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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BENNION & DEVILLE FINE
14 HOMES, INC., a California
15 corporation, BENNION & DEVILLE
16 FINE HOMES SOCAL, INC., a
17 California corporation, WINDERMERE
18 SERVICES SOUTHERN
19 CALIFORNIA, INC., a California
20 corporation,

21 Plaintiffs,

22 v.

23 WINDERMERE REAL ESTATE
24 SERVICES COMPANY, a Washington
25 corporation; and DOES 1-10

26 Defendant.

Case No. 5:15-CV-01921 R (KKx)
Hon. Manual L. Real

**OBJECTIONS TO WINDERMERE
REAL ESTATE SERVICES
COMPANY'S MOTION IN LIMINE
TO EXCLUDE GARY KRUGER
FROM TESTIFYING AT TRIAL
(Dkt. No. 142-1)**

Date: August 7, 2017
Time: 10:00 a.m.
Courtroom: 880

Action Filed: September 17, 2015
Trial: None Set

27 AND RELATED COUNTERCLAIMS
28

1 Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes SoCal,
 2 Inc., Windermere Services Southern California, Inc., and Counter-Defendants
 3 Robert Bennion and Joseph Deville (collectively, the “B&D Parties”) hereby
 4 respectfully submit the following evidentiary objections to Windermere Real
 5 Estate Services Company’s (“WSC”) Motion in *Limine* to Exclude Gary Kruger
 6 From Testifying at Trial (“Motion”).

7
 8 **OBJECTIONS TO MOTION [D.E. 142-1]**

TEXT CITATION	ASSOCIATED DECLARATION TEXT	OBJECTION
Page 1, Lines 21-22	“In or on 2002, Kruger filed a lawsuit against a WSC franchisee in the Seattle, Washington area.”	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F. v. Blue Shield of California</i> , 305 F.R.D. 115, 122–23 (N.D. Cal. 2014) (“With the exception of motions on the pleadings, motions in federal court are generally decided on the basis of declarations or affidavits or other written evidence, including properly authenticated exhibits. [] The court does not consider any arguments based on factual assertions that are unsupported by evidence.”) (citing Fed. R. Civ. P. 43(c); Civ. L.R. 7–5; Schwarzer, Tashima & Wagstaffe, <i>Federal Civil Procedure Before Trial</i> §§ 12:42, et seq.). Lacks foundation. Fed. R. Evid. 602.

1 2 3 4 5 6	Page 1, Lines 22-23	“After he lost the lawsuit, Kruger began to voice his negative opinions regarding WSC and some of its franchisees.”	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F.</i> , 305 F.R.D. at 122–23. Lacks foundation. Fed. R. Evid. 602.
7 8 9 10 11	Page 1, Lines 23-26	“Kruger created and launched a negative marketing campaign he named “Windermere Watch,” consisting initially of postcards and other materials sent through the US mail and via fax.”	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F.</i> , 305 F.R.D. at 122–23. Lacks foundation. Fed. R. Evid. 602.
12 13 14 15 16 17	Page 1, Lines 26-28	“Later, Kruger registered the internet domain name “windermwerewatch.com,” and published a website at that address in an effort to disparage the WSC name and it [sic] franchisees.”	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F.</i> , 305 F.R.D. at 122–23. Lacks foundation. Fed. R. Evid. 602.
18 19 20 21 22 23	Page 2, Lines 1-3	“Although it now appears Kruger has been in touch with Counter-Defendants’ counsel during this litigation, Kruger never had any dealings with Bennion or Deville while they were WSC franchisees.”	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F.</i> , 305 F.R.D. at 122–23. Lacks foundation. Fed. R. Evid. 602.
24 25 26 27 28	Page , Lines 3-5	“Kruger was not involved in drafting the relevant documents and has no relevant knowledge about the parties’ obligations under their various agreements or their performance of the	WSC does not cite to any declaration or other form of evidence to support the factual assertion. As a result, the Court should not consider WSC’s factual assertions or arguments based on unsupported facts. <i>Daniel F.</i> , 305 F.R.D. at 122–23. Lacks foundation. Fed. R. Evid. 602.

1		agreements.”	
2	Page 2, Lines	“On December 14, 2015,	WSC does not cite to any declaration
3	6-8	Counter-Defendants served	or other form of evidence to support
4		their Rule 26 Initial	the factual assertion. As a result, the
5		Disclosures identifying 24	Court should not consider WSC’s
6		individuals likely to have	factual assertions or arguments based
7		discoverable information	on unsupported facts. <i>Daniel F.</i> , 305
8		they anticipated using to	F.R.D. at 122–23. Lacks foundation.
9		support their claims or	Fed. R. Evid. 602.
10		defenses. (Exhibit A.)”	
11	Page 2, Lines	“That list included, <i>inter</i>	WSC does not cite to any declaration
12	8-9	<i>alia</i> , Bennion, Deville, and	or other form of evidence to support
13		several principals of WSC.	the factual assertion. As a result, the
14		(<i>Id.</i> , p. 2-7.)”	Court should not consider WSC’s
15			factual assertions or arguments based
16			on unsupported facts. <i>Daniel F.</i> , 305
17			F.R.D. at 122–23. Lacks foundation.
18			Fed. R. Evid. 602.

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15 In light of the above objections, the B&D Parties respectfully request that
16 the Court not consider the corresponding factual assertions in its analysis of
17 WSC’s Motion.

18 Dated: July 17, 2017

MULCAHY LLP

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20 By: /s/ Kevin A. Adams
Kevin A. Adams
21 *Attorneys for Plaintiffs/Counter-*
22 *Defendants*