

1 John D. Vaughn, State Bar No. 171801
Jeffrey A. Feasby, State Bar No. 208759
2 PEREZ VAUGHN & FEASBY Inc.
750 B Street, Suite 3300
3 San Diego, California 92101
Telephone: 619-702-8044
4 Facsimile: 619-460-0437
E-Mail: vaughn@perezwilson.com
5

6 Jeffrey L. Fillerup, State Bar No. 120543
Dentons US LLP
7 One Market Plaza Spear Tower
24th Floor
8 San Francisco, California 94105
Telephone: 415.356.4625
9 Facsimile: 619.267.4198
E-Mail: jeff.fillerup@dentons.com
10

11 Attorneys for Defendant and Counterclaimant
Windermere Real Estate Services Company
12

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

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

19 Plaintiffs,

20 v.

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

24 Defendant.
25
26

27 **AND RELATED COUNTERCLAIMS**
28

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

Hon. Manuel L. Real

**DEFENDANT WINDERMERE
REAL ESTATE SERVICES
COMPANY'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF KEVIN
ADAMS IN OPPOSITION TO
APPLICATION FOR RIGHT TO
ATTACH ORDERS AND ORDERS
FOR WRITS OF ATTACHMENT**

Date: December 19, 2016

Time: 10:00 a.m.

Courtroom: 8

1 Defendant and Counterclaimant Windermere Real Estate Services Company
2 (“WSC”) respectfully submits the following evidentiary objections to the exhibits
3 attached to the Declaration of Kevin Adams in Support of Plaintiffs and Counter-
4 Defendants’ Opposition to Windermere Real Estate Services Company’s
5 Application for Right to Attach Orders for Issuance of Writs of Attachment
6 (“Declaration”).

7 **Objection Number 1**

8 Exhibit A to the Declaration – Geoff Wood Deposition, p. 99 line 6-8: “Okay.
9 Now, wouldn’t you agree that Windermere, at the very least, has a good-faith
10 obligation to protect that name?”

11 **Grounds for Objection 1:**

12 Counsel for WSC properly objected to the form of the question, thus
13 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
14 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
15 and uncertain as to “that name” and calls for a legal conclusion regarding WSC’s
16 “obligation.” *See Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*,
17 § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev. § 8:3228*
18 (proper form objections include objections as to leading, suggestive, ambiguous,
19 uncertain, and compound questions, questions that assume facts not in evidence, call
20 for a narration, call for speculation, or are argumentative.)

21 **Objection Number 2**

22 Exhibit A to the Declaration – Geoff Wood Deposition, p. 154, line 15-17:
23 “And you don’t have a mechanism in place at Windermere to prevent these types of
24 false messages from being sent out?”

25 **Grounds for Objection 2:**

26 Counsel for WSC properly objected to the form of the question, thus
27 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
28 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,

1 and uncertain as to “these types of false messages,” argumentative, and assumes
2 facts not in evidence as to whether any “false messages” were sent out. *See Rutter*
3 *Group Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also*
4 *Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections
5 include objections as to leading, suggestive, ambiguous, uncertain, and compound
6 questions, questions that assume facts not in evidence, call for a narration, call for
7 speculation, or are argumentative.)

8 **Objection Number 3**

9 Exhibit A to the Declaration – Geoff Wood Deposition, p. 168, line 24-25:
10 “You didn’t take Windermere Watch very seriously, did you?”

11 **Grounds for Objection 3:**

12 Counsel for WSC properly objected to the form of the question, thus
13 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
14 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
15 and uncertain and is argumentative. *See Rutter Group Prac. Guide: Federal Civil*
16 *Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ.*
17 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
18 suggestive, ambiguous, uncertain, and compound questions, questions that assume
19 facts not in evidence, call for a narration, call for speculation, or are argumentative.)

20 **Objection Number 4**

21 Exhibit A to the Declaration – Geoff Wood Deposition, p. 172, line 13-15:
22 “Wouldn’t that be important for a CEO of the company to know whether or not the
23 logo that represented the brand was changed?”

24 **Grounds for Objection 4:**

25 Counsel for WSC properly objected to the form of the question, thus
26 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
27 614, 618 (D. Nev. 1998). This question is improper because it offers an incomplete
28 hypothetical, assumes facts not in evidence, and is argumentative. *See Rutter Group*

1 *Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555; see also *Rutter*
2 *Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include
3 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
4 questions that assume facts not in evidence, call for a narration, call for speculation,
5 or are argumentative.)

6 **Objection Number 5**

7 Exhibit A to the Declaration – Geoff Wood Deposition, p. 176, line 2: “And
8 did Windermere have a plan in place.”

9 **Grounds for Objection 5:**

10 Counsel for WSC properly objected to the form of the question, thus
11 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
12 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
13 and uncertain as to “a plan.” See *Rutter Group Prac. Guide: Federal Civil*
14 *Procedure Before Trial*, § 11:1555; see also *Rutter Group Prac. Guide Fed. Civ.*
15 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
16 suggestive, ambiguous, uncertain, and compound questions, questions that assume
17 facts not in evidence, call for a narration, call for speculation, or are argumentative.)

18 **Objection Number 6**

19 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 92, line 15-
20 20: “In 2007, there were additional – let me strike that. Windermere was increasing
21 its technology fees fairly often during the course of its relationship with Mr.
22 Bennion and Mr. Deville. Is that an accurate representation?”

23 **Grounds for Objection 6:**

24 Counsel for WSC properly objected to the form of the question, thus
25 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
26 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
27 and uncertain as to “fairly often.” See *Rutter Group Prac. Guide: Federal Civil*
28 *Procedure Before Trial*, § 11:1555; see also *Rutter Group Prac. Guide Fed. Civ.*

1 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
2 suggestive, ambiguous, uncertain, and compound questions, questions that assume
3 facts not in evidence, call for a narration, call for speculation, or are argumentative.)

4 **Objection Number 7**

5 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 106, line 17-
6 20: “Okay. And Windermere believed, and still believes, that the statements by Mr.
7 Kruger had crossed the lines and have been demonstrably false, correct?”

8 **Grounds for Objection 7:**

9 Counsel for WSC properly objected to the form of the question, thus
10 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
11 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
12 and uncertain as to “crossed the lines,” and is compound. *See Rutter Group Prac.*
13 *Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group*
14 *Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include
15 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
16 questions that assume facts not in evidence, call for a narration, call for speculation,
17 or are argumentative); *see also Paramount Farms Intern. LLC v. Ventilex B.V.*, 500
18 F. App’x. 586, 588 (9th Cir. 2012) (testimony elicited pursuant to compound
19 questions is properly excluded).

20 **Objection Number 8**

21 Exhibit B to the Declaration – Paul Drayna Deposition, Vol. 1 p. 112, line 22-
22 25: “Okay. And by dismissing – by voluntarily dismissing the action, Windermere
23 actually emboldened Mr. Kruger to take more action against Windermere and its
24 franchisees, correct?”

25 **Grounds for Objection 8:**

26 Counsel for WSC properly objected to the form of the question, thus
27 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
28 614, 618 (D. Nev. 1998). This question is improper because it calls for speculation

1 as to whether Mr. Kruger was emboldened, lacks foundation, assumes facts not in
2 evidence, is vague, ambiguous, and uncertain as to “more action,” and is compound.
3 *See Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555;
4 *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form
5 objections include objections as to leading, suggestive, ambiguous, uncertain, and
6 compound questions, questions that assume facts not in evidence, call for a
7 narration, call for speculation, or are argumentative); *see also Paramount Farms*
8 *Intern. LLC v. Ventilex B.V.*, 500 F. App’x. 586, 588 (9th Cir. 2012) (testimony
9 elicited pursuant to compound questions is properly excluded).

10 Objection Number 9

11 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 114, line 16:
12 “What was Mr. Kruger’s price for settlement?”

13 **Grounds for Objection 9:**

14 Counsel for WSC properly objected to the form of the question, thus
15 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
16 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
17 and uncertain as to “price for settlement,” and calls for speculation regarding Mr.
18 Kruger’s price. *See Rutter Group Prac. Guide: Federal Civil Procedure Before*
19 *Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* §
20 8:3228 (proper form objections include objections as to leading, suggestive,
21 ambiguous, uncertain, and compound questions, questions that assume facts not in
22 evidence, call for a narration, call for speculation, or are argumentative).

23 Objection Number 10

24 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 114, line 21-
25 22: “What amount did Mr. Kruger relay to Windermere that his price would be to go
26 away?”

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1 **Objection Number 14**

2 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 199, line 9-
3 10: “What does commercially reasonable efforts mean?”

4 **Grounds for Objection 14:**

5 Counsel for WSC properly objected to the form of the question, thus
6 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
7 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
8 and uncertain, and calls for a legal conclusion. *See Rutter Group Prac. Guide:*
9 *Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac.*
10 *Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include objections as
11 to leading, suggestive, ambiguous, uncertain, and compound questions, questions
12 that assume facts not in evidence, call for a narration, call for speculation, or are
13 argumentative).

14 **Objection Number 15**

15 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 199, line 23-
16 24: “And is that different than good faith effort?”

17 **Grounds for Objection 15:**

18 Counsel for WSC properly objected to the form of the question, thus
19 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
20 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
21 and uncertain, and calls for a legal conclusion. *See Rutter Group Prac. Guide:*
22 *Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac.*
23 *Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include objections as
24 to leading, suggestive, ambiguous, uncertain, and compound questions, questions
25 that assume facts not in evidence, call for a narration, call for speculation, or are
26 argumentative).

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1 **Objection Number 16**

2 Exhibit B to the Declaration – Paul Drayna Deposition Vol. 1, p. 237, line 18-
3 20: “Did it concern Windermere that Windermere Watch is directly affecting the
4 ability of these new franchisees to operate?”

5 **Grounds for Objection 16:**

6 Counsel for WSC properly objected to the form of the question, thus
7 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
8 614, 618 (D. Nev. 1998). This question is improper because it assumes facts not in
9 evidence and lacks foundation that anything was “affecting the ability of these new
10 franchisees to operate.” *See Rutter Group Prac. Guide: Federal Civil Procedure*
11 *Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* §
12 8:3228 (proper form objections include objections as to leading, suggestive,
13 ambiguous, uncertain, and compound questions, questions that assume facts not in
14 evidence, call for a narration, call for speculation, or are argumentative).

15 **Objection Number 17**

16 Exhibit C to the Declaration – York Baur Deposition, p. 42, line 20-22: “As
17 the CEO of Windermere Solutions, you have no idea how much of the revenue
18 obtained from that company is dedicated towards research and development?”

19 **Grounds for Objection 17:**

20 Counsel for WSC properly objected to the form of the question, thus
21 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
22 614, 618 (D. Nev. 1998). This question is improper because it is argumentative and
23 mischaracterizes prior testimony. *See Rutter Group Prac. Guide: Federal Civil*
24 *Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ.*
25 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
26 suggestive, ambiguous, uncertain, and compound questions, questions that assume
27 facts not in evidence, call for a narration, call for speculation, or are argumentative).

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1 **Objection Number 18**

2 Exhibit C to the Declaration – York Baur Deposition, p. 112, line 7-11: “So
3 it’s your understanding that Windermere Solutions was not permitted to sell or offer
4 technology or technology-related services to agents outside of the Windermere
5 System that were located within their regions where Windermere agents were
6 located?”

7 **Grounds for Objection 18:**

8 Counsel for WSC properly objected to the form of the question, thus
9 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
10 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
11 and uncertain as to “their regions,” compound, and calls for a legal conclusion. *See*
12 *Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see*
13 *also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form
14 objections include objections as to leading, suggestive, ambiguous, uncertain, and
15 compound questions, questions that assume facts not in evidence, call for a
16 narration, call for speculation, or are argumentative); *see also Paramount Farms*
17 *Intern. LLC v. Ventilex B.V.*, 500 F. App’x. 586, 588 (9th Cir. 2012) (testimony
18 elicited pursuant to compound questions is properly excluded).

19 **Objection Number 19**

20 Exhibit C to the Declaration – York Baur Deposition page 152, line 17-19:
21 “And so then is it safe to assume that that technology is used by other brokerages to
22 compete with Windermere real estate agents?”

23 **Grounds for Objection 19:**

24 Counsel for WSC properly objected to the form of the question, thus
25 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
26 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
27 and uncertain as to “that technology,” and calls for speculation. *See Rutter Group*
28 *Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter*

1 *Group Prac. Guide Fed. Civ. Trials & Ev. § 8:3228* (proper form objections include
2 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
3 questions that assume facts not in evidence, call for a narration, call for speculation,
4 or are argumentative).

5 **Objection Number 20**

6 Exhibit C to the Declaration – York Baur Deposition page 155, line 7-11: “Do
7 you know whether or not TouchCMA was sold to competitive brokerages within the
8 footprint of Windermere brokerages?”

9 **Grounds for Objection 20:**

10 Counsel for WSC properly objected to the form of the question, thus
11 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
12 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
13 and uncertain as to “competitive brokerages,” and lacks foundation that the witness
14 knows “the footprint of Windermere brokerages” or which brokerages are
15 “competitive.” *See Rutter Group Prac. Guide: Federal Civil Procedure Before*
16 *Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev. §*
17 *8:3228* (proper form objections include objections as to leading, suggestive,
18 ambiguous, uncertain, and compound questions, questions that assume facts not in
19 evidence, call for a narration, call for speculation, or are argumentative).

20 **Objection Number 21**

21 Exhibit C to the Declaration – York Baur Deposition page 156, line 8-11:
22 “And the question was, now I’ll paraphrase here, did Windermere Solutions offer
23 TouchCMA to non-Windermere brokerages within the footprint of Windermere
24 brokerages?”

25 **Grounds for Objection 21:**

26 Counsel for WSC properly objected to the form of the question, thus
27 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
28 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,

1 and uncertain as to “offer,” and lacks foundation that the witness knows “the
2 footprint of Windermere brokerages.” *See Rutter Group Prac. Guide: Federal Civil*
3 *Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ.*
4 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
5 suggestive, ambiguous, uncertain, and compound questions, questions that assume
6 facts not in evidence, call for a narration, call for speculation, or are argumentative).

7 **Objection Number 22**

8 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 page 96,
9 line 4-6: “Could anyone, to your knowledge, at Windermere think of something else
10 to do that hadn’t already been done with respect to Windermere Watch?”

11 **Grounds for Objection 22:**

12 Counsel for WSC properly objected to the form of the question, thus
13 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
14 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
15 and uncertain as to “something else to do,” and calls for speculation. *See Rutter*
16 *Group Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also*
17 *Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections
18 include objections as to leading, suggestive, ambiguous, uncertain, and compound
19 questions, questions that assume facts not in evidence, call for a narration, call for
20 speculation, or are argumentative).

21 **Objection Number 23**

22 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 page 72,
23 line 9-10: “And you understood that Windermere Watch was negatively affecting
24 Windermere franchisees?”

25 **Grounds for Objection 23:**

26 Counsel for WSC properly objected to the form of the question, thus
27 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
28 614, 618 (D. Nev. 1998). This question is improper because it assumes facts not in

1 evidence, lacks foundation, and is vague, ambiguous, and uncertain as to
2 “negatively affecting.” *See Rutter Group Prac. Guide: Federal Civil Procedure*
3 *Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* §
4 8:3228 (proper form objections include objections as to leading, suggestive,
5 ambiguous, uncertain, and compound questions, questions that assumes facts not in
6 evidence, call for a narration, call for speculation, or are argumentative).

7 **Objection Number 24**

8 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 page 72,
9 line 17-18: “And do you think the site has any impact whatsoever on Windermere
10 franchisees?”

11 **Grounds for Objection 24:**

12 Counsel for WSC properly objected to the form of the question, thus
13 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
14 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
15 and uncertain as to “the site” and “any impact whatsoever.” *See Rutter Group Prac.*
16 *Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group*
17 *Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include
18 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
19 questions that assumes facts not in evidence, call for a narration, call for speculation,
20 or are argumentative).

21 **Objection Number 25**

22 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 page 73,
23 line 3-4: “Why don’t we answer my question and then you can give your narrative.”

24 **Grounds for Objection 25:**

25 Counsel for WSC properly objected to the form of the question, thus
26 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
27 614, 618 (D. Nev. 1998). This question is improper because it is argumentative and
28 uncertain. *See Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*, §

1 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper
2 form objections include objections as to leading, suggestive, ambiguous, uncertain,
3 and compound questions, questions that assumes facts not in evidence, call for a
4 narration, call for speculation, or are argumentative).

5 **Objection Number 26**

6 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 page 74,
7 line 18-19: “Is – do you believe that Windermere Watch impacts the business of
8 Windermere franchisees?”

9 **Grounds for Objection 26:**

10 Counsel for WSC properly objected to the form of the question, thus
11 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
12 614, 618 (D. Nev. 1998). This question is improper because it lacks foundation, is
13 vague, ambiguous, and uncertain as to “impacted the business,” and is vague as to
14 time.” *See Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*, §
15 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper
16 form objections include objections as to leading, suggestive, ambiguous, uncertain,
17 and compound questions, questions that assumes facts not in evidence, call for a
18 narration, call for speculation, or are argumentative).

19 **Objection Number 27**

20 Exhibit D to the Declaration – Michael Teather Deposition Vol. 1 p. 77, line
21 20-22: “And you didn’t think that communicating with him without a goal in mind
22 would hurt the Windermere System.”

23 **Grounds for Objection 27:**

24 Counsel for WSC properly objected to the form of the question, thus
25 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
26 614, 618 (D. Nev. 1998). This question is improper because it is argumentative,
27 mischaracterizes prior testimony, and is lacks foundation. *See Rutter Group Prac.*
28 *Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group*

1 *Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form objections include
2 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
3 questions that assumes facts not in evidence, call for a narration, call for speculation,
4 or are argumentative).

5 **Objection Number 28**

6 Exhibit E to the Declaration – Michael Teather Deposition Vol. 2 p. 80, line
7 15-17: “Do you have an understanding as to why Mr. Kruger tells you that he will
8 not speak to you on the phone if you contacted him via email?”

9 **Grounds for Objection 28:**

10 Counsel for WSC properly objected to the form of the question, thus
11 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
12 614, 618 (D. Nev. 1998). This question is improper because it calls for speculation,
13 and is argumentative. *See Rutter Group Prac. Guide: Federal Civil Procedure*
14 *Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* §
15 8:3228 (proper form objections include objections as to leading, suggestive,
16 ambiguous, uncertain, and compound questions, questions that assumes facts not in
17 evidence, call for a narration, call for speculation, or are argumentative).

18 **Objection Number 29**

19 Exhibit E to the Declaration – Michael Teather Deposition Vol. 2 p. 82, line
20 16-15: “And you say in your email you want to seek solutions, but did you have any
21 means as to achieving those solutions?”

22 **Grounds for Objection 29:**

23 Counsel for WSC properly objected to the form of the question, thus
24 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
25 614, 618 (D. Nev. 1998). This question is improper because it is vague, ambiguous,
26 and uncertain as to “any means as to achieving those solutions,” and lacks
27 foundation as to what solutions were being considered. *See Rutter Group Prac.*
28 *Guide: Federal Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group*

1 *Prac. Guide Fed. Civ. Trials & Ev. § 8:3228* (proper form objections include
2 objections as to leading, suggestive, ambiguous, uncertain, and compound questions,
3 questions that assumes facts not in evidence, call for a narration, call for speculation,
4 or are argumentative).

5 **Objection Number 30**

6 Exhibit F to the Declaration – Noelle Bortfeld Deposition p. 74, line 21-22:
7 “Okay. But it wasn’t something that you were concerned with or concerned
8 yourself with?”

9 **Grounds for Objection 30:**

10 Counsel for WSC properly objected to the form of the question, thus
11 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
12 614, 618 (D. Nev. 1998). This question is improper because it assumes facts not in
13 evidence, lacks foundation, is argumentative, and is vague, ambiguous, and
14 uncertain as to “it.” *See Rutter Group Prac. Guide: Federal Civil Procedure*
15 *Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev. §*
16 *8:3228* (proper form objections include objections as to leading, suggestive,
17 ambiguous, uncertain, and compound questions, questions that assumes facts not in
18 evidence, call for a narration, call for speculation, or are argumentative).

19 **Objection Number 31**

20 Exhibit G to the Declaration – Mark Oster Deposition p. 46, line 6-8: “Do you
21 know the payment by Bennion & Deville Fine Homes, Inc. prior to July 1st 2014, to
22 Windermere?”

23 **Grounds for Objection 31:**

24 Counsel for WSC properly objected to the form of the question, thus
25 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
26 614, 618 (D. Nev. 1998). This question is improper because it lacks foundation, is
27 vague, ambiguous, and uncertain as to “the payment made.” As a franchisee and
28 occasional debtor of WSC, Bennion & Deville Fine Homes made numerous

1 payments to WSC prior to July 1st, 2014. *See Rutter Group Prac. Guide: Federal*
2 *Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed.*
3 *Civ. Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
4 suggestive, ambiguous, uncertain, and compound questions, questions that assumes
5 facts not in evidence, call for a narration, call for speculation, or are argumentative).

6 **Objection Number 32**

7 Exhibit G to the Declaration – Mark Oster Deposition p. 46, line 17-20:
8 “Amounts that would be due for a particular month are due when, 15 days after, 30
9 days after?”

10 **Grounds for Objection 32:**

11 Counsel for WSC properly objected to the form of the question, thus
12 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
13 614, 618 (D. Nev. 1998). This question is improper because it is compound, and it
14 is vague, ambiguous, and uncertain as to which payments under which agreements.
15 *See Rutter Group Prac. Guide: Federal Civil Procedure Before Trial*, § 11:1555;
16 *see also Rutter Group Prac. Guide Fed. Civ. Trials & Ev.* § 8:3228 (proper form
17 objections include objections as to leading, suggestive, ambiguous, uncertain, and
18 compound questions, questions that assumes facts not in evidence, call for a
19 narration, call for speculation, or are argumentative); *see also Paramount Farms*
20 *Intern. LLC v. Ventilex B.V.*, 500 F. App’x. 586, 588 (9th Cir. 2012) (testimony
21 elicited pursuant to compound questions is properly excluded).

22 **Objection Number 33**

23 Exhibit J to the Declaration – Michael Fanning Deposition p. 78, line 17-19:
24 “Okay. So it’s not the job of an area rep to take action to lower Windermere
25 Watch’s SEO listings, correct?”

26 **Grounds for Objection 33:**

27 Counsel for WSC properly objected to the form of the question, thus
28 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.

1 614, 618 (D. Nev. 1998). This question is improper because it mischaracterizes
2 prior testimony, lacks foundation, and is vague, ambiguous, and uncertain as to
3 “lower Windermere Watch’s SEO listings.” *See Rutter Group Prac. Guide: Federal*
4 *Civil Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed.*
5 *Civ. Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
6 suggestive, ambiguous, uncertain, and compound questions, questions that assumes
7 facts not in evidence, call for a narration, call for speculation, or are argumentative);
8 *see also Paramount Farms Intern. LLC v. Ventilex B.V.*, 500 F. App’x. 586, 588 (9th
9 Cir. 2012) (testimony elicited pursuant to compound questions is properly
10 excluded).

11 **Objection Number 34**

12 Exhibit J to the Declaration – Michael Fanning Deposition p. 79, line 11-14:
13 “And you informed Jill and Geoff of Mr. Curtis’ concerns that Windermere needed
14 to take action to permanently remove Windermere Watch off of the first page of the
15 search results, correct?”

16 **Grounds for Objection 34:**

17 Counsel for WSC properly objected to the form of the question, thus
18 preserving his objections. *In re Stratosphere Corp. Securities Litigation*, 182 F.R.D.
19 614, 618 (D. Nev. 1998). This question is improper because it lacks foundation, and
20 mischaracterizes prior testimony. *See Rutter Group Prac. Guide: Federal Civil*
21 *Procedure Before Trial*, § 11:1555; *see also Rutter Group Prac. Guide Fed. Civ.*
22 *Trials & Ev.* § 8:3228 (proper form objections include objections as to leading,
23 suggestive, ambiguous, uncertain, and compound questions, questions that assumes
24 facts not in evidence, call for a narration, call for speculation, or are argumentative);
25 *see also Paramount Farms Intern. LLC v. Ventilex B.V.*, 500 F. App’x. 586, 588 (9th
26 Cir. 2012) (testimony elicited pursuant to compound questions is properly
27 excluded).

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1 **Objection Number 35**

2 Exhibit L to the Declaration – Plaintiffs and Counter-Defendants’ Expert
3 Witness Disclosure Containing the Expert Witness Report of Peter Wrobel

4 **Grounds for Objection 35:**

5 Hearsay: Mr. Wrobel’s report is inadmissible hearsay not subject to any
6 exception. Absent testimony from the expert adopting and verifying the opinions
7 contained in the report, expert reports are only admissible if they are accompanied
8 by an affidavit from the witness swearing to the substance of the report. *See Huevo*
9 *v. Los Angeles Community College Dist.*, No. 04-9772, 2007 WL 7289347, *2, FN
10 18 (CD Cal. 2007, Feb. 27, 2007) (citing *Fowle v. C&C Cola*, 868 F.2d 59, 67 (3d
11 Cir. 1989)); *see also Carson Harbor Village, Ltd. v. Unocal Corp.*, No. 96-3281,
12 2003 WL 22038700, *6 (CD Cal., Aug. 8, 2003) (an expert report is inadmissible
13 hearsay absent a declaration from the expert attesting to the report’s authenticity).
14 Mr. Wrobel did not submit an affidavit or declaration swearing to the authenticity of
15 his report. Consequently, the report is inadmissible and cannot be considered for
16 purposes of this application.

17 **Objection Number 36**

18 Exhibit M to the Declaration – Plaintiffs and Counter-Defendants’ Expert
19 Witness Disclosure Containing the Expert Witness Report of Marvin Storm.

20 **Grounds for Objection 36:**

21 Hearsay: Mr. Storm’s report is inadmissible hearsay not subject to any
22 exception. Absent testimony from the expert adopting and verifying the opinions
23 contained in the report, expert reports are only admissible if they are accompanied
24 by an affidavit from the witness swearing to the substance of the report. *See Huevo*
25 *v. Los Angeles Community College Dist.*, No. 04-9772, 2007 WL 7289347, *2, FN
26 18 (CD Cal. 2007, Feb. 27, 2007) (citing *Fowle v. C&C Cola*, 868 F.2d 59, 67 (3d
27 Cir. 1989)); *see also Carson Harbor Village, Ltd. v. Unocal Corp.*, No. 96-3281,
28 2003 WL 22038700, *6 (CD Cal., Aug. 8, 2003) (an expert report is inadmissible

1 hearsay absent a declaration from the expert attesting to the report's authenticity).
2 Mr. Storm did not submit an affidavit or declaration wearing to the authenticity of
3 his report. Consequently, the report is inadmissible and cannot be considered for
4 purposes of this application.

5 Unqualified as an Expert: Plaintiffs and Counter-Defendants offer Mr. Storm
6 as an expert in, *inter alia*, steps WSC should have taken to counter act the anti-
7 marketing campaign undertaken by a former customer. Mr. Storm has no special
8 training or knowledge regarding the suppression of anti-marketing campaigns.
9 Consequently, his testimony on this issue is inadmissible. *See* Fed. R. Evid. 702;
10 *see also Avila v. Willits Environmental Remediation Trust*, 633 F.3d 828, 839-840
11 (9th Cir. 2011) (affirming district court's exclusion of expert despite degree in
12 chemistry because expert did not have any special training or knowledge regarding
13 metal working industries such that he could reliably opine that the activities at the
14 manufacturing site "must" have created dioxins); *Massok v. Keller Industries, Inc.*,
15 147 F.App'x 651, 656 (9th Cir. 2005) (affirming exclusion of expert testimony
16 where the extern had never designed ladders, had never written or lectured on the
17 subject, had produced no peer-reviewed work or independent confirmation of his
18 qualifications, and he was not a Ph.D.); *Hill v. Novartis Pharmaceuticals Corp.*,
19 2012 WL 5451800 *2 (E.D. Cal. 2012) (granting motion to exclude expert
20 testimony where opinions outside the scope of professional knowledge).

21
22 DATED: December 5, 2016 PEREZ VAUGHN & FEASBY Inc.

23
24 By: /s/ Jeffrey A. Feasby
25 Jeffrey A. Feasby
26 Attorneys for
27 Windermere Real Estate Services Company
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