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BY Susan Bone
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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

vs.

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

Defendants.

No. 14-2-07669-0 SEA

ORDER ON DEFENDANTS' MOTION TO
EXCLUDE TESTIMONY OF DAMAGES
EXPERT BRADFORD CONRNELL
RELATING TO "LISTHUB 2.0"

I. BACKGROUND

This matter comes before the Court on defendants' motion to exclude the testimony of damages expert Bradford Cornell as that testimony relates "ListHub 2.0". The Court has heard oral argument from all parties has carefully reviewed the records in this matter, including:

1. Defendants' Motion to Exclude
2. Plaintiffs' Response
3. Defendants' Reply
4. Supporting Declarations to all of the briefing immediately outlined above

1 5. The other pleadings and declarations submitted in this case

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3 II. ORDER

4 Now, being fully briefed and advised on the foregoing, the Court orders as follows:

5 A central, and critical, assumption of Dr. Cornell's damages opinion with respect to
6 "ListHub 2.0" is the assumption by Luke Glass that, in the but-for world, Zillow and Trulia
7 would have continued to its allegiance to ListHub in perpetuity. Professor Cornell was quite
8 candid in his opinion that his opinion was almost entirely dependent on the information and
9 projections provided by Mr. Glass. Indeed, Professor Cornell affirmed that he had no ability to
10 make the projections that Mr. Glass did.

11 A primary, and fatal, assumption is Mr. Glass' belief that Zillow would "remain in the
12 [ListHub] network," despite the reality that the Zillow-ListHub agreement had a specific
13 termination date. Moreover, without disclosing this to Professor Cornell, Mr. Glass had a
14 different, pre-litigation, assessment in 2013 that Zillow would not renew with ListHub in two
15 years.

16 Under his current theory, Mr. Glass does not rely on data or specific acts taken by Zillow
17 to support his hypothesis; instead, the basis for this assumption is Mr. Glass' own confidence and
18 expectations.


19 There are numerous, unpredictable, factors that cut against Zillow and Trulia renewing
20 with ListHub, starting with Mr. Glass' own assessment that within weeks of a termination of the
21 Zillow-ListHub arrangement, listings would flow back to Zillow within a number of weeks.
22 Without this key assumption, the entirety of Professor Cornell's damage estimate crumbles.

23 Because of the key assumption provide by Mr. Glass and upon which Professor Cornell
24 relies, his opinion with respect to ListHub 2.0's success in the but-for world, is speculative,
25 unsupported by data or other corroborative facts, and therefore not helpful to the trier of fact.
26 See, e.g., Meterlogic, Inc. v. KLT, Inc., 368 F.3d 1017, 1019 (8th Cir. 2004) (in which expert
predicted financial results ten years into the future even though the parties' contract extended
only two years and allowed for termination at any time).

Accordingly, the motion to exclude Professor Cornell's testimony with respect to
ListHub 2.0 damages is GRANTED.

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Signed this 2nd day of June, 2016



JUDGE SEAN P. O'DONNELL