with their expert proposes instructions, which I can then discuss jointly with the experts in the event I think any of the instructions require technical clarification. I'd thereafter carry out the instructions without needing to coordinate observation of the associated work. Again, I am happy to proceed as originally contemplated, but wanted to alert you to the availability of a more efficient option that would accomplish the contemplated objectives. Perhaps you can discuss amongst yourselves and let me know your thoughts, or we can have a conference call to discuss options together.

Regards,
Andy

From: Kohn, Lisa J. [<mailto:LKohn@jenner.com>]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

Now that the imaging has been performed in Seattle and Los Angeles, we would like to confirm that you have the devices and preexisting images identified in the chart plaintiffs sent to you on October 9 (attached for your reference). Can you please identify / confirm all of the images you have? In particular, plaintiffs would like clarification regarding what images were provided by Discovia on Apricorn Aegis Padlock 3 P2T203898 and P2T204022. The device chart indicates that defendants imaged various computers and USB devices, but we do not have information regarding which images are contained on those two drives.

In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn**Jenner & Block LLP**

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EXHIBIT H

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

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

PLAINTIFFS,)

VS.)

ZILLOW, INC., a Washington)
Corporation; ERROL SAMUELSON, an)
individual, and CURT BEARDSLEY, an)
individual,)

DEFENDANTS.)

Case No. 14-2-07669-
0-SEA

TRANSCRIPT OF TELEPHONIC PROCEEDINGS

(PLAINTIFF'S EMERGENCY APPLICATION TO ENFORCE
NEUTRAL FORENSIC INSPECTION PROTOCOL AND
ORDER AGAINST DEFENDANT CURT BEARDSLEY)

MONDAY, NOVEMBER 2, 2015

DISCOVERY MASTER, THE HONORABLE BRUCE HILYER, RET

Page 2

APPEARANCES:

FOR PLAINTIFFS: JENNER & BLOCK LLP

BY: DAVID SINGER, ESQ.
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(213) 239-5100

-and-
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FOR ZILLOW: PERKINS COIE LLP

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FOR ERROL SAMUELSON: MILLER NASH GRAHAM & DUNN LLP

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FOR CURT BEARDSLEY: SAVITT BRUCE & WILLEY LLP

BY: MICHELE STEPHEN, ESQ.
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Seattle, Washington 98101-2272
(206) 749-0500

LORI ANASTASIOU, CSR NO. 4345
OFFICIAL COURT REPORTER

Page 4

from the response.

So they say that, "Oh, this is all moot and it's much ado about nothing." And they say that they will now allow the Neutral to go forward and gather everything from the iCloud account except for e-mail but then in parenthesis they describe three or four things and ignore nor mention the iMessages, so...

I don't want to cede the floor because I do have a few things that I'd like to say, but my immediate response is they have not made clear that they're willing to allow the Neutral to continue gathering the iMessages and those -- that we will be allowed to do our deletion analysis of the iMessages, which we feel are central to the whole point of this Neutral forensic analysis.

So that is the first thing that stood out to me.

And if I may without -- again, without seeping my time because I would like to speak further -- counsel for Mr. Beardsley could yes or no let us know if they will allow the Neutral to continue gathering the iMessages so that he can conduct his deletion analysis that could short-circuit a lot of what I have to say today.

DISCOVERY MASTER HILYER: Miss Stephen, can you respond to that.

MS. STEPHEN: Yes, I can, your honor.

First, the iCloud applications, as I understand

Page 3

1 CASE NUMBER: 14-2-07669-0-SEA

2 CASE NAME: MOVE V. ZILLOW

3 TELEPHONIC HEARING MONDAY, NOVEMBER 2, 2015

4 DISCOVERY MASTER HON. BRUCE W. HILYER (RET)

5 REPORTER: LORI ANASTASIOU, CSR NO. 4345

6 TIME: 12:06 P.M.

DISCOVERY MASTER HILYER: This is the Discovery Master talking again. I've read the materials, including the response materials. And, Mr. Singer, I guess I want to know from you what your response is to Mr. Beardsley's offer and what, if any, additional relief you're seeking.

So, go ahead.

MR. SINGER: All right. Well, I'll start with just the substance because it may short-circuit it, and then I will -- there's a couple clarifications that I want to make.

But what stood out to me the most when I read their response this morning is that it ignores the sort of underlying issue that started all of this, which is that on Wednesday morning the Neutral, Andy Reisman, had told us that he had begun to gather information from Mr. Beardsley's Cloud account, excluding e-mail. And he noted that that included the text messages that are called on the Cloud, so-called iMessages. And it's just missing

Page 5

it following the investigation I was able to do, do not actually include text messages. So I think Mr. Singer is perhaps confused as to what is acceptable via the iCloud.

The reference to text messages came up because of what happened, which is -- as explained in our papers -- when the access happened, Mr. Beardsley's family members received a message that indicated that the Neutral was now signed on to their messages as well as Facetime.

So there was an indication that the new members, the Neutral would be able to participate in text messages and Facetime with the family members, but that did not indicate that actually what he was gathering or not gathering as a result of this process was text messages.

So, to clarify, what is available via the iCloud is what Mr. Beardsley is offering. Without agreeing that it's properly within scope, but in an effort to facilitate and get this process back on track.

MR. SINGER: So that there's -- okay. So that clears up the fact that the Neutral will be allowed -- for the record -- that anything that he has, he is able to image and gather from that iCloud, except for the web-based e-mail, i.e., e-mail to a Mac or iCloud address, he will be allowed to continue doing that work and to do his deletion analysis.

So it seems on that point we will allow the

2 (Pages 2 to 5)

Page 6

1 Neutral to go forward.

2 And then my second point -- which is no small
3 point either -- that this idea that, you know, Mr.
4 Beardsley did nothing wrong and that we should all just
5 forget about it is one that we think deserves more
6 attention. The fact of the matter is that Mr. Beardsley's
7 story that his family was alarmed that there was evidence
8 that their iCloud account was being accessed. Whether
9 that's true or not -- and we can all wonder to ourselves
10 why Mr. Beardsley's family didn't know that a Neutral
11 examination of that account was happening -- but certainly
12 by Wednesday morning when we had a call with Mr. Reisman,
13 who told us exactly what he was doing and that he was in
14 the process of looking at Mr. Beardsley's iCloud account
15 and counsel for Mr. Beardsley asked the Neutral to stop
16 his work, we believe that, A, that was a problem. But
17 even worse, that seven hours later, well after Mr.
18 Beardsley's counsel had time to consult with Mr.
19 Beardsley, another e-mail was sent, telling the Neutral
20 that Mr. Beardsley unilaterally changed his password. And
21 the protocol clearly says that Beardsley cannot change his
22 password to the account until the Neutral tells him he
23 can.

24 And, you know, one wonders why Mr. Beardsley
25 didn't simply tell his family the truth. That Andrew,

Page 8

1 agreement between the parties. It is a court order that
2 has been entered by Judge O'Donnell. And the fact remains
3 that it was violated because Mr. Beardsley changed his
4 password before he was allowed to do so.

5 And, you know, whether we buy his story or not,
6 he's not in a position to trump the court's order. So,
7 you know, there needs to be some kind of repercussion for
8 doing that. We can't just let it happen and act like,
9 "Oh, no harm, no foul, it's no big deal." It is a big
10 deal to us. And there are certainly concerns on our end,
11 that while access was blocked, Mr. Beardsley may have been
12 altering data on there. This is the same defendant who,
13 you know, threw away hard drives and attempted to wipe his
14 computer while under subpoena, which your honor noted was
15 understandably disturbing to us.

16 So, while we may have the substantive issue
17 worked out, you know, rather than hearing excuses, "Oh,
18 Mr. Beardsley's family is being so terrified that they're
19 being hacked," we would like something to be said or done
20 by your honor that assures us that when things don't go
21 Mr. Beardsley's way, he doesn't take the law into his own
22 hands again.

23 MS. STEPHEN: Your honor, may I respond?

24 THE COURT: Yes, Miss Stephen, but one moment
25 first.

Page 7

1 Andrew Reisman, the Neutral, was looking at the Cloud
2 account. There was plenty of time to sort that out. But
3 we're really troubled by the fact that Mr. Beardsley took
4 matters into his own hands again, changed his password and
5 locked the Neutral out for some period of time. And we
6 understand that they then reversed course.

7 But we're talking in the whole genesis of this
8 Neutral exam was because of allegations of evidence
9 destruction, including destruction of iCloud materials.

10 And the idea that they can just go and violate
11 the protocol -- the idea that they can just go ahead and
12 violate the protocol and then have no consequences is
13 troubling. I mean, at what point is Mr. Beardsley going
14 to start thinking twice before he does that sort of thing.

15 And, you know, I guess in terms of what relief we
16 can ask for now that they appear to allow the Neutral to
17 continue his work, the relief would be some kind of
18 admonition that, you know, again as stated in the order,
19 Mr. Beardsley can't use his password and access to the
20 account to hold over the neutral's head. The Neutral will
21 tell Mr. Beardsley when he's done. Mr. Beardsley won't
22 tell the Neutral when he's done.

23 You know, I just -- you know, our clients want
24 more assurances backed up by your honor that this protocol
25 is not going to be treated like it was just an e-mail

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1 Someone joined the call during Mr. Singer's
2 conversation just now. Could that person or party
3 identify themselves, please.

4 MR. LOVEJOY: Thank you, your honor. This is
5 Jack Lovejoy speaking.

6 I do not know why but I was dropped from the call
7 in the middle of Mr. Singer's speaking and then I rejoined
8 the call.

9 THE COURT: Okay. Thank you very much.

10 Go ahead, Miss Stephen.

11 MS. STEPHEN: Thank you, your honor.

12 First, to address the points raised by Mr.
13 Singer. First, with respect to family alarm and whether
14 they knew the Neutral was collecting? Mr. Beardsley's
15 iCloud account has been accessed before and there has
16 never been that impact. The fact of the matter is, is
17 that the Neutral used a way to access his account that had
18 not been used before and nobody was aware he was going to
19 access the account that way.

20 Our own expert following my conversation with
21 him, I learned, that he, in fact, in his experience has
22 never accessed an iCloud account that way.

23 So, the alarm -- and frankly, I'm offended that
24 Mr. Singer thinks that this alarm is made up -- but,
25 regardless, the fact of the matter is that the Neutral

3 (Pages 6 to 9)

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1 went about it in a way that nobody contemplated or
2 expected and there was no such notice and so the family
3 was surprised.

4 Mr. Beardsley was not home. He could not -- he
5 could not immediately address their concerns and instead,
6 got a phone call and ended up calling me, asking me,
7 "What's happening? Who is Andrew? Is that the name of
8 the expert?"

9 Second, with respect to the password change. As
10 has been made clear in the papers and by more than one
11 party during our conversation last Wednesday with the
12 expert, we indicated that there were concerns here about
13 the means of access and the scope of collection. In fact,
14 at no point prior has anybody discussed other applications
15 besides e-mail being in play or not in play when the Cloud
16 accounts were being collected and inspected. That is
17 something new that came up.

18 On our conversation the Neutral said, "We will
19 hold collection until the parties have resolved this
20 issue." Therefore, the fact that Mr. Beardsley changed
21 his password later was -- was -- had no impact whatsoever
22 as to what the Neutral was doing because he had agreed to
23 hold collection.

24 As explained in our papers, the reason Mr.
25 Beardsley did that, is the neutral's access was -- was

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1 DISCOVERY MASTER HILYER: Before I hear any
2 rebuttal, Mr. Singer, I want to give a chance for Mr.
3 Samuelson's counsel and Zillow to be heard.

4 So, Mr. Samuelson, do you want to go next?

5 MR. ESLER: Certainly, your honor. I mean, we
6 would join in and did join in everything that Miss Stephen
7 has said.

8 And, truly, the reason for the protocol is so
9 that we can work these things out. There are going to be
10 technical bumps on the road. The idea is to work that out
11 and let the process continue. Instead of rushing back to
12 the court, this could have all been resolved with a few
13 phone calls and some meet and confers and we wouldn't be
14 sitting here on a Monday during lunch hour discussing
15 these issues.

16 So, we think that Mr. Beardsley did nothing wrong
17 and this is really a tempest in a tea pot.

18 If your honor wants to hear anything more, we'd
19 be happy to address any issues, but I think this is really
20 Mr. Beardsley's response.

21 DISCOVERY MASTER HILYER: I'll hear next from Mr.
22 McMillan for Zillow.

23 MR. McMILLAN: Yes. Thank you, your honor. This
24 is Joe McMillan on behalf of Zillow.

25 I would like to underscore the point made by Miss

Page 11

1 essentially ongoing surveillance of the Beardsley family
2 communications and there's certainly no real issue with
3 that except for just that the family felt a little exposed
4 there. And given that the Neutral had already agreed to
5 cease collection, it did not seem that there was any
6 reason that changing the password should cause a problem.

7 And when advised of that fact, plaintiff's
8 counsel did not respond with any sort of objection. So a
9 couple hours later Mr. Beardsley changed his password.

10 Finally, he provided the Neutral the password
11 less than 24 hours later, at 4:00 on Thursday. And I
12 advised counsel of that. The Neutral can proceed with
13 collection. He can collect documents and "Here is the
14 password."

15 So collection could have proceeded within the
16 scope that the parties new and understood was properly
17 within the scope.

18 And then finally, with respect to repercussions.
19 I mean, we're all here having this conversation because
20 plaintiffs have ignored their obligations to meet and
21 confer. This could have been worked out and addressed
22 come Friday morning and collection been on and going.
23 Instead, party and judicial resources are being wasted to
24 address what is essentially a non-issue. And the process
25 has thus been delayed.

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1 Stephen and Mr. Esler, that this is entirely unnecessary,
2 wasteful and in some measure really silly because the
3 Neutral on the Wednesday call consented to a temporary
4 delay until this could be worked out in an orderly way.
5 And Miss Stephen diligently attempted to do so but was
6 undercut in that effort by the precipitous conduct of the
7 plaintiff in rushing to the court needlessly on shortened
8 time, all of which has been attended by certain
9 representations and claims that are simply not true, not
10 correct about Mr. Beardsley attempting to wipe his
11 computer, concerns about his taking advantage of the
12 change of password to delete content from that iCloud
13 account.

14 I mean, the premise of that claim itself is
15 baseless. The Neutral only received the password to that
16 account on October 24th. The meeting -- the
17 teleconference was then held Wednesday, you know, like,
18 the 28th. So, you know, and then the password was changed
19 that evening.

20 The notion that somehow -- I mean, Mr. Beardsley
21 had free access to that account for months. So this
22 effort to address this issue would somehow raise an alarm
23 that now a nefarious, sinister act has occurred which
24 gives Mr. Beardsley the opportunity, a new opportunity to
25 delete content. I mean, it's nothing short of

4 (Pages 10 to 13)

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1 preposterous.

2 So, I'll stop at that point.

3 MR. SINGER: If I may?

4 DISCOVERY MASTER HILYER: Mr. Singer, in your
5 rebuttal I'd like you to address the meet and confer
6 argument and the timing of when you filed your motion
7 versus when you got the changed password information.

8 MS. SINGER: Yes, of course, your honor.

9 Because -- and that's the right place to start.

10 If anyone failed in their duties to meet and
11 confer, it was the other side.

12 Let me start by saying there's plenty of places
13 where the protocol calls for meeting and conferring, such
14 as on keywords that are going to be used to search for
15 stolen documents.

16 But the protocol, Section 6 makes very clear,
17 that it is the Neutral who will tell Mr. Beardsley -- not
18 the other way around -- when he can change his password.
19 There's no meet and confer obligation there.

20 And when Mr. Beardsley's counsel was on the phone
21 with the Neutral and the Neutral had indicated that he was
22 taking access to all aspects of the iCloud account and the
23 issue of iMessages came up, that was -- it was the
24 neutral's suggestion that he was also gathering that -- he
25 was told by Mr. Beardsley's counsel to stop. I objected.

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1 after we told the other side that we're going in for
2 immediate relief that they did an about-face and then told
3 the Neutral, "Okay, fine, we'll give you access again.
4 But, by the way, here is the conditions. You can only
5 gather this type of document. You can't gather the rest
6 until we work it out." So they used the threat of the
7 password as a club.

8 So that is the timing of how it went down. I
9 mean, the idea that we should just sit around and meet and
10 confer while Mr. Beardsley violates the court order?
11 That's what's absurd. We're not saying the sky is
12 falling. We're saying that this guy is thumbing his nose
13 at a court order. And any time that happens under these
14 circumstances, we're going to bring it to your honor's
15 attention and not wait for things to get worse.

16 DISCOVERY MASTER HILYER: Miss Stephen, I'll give
17 you a few minutes for surrebuttal.

18 MS. STEPHEN: Thank you, your honor.

19 I -- frankly the -- we -- in an e-mail in which I
20 advised counsel that we -- Mr. Beardsley -- was going to
21 change his password, I also indicated to Mr. Singer that I
22 was going to follow up with him promptly. And then the
23 next day when we received word of a notice of -- or of an
24 intention to file a motion, which was initially vaguely
25 stated until it had to be teased out of them what they

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1 He didn't just agree. He said, "In light of this dispute,
2 I'm going to halt."

3 So it wasn't -- his instinct was to collect all
4 the information and he was told to stop.

5 In terms of the timing, I mean, it was only
6 hours -- it was later that evening that Mr. Beardsley's
7 counsel unilaterally told us out of the blue that he was
8 changing his password. There was no meet and confer.
9 There was no attempt to clarify that it was, in fact, the
10 Neutral. There was no, "Oh, Mr. Beardsley went and told
11 his family that it was the Neutral." It was, "We are
12 taking matters into our own hands. We are cutting off the
13 neutral's access. We are going against what the court
14 order says. And we are going to change the status quo."

15 It is at that point that we decided that we need
16 to go into the court and get immediate relief. Violating
17 a court order in a fluid process like this and ignoring it
18 and changing the status quo is exactly when you run in on
19 short notice, not the other way around. They had a duty
20 to meet and confer before blocking the neutral's access
21 and violating the court order. We didn't have a duty to
22 wait and see and trust while Mr. Beardsley had blocked the
23 neutral's access.

24 So we did what any litigant would have done. We
25 immediately brought it to your attention. And it was only

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1 were actually going to do, I advised, "Listen, here are
2 the concerns. I spoke with Mr. Beardsley the prior
3 evening. I'm speaking with him again today. I need to
4 talk to the Neutral and figure -- or not the Neutral --
5 our own expert to figure out if the type of access the
6 Neutral was -- was -- had done was necessary.

7 And, you know, I reiterated a request to meet and
8 confer. That was at 4:00. And plaintiff filed their
9 motion within a half an hour of that. Ignoring the fact
10 that I've already said the password was being provided.
11 Ignoring the fact that I've said, "I'm working on trying
12 to figure out what we can do here."

13 And then, in fact, as is evidenced from our
14 proposal, there is no issue here with scope of collection.
15 Mr. Beardsley is willing to provide everything. Even
16 though it implicates his family's photos, his wife's
17 calendar, his wife's photos, all -- it implicates every
18 client's member's piece of information, but he is willing
19 to do it.

20 And to suggest that we've run in every time and
21 not do a meet and confer just seems to violate the -- you
22 know, Rule 26 and everything that it's about in terms of
23 getting resolution and being reasonable among the parties
24 prior to bothering the court.

25 THE COURT: Okay. I think I've heard from

5 (Pages 14 to 17)

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1 everyone. Is there anyone who has not had a chance to say
2 something new?

3 All right. I don't hear anyone. Can you all
4 hear me?

5 MR. SINGER: Yes.

6 MS. STEPHEN: Yes.

7 MR. ESLER: Yes.

8 MR. McMILLAN: Yes, we can.

9 THE COURT: Okay. All right. I think I've got a
10 good understanding of what happened here and the starting
11 point is, obviously there's not a lot of trust in this
12 process. I guess I probably wouldn't be here if there
13 was. But I was concerned initially about the failure to
14 meet and confer until I heard Mr. Singer's explanation
15 specifically about how this developed and how that counsel
16 for Mr. Beardsley advised the Neutral that they objected
17 to collection of certain information and that he then
18 acquiesced in that. Point number 1.

19 And point number 2, the fact that Mr. Beardsley
20 unilaterally took action, I think the combination of those
21 two facts makes it so. To me, I'm not going to criticize
22 Move forward for taking extra time to meet and confer.
23 That's point number 1.

24 Point number two is, I am very concerned about
25 Mr. Beardsley taking unilateral action to in any way

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1 Beardsley not to take unilateral actions to impede or
2 delay or interfere with the neutral's investigation. And
3 I am also going to advise the Neutral that before he
4 decides to halt his investigation in light of the
5 objection of counsel for either party, he should -- he
6 may, I should say -- avail himself of the special master
7 procedure, even if it's a telephone call. I can't promise
8 that I'll be able to take it on the spot. But he doesn't
9 have to get -- do what the lawyers tell him, unless he
10 decides that there's some merit to it.

11 And I'm going to direct that counsel for Move
12 prepare the appropriate order, which you should circulate
13 to counsel first to put in writing what I've just
14 articulated.

15 Thank you all very much. And I'd like to see
16 that within the next two or three days.

17 MS. STEPHEN: I'm sorry, your honor. This is
18 Michelle Stephen.

19 If I may, there's a very important clarification
20 I need to make here. Mr. Beardsley did not change his
21 password without talking to his counsel. In our
22 discussion about what happened when I was trying to
23 understand what happened and in terms of the access and
24 what his family was experiencing and what that meant, in
25 that conversation he asked me if it was okay to change his

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1 interfere with this investigation and saying, "I did it to
2 protect my family's privacy" doesn't go very far with me
3 because we have elaborate protections built into this case
4 to protect privacy. And, also, the Neutral serves as an
5 officer of the court and the Neutral may have to look at
6 some family matters in order to complete his
7 investigation. And I think that Mr. Beardsley's action
8 was inconsistent with the protocol and the court's order
9 and I think Mr. Beardsley should understand that he is not
10 authorized to unilaterally take actions such as the action
11 that he took.

12 And the argument that there's no harm, no foul
13 may be true in the ultimate sense in this case, but I want
14 to be clear to him that he is not to take measures himself
15 and then tell his lawyers after the fact what he's done.
16 He has lawyers and we have a process here in which he can
17 get to my attention pretty quick. That's the remedy. Not
18 for someone to say, "I've done this on my own."

19 And the fact that the Neutral had indicated that
20 he was going to hold up on the investigation in light of
21 Mr. Beardsley's counsel's objections doesn't excuse that.
22 That doesn't give Mr. Beardsley a right to say, "Well, I'm
23 going to make double sure that he really doesn't by
24 changing the password myself."

25 I am going to enter an order admonishing Mr.

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1 password. And I advised because the Neutral had already
2 said that he was ceasing collection, that was okay.

3 So it was not something that he did on his own
4 for some nefarious reason or what have you. It was
5 following my understanding that the neutral's collection
6 had ceased. Therefore, there was no need to have kind of
7 the open line of access to his family. It wasn't
8 necessary anymore. We were going to work on the scope of
9 collection issue and then provide another password.

10 So I just want to make it clear that it wasn't
11 something he ran off and did and then later told us. And
12 I understand from the judge's comments that that perhaps
13 was not the right way to advise my client and I should
14 have -- well, frankly, I thought I was going to have a
15 conversation with the plaintiff and this would have all
16 been resolved.

17 But I just want to make that clear.

18 DISCOVERY MASTER HILYER: Well, thank you for the
19 clarification. And -- but I'm not relying on that. This
20 process is not a unilateral process. And that includes
21 lawyers for one side or a party for one side. And the
22 fact that the Neutral had already said that the Neutral
23 would suspend it, that's a different issue because that
24 was evidently in response to Mr. Beardsley's counsel's
25 objection.

6 (Pages 18 to 21)

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1 But that doesn't change my view that this needs
2 to be in the hands of the Neutral and there shouldn't be
3 unilateral actions. And the fact that the Neutral -- that
4 this was consistent with what the Neutral said that he was
5 going to do, doesn't make any difference to me. If the
6 Neutral had changed his mind an hour later and said, "Oh,
7 my gosh, I forgot about one thing," he would have been
8 blocked from it -- now, obviously that's a hypothetical
9 and it didn't happen -- but this process needs to proceed.
10 It's got lots of safeguards in it, ability to get judicial
11 resolution.

12 And I guess the other thing I might also say is,
13 I don't find the alarm to warrant that kind of an action.
14 The fact that a court appointed forensic Neutral was going
15 to be able to access somebody's Facetime and some of their
16 other personal photos. I mean, that's an officer of the
17 court. That's not the same concern that I've had with
18 issues such as disclosing trade secrets of a competitor or
19 disclosing e-mails which are privileged which contain
20 attorney-client communications. I just don't think that
21 the actions that Mr. Beardsley and his counsel took in
22 this in this action were warranted under the
23 circumstances.

24 Anything else?

25 MR. SINGER: No, your honor.

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1 MS. STEPHEN: No, your honor.

2 MR. ESLER: Thank you.

3 DISCOVERY MASTER HILYER: Thank you.

4
5 (At 12:34 p.m. the proceedings were
6 concluded.)
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Page 24

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 FOR THE COUNTY OF KING
3

4 MOVE, INC., a Delaware corporation,)
5 REALSELECT, INC., a Delaware)
6 corporation; TOP PRODUCER SYSTEMS)
7 COMPANY, a British Columbia unlimited)
8 Liability company; NATIONAL)
9 ASSOCIATION OF REALTORS, an Illinois)
10 non-profit corporation, and REALTORS)
11 INFORMATION NETWORK, INC., an)
12 Illinois corporation,)

13 PLAINTIFFS,)

14 VS.) Case No. 14-2-07669-
15) 0-SEA

16 ZILLOW, INC., a Washington)
17 Corporation; ERROL SAMUELSON, an)
18 individual, and CURT BEARDSLEY, an)
19 individual,)

20 DEFENDANTS,)

21 I, LORI ANASTASIOU, CERTIFIED SHORTHAND REPORTER
22 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,
23 DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE
24 PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING
25 PAGES, 1 THROUGH 23, INCLUSIVE, COMPRISE A FULL, TRUE,
AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE
MATTER OF THE ABOVE-ENTITLED CAUSE ON MONDAY, NOVEMBER
2, 2015.

DATED THIS 2ND DAY OF NOVEMBER, 2015.

LORI ANASTASIOU, CSR NO. 4345
OFFICIAL COURT REPORTER

7 (Pages 22 to 24)

EXHIBIT I

McMillan, Joseph M. (Perkins Coie)

From: Michele Stephen <mstephen@sbwllp.com>
Sent: Wednesday, October 28, 2015 6:59 PM
To: Andy Reisman; Singer, David R.
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Kohn, Lisa J.; Fandel, Mike; McMillan, Joseph M. (Perkins Coie); Andy Crain
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Andy:

Further to our call today and the concerns raised with respect to Mr. Beardsley's iCloud account (which, as I mentioned, is shared by his family), Mr. Beardsley is changing his iCloud password tonight. I will promptly provide the new password once we have resolved the scope of collection issues and related process. We are endeavoring to address these issues with our client and Plaintiffs promptly.

Also, please confirm when collections from Mr. Beardsley's DropBox and Google Drive are complete so that the passwords to those accounts may be changed. Thank you.

David:

I will be in touch with you on the scope of collection issue in the very near term.

Michele

MICHELE L. STEPHEN | SAVITT BRUCE & WILLEY LLP | www.SBWLLP.com

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From: Michele Stephen
Sent: Wednesday, October 28, 2015 11:40 AM
To: 'Andy Reisman'; Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Andy:

Thank you for the below, and also for your time this morning. We'll be back in touch after discussions with Plaintiffs about the scope of collection from Mr. Beardsley's iCloud account. In the meantime, we understand that collection won't proceed until you've heard back from us.

Michele

MICHELE L. STEPHEN | SAVITT BRUCE & WILLEY LLP | www.SBWLLP.com

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From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Wednesday, October 28, 2015 11:12 AM

To: Andy Crain; McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

For purposes of your discussions about iCloud, I have confirmed that we are able to select documents and not select other artifacts such as calendars, contacts, Safari bookmarks, etc. Also, please clarify if Notes should be included, as those are treated differently than documents.

Regards,

Andy Reisman, CEO

Elijah Ltd.

312-492-4108 direct

866-354-5240 main

847-722-6363 cell

312-423-1934 fax

andy.reisman@elijaht.com

www.elijaht.com

From: Andy Crain [<mailto:andy@discovia.com>]

Sent: Tuesday, October 27, 2015 8:10 PM

To: Andy Reisman <andy.reisman@elijaht.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Mr. Reisman, Counsel, and Stroz team:

Along with Defendants' counsel, today I reviewed the proposed instructions prepared by Jenner and Stroz. In advance of our scheduled call tomorrow, please find attached a redlined version of those instructions, reflecting our initial comments / suggested revisions. It is our hope that providing this redlined version now can increase the productivity of our discussion tomorrow. We may have more suggested comments / revisions as this process moves along.

Regards,

Andy

Andy Crain

VP - Forensics & Collections

415.392.2900 | Main

415.321.8205 | Direct

415.640.3385 | Cell

andy@discovia.com

www.discovia.com



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From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]
Sent: Saturday, October 24, 2015 2:19 PM
To: McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Sounds good – we'll start making the copies per the protocol on Monday, and will look for the separate emails with the Hebard Google Drive and Zillow laptop credentials. Best times for me for a call next week are Monday afternoon, Wednesday morning and any time on Friday. If none of those ranges work for everyone else just let me know what does, and I will try to shuffle things around to accommodate. Thanks!

Regards,
Andy

From: McMillan, Joseph M. (Perkins Coie) [<mailto:JMcMillan@perkinscoie.com>]
Sent: Saturday, October 24, 2015 3:26 PM
To: Andy Reisman <andy.reisman@elijaht.com>
Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>; Andy Crain (andy@discovia.com) <andy@discovia.com>
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Andy:

I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode

to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

The Neutral Protocol is attached to this email (as a pdf) for reference.

Finally, Defendants agree with your suggestion to arrange a conference call next week with all counsel/experts to discuss the work flow issues discussed in your email below. Defendants obviously need some time to review the very extensive set of Instructions proposed by Plaintiffs yesterday afternoon. Accordingly, we think it makes sense to arrange for a call sometime mid-week, if that works for you.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Saturday, October 24, 2015 7:12 AM

To: Kohn, Lisa J.

Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie);

Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

Regards,
Andy

From: Andy Reisman

Sent: Friday, October 23, 2015 5:01 PM

To: 'Kohn, Lisa J.' <LKohn@jenner.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Thanks Lisa, I will put together a spreadsheet of device imaging/account collection status that tracks the item in the original Word document, and will circulate it on completion.

On a related note, and with apologies if I overlooked an email conveying any of the below, here is a list of the remaining items for which we need passwords/passcodes:

1. Curt Beardsley
 - a. Google Drive
 - b. iCloud
 - c. Dropbox
 - d. Microsoft One Drive
2. Will Hebard
 - a. Bit locker encrypted Dell Latitude, Bit locker ID: {2261916D-4AC1-4ECF-8237-6B8BBBBCB1F7}
 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
 - a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

An alternative for your consideration is that each side in consultation with their expert proposes instructions, which I can then discuss jointly with the experts in the event I think any of the instructions require technical clarification. I'd thereafter carry out the instructions without needing to coordinate observation of the associated work. Again, I am happy to proceed as originally contemplated, but wanted to alert you to the availability of a more efficient option that

would accomplish the contemplated objectives. Perhaps you can discuss amongst yourselves and let me know your thoughts, or we can have a conference call to discuss options together.

Regards,
Andy

From: Kohn, Lisa J. [<mailto:LKohn@jenner.com>]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

Now that the imaging has been performed in Seattle and Los Angeles, we would like to confirm that you have the devices and preexisting images identified in the chart plaintiffs sent to you on October 9 (attached for your reference). Can you please identify / confirm all of the images you have? In particular, plaintiffs would like clarification regarding what images were provided by Discovia on Apricorn Aegis Padlock 3 P2T203898 and P2T204022. The device chart indicates that defendants imaged various computers and USB devices, but we do not have information regarding which images are contained on those two drives.

In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn

Jenner & Block LLP

633 West 5th Street

Suite 3600, Los Angeles, CA 90071 | jenner.com

+1 213 239 2224 | TEL

L.Kohn@jenner.com

[Download V-Card](#) | [View Biography](#)

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

EXHIBIT J

McMillan, Joseph M. (Perkins Coie)

From: Andy Reisman <andy.reisman@elijaht.com>
Sent: Thursday, October 29, 2015 11:10 AM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen
Subject: Re: Move v. Zillow - suggested revisions to instructions for forensic neutral expert
Attachments: 00-3276_Move Vs. Zillow_Master Collections Spreadsheet Oct 29 2015.xlsx

Hi All,

I have attached an updated status sheet per our conversation yesterday. It has tabs at the bottom to break out the images we received, the images we created, and the cloud screenshots we have completed.

We are ready to start shipping out copies of the images we created and the screenshots we have collected to date to the producing parties. **As I want to be 100% sure to send the images/screenshots for each custodian only to the person who should be receiving those images/screenshots, please let me know for each custodian the name and address we should be sending the images/screenshots to per the protocol.** Thanks!

Regards,

Andy Reisman, CEO
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312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Reisman
Sent: Wednesday, October 28, 2015 2:12 PM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike
Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

For purposes of your discussions about iCloud, I have confirmed that we are able to select documents and not select other artifacts such as calendars, contacts, Safari bookmarks, etc. Also, please clarify if Notes should be included, as those are treated differently than documents.

Regards,

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312-492-4108 direct

866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
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From: Andy Crain [mailto:andy@discovia.com]

Sent: Tuesday, October 27, 2015 8:10 PM

To: Andy Reisman <andy.reisman@elijaht.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>

Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A.

<EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen

<mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>;

Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>;

Fandel, Mike <Michael.Fandel@millernash.com>

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Mr. Reisman, Counsel, and Stroz team:

Along with Defendants' counsel, today I reviewed the proposed instructions prepared by Jenner and Stroz. In advance of our scheduled call tomorrow, please find attached a redlined version of those instructions, reflecting our initial comments / suggested revisions. It is our hope that providing this redlined version now can increase the productivity of our discussion tomorrow. We may have more suggested comments / revisions as this process moves along.

Regards,
Andy

Andy Crain

VP - Forensics & Collections

415.392.2900 | Main

415.321.8205 | Direct

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BY BRIGHTLINE

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From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]
Sent: Saturday, October 24, 2015 2:19 PM
To: McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Sounds good – we'll start making the copies per the protocol on Monday, and will look for the separate emails with the Hebard Google Drive and Zillow laptop credentials. Best times for me for a call next week are Monday afternoon, Wednesday morning and any time on Friday. If none of those ranges work for everyone else just let me know what does, and I will try to shuffle things around to accommodate. Thanks!

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Sent: Saturday, October 24, 2015 3:26 PM
To: Andy Reisman <andy.reisman@elijaht.com>
Cc: Esler, Brian <brian.esler@millernash.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>; Kohn, Lisa J. <LKohn@jenner.com>; Andy Crain (andy@discovia.com) <andy@discovia.com>
Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Andy:

I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

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Thanks.

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Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
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From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Saturday, October 24, 2015 7:12 AM

To: Kohn, Lisa J.

Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

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Andy

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Sent: Friday, October 23, 2015 5:01 PM

To: 'Kohn, Lisa J.' <LKohn@jenner.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcmillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie)

<JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

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 - a. Google Drive
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 - c. Dropbox
 - d. Microsoft One Drive
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 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
 - a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

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Regards,
Andy

From: Kohn, Lisa J. [mailto:LKohn@jenner.com]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwillp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwillp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

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In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn

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+1 213 239 2224 | TEL
L.Kohn@jenner.com
[Download V-Card](#) | [View Biography](#)

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EXHIBIT K

McMillan, Joseph M. (Perkins Coie)

From: Andy Reisman <andy.reisman@elijaht.com>
Sent: Thursday, October 29, 2015 12:27 PM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen
Subject: Re: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

Hi All,

Here is an update on the cloud accounts we have yet to access for purposes of creating screenshots per the protocol:

1. Beardsley Microsoft One-Drive: We have attempted to sign in using the Microsoft security code, but so far requests have timed out. We have advised regarding bypassing two-factor authentication temporarily in order to avoid this issue.
2. Hebard Google Drive: We have the password, but need to coordinate getting the security code with Hebard/counsel in order to access, or disabling two factor authentication.
3. Samuelson Dropbox: Was informed that this account (associated with login errol@move.com) is under the control of Move, and that Samuelson does not have the password. We will need this provided by counsel for Move. If enabled, we'd suggest temporarily disabling two factor authentication.
4. Samuelson Google Drive x2: Received a password, but determined it does not work - we will need this checked on by Samuelson/counsel. If enabled, we'd suggest temporarily disabling two factor authentication.
5. Beardsley iCloud account: On hold pending counsel discussions/resolution.

Apologies if I missed any communications that provided information listed above, but I believe this is all correct. Thanks everyone for your cooperation!

Regards,

Andy Reisman, CEO
Elijah Ltd.
312-492-4108 direct
866-354-5240 main
847-722-6363 cell
312-423-1934 fax
andy.reisman@elijaht.com
www.elijaht.com

From: Andy Reisman
Sent: Thursday, October 29, 2015 2:09 PM
To: Andy Crain; McMillan, Joseph M. (Perkins Coie)
Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike; Matthew Feilen
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person who should be receiving those images/screenshots, please let me know for each custodian the name and address we should be sending the images/screenshots to per the protocol. Thanks!

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From: Andy Reisman

Sent: Wednesday, October 28, 2015 2:12 PM

To: Andy Crain; McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Fandel, Mike

Subject: RE: Move v. Zillow - suggested revisions to instructions for forensic neutral expert

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From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Saturday, October 24, 2015 2:19 PM

To: McMillan, Joseph M. (Perkins Coie)

Cc: Esler, Brian; Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.; Kohn, Lisa J.; Andy Crain

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

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I have the credentials for the Hebard Google Drive account and will forward them to you by email, without copying counsel or experts. With respect to the Bit Locker encryption on Mr. Hebard's Zillow laptop, I will inquire of him and should be able to get the password/passcode to you promptly. I have also asked Defendants' forensic expert, Discovia, to forward to you separately the passcodes for the two Apricorn hard drives referenced in your email below.

Attached to this email is a spreadsheet prepared by Discovia reflecting the contents of the two Discovia hard drives – i.e., showing which imaged devices are copied on those two drives.

Also, can you arrange to send directly to Defendants' forensic expert, Andy Crain of Discovia, forensically valid copies on encrypted hard drives of the images you made of the various devices produced by Defendants – i.e., the Samuelson, Beardsley, and Hebard computers, iPad(s), iPhone(s) and USB devices – as required by the Neutral Protocol, paragraph 18:

17. Notwithstanding any other section of this protocol, the Neutral may not per any cloud account until the Neutral takes screen shots and memorializes all information showing last accessed or modified dates to the extent those data and provides those screen shots to the producing party's outside counsel or
18. Notwithstanding any other section of this protocol, the Neutral may not per an image of any device until the Neutral ensures that the producing party ha image of the device that the Neutral will be examining.

The Neutral Protocol is attached to this email (as a pdf) for reference.

Finally, Defendants agree with your suggestion to arrange a conference call next week with all counsel/experts to discuss the work flow issues discussed in your email below. Defendants obviously need some time to review the very extensive set of Instructions proposed by Plaintiffs yesterday afternoon. Accordingly, we think it makes sense to arrange for a call sometime mid-week, if that works for you.

Thanks.

Joseph M. McMillan
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
T: 206.359.6354
F: 206.359.7354
jmcmillan@perkinscoie.com

From: Andy Reisman [<mailto:andy.reisman@elijaht.com>]

Sent: Saturday, October 24, 2015 7:12 AM

To: Kohn, Lisa J.

Cc: Esler, Brian; McMillan, Joseph M. (Perkins Coie); Duffy Graham; Glickstein, Ethan A.; Gray, John H. (Perkins Coie); Michele Stephen; AFredette@StrozFriedberg.com; Byron Lloyd-Jones; Aaron Read; Singer, David R.

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Our collection status spreadsheet is attached. Please note per the message below, although we have imaged the Hebard Dell Latitude, we will need the BitLocker recovery key in order to actually work with the data.

Regards,
Andy

From: Andy Reisman

Sent: Friday, October 23, 2015 5:01 PM

To: 'Kohn, Lisa J.' <LKohn@jenner.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: RE: Move v. Zillow - confirmation of devices & initial instructions

Thanks Lisa, I will put together a spreadsheet of device imaging/account collection status that tracks the item in the original Word document, and will circulate it on completion.

On a related note, and with apologies if I overlooked an email conveying any of the below, here is a list of the remaining items for which we need passwords/passcodes:

1. Curt Beardsley
 - a. Google Drive
 - b. iCloud
 - c. Dropbox
 - d. Microsoft One Drive
2. Will Hebard
 - a. Bit locker encrypted Dell Latitude, Bit locker ID: {2261916D-4AC1-4ECF-8237-6B8BBBBCB1F7}
 - b. Google Drive
3. Discovia Apricorn Drives Containing Previously Imaged Data
 - a. Drive#1, Discovia Media Control# A002237
 - b. Drive#2, Discovia Media Control# A002279

So, with respect to the specific question of what is on the Discovia-provided drives, we need to get the passcodes for those devices and thereafter can answer that question.

Also, thanks for passing along the proposed instructions. I'll review them in detail this evening. Regardless of the specifics, there is one significant factor that will affect timing/cost that I alluded to in our previous call, namely whether we need to do all of our work in coordination with and under the observation of each side's experts as set forth in paragraph 9 of the protocol. We certainly can do so, but the associated coordination and watching of progress bars substantially will increase costs and turn-around times. With the number of images and investigative steps required, the cost and time impacts associated with doing all of the work under each side's observation will be quite considerable.

An alternative for your consideration is that each side in consultation with their expert proposes instructions, which I can then discuss jointly with the experts in the event I think any of the instructions require technical clarification. I'd thereafter carry out the instructions without needing to coordinate observation of the associated work. Again, I am happy to proceed as originally contemplated, but wanted to alert you to the availability of a more efficient option that would accomplish the contemplated objectives. Perhaps you can discuss amongst yourselves and let me know your thoughts, or we can have a conference call to discuss options together.

Regards,
Andy

From: Kohn, Lisa J. [<mailto:LKohn@jenner.com>]

Sent: Friday, October 23, 2015 3:56 PM

To: Andy Reisman <andy.reisman@elijaht.com>

Cc: Esler, Brian <brian.esler@millernash.com>; McMillan, Joseph M. (Perkins Coie) <JMcMillan@perkinscoie.com>; Duffy Graham <dgraham@sbwllp.com>; Glickstein, Ethan A. <EGlickstein@jenner.com>; Gray, John H. (Perkins Coie) <JHGray@perkinscoie.com>; Michele Stephen <mstephen@sbwllp.com>; AFredette@StrozFriedberg.com; Byron Lloyd-Jones <blloyd-jones@strozfriedberg.co.uk>; Aaron Read <ARead@StrozFriedberg.com>; Singer, David R. <DSinger@jenner.com>

Subject: Move v. Zillow - confirmation of devices & initial instructions

Hi Andy,

Now that the imaging has been performed in Seattle and Los Angeles, we would like to confirm that you have the devices and preexisting images identified in the chart plaintiffs sent to you on October 9 (attached for your reference). Can you please identify / confirm all of the images you have? In particular, plaintiffs would like clarification regarding what images were provided by Discovia on Apricorn Aegis Padlock 3 P2T203898 and P2T204022. The device chart indicates that defendants imaged various computers and USB devices, but we do not have information regarding which images are contained on those two drives.

In addition, plaintiffs have prepared our first set of instructions pursuant to the neutral forensic examination protocol. If you or defendants' counsel have any questions on the attached instructions, please let us know. Once you've had a chance to review, can you give us a rough estimate for completing these tasks?

Thanks,
Lisa

Lisa J. Kohn

Jenner & Block LLP

633 West 5th Street

Suite 3600, Los Angeles, CA 90071 | jenner.com

+1 213 239 2224 | TEL

LKohn@jenner.com

[Download V-Card](#) | [View Biography](#)

EXHIBIT L

McMillan, Joseph M. (Perkins Coie)

From: Michele Stephen <mstephen@sbwllp.com>
Sent: Thursday, October 29, 2015 4:06 PM
To: 'Jack Lovejoy'
Cc: Esler, Brian; James Savitt; Foster, Susan E. (Perkins Coie); McMillan, Joseph M. (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); rstone@jenner.com; dsinger@jenner.com; bcaslin@jenner.com
Subject: FW: Notice of motion to file motion on shortened time

Jack:

As I advised all counsel in my email last night, we are endeavoring to promptly address the issue with our client. We began discussion yesterday with Mr. Beardsley and are continuing it today to understand the extent of the intrusion into each of the members of his family's information and materials in iCloud. Yesterday morning each of Curt's family members who share the iCloud account received an unexpected message indicating that a new "member" was added to their account and, it is my understanding, that member is privy to all messages and other communications being exchanged between Mr. Beardsley's family members who share that account. Given the unexpected intrusion into the family's privacy and ongoing communications, I advised in my email last night that Mr. Beardsley would change his password and provide the neutral a new password once the scope of collection was resolved.

This afternoon we provided the new password to Mr. Reisman and advised that he may proceed to collect documents being stored in the iCloud account.

As I also indicated in my email last night, I seek to discuss with David the basis for plaintiffs' position that all data in all other applications associated with the iCloud account is within the scope of the forensic neutral's review.

It appears plaintiffs are proceeding to file a motion in the absence of any meet and confer on this issue. We object to such and reiterate our request for a meet and confer on this issue.

If plaintiffs nonetheless persist on making their motion, we suggest the parties seek a telephone conference with Judge Hilyer as contemplated in paragraph 25 of the protocol.

Michele

MICHELE L. STEPHEN | SAVITT BRUCE & WILLEY LLP | www.SBWLLP.com

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From: Jack Lovejoy [<mailto:jlovejoy@cablelang.com>]
Sent: Thursday, October 29, 2015 2:58 PM
To: Esler, Brian; clem.barnes@millernash.com
Cc: James Savitt; sfoster@perkinscoie.com; kosullivan@perkinscoie.com; Stone, Richard L.; Singer, David R.; 'Caslin, Brent' (BCaslin@jenner.com)
Subject: RE: Notice of motion to file motion on shortened time

Brian,

Detail will follow in the motion, which should be coming soon. To the extent there's any discrepancy between this email and the motion, the motion controls. I'm not trying to be cagey, we're just moving quickly and I'm not the only set of eyes or hands on this.

In a nutshell, Mr. Beardsley ordered the neutral to halt a part of the forensic review and then changed a password, cutting off the neutral's access to his iCloud account. We're seeking an order to restore the neutral's access to that account and get the forensic review back on track.

Sincerely,

Jack M. Lovejoy

Cable Langenbach Kinerk & Bauer, LLP

1000 Second Avenue, Suite 3500

Seattle, WA 98104

Phone: (206)292-8800

Direct: (206)812-0894

Fax: (206)292-0494

jlovejoy@cablelang.com

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From: Esler, Brian [<mailto:brian.esler@millernash.com>]

Sent: Thursday, October 29, 2015 2:53 PM

To: Jack Lovejoy <jlovejoy@cablelang.com>

Subject: RE: Notice of motion to file motion on shortened time

Jack - what is this about?

Sent with Good (www.good.com)

Brian Esler, P.C.

Partner, Washington Litigation Team Leader

Miller Nash Graham & Dunn LLP

Pier 70 | 2801 Alaskan Way - Suite 300 | Seattle, Washington 98121

Office: 206.624.8300 | Fax: 206.340.9599

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-----Original Message-----

From: Jack Lovejoy [jlovejoy@cablelang.com]

Sent: Thursday, October 29, 2015 02:47 PM Pacific Standard Time

To: 'jsavitt@sbwllp.com'; 'mstephen@sbwllp.com'; dgraham@sbwllp.com; Esler, Brian; Barnes, Clem; Hays, Connie E.; Fandel, Mike; sfoster@perkinscoie.com; kosullivan@perkinscoie.com; kgalipeau@perkinscoie.com; jjennison@perkinscoie.com

Cc: Stone, Richard L.; Singer, David R.; 'Caslin, Brent (BCaslin@jenner.com)'; 'Ward, Christopher R. (CWard@jenner.com)'

Subject: Notice of motion to file motion on shortened time

Counsel,

I am notifying you under LR 7(b)(10)(C) that Plaintiffs intend to file a motion on shortened time. The underlying motion will seek an order enforcing the neutral forensic examination protocol. We hope to have the motion to shorten time and the underlying motion filed later today.

Sincerely,

Jack M. Lovejoy

Cable Langenbach Kinerk & Bauer, LLP

1000 Second Avenue, Suite 3500

Seattle, WA 98104

Phone: (206)292-8800

Direct: (206)812-0894

Fax: (206)292-0494

jlovejoy@cablelang.com

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EXHIBIT M

McMillan, Joseph M. (Perkins Coie)

From: Katy Albritton <kalbritton@cablelang.com>
Sent: Thursday, October 29, 2015 4:26 PM
To: Bruce Hilyer; Janelle Hall (JHH@hilyeradr.com)
Cc: Burman, David J. (Perkins Coie); Foster, Susan E. (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); Galipeau, Katherine G. (Katie) (Perkins Coie); Jennison, Judy (Perkins Coie); Gaston, Mary Z. (Perkins Coie); McMillan, Joseph M. (Perkins Coie); Perez, David A. (Perkins Coie); Connelly, Ulrike B. (Rike) (Perkins Coie); Wyatt, Sherri (Perkins Coie); Carranza, Brina (Perkins Coie); Beane, Amanda J. (Perkins Coie); Hesterberg, Nicholas H. (Nick) (Perkins Coie); Aldama, Karin S. (Perkins Coie); Gray, John H. (Perkins Coie); clem.barnes@millernash.com; estera.gordon@millernash.com; michael.fandel@millernash.com; robert.mittenthal@millernash.com; connie.hays@millernash.com; kelly.hamilton@millernash.com; jennifer.schnar@millernash.com; brian.esler@millernash.com; gill.fadaie@millernash.com; justin.sawyer@millernash.com; jsavitt@sbwllp.com; dgraham@sbwllp.com; clein@sbwllp.com; mstephen@sbwllp.com; chawks@sbwllp.com; lcastello@sbwllp.com; miller@carneylaw.com; lobsenz@carneylaw.com; rstone@jenner.com; bcaslin@jenner.com; jatteberry@jenner.com; nsaros@jenner.com; dsinger@jenner.com; jnjathi@jenner.com; eglickstein@jenner.com; drozansky@jenner.com; agallegos@jenner.com; jslee@jenner.com; avanhoesen@jenner.com; ajthomas@jenner.com; clindsay@jenner.com; cward@jenner.com; jtilden@gordontilden.com; jthomas@gordontilden.com; mrosenberger@gordontilden.com; mwilner@gordontilden.com; chudson@gordontilden.com; Lawrence Cock; Jack Lovejoy
Subject: Move v. Zillow
Attachments: Note for Hearing - Shorten Time.pdf; Mot to Shorten Time re Emrgncy App to Enforce Neutral Protocol.pdf; Lovejoy Decl. w Ex 1.pdf; Note for Hearing - Emergency Appl.pdf; P's Emergency App_to_Enforce_Neutral_Forensic_Inspection_Protocol_and_Order.pdf; Singer Decl. w Exs A-C.pdf

Dear Judge Hilyer:

Please find attached the following documents submitted by Plaintiffs:

- Notice of Hearing re Motion to Shorten Time;
- Motion to Shorten Time Re Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol and Order Against Defendant Curt Beardsley;
- Declaration of Jack M. Lovejoy with Exhibits thereto;
- Notice of Hearing re Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol and Order Against Defendant Curt Beardsley;
- Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol and Order Against Defendant Curt Beardsley; and
- Declaration of David Singer with Exhibits thereto.

CABLE, LANGENBACH, KINERK & BAUER, LLP

Katy Albritton

Legal Secretary

Cable, Langenbach, Kinerk & Bauer, LLP

1000 2nd Ave., Suite 3500 / Seattle, WA 98104

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EXHIBIT N

DISCOVERY MASTER
THE HONORABLE BRUCE HILYER (RET.)
NOTED FOR CONSIDERATION ON SHORTENED
TIME: OCTOBER 30, 2015
(WITHOUT SHORTENED TIME: NOVEMBER 6, 2015)
WITHOUT ORAL ARGUMENT

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

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

Plaintiffs,

vs.

ZILLOW, INC., a Washington corporation,
ERROL SAMUELSON, an individual, and
CURT BEARDSLEY, an individual,
Defendants.

Case No. 14-2-07669-0 SEA

**PLAINTIFFS' EMERGENCY
APPLICATION TO ENFORCE NEUTRAL
FORENSIC INSPECTION PROTOCOL
AND ORDER AGAINST DEFENDANT
CURT BEARDSLEY**

1 **I. Introduction**

2 Defendant Curt Beardsley is in willful violation of the Court's order appointing a neutral
3 expert. The neutral is expressly authorized to forensically examine everything in
4 Mr. Beardsley's iCloud account except web-based email. The order was based on
5 Mr. Beardsley's physical destruction of electronic evidence while he was under subpoena and his
6 admitted attempts to wipe his computer hard drives after he was named as a defendant.¹
7 Understanding the Discovery Master's Protocol to mean exactly what it said, the Neutral began
8 gathering and copying all of the contents of Mr. Beardsley's iCloud account except web-based
9 email. But four days after providing his iCloud password to the Neutral (which Mr. Beardsley
10 took nearly a month to do despite being order to do so within a week), Mr. Beardsley instructed
11 the Neutral to *stop his work* and then *unilaterally changed his iCloud password* to lock the
12 Neutral out of his iCloud account. Mr. Beardsley's purported excuse was that private iMessages
13 (i.e., text messages) were stored on his iCloud account which he didn't want the Neutral to
14 access. But Mr. Beardsley's excuse is not credible and does not justify his actions. Plaintiffs'
15 expert already has Mr. Beardsley's iPhone (which contains copies Mr. Beardsley's relevant
16 iMessages), and the Protocol contains clear procedures to protect any private or privileged
17 information gathered by Neutral (for example, by allowing Mr. Beardsley to review and
18 withhold sensitive materials before they are shown to plaintiffs). The *real* reason Mr. Beardsley
19 is blocking the Neutral from accessing his iCloud account is because he doesn't want the Neutral
20 to find incriminating text messages that he deleted from his iPhone but which may still exist on
21 his iCloud storage account.

22 Discovery is in full swing, and Plaintiffs are still waiting for the actual forensic analysis
23 to get underway. Plaintiffs have been waiting *seven months* for a forensic examination, and

¹ Last month, the Court also ordered an immediate deposition of Mr. Beardsley concerning his evidence destruction where Plaintiffs learned about even more destruction and spoliation, including one episode where Mr. Beardsley – while under subpoena – physically destroyed a hard drive containing Move documents by throwing it 30 feet against the wall of his workshop until it broke into pieces and then disposed of the remains at his local garbage dump.

1 there is no more room for delay. Mr. Beardsley cannot treat Court orders like mere suggestions
2 and must be required to comply with the Protocol. Plaintiffs respectfully request that the
3 Discovery Master recommend an order mandating that Mr. Beardsley (1) immediately provide
4 the neutral with his new iCloud password, and (2) allow the Neutral to continue doing his work
5 without further obstruction, including the imaging and examination of Mr. Beardsley's *entire*
6 iCloud account except for web-based email (i.e., emails sent to or from Mr. Beardsley's Apple
7 "@mac.com" or "@icloud.com" email accounts), as set forth in the Protocol and Ordered by the
8 Court.

9 **II. The Protocol and Forensic Inspection Order Cover *Everything* in Mr. Beardsley's
10 iCloud Account Except for Web-Based Email**

11 Four months ago, plaintiffs filed a motion to compel a forensic inspection of defendants'
12 computers, electronic devices and cloud accounts because (1) defendants had wiped hard drives,
13 destroyed and discarded USB storage devices, used third-party eraser programs to permanently
14 delete relevant evidence, and (2) defendants had stolen Move's confidential business
15 information, which was being stored on these various devices and accounts. Plaintiffs have been
16 seeking a forensic examination of defendants' computers, devices and cloud account since April
17 2015 and move to compel an inspection in June 2015. After months of briefing and multiple oral
18 arguments, the Discovery Master issued – and the Court entered as an order – a Protocol
19 Governing Neutral Review and Handling of Certain Electronic Devices and Cloud Accounts (the
20 "Protocol") (*see* Exhibit A). The Protocol appointed Andy Reisman as the neutral forensic
21 examiner (the "Neutral").
22

23 A stated purpose of the Protocol is:

to promote and facilitate the efficient and transparent forensic
analysis of certain devices and accounts at issue in this litigation,
including investigation of alleged deletion(s) of potential evidence
and/or alleged misappropriation of Move, Inc. documents or data.

1 Declaration of David Singer ("Singer Decl."), Exhibit A [Protocol § 2(a)]. The Protocol
2 expressly includes the "iCloud" account of Curt Beardsley. Protocol § 4(b). The *only* limitation
3 on the Neutral's examination of cloud accounts (including Mr. Beardsley's iCloud account) is
4 that "associated web-based email accounts previously searched are not subject to review under
5 this protocol unless specifically approved by the Discovery Master." *Id.*

6 The Protocol orders that "For cloud storage accounts, defendants will provide the
7 username, email account, password, or other information necessary to access the account to the
8 Neutral *within one week of the appointment of the Neutral.*" Protocol § 5 (emphasis added).
9 The Protocol further orders that "*Once the imaging is complete*, as determined by the Neutral,
10 then the producing party is free to take steps (such as changing passwords) to re-secure the
11 device or account." *Id.* § 6 (emphasis added).

11 **III. Mr. Beardsley Violated The Protocol and Forensic Inspection Order**

12 The Neutral was appointed by the Discovery Master's September 19, 2015 Report and
13 Recommendation, which was entered as a Court Order on September 30, 2015. Instead of
14 providing his iCloud account password to the Neutral "within one week," Mr. Beardsley
15 withheld his password until October 24, 2014 – more than a month after the Neutral was first
16 appointed by the Discovery Master. Singer Decl., Exh. B.

17 On October 28, 2015, during a status conference with the Neutral, the Neutral updated
18 the parties on the progress of his work and noted that he was in the process of imaging (i.e.,
19 copying) the contents of Mr. Beardsley's iCloud account. The Neutral expressed his
20 understanding that all of the contents of Mr. Beardsley's iCloud account would be imaged
21 pursuant to the Protocol except for Mr. Beardsley's web-based email associated with that cloud
22 account (i.e., Mr. Beardsley's "@mac.com" or "@icloud.com" email accounts). Over plaintiffs'
23 objection, Mr. Beardsley's counsel instructed the Neutral to immediately cease collecting data
from Mr. Beardsley's iCloud account, claiming that text messages (also known as "iMessages"
on Apple devices) and other artifacts stored on Mr. Beardsley's iCloud account (such as notes

1 and calendar entries) must be excluded from the neutral forensic examination. Singer Decl. ¶ 5.
2 In light of Mr. Beardsley's objection and demand, the Neutral agreed to suspend his forensic
3 work on Mr. Beardsley's iCloud account pending resolution of the dispute.

4 Later that evening, Mr. Beardsley took it upon himself to completely cut off the Neutral's
5 Court-ordered access to the iCloud account by unilaterally changing the password for his iCloud
6 account. Singer Decl., Exh. C. Mr. Beardsley did *not* seek permission from the Neutral; he did
7 *not* seek permission from the Discovery Master; he did not *seek* permission from the Court; and
8 he did *not* seek permission or even give advance notice to plaintiffs. Singer Decl. ¶ 6. Instead,
9 Mr. Beardsley flat-out ignored Sections 5 and 6 of the Protocol and Forensic Inspection Order
10 and took matters into his own hands. This, of course, defeats the whole purpose of the Neutral
11 inspection which plaintiffs sought because Mr. Beardsley – who knowingly destroyed evidence
12 while under subpoena – could not be trusted. Once again, he has unmonitored access to his
13 cloud storage account and could potentially be deleting more information before the Neutral
14 has a chance to analyze its contents.

15 There is no ambiguity or dispute that needs to be resolved. The "scope" of the Protocol is
16 crystal clear. The Neutral is authorized to examine Mr. Beardsley's iCloud account with one
17 exception only: *web-based email*. Mr. Beardsley's iMessages (which are text messages), notes,
18 Internet browser bookmarks, and any other artifacts stored in his iCloud account were never
19 excluded from the Court-ordered forensic examination. To the contrary, Mr. Beardsley's efforts
20 to delete and wipe relevant text messages featured prominently in plaintiffs' original motion to
21 compel this forensic inspection (Motion to Compel at 6), and Mr. Beardsley knew full well that
22 his deletion of iMessages were squarely at issue. Interfering with the Neutral's forensic work at
23 this stage is simply bad faith.

Furthermore, unlike Mr. Beardsley's web-based email to which plaintiffs have never
been given access, Mr. Beardsley's iPhone – which he used to send and receive iMessages –
belongs to Move and is currently in the possession of Move's expert. In other words, plaintiff

1 Move *already has access* to Mr. Beardsley's relevant iMessages (to the extent they were not
2 successfully wiped by Mr. Beardsley). Thus, Mr. Beardsley cannot attempt to excuse his
3 obstruction of the Neutral's forensic examination based on supposed privacy concerns related to
4 his iMessages generally. There are no privacy concerns here. The only issue is whether the
5 Neutral should be allowed to search for (and hopefully recover) *deleted* iMessages that currently
6 reside in Mr. Beardsley's iCloud account. That, of course, is the whole point of the Protocol.

7 Even if Mr. Beardsley had any legitimate privacy interest in his iMessages that are stored
8 in his iCloud account, the Protocol expressly provides ample protections. As the Discovery
9 Master explained in the Protocol, the purpose of appointing a *neutral* examiner was "To ensure
10 that privileged information remains privileged and is not inadvertently or otherwise produced or
11 disclosed to non-privileged parties, persons or entities; and to avoid unwarranted disclosure of
12 personal, private or competitively sensitive information." The Neutral is an officer of the Court,
13 and he is allowed to see personal information. Once information is gathered, the Protocol
14 provides detailed procedures and protections allowing Mr. Beardsley to review any materials
15 culled from the forensic inspection and to prevent their disclosure to plaintiffs by seeking a
16 protective order. Protocol § 14.

17 Yesterday, Mr. Beardsley insisted that the Neutral's forensic examination of the
18 Beardsley iCloud account immediately cease, and he unilaterally blocked the *Neutral's* access to
19 the Beardsley iCloud account even though there was no threat of *Plaintiffs* gaining access to any
20 of Mr. Beardsley's supposedly personal information. Mr. Beardsley's outright defiance of the
21 Protocol and Forensic Examination Order must not be countenanced. The Protocol is not a mere
22 suggestion; it is a Court order.

23 **IV. Emergency Relief Requested**

Plaintiffs have been waiting *seven months* for a forensic inspection of defendants'
devices and cloud accounts. Depositions are in full swing, and the Neutral's forensic inspection
is already behind schedule. Mr. Samuelson has already been deposed (without the benefit of the

1 inspection being completed) and Mr. Beardsley's deposition is set to occur in December.
2 Plaintiffs have been seeking a forensic examination of defendants' computers and cloud accounts
3 since June 2014, and have already been prejudiced by the amount of time that has gone by.

4 Accordingly, plaintiffs respectfully request that the Discovery Master recommend an
5 order mandating that Mr. Beardsley (1) immediately provide the Neutral with his new iCloud
6 password, and (2) allow the Neutral to continue doing his work without further obstruction,
7 including the imaging and examination of Mr. Beardsley's entire iCloud account except for web-
8 based email, as set forth in the Protocol and Ordered by the Court.

9 DATED October 29, 2015.

10 **JENNER & BLOCK LLP**
11 Attorneys for Plaintiffs

**GORDON TILDEN THOMAS &
CORDELL LLP**
Attorneys for Plaintiffs

12 By s/David Singer
13 Richard L. Stone (*pro hac vice*)
14 Brent Caslin, WSBA #36145
15 633 West Fifth Street, Suite 3600
16 Los Angeles, California 90071
T: 213-239-5100
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By s/Mark Wilner
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18 BAUER LLP**
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PLAINTIFFS' EMERGENCY APPLICATION FOR
PRESERVATION ORDER

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 29, 2015, I served the documents described below:

3 **PLAINTIFFS' EMERGENCY APPLICATION FOR OMNIBUS PRESERVATION**
4 **ORDER IN LIGHT OF EVIDENCE OF DEFENDANTS' DESTRUCTION OF**
5 **HARD DRIVE AND DELETION OF COMPUTER FILES DURING DISCOVERY**

6 by email transmission at the email addresses provided to the following:

7 David J. Burman
8 Ulrike B. Connelly
9 Susan E. Foster
10 Katherine G. Galipeau
11 Mary P. Gaston
12 Judith B. Jennison
13 Joseph M. McMillan
14 Kathleen M. O'Sullivan
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19 jmcmillan@perkinscoie.com; kosullivan@perkinscoie.com; dperez@perkinscoie.com

20 *Counsel for Zillow, Inc.*

21 Clemens H. Barnes
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dgraham@sbwllp.com; mstephen@sbwllp.com

Counsel for Curt Beardsley

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

3 DATED at Seattle, WA on October 29, 2015.

4 /s/Katy Albritton
5 Katy Albritton, Legal Assistant
6 CABLE, LANGENBACH, KINERK & BAUER LLP
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EXHIBIT O

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

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

Plaintiffs,

vs.

ZILLOW, INC., a Washington corporation,
ERROL SAMUELSON, an individual, and
CURT BEARDSLEY, an individual,
Defendants.

Case No. 14-2-07669-0 SEA

**REPORT AND RECOMMENDATION RE
PLAINTIFFS' EMERGENCY
APPLICATION TO ENFORCE NEUTRAL
FORENSIC INSPECTION PROTOCOL**

1 Pursuant to the Court's orders in this case dated July 15, 2015 and July 28, 2015, regarding
2 the procedures surrounding discovery motions, contained herein is my Report and
3 Recommendation to the Court. These matters have been referred by the court and having come
4 before the Discovery Master ("DM") regarding Plaintiffs' Emergency Application to Enforce
5 Neutral Forensic Inspection Protocol and Order Against Defendant Curt Beardsley, the DM has
6 considered all briefing, including: Plaintiffs' Emergency Application to Enforce Neutral Forensic
7 Inspection Protocol and Order Against Defendant Curt Beardsley; Declaration of David Singer in
8 support of Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol and
9 Order Against Defendant Curt Beardsley; Defendant Curt Beardsley's Response to Plaintiffs'
10 Emergency Application to Enforce Neutral Forensic Inspection Protocol and Order Against
11 Defendant Curt Beardsley; Declaration of Michele Stephen in support of Curt Beardsley's
12 Response to Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol
13 and Order Against Defendant Curt Beardsley; Defendant Zillow's Joinder In Curt Beardsley's
14 Response to Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol
15 and Order Against Defendant Curt Beardsley; and Defendant Errol Samuelson's Joinder in Curt
16 Beardsley's Response to Plaintiffs' Emergency Application to Enforce Neutral Forensic
17 Inspection Protocol and Order Against Defendant Curt Beardsley.

18 Oral argument was held via telephone on November 2, 2015 at 12:00pm. Counsel for all
19 parties were present. The DM reports and recommends as follows:

20 The Court previously ordered a forensic examination of certain electronic devices and
21 accounts. The Court has appointed a third party neutral ("the Neutral") to conduct the
22 examination as an officer of the Court. In the course of the Neutral's examination, a message
23 appeared on devices which were connected to Mr. Beardsley's iCloud account, indicating those
accounts were being accessed by the Neutral, but Mr. Beardsley's family contends it did not
recognize that and instead feared their devices were being "hacked." Subsequently, when made

1 aware of these events, Mr. Beardsley, through counsel, informed the Neutral that he objected to
2 collection of information from Mr. Beardsley's iCloud account that was interconnected to the
3 family's devices, and objected to further examination of the Beardsley iCloud account until the
4 scope of that inquiry could be resolved. The Neutral acquiesced in that objection over Plaintiffs'
5 objection. Mr. Beardsley then, with advice of counsel, unilaterally decided to change the
6 password to his iCloud account, thereby blocking the Neutral's access to that account. Mr.
7 Beardsley did not give advance notice to Plaintiffs, or the Neutral, before deciding to change his
8 password and thereby block the Neutral's access to his iCloud account. Mr. Beardsley also did
9 not seek relief from the Court, through the Discovery Master, from Section 6 of the Protocol,
10 which does not allow Mr. Beardsley to change the password to his iCloud account until after the
11 Neutral determines that imaging of the account is complete.

12 Plaintiffs then brought the pending motion for an order requiring Mr. Beardsley to allow
13 the Neutral to continue his investigation including the iCloud account except for web-based
14 email, and admonishing Mr. Beardsley for violating the Court-ordered protocol governing the
15 Neutral's examination. In response, Defendants argued that Plaintiffs should have met and
16 conferred before bringing the instant motion, that the motion was unnecessary, and the issue was
17 moot because the changed password had later been given to the Neutral.

18 Under the circumstances, and given Mr. Beardsley's unilateral action, and the effect of
19 the objection by Defendant's Counsel on the Neutral's investigation, I do not find that Plaintiffs
20 were required to meet and confer any further with Defendants before bringing the instant motion.

21 Mr. Beardsley's initial objection to the scope of the Neutral's examination of his iCloud
22 account is now moot as Defendants have agreed to an acceptable procedure to complete this task.
23 The Neutral will be allowed to conduct a review and deletion analysis (as described in the Court-

1 ordered protocol) on all content he is able to image and gather from Mr. Beardsley's iCloud
2 account, except for the web-based email. Specifically, the Neutral may examine iMessages and
3 other data stored in cloud accounts in the manner now agreed.

4 The DM is concerned about Mr. Beardsley taking unilateral action to in any way impede
5 or control the Neutral's investigation. The DM finds that Mr. Beardsley's action in changing the
6 password to his iCloud account, and thus removing the Neutral's access to that account, was
7 inconsistent with the Court-ordered protocol for the Neutral's examination. Mr. Beardsley, and
8 his counsel, should understand that no party is authorized to unilaterally take actions to impede
9 or otherwise circumscribe the Neutral's investigation. When the Neutral indicated he would
10 suspend his review, the Neutral was still in control of the process. But once Mr. Beardsley
11 changed his password, he then was in control of the forensic process, and that is inconsistent
12 with the Protocol which has the force of a court order.

13 Mr. Beardsley contends he took unilateral action to change his password because the
14 Neutral may have been able to access information of Mr. Beardsley's family members via the
15 iCloud account. While Mr. Beardsley's concerns and interests may be important from his
16 family's perspective, the gravity of those concerns are not equivalent to the more serious
17 concerns over previous issues such as disclosure of emails containing highly sensitive privileged
18 attorney-client communications, and there has been no showing that privileged attorney-client
19 communications were at issue here. The Neutral is an officer of the Court, and the Neutral may
20 have to look at some family matters in order to complete his investigation.

21 Mr. Beardsley argues that there was no harm, and therefore should be no foul, when he
22 unilaterally changed his password because the Neutral had already agreed to suspend his
23 examination of the iCloud account. The DM rejects this argument. The fact that the Neutral had

1 indicated that he was going to hold up on the investigation of the iCloud account in light of Mr.
2 Beardsley's objection does not excuse the decision by Mr. Beardsley and his counsel to
3 unilaterally change his password, and thereby assume control of this process, which is the
4 province of the Court (as administered through the Neutral and the DM), and not Mr. Beardsley.

5 I recommend the Court enter an order admonishing Mr. Beardsley not to take unilateral
6 actions to impede or delay or interfere with the Neutral's investigation. The actions that Mr.
7 Beardsley and his counsel took were not warranted under the circumstances.

8 The DM also advises the Neutral that, in the future, before he halts his investigation in
9 light of an objection from counsel for a party, he may contact the DM for guidance.

10 IT IS SO REPORTED AND RECOMMENDED THIS 5 DAY OF NOVEMBER, 2015.

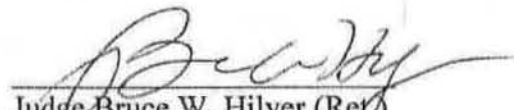
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12 
13 Judge Bruce W. Hilyer (Ret.)
14 Special Discovery Master
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EXHIBIT P

McMillan, Joseph M. (Perkins Coie)

From: McMillan, Joseph M. (Perkins Coie)
Sent: Tuesday, November 03, 2015 5:00 PM
To: Janelle Hall
Cc: Burman, David J. (Perkins Coie); Foster, Susan E. (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); Galipeau, Katherine G. (Katie) (Perkins Coie); Jennison, Judy (Perkins Coie); Gaston, Mary Z. (Perkins Coie); Perez, David A. (Perkins Coie); Connelly, Ulrike B. (Rike) (Perkins Coie); Wyatt, Sherri (Perkins Coie); Carranza, Brina (Perkins Coie); Beane, Amanda J. (Perkins Coie); Hesterberg, Nicholas H. (Nick) (Perkins Coie); Aldama, Karin S. (Perkins Coie); Gray, John H. (Perkins Coie); Barnes, Clem; estera.gordon@millernash.com; michael.fandel@millernash.com; Mittenthal, Robert; connie.hays@millernash.com; 'kelly.hamilton@millernash.com'; jennifer.schnar@millernash.com; Esler, Brian; 'gill.fadaie@millernash.com'; 'justin.sawyer@millernash.com'; 'jsavitt@sbwllp.com'; Duffy Graham; Leslie Castello; 'Jack Lovejoy'; Stone, Richard L.; Caslin, Brent; Atteberry, Jeffrey A.; Saros, Nick; mstephen@sbwllp.com; Singer, David R.; Njathi, Jennifer Wagman; Glickstein, Ethan A.; Rozansky, Daniel A.; Gallegos, Amy M.; Lee, John S.; Van Hoesen, AnnaMarie A.; Thomas, Andrew J.; Lindsay, Christopher S.; Ward, Christopher R.; Jeff Tilden; Jeff Thomas; Mike Rosenberger; mwilner@gordontilden.com; chudson@gordontilden.com; Lawrence Cock; Katy Albritton
Subject: Move v. Zillow et al. -- Defendants' Proposed Report & Recommendation re Pls' Emergency Application re Neutral Protocol
Attachments: Def_s Proposed RR re CB iCloud Acct.docx

Dear Ms. Hall:

On behalf of all Defendants, I respectfully request that you forward to Judge Hilyer Defendants' alternative Proposed Order on Plaintiffs' Emergency Application re the Neutral Protocol (attached), along with the message below. Thank you.

Dear Judge Hilyer:

Defendants cannot agree to the Proposed Order submitted by Plaintiffs in connection with their Emergency Application to Enforce the Neutral Protocol, as that Proposed Order is flawed in multiple respects.

First, it misrepresents the relief Plaintiffs sought in bringing their motion (see Proposed Order, page 2). Plaintiff's motion did not seek an Order admonishing Mr. Beardsley. Rather, that relief was only requested for the first time during the telephonic hearing on Monday, after it was clear that the issue raised by Plaintiffs' motion had been entirely mooted by Mr. Beardsley's proposed resolution. In addition, Plaintiffs' motion did not seek the broad relief as represented in their Proposed Order, i.e., an order "confirming that the Protocol permits forensic inspection of all contents of cloud accounts – including iMessages, notes, and Calendar entries – except for web-based email accounts associated with the cloud account." (Proposed Order at 2.) Rather, Plaintiffs' motion focused exclusively on Mr. Beardsley's iCloud account, and requested an "order mandating that Mr. Beardsley . . . (2) allow the Neutral to continue doing his work

without further obstruction, including the imaging and examination of Mr. Beardsley's entire iCloud account except for web-based email" (Pls' Motion at 6.)

Second, the Plaintiffs' use of loaded terms such as Mr. Beardsley "instructed" the Neutral to halt the examination (Proposed Order at 1), "block[ed] the Neutral's access to [the iCloud] account" (id. at 2), and their carefully crafted semantics suggesting that his action "interfer[ed] with the Neutral's investigation" (id. at 3), are simply false. Mr. Beardsley's counsel did not "instruct" the Neutral to halt, nor did he "block the Neutral's access." Instead, Mr. Beardsley's counsel simply brought an unexpected (and troubling) development to the attention of the Neutral and all counsel, and requested that the Neutral briefly delay the data collection from a single account until the issue could be addressed. (So it is crystal clear, the Neutral had *not* advised counsel that the messages to Mr. Beardsley's family would appear; there was no notice that this would happen; and the suggestion by Plaintiffs in the call yesterday that Mr. Beardsley had notice but didn't tell his family are just false.) Plaintiffs objected, but the Neutral recognized that the pause in collection from that one account would not cause any genuine delay in the investigation at all, as the Instruction Set had not even been finalized and (even if it had been) there was a very significant volume of other work (relating to all the other devices and accounts) that would occupy all the efforts of his team for quite some time. Accordingly, exercising precisely the type of discretion that is vested in him by paragraph 8 of the Neutral Protocol, the Neutral determined that Mr. Beardsley's request should be accommodated. Plaintiffs' motion papers, their presentation during the oral argument, and their Proposed Order all grossly mischaracterize the interaction as an attempt to browbeat the Neutral into compliance. Nothing could be further from the truth. The Neutral recognizes that all Defendants, including Mr. Beardsley, have been fully cooperative in this process, and he determined that the request from Mr. Beardsley's counsel was perfectly reasonable under the circumstances. To now enter Plaintiffs' Proposed Order admonishing Mr. Beardsley for misconduct in this process unfairly obscures that reality.

Third, we want to emphasize again that Mr. Beardsley did not act in this situation on his own, without seeking assurance from his counsel that the change of password on the evening of October 28 was permissible under the then-existing state of affairs. His counsel had no reason to think, given the Neutral's statement that the data collection from that one account was being held in abeyance at that point, that a change of password would create any problems. Accordingly, Mr. Beardsley acted in a manner consistent with his counsel's advice, and was not in any way attempting to disregard the requirements of the Neutral Protocol. Quite the contrary.

Accordingly, Defendants jointly submit the attached alternative Proposed Order, which we believe more accurately describes the reality of the situation, while also serving the Special Master's intention of ensuring that the process moves forward without interference or needless delay.

In light of the Presentation of alternative Proposed Orders from the parties, Defendants respectfully suggest that the Special Master confer privately by telephone with the Neutral

Forensic Expert, to assess which Proposed Order more accurately promotes justice in this particular controversy.

Very respectfully,

Joseph M. McMillan

Perkins Coie LLP

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jmcmillan@perkinscoie.com

From: Jack Lovejoy [mailto:jlovejoy@cablelang.com]

Sent: Tuesday, November 03, 2015 2:48 PM

To: Janelle Hall; mstephen@sbwillp.com

Cc: Burman, David J. (Perkins Coie); Foster, Susan E. (Perkins Coie); O'Sullivan, Kathleen M. (Perkins Coie); Galipeau, Katherine G. (Katie) (Perkins Coie); Jennison, Judy (Perkins Coie); Gaston, Mary Z. (Perkins Coie); McMillan, Joseph M. (Perkins Coie); Perez, David A. (Perkins Coie); Connelly, Ulrike B. (Rike) (Perkins Coie); Wyatt, Sherri (Perkins Coie); Carranza, Brina (Perkins Coie); Beane, Amanda J. (Perkins Coie); Hesterberg, Nicholas H. (Nick) (Perkins Coie); Aldama, Karin S. (Perkins Coie); Gray, John H. (Perkins Coie); Barnes, Clem; estera.gordon@millernash.com; michael.fandel@millernash.com; Mittenthal, Robert; connie.hays@millernash.com; 'kelly.hamilton@millernash.com'; jennifer.schnar@millernash.com; Esler, Brian; 'gill.fadaie@millernash.com'; 'justin.sawyer@millernash.com'; 'jsavitt@sbwillp.com'; Duffy Graham; Leslie Castello; Stone, Richard L.; Caslin, Brent; Atteberry, Jeffrey A.; Saros, Nick; Singer, David R.; Njathi, Jennifer Wagman; Glickstein, Ethan A.; Rozansky, Daniel A.; Gallegos, Amy M.; Lee, John S.; Van Hoesen, AnnaMarie A.; Thomas, Andrew J.; Lindsay, Christopher S.; Ward, Christopher R.; Jeff Tilden; Jeff Thomas; Mike Rosenberger; mwilner@gordontilden.com; chudson@gordontilden.com; Lawrence Cock; Katy Albritton

Subject: Proposed Report & Recommendation

Dear Ms. Hall,

Attached please find a proposed Report & Recommendation in connection with yesterday's telephone hearing. For Judge Hilyer's reference, I am also attaching a copy of the proposed R&R with footnotes to relevant portions of the final transcript of yesterday's telephone hearing. Earlier today, I sent all attorneys who attended yesterday's telephone hearing the proposed R&R and a version of the proposed R&R that had footnotes referencing the rough draft of the hearing transcript.

Finally, I am attaching the final transcript of yesterday's hearing.

Sincerely,

Jack M. Lovejoy

Cable Langenbach Kinerk & Bauer, LLP

1000 Second Avenue, Suite 3500

Seattle, WA 98104

Phone: (206)292-8800

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jlovejoy@cablelang.com

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

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

Plaintiffs,

vs.

ZILLOW, INC., a Washington corporation,
ERROL SAMUELSON, an individual, and
CURT BEARDSLEY, an individual,
Defendants.

Case No. 14-2-07669-0 SEA

**[PROPOSED] REPORT AND
RECOMMENDATION RE PLAINTIFFS'
EMERGENCY APPLICATION TO
ENFORCE NEUTRAL FORENSIC
INSPECTION PROTOCOL**

1 Pursuant to the Court's orders in this case dated July 15, 2015 and July 28, 2015,
2 regarding the procedures surrounding discovery motions, contained herein is my Report and
3 Recommendation to the Court. These matters have been referred by the court and having come
4 before the Discovery Master ("DM") regarding Plaintiffs' Emergency Application to Enforce
5 Neutral Forensic Inspection Protocol and Order Against Defendant Curt Beardsley, the DM has
6 considered all briefing, including: Plaintiffs' Emergency Application to Enforce Neutral Forensic
7 Inspection Protocol and Order Against Defendant Curt Beardsley; Declaration of David Singer in
8 support of Plaintiffs' Emergency Application to Enforce Neutral Forensic Inspection Protocol
9 and Order Against Defendant Curt Beardsley; Defendant Curt Beardsley's Response to
10 Plaintiffs' "Emergency" Application to Enforce Neutral Forensic Inspection Protocol;
11 Declaration of Michele Stephen in support of Curt Beardsley's Response to Plaintiffs'
12 "Emergency" Application to Enforce Neutral Forensic Inspection Protocol; Defendant Zillow's
13 Joinder In Beardsley Response to Plaintiffs' Motion to Enforce Neutral Protocol; and Defendant
14 Errol Samuelson's Joinder in Beardsley Response to Plaintiffs' Motion to Enforce Neutral
15 Protocol.

16 Oral argument was held via telephone on November 2, 2015 at 12:00pm. Counsel for all
17 parties were present. The DM reports and recommends as follows:

18 The Court has ordered a forensic examination of certain electronic devices and accounts.
19 The Court has appointed a third party neutral ("the Neutral") to conduct the examination as an
20 officer of the Court and has entered a Protocol Governing Neutral Expert Review and Handling
21 of Certain Electronic Devices and Cloud Accounts (the "Protocol"). The Protocol permits access
22 by the Neutral to certain web-based cloud storage accounts, including Mr. Beardsley's iCloud
23 account. However, web-based email accounts that may be associated with cloud accounts are
excluded from review unless specifically approved by the Discovery Master. The Protocol does
not specify how documents stored in cloud accounts shall be collected by the Neutral and does
PROPOSED REPORT AND RECOMMENDATION

1 not specify whether data in other applications associated with cloud accounts (*i.e.*, data beyond
2 documents stored in the account and web-based email) are subject to it.

3 In the course of the Neutral's examination, the Neutral's registration to Mr. Beardsley's
4 iCloud account caused an unexpected message to appear on the devices of each of Mr.
5 Beardsley's family members who are linked to the account, giving rise to concerns that an
6 unknown individual had gained access and real-time surveillance capability to live social media
7 applications (*e.g.*, iMessage and Facetime) used by the family members. Mr. Beardsley's
8 counsel advised the Neutral that this message had appeared (the Neutral was apparently unaware
9 that his registration to the iCloud account operated in this manner) and also noted the scope of
10 collection issue this raised (*i.e.*, whether not only documents in the iCloud account but also all
11 data in all other applications provided by iCloud were within the scope of review, because, *e.g.*,
12 data in other applications included not only Mr. Beardsley's but also that of his family
13 members).

14 Given both the unexpected impact of the way the Neutral accessed the account and the
15 scope of collection issue, Mr. Beardsley's counsel requested that the Neutral briefly halt the
16 examination of that account until either agreement on the scope of collection or clarification
17 from the Special Master on scope could be obtained. The Neutral, consistent with the discretion
18 vested in him by paragraph 8 of the Neutral Protocol entered by the Court, agreed to that request
19 over plaintiffs' objection. In order to assist in the process of resolving the issue, the Neutral
20 promptly investigated and reported to the parties that it would be possible, from a technical
21 perspective, to collect only documentary data from the iCloud account, should that be the
22 resolution on scope of collection. Later that same day, Mr. Beardsley's counsel advised the
23 Neutral and all counsel that Mr. Beardsley would be changing the password to his iCloud

1 account later than evening, and invited Plaintiffs' counsel to confer regarding the scope of
2 collection issue. A couple hours later and having heard no objection, Mr. Beardsley, with advice
3 of counsel, changed his password to that account, pending a resolution of the issue.

4 Plaintiffs' counsel, however, did not meet and confer with Mr. Beardsley's counsel on the
5 issue. Instead, the following day (indeed, after Mr. Beardsley had provided a new password to
6 the Neutral for purposes of document collection from the iCloud account), Plaintiffs brought the
7 pending motion, on shortened time, for an order mandating that Mr. Beardsley (1) immediately
8 provide the Neutral with his new iCloud password, and (2) allow the Neutral to proceed with the
9 imaging and collection of Mr. Beardsley's entire iCloud account except for web-based email.

10 Subsequently, in papers filed in response to Plaintiffs' motion, Mr. Beardsley's counsel
11 proposed a resolution to the scope of collection issue, and a procedure for the collection process,
12 that was acceptable to all parties.

13 Accordingly, the issue regarding the scope of the Neutral's examination of Mr.
14 Beardsley's iCloud account is now moot. The Neutral will be allowed to conduct a review and
15 deletion analysis on all content he is able to image and gather from Mr. Beardsley's iCloud
16 account, except for the web-based email, *i.e.*, email to a Mac or iCloud address.

17 Plaintiffs nevertheless requested at oral argument on their motion that an order be entered
18 admonishing Mr. Beardsley for unilaterally changing the password to his iCloud account. In
19 light of the legitimate issue that arose as to scope of collection, and the Neutral's consent to the
20 temporary delay in collecting data from that account, the change of password had no adverse
21 effect on the progress of the Neutral's investigation. Accordingly, the Special Master declines to
22 issue any admonition to Mr. Beardsley or his counsel, as there is no evidence that the iCloud
23 password was changed in a bad faith effort to interfere with the Neutral's investigation. The

1 Special Master nevertheless recommends entry of an order advising all parties and counsel to
2 work cooperatively in fulfilling the purposes of the Protocol, and to avoid any unilateral actions
3 to impede or delay or interfere with the Neutral's investigation.

4 The Special Master recognizes that, in this instance, the Neutral properly exercised his
5 discretion to permit a brief delay in the collection of data from the iCloud account. The Special
6 Master also takes this opportunity to note that, pursuant to paragraph 25 of the Neutral Protocol,
7 the Neutral may at any time contact the Special Master for guidance should issues arise relating
8 to the conduct of his investigation.

9 IT IS SO REPORTED AND RECOMMENDED THIS __ DAY OF NOVEMBER, 2015.

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