

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW SCIABACUCCHI,
derivatively on behalf of ZILLOW
GROUP, INC.,

Plaintiff,

v.

RICHARD N. BARTON, *et al.*,

Defendants.

CASE NO. C17-1568-JCC

ORDER

This matter comes before the Court on the parties' stipulation and proposed order to consolidate, appoint lead plaintiffs and counsel, and stay proceedings (Dkt. No. 21). On October 23, 2017, Plaintiff Matthew Sciabacucchi filed this verified shareholder derivative complaint ("Derivative Action") against Defendants. (Dkt. No. 1.) On January 8, 2018, Melvyn Klein filed a nearly identical shareholder derivative complaint against Defendants. *See Melvyn Klein v. Richard Barton, et al.*, Case No. C18-0027-JCC, Dkt. No. 1 (W.D. Wash. January 8, 2018).¹ Also pending before this Court, is a related securities class action ("Securities Action") that shares substantial factual overlap with both Derivative Actions. *See In re Zillow Group, Inc.*, Case No. C17-1387-JCC, Dkt. No. 29 (W.D. Wash. 2017, January 5, 2018).

¹ The parties have filed an identical stipulation and proposed order in the *Klein* matter.

1 The parties in both Derivative Actions now stipulate that: (1) the Derivative Actions
2 should be consolidated for all purposes; (2) Sciabachucchi and Klein should be appointed lead
3 plaintiffs in the consolidated Derivative Action; (3) The Weiser Law Firm, P.C. and Gainey
4 McKenna & Egleston should be appointed co-lead counsel, with Badgley Mullins Turner PLLC
5 appointed liaison counsel; and (4) the consolidated Derivative Action should be stayed pending
6 the Court's adjudication of a motion to dismiss in the Securities Action. (Dkt. No. 21 at 3-7.)

7 The Derivative Actions should be consolidated because they involve common questions
8 of fact and law. *See* Fed. R. Civ. P. 42(a)(1). The Court additionally finds that it is appropriate
9 for the fair and efficient administration of this consolidated action to appoint Sciabachucchi and
10 Klein as lead plaintiffs and to appoint their selected attorneys as co-lead and liaison counsel.
11 Finally, the Court finds that all proceedings should be stayed in this consolidated action pending
12 the resolution of Defendants' motion to dismiss in the Securities Action. *See* 15 U.S.C.
13 § 78u- 4(b)(3)(B) ("In any private action arising under this chapter, all discovery and other
14 proceedings shall be stayed during the pendency of any motion to dismiss")

15 Given the above determinations, the Court ENTERS the following stipulation:

16 **CONSOLIDATION OF THE ACTIONS**

17 1. Defendants hereby agree to accept service of the operative complaints in each of
18 the Derivative Actions.

19 2. Defendants are not required to take any action with respect to the complaints filed
20 in the Derivative Actions, including answering or otherwise responding.

21 3. The Derivative Actions are hereby consolidated for all purposes, including
22 pretrial proceedings, trial, and appeal, and are referred to herein as the "Consolidated Action."
23

24 4. Every pleading filed in the Consolidated Action, or in any separate action
25 included herein, shall bear the following caption:
26

1 IN RE ZILLOW GROUP, INC.
2 SHAREHOLDER DERIVATIVE
3 LITIGATION

Master File No.: 17-1568-JCC

4 THIS DOCUMENT RELATES TO:

5 5. The files of the Consolidated Action will be maintained in one file under Master
6 File No. C17-1568-JCC.

7 6. When a document being filed pertains to all of the actions included within the
8 Consolidated Action, the phrase “All Actions” shall appear immediately after the phrase “This
9 Document Relates To:”. When a pleading applies only to some, but not all, of the actions
10 included within the Consolidated Action, the document shall list, immediately after the phrase
11 “This Document Relates To:”, the docket number for each individual action to which the
12 document applies, along with the last name of the first listed plaintiff in said action.

13 7. When any shareholder derivative action is filed in this Court, transferred to this
14 Court, or removed to this Court that concerns substantially the same parties, property,
15 transaction, or event and thus should be considered as a “Related Shareholder Derivative Case”
16 and consolidated with, and into, the Consolidated Action, Co-Lead Counsel (defined herein)
17 shall, upon notice of the existence of the Related Shareholder Derivative Case, promptly file a
18 Notice of Related Case in both the Consolidated Action and in the Related Shareholder
19 Derivative Case, serve a copy of this Order signed and entered by the Court (the “Notice”) upon
20 counsel of record for the plaintiff(s) in the Related Shareholder Derivative Case and any
21 defendants in such Related Shareholder Derivative Case that have not previously been named in
22 the Consolidated Action (the “Related Case Parties”), and file in the Consolidated Action proof
23 of service of such Notice.

24 8. The Related Case Parties shall have five (5) business days following service of
25 the Notice to confer with Co-Lead Counsel and counsel for the Defendants. If, following such
26 conferences, any of the Related Case Parties do not agree that the subject action meets the

1 definition of a Related Shareholder Derivative Case and shall be subject to all terms of this
2 Order, such Related Case Parties shall have fifteen (15) business days from service of the Notice
3 within which to file a motion for entry of an order excepting such action from the terms of this
4 Order (the "Motion"). Such Motion shall be noticed for a hearing date by the Related Case
5 Parties pursuant to a stipulated agreement with Co-Lead Counsel and counsel for Defendants in
6 the Consolidated Action as to such hearing date. If, however, following Notice, none of the
7 Related Case Parties files a Motion within the time frame and subject to the procedures set forth
8 herein, the Court, after notice of such failure filed by the Co-Lead Counsel, shall proceed to
9 conduct any necessary review and enter an order, as appropriate, directing that the Related
10 Shareholder Derivative Case be consolidated with, and into, the Consolidated Action and be
11 subject to the terms of this Order.

12 9. All documents previously served or filed in any of the actions consolidated with,
13 and into, the Consolidated Action are deemed part of the record in the Consolidated Action.

14 **APPOINTMENT OF LEAD PLAINTIFFS,**
15 **CO-LEAD COUNSEL, AND LIAISON COUNSEL**

16 10. Plaintiffs Matthew Sciabacucchi and Melvyn Klein are hereby appointed as Lead
17 Plaintiffs in the Consolidated Action.

18 11. The Weiser Law Firm, P.C. and Gainey McKenna & Egleston are hereby
19 appointed as Co-Lead Counsel in the Consolidated Action.

20 12. Badgley Mullins Turner PLLC is hereby appointed as Liaison Counsel in the
21 Consolidated Action.

22 13. Plaintiffs' Co-Lead Counsel shall set policy for Plaintiffs for the prosecution of
23 the Consolidated Action and delegate and monitor the work performed by all plaintiffs' attorneys
24 to ensure there is no duplication of effort or unnecessary expense.

25 14. Plaintiffs' Co-Lead Counsel shall assume the following powers and
26 responsibilities on behalf of all plaintiffs: coordinate and direct the preparation of pleadings;

1 coordinate and direct the briefing and argument of motions; coordinate and direct the conduct of
2 discovery and other pretrial proceedings; coordinate the selection of counsel to act as plaintiffs'
3 spokesperson at pretrial conferences; call meetings of plaintiffs' counsel as they deem necessary
4 and appropriate from time to time; conduct any and all settlement negotiations with counsel for
5 Defendants; coordinate and direct the preparation for trial and trial of this matter, and delegate
6 work responsibilities to selected counsel as may be required; and coordinate and direct any other
7 matters concerning the prosecution or resolution of the Consolidated Action.

8 15. Any agreement reached between counsel for Defendants and any of Plaintiffs'
9 Co-Lead Counsel shall be binding on the other Co-Lead Counsel, any other counsel for any
10 plaintiff in the Consolidated Action, and on Plaintiffs.

11 **STAY OF THE CONSOLIDATED ACTION**

12 16. The Parties agree that during the pendency of this stay, Defendants shall use best
13 efforts to include Plaintiffs in any formal mediation with the plaintiffs in the Securities Action
14 and shall use best efforts to include Plaintiffs in any formal mediation with any plaintiff in any
15 related derivative lawsuit and discuss their potential participation with the parties in interest.

16 17. The Parties agree that notwithstanding this stay of this Consolidated Action,
17 Plaintiffs may file an amended complaint, for which Defendants' time to respond shall not begin
18 to run during the stay.

19 18. All proceedings in this Consolidated Action shall be stayed effective upon the
20 Court's entry of this Order.

21 19. In the event that Defendants agree to produce, or are ordered to produce by a
22 court of competent jurisdiction, any documents pursuant to an inspection request related to the
23 facts and circumstances at issue in this Consolidated Action made pursuant to Washington law
24 (RCW 23B.16.020) by any holder or beneficial owner of Zillow stock, copies of such documents
25 shall be provided to Co-Lead Counsel within ten (10) business days of Defendants' production,
26 subject to the execution by Plaintiffs and Co-Lead Counsel of a confidentiality agreement

1 governing the use and disclosure of these materials and evidence of Plaintiffs' stock ownership
2 throughout the relevant periods covered by the inspection request.

3 20. Upon occurrence of either (1) the dismissal of the Securities Action, with
4 prejudice, and exhaustion of all appeals related thereto, or (2) the denial of any motion to dismiss
5 the Securities Action in whole or in part, and the filing of an answer to the operative complaint
6 by Securities Action Defendants; the Parties shall notify the Court within fifteen (15) days and
7 shall submit a joint proposed scheduling order that will provide Defendants at least forty-five
8 (45) days from submission of the proposed order to respond to the complaint. The stay of the
9 Consolidated Action pursuant to this Order shall remain in effect until further Order of this Court
10 or agreement of the Parties.

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 IT IS SO STIPULATED

2 DATED: January 31, 2018.

3 s/ Duncan Turner

4 Duncan C. Turner, WSBA No. 20597

5 **Badgley Mullins Turner PLLC**

6 19929 Ballinger Way NE, Suite 200
7 Seattle, WA 98155

8 Telephone: (206) 621-6566

9 Facsimile: (206) 261-9686

10 Email: dturner@badgleyturner.com

11 Robert B. Weiser

12 Brett D. Stecker

13 James. M Ficaró

14 **The Weiser Law Firm, P.C.**

15 22 Cassatt Avenue

16 Berwyn, PA 19312

17 Telephone: (610) 225-2677

18 Facsimile: (610) 408-8062

19 Email: rw@weiserlawfirm.com

20 bds@weiserlawfirm.com

21 jmf@weiserlawfirm.com

22 **GAINEY McKENNA & EGLESTON**

23 Thomas J. McKenna

24 Gregory M. Egleston

25 440 Park Avenue South, 5th Floor

26 New York, NY 10016

Telephone: (212) 983-1300

Facsimile: (212) 983-0383

Email: tjmckenna@gme-law.com

Email: gegleston@gme-law.com

Proposed Co-Lead Counsel for Plaintiffs

s/ Ronald L. Berenstain

Ronald L. Berenstain, WSBA No. 7573

s/ Sean C. Knowles

Sean C. Knowles, WSBA No. 39893

Perkins Coie LLP

1201 Third Avenue, Ste. 4900

Seattle, WA 98101

Telephone: (206) 359-8000

Facsimile: (206) 359-9000

Email: rberenstain@perkinscoie.com

sknowles@perkinscoie.com

Meryl L. Young, *Admitted Pro Hac Vice*

Gibson, Dunn & Crutcher LLP

3161 Michelson Drive

Irvine, California 92612

Telephone: 949.451.3800

Facsimile: 949.451.4220

Email: myoung@gibsondunn.com

Alexander K. Mircheff, *Admitted Pro Hac Vice*

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue

Los Angeles, California 90071

Telephone: 213.229.7000

Facsimile: 213.229.7520

Email: amircheff@gibsondunn.com

Attorneys for Defendants Richard N. Barton, Erik

C. Blachford, Lloyd D. Frink, Jay C. Hoag,

Gregory B. Maffei, Spencer M. Rascoff, Gordon

S. Stephenson, Gregory L. Waldorf, Kathleen

Philips, April Underwood and Nominal Defendant

Zillow Group, Inc.

22 The Clerk is DIRECTED to terminate the Status Conference currently scheduled for
23 February 20, 2018.

24 //

25 //

26 //

1 DATED this 5th day of February 2018.

2
3
4 

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26