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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 BENNION & DEVILLE FINE
17 HOMES, INC., a California
18 corporation, BENNION & DEVILLE
19 FINE HOMES SOCAL, INC., a
20 California corporation, WINDERMERE
21 SERVICES SOUTHERN
22 CALIFORNIA, INC., a California
23 corporation,

24 Plaintiffs,

25 v.

26 WINDERMERE REAL ESTATE
27 SERVICES COMPANY, a Washington
28 corporation; and DOES 1-10

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 5:15-CV-01921 R (KKx)

Hon. Manual L. Real

**THE B&D PARTIES' NOTICE OF
MOTION AND MOTION IN
LIMINE TO PRECLUDE WSC
FROM INTRODUCING EVIDENCE
OF THE PERSONAL WEALTH OF
PLAINTIFFS BENNION OR
DEVILLE**

[Motion in Limine # 3]

Date: May 1, 2017
Time: 10:00 a.m.
Courtroom: 880
Action Filed: September 17, 2015
Disc. Cut-Off: August 29, 2016
Pretrial Conf.: November 15, 2016
Trial: May 30, 2017

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2 TO DEFENDANT/COUNTER-CLAIMANT WINDERMERE REAL ESTATE
3 SERVICES COMPANY (“WSC”) AND THEIR ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE THAT ON May 1, 2017, at 10:00 a.m. or as soon
5 thereafter as counsel may be heard, the Courtroom of the Honorable Manuel L. Real,
6 located at 255 East Temple Street, Los Angeles, California 90012, Plaintiffs/Counter-
7 Defendants Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes
8 SoCal, Inc., Windermere Services Southern California, Inc., and Counter-Defendants
9 Robert L. Bennion and Joseph R. Deville (collectively referred to herein as the “B&D
10 Parties”), will and hereby do move this Court to grant their Motion in *Limine* No. 3 to
11 preclude Windermere Real Estate Service Company (“WSC”) from introducing at trial
12 exhibits, testimony, or other evidence relating to the wealth of Plaintiffs Joseph R.
13 Deville or Robert L. Bennion.

14 This motion is made under the provisions of Federal Rules of Evidence 401 and
15 403, and is based on this Notice of Motion and Motion, the attached Memorandum of
16 Points and Authorities, the [Proposed] Order filed and lodged herewith, the pleadings
17 and papers on file in this action, and upon such argument and evidence as may be
18 presented at the hearing on this matter.

19
20 DATED: April 3, 2017

MULCAHY LLP

21
22 By: /s/ Kevin A. Adams

23 Kevin A. Adams

24 *Attorneys for Plaintiffs/Counter-Defendants*

25 *Bennion & Deville Fine Homes, Inc.,*

26 *Bennion & Deville Fine Homes SoCal, Inc.,*

27 *Windermere Services Southern California,*

28 *Inc., and Counter-Defendants Robert L.*

Bennion and Joseph R. Deville

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs/Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion &
3 Deville Fine Homes SoCal, Inc., Windermere Services Southern California, Inc., and
4 Counter-Defendants Robert L. Bennion (“Bennion”) and Joseph R. Deville (“Deville”)
5 (collectively referred to herein as the “B&D Parties”) respectfully submit this
6 Memorandum of Points and Authorities in Support of their Motion in *Limine* to preclude
7 Windermere Real Estate Service Company (“WSC”) from introducing at trial exhibits,
8 testimony, or other evidence relating to the wealth of Plaintiffs Joseph R. Deville or
9 Robert L. Bennion.

10 **I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND**

11 The B&D Parties anticipate that WSC will attempt to introduce evidence in the
12 form of exhibits, testimony, or other references to the wealth of Plaintiffs Joseph R.
13 Deville (“Deville”) or Robert L. Bennion (“Bennion”). Evidence of Bennion’s and
14 Deville’s wealth should be excluded on the grounds that it (1) is not relevant to any claim,
15 counterclaim, or defense and (2) is prejudicial.

16 The claims and defenses in this case are centered on the parties’ respective
17 obligations under the franchise and area representative agreements, the California
18 Franchise Relations Act (“CFRA”), and state and federal trademark laws. (*See generally*
19 *First Amended Compl. (“FAC”); First Amended Countercl. (“FACC”).*) Neither
20 Bennion’s or Deville’s wealth are not at issue.

21 **II. EVIDENCE OF BENNION’S AND DEVILLE’S WEALTH IS IRRELEVANT**
22 **TO THIS CASE**

23 Evidence relating to Bennion’s and Deville’s wealth are not relevant to the
24 performance of the contracts at issue. Under Federal Rule of Evidence (“FRE”) 401,
25 “[e]vidence is relevant if (a) it has any tendency to make a fact more or less probable than
26 it would be without the evidence; and (b) the fact is of consequence in determining the
27 action.” Fed. R. Evid. 403. “Irrelevant evidence is not admissible.” Fed. R. Evid. 402.
28 Consequently, irrelevant evidence may be properly excluded from trial. *See Gribben v.*

1 *United Parcel Service, Inc.*, 528 F.3d 1166, 1171 (2008) (upholding exclusion of prior
2 consent decree with EEOC as irrelevant in employment discrimination case).

3 Here, the B&D Parties anticipate that WSC will attempt to introduce evidence of
4 Bennion's and Deville's wealth. The scope of relevance is set by the parties' pleadings.
5 Here, the parties' contract claims arise out of the franchise and area representation
6 agreements, the CFRA, and trademark laws. (*See generally* FAC; FACC.) Evidence of
7 Bennion's and Deville's wealth will not make any fact of consequence to this action any
8 more or less likely. Accordingly, all evidence of Bennion's and Deville's wealth should be
9 excluded as irrelevant.

10 **III. EVIDENCE RELATING TO BENNION'S AND DEVILLE'S WEALTH**
11 **CARRIES THE DANGER OF UNFAIR PREJUDICE**

12 To the extent that the Court finds that evidence relating to the individual parties'
13 wealth have some nominal relevance to the instant dispute (*it should not*), all evidence
14 involving the same should still be excluded because it is highly prejudicial. Under FRE
15 403, "[t]he court may exclude relevant evidence if its probative value is substantially
16 outweighed by a danger of one or more of the following: unfair prejudice, confusing the
17 issues, misleading the jury, undue delay, wasting time or needlessly presenting cumulative
18 evidence." The Supreme Court of the United States declared that "appeals to class
19 prejudice are highly improper and cannot be condoned and trial courts should ever be alert
20 to prevent them." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 239.

21 Here, evidence relating to Bennion's and Deville's wealth is highly prejudicial and
22 should be excluded under FRE 403. Evidence relating to the parties' wealth could lead the
23 jury to make a decision based upon their ability to pay a judgment. Moreover, introduction
24 of evidence relating to wealth where it is not at issue is the very practice the Supreme
25 Court admonished. *Socony-Vacuum Oil Co.*, 310 U.S. at 239. Given the danger of the
26 jury's reliance on this evidence, and the lack of any probative value whatsoever, this
27 evidence is unfairly prejudicial and should be excluded.

1 **IV. CONCLUSION**

2 For the Foregoing reasons, the B&D Parties respectfully ask that this Court grant
3 its motion *in limine* and issue an order barring WSC from presenting any evidence
4 referring to or regarding Bennion's and Deville's respective wealth.

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6 Dated: April 3, 2017

MULCAHY LLP

7
8 By: /s/ Kevin A. Adams

9 Kevin A. Adams

10 *Attorneys for Plaintiffs/Counter-Defendants*
11 *Bennion & Deville Fine Homes, Inc., Bennion &*
12 *Deville Fine Homes SoCal, Inc., Windermere*
13 *Services Southern California, Inc., and Counter-*
14 *Defendants Robert L. Bennion and Joseph R.*
15 *Deville*