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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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.

AND RELATED COUNTERCLAIMS

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

Hon. Manuel L. Real

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WINDERMERE REAL ESTATE SERVICES COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: October 17, 2016
Time: 10:00 a.m.
Courtroom: 6

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I. STATEMENT OF ISSUES

Defendant and Counterclaimant Windermere Real Estate Services Company ("WSC") is a real estate franchisor. Plaintiffs Bennion & Deville Fine Homes, Inc. ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D Fine Homes SoCal") were franchisees of Defendant Windermere Real Estate Services Company ("WSC"). Plaintiff Windermere Services Southern California, Inc. ("Services SoCal") was the area representative for WSC in Southern California. B&D Fine Homes became a franchisee in 2001, Services SoCal became the area representative in 2004, and B&D Fine Homes SoCal became a franchisee in 2011. The parties terminated their relationship in September 2015, shortly before Plaintiff filed this action. In their First Amended Complaint ("FAC"), Plaintiffs alleged breach of contract claims, breach of the implied covenant of good faith and fair dealing claims, and violations of the California Franchise Relations Act. Portions of Plaintiffs' First through Sixth Claims for Relief are time-barred as they accrued outside the applicable statute of limitations, and Plaintiff's Seventh Claim for Relief fails because the Area Representation Agreement is not a franchise agreement as a matter of law.

Plaintiffs' breach of contract and breach of the implied covenant of good faith and fair dealings claims are based, in part, on WSC's alleged failure to provide Plaintiffs with adequate technology and a viable "Windermere System." Plaintiffs testified, however, that they were never provided with a viable Windermere System, and the technology has been inadequate since at least 2004. Consequently, the portions of Plaintiffs' First through Sixth Claims for Relief that are based on WSC's failure to provide adequate technology or a viable Windermere System accrued more than four years ago, and are barred by the applicable statute of limitations.

Plaintiffs' Fourth Claim for Relief is based, in part, on WSC's alleged solicitation of Plaintiffs to violate California franchise law. Plaintiffs admitted in response to WSC's Requests for Admission that they had not sustained any damages

as a result of these alleged violations of California franchise law. Consequently, WSC is entitled to partial summary judgment as to the portion of Plaintiffs' Fourth Claim for Relief that is based on WSC's alleged violation of California Franchise Law.

Finally, WSC is entitled to partial summary judgment as to the entirety of Plaintiffs' Seventh Claim for Relief alleging violations of California's Franchise Relations Act. Plaintiffs' Seventh Claim for Relief relies on California Business and Professions Code section 20020 and alleges that WSC violated California franchise law by terminating the Area Representation Agreement without cause. Section 20020, however, only applies to franchise agreements. Because the Area Representation Agreement was not a franchise agreement, section 20020 is inapplicable, and WSC is entitled to judgment as a matter of law as to Plaintiffs' Seventh Claim for Relief.

II. STATEMENT OF FACTS

A. The Agreements Between the Parties

Plaintiffs are former Windermere representatives and franchisees of WSC in Southern California. (D.E. 31, FAC ¶ 1.) The parties' relationship was governed by a number of different contracts. Plaintiffs allege, *inter alia*, that WSC breached three of these contracts, which Plaintiffs have defined as (1) the Coachella Valley Franchise Agreement; (2) the Area Representation Agreement; and (3) the SoCal Franchise Agreement. (Declaration of Jeffrey A. Feasby ("Feasby Decl.") Ex. A, B, C.)

WSC and Bennion & Deville Fine Homes, Inc. ("B&D Fine Homes"), an entity owned by Bennion and Deville, entered into the Coachella Valley Franchise Agreement on August 1, 2001. (Separate Statement of Material Uncontroverted Facts ("SSMUF") No. 1; Feasby Decl. Ex. A, p. 1; Feasby Decl. Ex. F, Drayna Dep. 28:21-29:13.) Pursuant to the Coachella Valley Franchise Agreement, B&D Fine Homes agreed to pay an initial fee of $15,000 and an ongoing license fee equal to

5% of the gross revenues earned during the term of the agreement. (Feasby Decl. Ex. A, § 5.) In exchange for the license fees, WSC agreed to "provide a variety of services to [B&D Fine Homes] for the benefit of [B&D Fine Homes] and other licensees, designed to complement the real estate brokerage business activities of [B&D Fine Homes] and to enhance its profitability." (SSMUF No. 2; Feasby Decl. Ex A, p. 2, ¶ 1.) WSC also granted B&D Fine Homes the right to use the "Windermere System." (SSMUF No. 3; Feasby Decl. Ex. A, p. 2, ¶ 2.)

On May 1, 2004, WSC and Windermere Services Southern California, Inc. ("Services SoCal"), an entity owned by Bennion and Deville, entered into the Area Representation Agreement. (SSMUF No. 4; Feasby Decl. Ex. B, p. 1; Feasby Decl. Ex. E, Bennion Dep. 77:7-13; Feasby Decl. Ex. F, Drayna Dep. 46:18-47:1.) Pursuant to the Area Representation Agreement, WSC agreed to provide Services SoCal with a non-exclusive right to offer WSC licensees use of the "Windermere System." (SSMUF No. 5; Feasby Decl. Ex. B, p. 2, ¶ 2.) WSC also agreed to provide Services SoCal with "servicing support in connection with the marketing, promotion and administration of the Trademark and Windermere System," and to make available to Services SoCal WSC's "key people to the extent necessary to assist [Services SoCal] in carrying out its obligations as set forth in" the Area Representation Agreement. (SSMUF No. 6, 7; Feasby Decl. Ex. B, pp. 3-4, ¶ 3.) As the Area Representative, Services SoCal was responsible for, among other things, collecting, accounting for, and remitting all license fees, technology fees, administrative fees, and other amounts due under franchise agreements between WSC and licensees in Southern California. (Feasby Decl. Ex. B, ¶ 3.) Services SoCal kept 50% of all license fees collected, and remitted all remaining fees to WSC. (Feasby Decl. Ex. B, ¶ 10.)

On March 29, 2011, WSC and Bennion & Deville Fines Homes SoCal, Inc. ("B&D Fine Homes SoCal"), another entity owned entirely by Bennion and Deville, entered into the Southern California Franchise Agreement. (SSMUF No. 8; Feasby

Decl. Ex. C, p. 1; Feasby Decl. Ex. F, Drayna Dep. 134:8-22.) Like the Coachella Valley Franchise Agreement, the Southern California Franchise Agreement granted B&D Fine Homes SoCal a revocable and non-exclusive right to use the "Windermere System" in the conduct of real estate brokerage services. (SSMUF No. 9; Feasby Decl. Ex. C, p. 2, ¶ 1.) WSC agreed to "provide guidance" to B&D Fine Homes SoCal with respect to the Windermere System. (SSMUF No. 10; Feasby Decl. Ex. C, p. 3, ¶ 3.) In exchange for the right to use WSC's Trademark and the Windermere System, B&D Fine Homes agreed to pay an initial fee and an ongoing licensee fee of 5% of the gross commissions earned and received by B&D Fine Homes SoCal. (Feasby Decl. Ex. C, ¶ 7.) The Southern California Franchise Agreement was modified by agreement between the parties in December 2012. None of the aforementioned provisions were affected by the December 2012 modification.

B. <u>Plaintiffs' Testimony Regarding WSC's Performance</u>

In this action, Plaintiffs claim that WSC never provided them with a viable Windermere System or sufficient technology[1]. (SSMUF No. 11, 12; Feasby Decl. Ex. D, Deville Dep. 67:5-68:6.) Deville, the 50% owner of B&D Fine Homes, B&D Fine Homes SoCal, and Services SoCal, testified that throughout the entire relationship between the parties, WSC never provided sufficient technology. (SSMUF No. 11; Feasby Decl. Ex. D, Deville Dep. 67:5-13.) Deville further testified that at no point did WSC provide a sufficient and viable Windermere System. (SSMUF No. 12; Feasby Decl. Ex. D, Deville Dep. 68:2-6.)

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[1] For purposes of this motion only, WSC does not dispute Plaintiffs' claims regarding the provision of the Windermere System, technology, or other aspects of WSC's performance under the subject agreements.

III. LEGAL ANALYSIS

A. Legal Standard for Partial Summary Judgment

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Rule 56 of the Federal Rules of Civil Procedure, which governs summary judgment, does not contain an explicit procedure entitled "partial summary judgment." As with a motion under Rule 56(c), partial summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). To meet its burden of production, "the moving party must either produce evidence negating an essential element of the non-moving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party meets its initial burden of showing there is no genuine issue of material fact, the opposing party has the burden of producing competent evidence and cannot rely on mere allegations or denials in the pleadings. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *Id.*

B. Portions of Plaintiff's First Through Sixth Claims for Relief Are Barred by the Applicable Statute of Limitations

Plaintiffs' First through Sixth Claims for Relief allege breaches of contract and breaches of the implied covenant of good faith and fair dealing relating to WSC's performance under three separate written agreements. Based on Bennion

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and Deville's testimony, these claims are barred by the applicable four-year statute of limitations.

1. Plaintiffs' First Through Sixth Causes of Action Are Subject to a Four Year Statute of Limitations.

The purpose of a statute of limitations is "to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Prudential-LMI Commercial Ins. v. Super. Ct.*, 51 Cal.3d 674, 684 (1990); *see also Seagate Tech. LLC v. Dalian China Express Int'l Corp. Ltd.*, 169 F.Supp.2d 1146, 1159 (N.D. Cal. 2001). "The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitations and the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Prudential-LMI*, 51 Cal.3d at 684. By limiting the time within which a plaintiff may bring a claim, statutes of limitation promote repose for defendants and stimulate plaintiffs to diligently prosecute their claims. *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 806 (2005).

Code of Civil Procedure section 312 provides that "[c]ivil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute." Claims arising out of breach of "contract, obligation or liability founded upon an instrument in writing," as Plaintiffs' claims do, must be brought within four years of accrual. Cal. Civ. Proc. § 337(1).

2. Portions of Plaintiffs' Claims for Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing Are Untimely

Plaintiffs' First, Third, and Fifth Claims for Relief allege that WSC breached the Coachella Valley Franchise Agreement, the Area Representation Agreement, and the Southern California Franchise Agreement by, *inter alia*, "failing to provide

the promised 'variety of services' designed to enhance Plaintiffs' 'profitability,'" "failing to provide Plaintiffs with a viable 'Windermere System' as defined in the agreement," and "failing to provide the promised 'guidance' to Plaintiffs with respect to the 'Windermere System.'" (Docket Entry ("D.E. 31"), FAC ¶¶ 151(a)-(b), 163 (b)-(d), 163(i), 175(a)-(b)). Plaintiffs' Second, Fourth, and Sixth Claims for Relief all allege WSC breached the implied covenant of good faith and fair dealing as to each of the aforementioned agreements. Plaintiffs allege, among other things, that WSC breached its covenant by "failing to provide adequate technology services in return for the excessive technology fees," and "failing to provide a viable Windermere System to the Southern California region." (D.E. 31, FAC ¶¶ 158(a)-(b), 170(a), 181(a)(e).) Because Plaintiffs testified that they have not received adequate technology or a viable "Windermere System" since at least 2004, their claims are barred by the statute of limitations.

During his deposition, Deville initially testified that B&D Fine Homes received "nothing" in exchange for the monthly technology fees they paid to WSC. (Feasby Decl. Ex. D, Deville Dep. 50:10-22.) Deville later testified that the technology was inadequate starting around 2003. (Feasby Decl. Ex. D, Deville Dep. 58:2-17; 63:22-64:23.) Bennion also testified that his problems with the technology started in 2003 or 2004, and those issues persisted throughout his relationship with WSC. (Feasby Decl. Ex. E, Bennion Dep. 25:10-17; 112:7-11.) Deville does not believe the B&D Parties were ever provided sufficient technology in light of the fees they were paying. (Feasby Decl. Ex. D, Deville Dep. 67:5-13).

Regarding the "Windermere System," Deville initially testified that B&D Fine Homes had not received a viable "Windermere System" since approximately 2002. (Feasby Decl. Ex. D, Deville Dep. 55:23-56:9). Deville later stated that the B&D Parties were never provided with a viable Windermere System. (Feasby Decl. Ex. D, Deville Dep. 67:14-68:6.) This would extend back to 2001, when the parties' entered into the Coachella Valley Franchise Agreement.

This testimony establishes that Plaintiffs' claims regarding failure to provide adequate technology and/or a viable Windermere System are all barred by the applicable statute of limitations. Plaintiffs testified that these claims relating to the Coachella Valley Franchise Agreement and the Area Representation Agreement accrued in 2004; 11 years before they filed the present action. (SSMUF No. 11, 12.) Because Plaintiffs testified that they never received adequate technology or a viable Windermere System, claims arising out of the Southern California Franchise Agreement accrued in March 2011, immediately upon its execution, which was more than four years before Plaintiffs filed the present claim. All of Plaintiffs' claims regarding WSC's failure to provide adequate technology or a viable Windermere System accrued more than four years ago, are consequently untimely, and WSC is entitled to judgment as a matter of law as to those claims.

C. Portions of Plaintiffs' Fourth Claim for Relief Fail Because Plaintiffs Were Not Damaged

Plaintiffs allege that WSC breached the implied covenant of good faith and fair dealing regarding the Area Representation Agreement by, among other things, "soliciting Services SoCal's participation in offers and sales of franchises in violation of the franchise laws." (D.E. 31, FAC ¶ 170(c).) Plaintiffs claim that WSC failed to comply with applicable franchise laws requiring disclosure of certain information about franchisors to the state and to their franchisees. (D.E. 31, FAC ¶ 83-103.) Plaintiffs argue that because a new license agreement was executed in their region before WSC's franchise disclosure document was renewed by the state licensing authority, Plaintiffs were somehow made a part of this franchise law violation.[2] (D.E. 31, FAC ¶ 83-103.) Plaintiffs admit, however, that they did not suffer any damage as a result of these alleged franchise law violations, so judgement should be entered for WSC on these claims.

[2] WSC also disputes this contention. However, for purposes of this motion only, it can be accepted as true.

Under California law, a claim for breach of contract includes four elements: that a contract exists between the parties, that the plaintiff performed his contractual duties or was excused from nonperformance, that the defendant breached those contractual duties, and that plaintiff's damages were a result of the breach. *Oasis West Realty LLC v. Goldman*, 51 Cal.4th 811, 821 (2011); *Reichert v. General Ins. Co.*, 68 Cal.2d 822, 830 (1968); *First Commercial Mortgage Co. v. Reece*, 89 Cal.App.4th 731, 745 (2001). A claim for breach of the implied covenant of good faith and fair dealing requires the same elements, except that instead of showing that defendant breached a contractual duty, the plaintiff must show, in essence, that defendant deprived the plaintiff of a benefit conferred by the contract in violation of the parties' expectations at the time of contracting. *Carma Developers, Inc. v. Marathon Development California, Inc.*, 2 Cal.4th 342, 372–73 (1992). Thus, to prevail on their claim for breach of the implied covenant of good faith and fair dealing, Plaintiffs must show they were damaged by WSC's alleged breach.

In response to Requests for Admissions, Plaintiffs admitted that they have not been subjected to either criminal or civil liability arising out of WSC's alleged failure to comply with California franchise laws. (SSMUF No. 13; Feasby Decl. Ex. G, p. 14-16.) Specifically, Plaintiffs admitted that they had not been subjected to criminal or civil liability as a result of: WSC's alleged failure to properly and timely renew its California franchise registrations; any inaccuracies in WSC's California franchise registrations; or any incomplete disclosures in WSC's California franchise registrations. (SSMUF No. 13; Feasby Decl. Ex. G, p. 14-16.) These admissions that Plaintiffs have not been damaged by any alleged violation of California franchise law means they cannot prove at least one element of their claim. Consequently, the Court should enter judgement for WSC on Plaintiff's claim that WSC breached the implied covenant of good faith and fair dealing by allegedly violating California franchise law.

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D. <u>The Area Representation Agreement Was Not a Franchise Agreement so WSC is Entitled to Judgment as a Matter of Law as to Plaintiffs' Seventh Claim for Relief</u>

The FAC's Seventh Cause of Action is asserted on behalf of Services SoCal and is based on Plaintiffs' contention that WSC violated California Business and Professions Code section 20020. However, this claim is based on the erroneous premise that the Area Representation Agreement was a franchise. As set forth below, it was not. Therefore, section 20020 does not limit the manner in which WSC could terminate the Area Representation Agreement. As a result, the Seventh Cause of Action fails as a matter of law.

Section 20020 provides, in pertinent part, "Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior to the expiration of its term, except for good cause."

In California, franchise relations are governed by the California Franchise Investment Law ("CFIL") (Cal. Corp. Code § 31000 *et seq*.) and the California Franchise Relations Act ("CFRA") (Cal. Bus. & Prof. Code § 20000 *et seq*.). *See Thueson v. U-Haul International, Inc*., 144 Cal.App.4th 664 (2006). "The CFIL protects consumers in the sale of franchises, and the CFRA regulates certain events after the franchise relationship has been formed." *Id*. at 667, n. 1 citing *Gentis v. Safeguard Business Systems, Inc*., 60 Cal.App.4th 1294, 1298 (1998).

Under both the CFIL and the CFRA,

> 'Franchise' means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
>
> (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
>
> (2) The operation of the franchisee's business pursuant to that plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

> (3) The franchisee is required to pay, directly or indirectly, a franchise fee.

Cal. Corp. Code § 31005(a); *see also* Cal. Bus. & Prof. Code § 20001(a), (b), (c). As to the issue in this case – whether the Area Representation Agreement was a franchise – *Thueson* is directly on point.

In *Thueson*, the plaintiff sued U-Haul and others claiming that it had a franchise, and that U-Haul unlawfully terminated that franchise without cause. The trial court held a bench trial and found that the plaintiff's dealership did not meet the definitional requirements of a franchise agreement under California law because " '[n]othing was paid or invested in the dealership.' " *Id*. at 669-670. In affirming, the Court of Appeal looked closely at what constituted a franchise fee under California law.

The Court of Appeal began with the definitions of "franchise fee" as set forth in the CFIL and the CFRA, which for both statutes is set forth as "any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services." The Court of Appeal next looked to the California Commissioner of Corporation's Release 3-F, entitled "When Does An Agreement Constitute a 'Franchise'?" *Id*. at 671.

> The Guidelines confirm that the payment of a franchise fee is a necessary element of a franchise, and that the broad definition of 'franchise fee' contained within Corporations Code section 31011 includes 'any fee or charge which the franchisee is required to pay to the franchisor or an affiliate of the franchisor for the right to engage in business ... regardless of the designation given to, or the form of, such payment.'

Id. Finally, in looking at cases from other jurisdictions that used similar statutory provisions as well as FTC definitions and other California cases interpreting the purposes of the franchise laws, the Court of Appeal concluded that the intent of the CFIL and CFRA "is to protect franchise investors – i.e. those who 'pay for the right to enter into a business.' " *Id*. at 672-673. Based upon these authorities, the Court

of Appeal concluded that the plaintiff did not pay any "franchise fees" and affirmed the trial court's judgment.

Here, Services SoCal also did not pay a franchise fee to WSC. (SSMUF No. 14; Feasby Decl. Ex. B, p. 8, ¶ 9 ["Due to the special circumstances of this offering, [Services SoCal] will not be required to pay any initial fee for its Area Representation Rights."]; Feasby Decl. Ex. D, Deville Dep. 212:4-216:14; Feasby Decl. Ex. E, Bennion Dep., 107:12-108:16.) Services SoCal will likely argue that payments it made to Mark Ewing constituted franchise fees for purposes of the CFIL and CFRA because Mr. Ewing was an affiliate of WSC. This is not the case. First, Mr. Ewing was an independent third party who had contracted with WSC, he was not an affiliate of WSC. (SSMUF No. 15; Feasby Decl. Ex. G, Wood Dep. 118:18; Feasby Decl. Ex. F, Drayna Dep. 43:15-44:13.) Second, the payments that were made to Mr. Ewing were not made for the "right to enter into a business" as outlined by the Court of Appeal in *Thueson*. Rather, those amounts were paid to Mr. Ewing in order to purchase from him the right to receive the revenue he had been receiving from the Carlsbad, Escondido, and Solana Beach locations. (SSMUF No. 16; Feasby Decl. Ex. B, ¶ 14, Feasby Decl. Ex. A, ¶ 1; Feasby Decl. Ex. G, Wood Dep. 119:2-6; Feasby Decl. Ex. F, Drayna Dep. 44:14-46:3.)

> A payment to, or for the account of, third parties not affiliated with the franchisor is not a 'franchise fee' within the meaning of Section 31011, even though the franchisee is required by the agreement to make such payment and even if the franchisor collects it from the franchisee on behalf of the third party; ***provided that such payment is not made for the right to enter into the business***.

"When Does An Agreement Constitute A Franchise?" (Release 3-F, Rev. 6/22/94 [emphasis added]). Therefore, because Services SoCal was not required to pay a franchise fee for the right to enter into the Area Representation Agreement, that agreement is not a franchise under the CFIL or CFRA as a matter of law. *See Thueson*, 144 Cal. App. 4th at 670 ("Only when all components are present can a franchise actually be found to exist.").

Finally, Services SoCal may also argue that the Area Representation Agreement was a "subfranchise," which also constitutes a "franchise" under California law. *See* Cal. Corp. Code § 31010. However, a subfranchise requires that the subfranchisor be "granted the right, for consideration given in whole or in part for that right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor." Cal. Corp. Code § 31008.5. Here, Services SoCal did not have the right to sell or negotiate the sale of franchises for WSC. (SSMUF No. 17; Feasby Decl. Ex. B, p. 2, ¶ 2 ["Licenses offered will in all cases be subject to the approval of WSC and will be granted and issued by WSC to the licensee."]. Instead, Services SoCal was at most a sales representative for WSC, which does not constitute a "subfranchise" under California law. *See* Cal. Corp. Code § 31008.5 ["A contract or agreement which is a franchise does not become a subfranchise merely because under its terms a person is granted the right to receive compensation for referrals to a franchisor or subfranchisor or to receive compensation for acting as a sales representative on their behalf."].

For all of these reasons, WSC is entitled to judgment on the FAC's Seventh Cause of Action as a matter of law.

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IV. CONCLUSION

For the foregoing reasons, the claims alleged in paragraphs 151(a)-(b); 158(a)-(b); 163(b)-(d), (i); 170(a); 175(a)-(b); and 181(a)(e) of Plaintiffs' First Amended Complaint are barred by the applicable statute of limitations. Consequently, WSC is entitled to judgment as a matter of law as to those claims. Similarly, WSC is entitled to partial summary judgment on the claim alleged in paragraph 170(c) of Plaintiffs' First Amended Complaint because Plaintiffs admit they were not damaged by the alleged violations of California franchise law. Finally, WSC is entitled to partial summary judgment on the FAC's Seventh Cause of Action in its entirety.

DATED: September 19, 2016 PEREZ WILSON VAUGHN & FEASBY

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