1 2 3 4 5 6 7 8 9	MULCAHY LLP James M. Mulcahy (SBN 213547) jmulcahy@mulcahyllp.com Kevin A. Adams (SBN 239171) kadams@mulcahyllp.com Four Park Plaza, Suite 1230 Irvine, California 92614 Telephone: (949) 252-9377 Facsimile: (949) 252-0090 Attorneys for Plaintiffs and Counter-Defendence of the Central Distriction of the Central Distric	DISTRICT COURT
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	BENNION & DEVILLE FINE HOMES, INC., a California corporation, BENNION & DEVILLE FINE HOMES SOCAL, INC., a California corporation, WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC., a California corporation, Plaintiffs, v. WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation; and DOES 1-10 Defendant.	Case No. 5:15-CV-01921 R (KKx) Hon. Manual L. Real OBJECTION TO DECLARATION OF JEFFREY A. FEASBY IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT Date: November 21, 2016 Time: 10:00 a.m. Courtroom: 8 [Filed concurrently with Reply Brief; Reply to Defendants Opposition to Separate Statement of Uncontroverted Facts & Opposition to Defendant's Separate Statement of Genuine Disputes] Action Filed: September 17, 2015 Pretrial Conf.: November 14, 2016 Trial: January 31, 2017
27 28	AND RELATED COUNTERCLAIMS	

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and Counter-Defendants Bennion & Deville Fine Homes SoCal, Inc. ("B&D SoCal"), Windermere Services Southern California, Inc. ("Services SoCal"), and Counter-Defendants Robert Bennion ("Bennion") and Joseph Deville ("Deville") (collectively, the "Moving Parties") hereby respectfully submit the following evidentiary objections to the Declaration of Jeffrey A. Feasby, and the exhibits thereto, submitted by Defendant Windermere Real Estate Services Company ("WSC") in support of its Opposition to the Moving Parties' Motion for Partial Summary Judgment.

Pursuant to Federal Rule of Civil Procedure ("FRCP") 56(c)(3), Plaintiffs

I. <u>INTRODUCTION</u>

In opposition to the Moving Parties' motion for partial summary judgment, WSC submitted the lone declaration of its litigation counsel, Jeffrey A. Feasby. [D.E. 68-2.] Through the declaration, Mr. Feasby attempts to introduce thirteen exhibits that he is not capable of authenticating. As explained in detail below, exhibits A, B, C, H, I, J, K, L, M, and N to Mr. Feasby's declaration should be rejected by the Court because Mr. Feasby lacks the personal knowledge necessary to establish the authenticity and lay the proper foundation to render the exhibits admissible.

II. OBJECTIONS TO DECLARATION OF JEFFREY A. FEASBY

EXHIBIT	ASSOCIATED	OBJECTION	
	DECLARATION TEXT		
Α	"This document was	Fed. R. Evid. 602, 901. Mr. Feasby	
1 1	attached to the parties'	does not lay the proper foundation for	
	respective complaints and	Exhibit A. Exhibits are not rendered	
	counterclaims, was	admissible merely by being attached to	
	exchanged in discovery,	a complaint. Ellipsis, Inc. v. The Color	
	and was attached as an	Works, Inc., No. 03-2939 B, 2006 WL	
	exhibit to a number of	1207589, at *8 (W.D. Tenn. May 4,	
	depositions of the parties	2006); see also Szymankiewicz v.	

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1		and their representatives."	<i>Picard</i> , No. 04-C-186-C, 2005 WL
2		(Decl. of Jeffrey A. Feasby	1154210, at *1 (W.D. Wis. May 13,
		in Support of Counter-	2005) ("In addition, plaintiff referred
3		Claimants' Opp. to Pls. and	to documentary exhibits attached to his
4		Counter-Defs.' Mot. for	complaint, but such exhibits do not
5		Partial Summ. J. ("Decl."), ¶ 3.)	become admissible simply because they are attached to a verified
		3. <i>)</i>	complaint."); Willis v. Ritter, No. CIV.
6			04-2303WQHJMA, 2008 WL 821828,
7			at *7 (S.D. Cal. Mar. 26, 2008)
8			(finding that declaration that did not set
9			forth facts made on personal
			knowledge, even if it referred to
10			exhibits attached to complaint, was not
11			true affidavit).
12			Exhibit A is not deemed authentic and
			admissible by being attached to a complaint. <i>See Ellipsis</i> , <i>Inc.</i> , 2006 WL
13			1207589, at *8; see also
14			Szymankiewicz, 2005 WL 1154210, at
15			*1; Willis, 2008 WL 821828, at *7.
16			Also, WSC does not identify who
			produced the document in discovery,
17			and the document does not bear the
18			Moving Parties' Bates stamp. See Orr
19			v. Bank of America, NT & SA, 285 F.3d
			764, 777 fn. 20, 21(9th Cir. 2002). Finally, WSC fails to cite to a
20			transcript that authenticates Exhibit A.
21			<i>Id.</i> at p. 774-75, fn. 12, 13.
22	В	"This document was	Fed. R. Evid. 602, 901. Mr. Feasby
23		attached to the parties'	does not lay the proper foundation for
		respective complaints and	Exhibit B. Exhibit B is not deemed
24		counterclaims, was	authentic and admissible by being
25		exchanged in discovery,	attached to a complaint. See Ellipsis,
26		and was attached as an exhibit to a number of	Inc., 2006 WL 1207589, at *8; see also
27		depositions of the parties	Szymankiewicz, 2005 WL 1154210, at *1; Willis, 2008 WL 821828, at *7.
		and their representatives."	Also, WSC does not identify who
28		(Decl., ¶ 4.)	produced the document in discovery,
		\ /	Transcription of the control of the

1			and the document does not bear the
2			Moving Parties' Bates stamp. See Orr,
3			285 F.3d at 777 fn. 20, 21. Finally, WSC fails to cite to a transcript that
			authenticates Exhibit B. See Orr, 285
4			F.3d at 774-75, fn. 12, 13.
5	С	"This document was	Fed. R. Evid. 602, 901. Mr. Feasby
6		attached to the parties'	does not lay the proper foundation for
7		respective complaints and	Exhibit C. Exhibit C is not deemed
		counterclaims, was	authentic and admissible by being
8		exchanged in discovery,	attached to a complaint. See Ellipsis,
9		and was attached as an exhibit to a number of	Inc., 2006 WL 1207589, at *8; see also Szymankiewicz, 2005 WL 1154210, at
10		depositions of the parties	*1; Willis, 2008 WL 821828, at *7.
11		and their representatives."	Also, WSC does not identify who
		(Decl., ¶ 5.)	produced the document in discovery,
12			and the document does not bear the
13			Moving Parties' Bates stamp. See Orr,
14			285 F.3d at 777 fn. 20, 21. Finally,
			WSC fails to cite to a transcript that
15			authenticates the Exhibit C. <i>See Orr</i> , 285 F.3d at 774-75, fn. 12, 13.
16	TT	"These documents were	Fed. R. Evid. 602, 901. Mr. Feasby's
17	Н	attached to the parties'	declaration does not lay the proper
18		respective complaints and	foundation for Exhibit H. Exhibit H is
19		counterclaims, were	not deemed authentic and admissible
		exchanged in discovery,	by being attached to a complaint. See
20		and were attached as	Ellipsis, Inc., 2006 WL 1207589, at *8;
21		exhibits to Mr. Deville's deposition. Included in the	see also Szymankiewicz, 2005 WL 1154210, at *1; Willis, 2008 WL
22		deposition testimony of	821828, at *7. Also, Defendant does
23		Mr. Deville, attached to	not identify who produced the
		this declaration as Exhibit	document in discovery, and the
24		D, is testimony from Mr.	document does not bear Plaintiffs' bate
25		Deville further	stamp. See Orr, 285 F.3d at 777 fn. 20,
26		authenticating these	21. Finally, Defendant fails to cite to a
27		documents." (Decl., ¶ 10.)	transcript that authenticates Exhibit H.
	τ	"This document was	See Orr, 285 F.3d at 774-75, fn. 12, 13. Fed. R. Evid. 602, 901. Mr. Feasby's
28	I	exchanged in discovery	declaration does not lay the proper
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1 2		and was attached as an exhibit to Mr. Deville's deposition. Included in the	foundation for Exhibit I. WSC does not identify who produced the document in discovery, and the document does not
3		deposition testimony of	bear the Moving Parties' Bates stamp;
		Mr. Deville, attached to	in fact it bears WSC's Bates stamp,
4 5		this declaration as Exhibit	and therefore cannot be authenticated
6		D, is testimony from Mr. Deville further	on the grounds that it was produced by a party-opponent. <i>See Orr</i> , 285 F.3d at
		authenticating these	777 fn. 20, 21. Furthermore, WSC fails
7		documents." (Decl., ¶ 11.)	to cite to the page and line in the
8			transcript that allegedly authenticates
9			Exhibit I. <i>See Orr</i> , 285 F.3d at 774-75, fn. 12, 13.
10	J	This document was	Fed. R. Evid. 602, 901. Mr. Feasby's
11	J	exchanged in discovery	declaration does not lay the proper
		and was attached as an	foundation for Exhibit J. WSC does not
12		exhibit to Mr. Deville's	identify who produced the document in
13		deposition. Included in the	discovery, and the document does not
14		deposition testimony of Mr. Deville, attached to	bear the Moving Parties' Bates stamp; in fact it bears WSC's Bates stamp and
15		this declaration as Exhibit	cannot be authenticated as a document
		D, is testimony from Mr.	produced by a party-opponent. See
16		Deville further	Orr, 285 F.3d at 777 fn. 20, 21.
17		authenticating these	Furthermore, WSC fails to cite to the
18		documents." (Decl., ¶ 12.)	page and line in the transcript that
19			authenticates Exhibit J. See Orr, 285 F.3d at 774-75, fn. 12, 13.
20	K	"This document was	Fed. R. Evid. 602, 901. Mr. Feasby's
21		attached to the parties'	declaration does not lay the proper
22		respective complaints and counterclaims, was	foundation for Exhibit K. Exhibit K is not deemed authentic and admissible
		exchanged in discovery,	by being attached to a complaint. See
23		and was attached as an	Ellipsis, Inc., 2006 WL 1207589, at *8;
24		exhibit to a number of	see also Szymankiewicz, 2005 WL
25		depositions of the parties	1154210, at *1; Willis, 2008 WL
26		and their representatives.	821828, at *7. WSC does not identify
27		Included in the deposition	who produced the document in
		testimony of Mr. Deville, attached to this declaration	discovery, and the document does not bear the Moving Party's Bates stamp;
28		as Exhibit D, is testimony	in fact it bears WSC's Bates stamp,
		·	* '

1		from Mr. Deville further	and therefore, cannot be authenticated
2		authenticating these	as a document produced by a party-
3		documents." (Decl., ¶ 13.)	opponent. <i>See Orr</i> , 285 F.3d at 777 fn. 20, 21. Furthermore, WSC fails to cite
			to the page and line in the transcript
4			that authenticates Exhibit K. See Orr,
5			285 F.3d at 774-75, fn. 12, 13.
6	L	"Attached as Exhibit L to	Fed. R. Evid. 602, 801, 805, 901. The
7		this declaration is a true	Declaration does not lay the proper
8		and correct copy of pages that I printed from the	foundation for Exhibit L. Defendant's counsel has personal knowledge that he
		California Bureau of Real	printed the page, but not as to the
9		Estate's website –	contents of the website. The fact that it
10		www.dre.ca.gov –	is a print out of a state agency website
11		regarding Fine Homes."	does not deem it <i>per se</i> authentic, and
12		(Decl., ¶ 14.)	is thus inadmissible. Fed R. Evid. 902; see also Jimena, 2011 WL 2551413, at
13			*4; see also In re Homestore.com, Inc.
			Sec. Litig., 347 F. Supp. 2d at 782–83;
14			San Luis, 136 F. Supp. 2d at 1146.
15	M	"Attached as Exhibit M to	Fed. R. Evid. 602, 801, 805, 901. Mr.
16		this declaration is a true and correct copy of pages	Feasby's declaration does not lay the proper foundation for Exhibit M.
17		that I printed from the	WSC's counsel has personal
18		California Bureau of Real	knowledge that he printed the page, but
		Estate's website –	not as to the contents of the website the
19		www.dre.ca.gov –	page was printed from or the accuracy
20		regarding." (Decl., ¶ 15.)	of the information displayed on the
21			page printed. The fact that it is a printout from the website of a state
22			agency does not deem it <i>per se</i>
23			authentic, and, without more, is thus
24			inadmissible. Fed R. Evid. 902; see
			Jimena v. UBS AG Bank, Inc., No.
25			1:07-CV-00367 OWW, 2011 WL 2551413, at *4 (E.D. Cal. June 27,
26			2011) (holding that e-mails not
27			authenticated or admissible where
28			declarant attested to having read and
			printed them); see also In re
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1			Homestore.com, Inc. Sec. Litig., 347 F.
2			Supp. 2d 769, 782–83 (C.D. Cal. 2004)
			(finding that print-out of website did
3			not bear indicia of reliability for self-
4			authenticating documents under FRE 902); <i>San Luis v. Badgley</i> , 136 F.
5			Supp. 2d 1136, 1146 (E.D. Cal. 2000)
			(denying judicial notice request for
6			print-out of federal website with real-
7			time monitoring data for failure to
8			show reliability and admissibility).
9	N	"Attached as Exhibit N to	Fed. R. Evid. 602, 801, 805, 901. Mr.
		this declaration is a true	Feasby's declaration does not lay the
10		and correct copy of pages I	proper foundation for Exhibit N.
11		printed from the California Secretary of State's	WSC's counsel has personal knowledge that he printed the page, but
12		website –	not as to the contents of the website.
13		https://businessfilings.sos.c	The fact that it is a print out of a state
14		<u>a.gov</u> – regarding WSSC."	agency website does not deem it per se
		(Decl., ¶ 16.)	authentic, and is thus inadmissible. Fed
15			R. Evid. 902; see also Jimena, 2011
16			WL 2551413, at *4; see also In re Homestore.com, Inc. Sec. Litig., 347 F.
17			Supp. 2d at 782–83; San Luis, 136 F.
18			Supp. 2d at 1146.
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III. <u>CONCLUSION</u>

Exhibits A through C and H through N to the declaration of Mr. Feasby, and associated paragraphs, are inadmissible on the grounds set forth above because they are not authenticated, and the Declaration does not lay the proper foundation for their admission. Accordingly, this Court should not consider the same in its analysis of the Moving Party's motion for partial summary judgment.

Dated: November 7, 2016 MULCAHY LLP

By: /s/ Kevin A. Adams
Kevin A. Adams
Attorneys for Plaintiffs/CounterDefendants Bennion & Deville Fine
Homes, Inc., Bennion & Deville Fine
Homes SoCal, Inc., Windermere
Services Southern California, Inc.,
and Counter-Defendants Robert L.
Bennion and Joseph R. Deville