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15 SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF SAN DIEGO, CENTRAL DIVISION

17 WINDERMERE REAL ESTATE SERVICES ) CASE NO. 37-2011-00089709-CU-BC-CTL  
18 COMPANY, LLC, a Washington corporation; and )  
19 WINDERMERE SERVICES SOUTHERN ) Assigned for All Purposes:  
20 CALIFORNIA, INC., a California corporation ) Judge: William R. Nevitt  
21 ) Dept.: C-64  
22 Plaintiffs, )

23 ) **CROSS-COMPLAINT FOR**  
24 ) **DAMAGES AND RESTITUTION**

25 )  
26 LIFESTYLES SERVICES CORP., a California )  
27 corporation; LIFESTYLES SERVICES SOLANA )  
28 BEACH/ RSF CORP., a California corporation; )  
MRJR, INC. a California corporation; STEPHEN )  
D. RODGERS, an individual; MARK LOSCHER, )  
an individual; MAUREEN LOSCHER, an )  
individual; JAMES BROWNE, an individual; )  
SHARON BROWNE, an individual; LARRY )  
ANDERSON, BARBARA ANDERSON, an )  
individual; ROBERT BEHIC, an )  
individual; ROBIN BEHIC, an individual; )  
and DOES 1 through 50, inclusive. ) Complaint Filed: April 15, 2011

29 Defendants. )  
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LIFESTYLES SERVICES CORP., a California )  
corporation; LIFESTYLES SERVICES SOLANA )  
BEACH/ RSF CORP., a California corporation; )  
MRJR, INC., a California corporation; )  
Cross-Complainants, )  
vs. )  
WINDERMERE REAL ESTATE SERVICES )  
COMPANY, LLC, a Washington corporation; and )  
WINDERMERE SERVICES SOUTHERN )  
CALIFORNIA, INC., a California corporation; and )  
ROES 1 through 50, inclusive. )  
Cross-Defendants. )

Cross-Complainants, LIFE STYLES SERVICES CORP., LIFE STYLES SERVICES SOLANA BEACH/RSF CORP.. and MRJR, INC. (hereinafter also collectively referred to as "Cross-Complainants"), by and through undersigned counsel, hereby sue Cross-Defendants, WINDERMERE REAL ESTATE SERVICES COMPANY CORPORATION and WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC., as follows:

**Jurisdiction and Venue**

1. Jurisdiction in the Superior Court of the County of San Diego is proper under article 6, section 10 of the Constitution of the State of California.
2. Venue in the Superior Court of the County of San Diego is proper under section 395.5 of the California Code of Civil Procedure on the grounds that the liability of Cross-Defendants arose in the County of San Diego.

**Parties**

3. Cross-Complainant, LIFE STYLES SERVICES CORP. (individually referred to as "LS"), is a California corporation with its principal place of business in San Diego, California.

1           4.       Cross-Complainant, LIFE STYLES SERVICES SOLANA BEACH/RSF CORP.  
2 (“LS Solana”), is a California corporation with its principal place of business in Solana Beach,  
3 California.

4           5.       Cross-Complainant, MRJR, INC. (“MRJR”), is a California corporation with its  
5 principal place of business in Escondido, California.

6           6.       Cross-Defendant, WINDERMERE REAL ESTATE SERVICES COMPANY  
7 CORPORATION (“Windermere”), is a Washington corporation with its principal place of  
8 business located at 5424 Sand Point Way NE, Seattle, Washington. Windermere is a franchisor  
9 which offers franchises for the establishment, development, and operation of businesses that  
10 specialize in providing real estate brokerage services. Upon information and belief, Windermere  
11 has filed necessary registration documents with the California Department of Corporations in  
12 order to offer and sell Windermere franchises in California and has designated an agent for  
13 service in California.

14           7.       Cross-Defendant, WINDERMERE SERVICES SOUTHERN CALIFORNIA,  
15 INC. (“Windermere SoCal”), is a California corporation with its principal place of business  
16 located at 71-691 Highway 111, Rancho Mirage, California. Windermere SoCal is an Area  
17 Representative of the Windermere franchises system charged with the responsibility of directing  
18 growth and operation of the Windermere franchise in Southern California, and overseeing the  
19 development of the Windermere brand in Southern California. Windermere contracts with  
20 Windermere SoCal to administer the Windermere System in Southern California.

21           8.       Cross-Complainants are unaware of the true names and capacities of cross-  
22 defendants sued herein as ROES 1 through 50, inclusive, and therefore sues these cross-  
23 defendants by such fictitious names. Cross-Complainants will amend this Cross-Complaint to  
24 allege their true names and capacities when ascertained. Cross-Complainants are informed and  
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1 believe and based thereon allege that each of the fictitiously named cross-defendants is  
2 responsible in some manner for the occurrences alleged in this Cross-Complaint.

3 9. Cross-Complainants are informed and believe and based thereon allege that at all  
4 times herein mentioned each of the cross-defendants, including the fictitiously names cross-  
5 defendants, was the agent and employee of each of the remaining cross-defendants and, in doing  
6 the things alleged in this Cross-Complaint, was acting within the course and scope of such  
7 agency and employment.

8  
9 **General Allegations**

10 10. In or about April 1, 2001, MRJR executed a Windermere Franchise License  
11 Agreement for the operation of a Windermere franchise. (A copy of the subject franchise  
12 agreement is annexed hereto as Exhibit "A").

13  
14 11. On April 17, 2009, LS executed a Windermere Franchise License Agreement for  
15 the operation of a Windermere franchise. (A copy of the subject franchise agreement is annexed  
16 hereto as Exhibit "B").

17 12. On March 23, 2010, LS Solana executed a Windermere Franchise License  
18 Agreement for the operation of a Windermere franchise. (A copy of the subject franchise  
19 agreement is annexed hereto as Exhibit "C").

20  
21 13. As a result of the operation of these Windermere franchises, Cross-Complainants  
22 have developed substantial business relationships with numerous clients and real estate agents.

23 14. Under the terms of each of the Franchise License Agreements, either party may  
24 terminate the Franchise License Agreement at any time and for any reason so long as notice of  
25 intent to terminate is provided 180 days prior to the termination date.

26 15. In December, 2010, Cross-Complainants exercised their right to terminate their  
27 respective Franchise License Agreements by supplying written notice to Cross-Defendants of  
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1 Windermere SoCal, thus ensuring that any internet leads generated by this advertisement would  
2 be directed solely to Windermere SoCal (even though Cross-Complainants' businesses are being  
3 used as part of the advertisement).

4 21. Clearly, this is a direct effort by Windermere SoCal to mislead consumers and to  
5 gain a competitive advantage using tactics that are unprofessional and contrary to law.  
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7 22. Cross-Complainants recognized that once they ceased being Windermere  
8 franchisees, Windermere and Windermere SoCal intend on competing against them in the  
9 marketplace.

10 23. However, Cross-Complainants did not anticipate that such "competition" would  
11 take place while they were still operating as Windermere franchisees.  
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13 24. At the time that the Franchise License Agreements were signed, it was disclosed  
14 to Cross-Complainants that Windermere and Windermere SoCal would be involved in approving  
15 the location of each of the Cross-Complainants' franchises.

16 25. A clear and unequivocal conflict of interest exists in Windermere and  
17 Windermere SoCal opening, operating and advertising a Windermere franchise in direct  
18 competition with Cross-Complainants' businesses when they were still operating as Windermere  
19 franchisees. This is especially so given the access to information that Windermere and  
20 Windermere SoCal possess in relation to the general location, neighborhood, and traffic patterns  
21 of Cross-Complainants' business locations.  
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23 26. It is particularly distasteful and improper that Windermere's new businesses are  
24 now being staffed by Cross-Complainants' former agents.

25 27. Indeed, such intentional and wrongful conduct by Windermere and Windermere  
26 SoCal interfered with Cross-Complainants' ability to operate their businesses when they were  
27 still Windermere franchisees, and constituted a tortious interference of the rights that Cross-  
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1 Complainants possessed pursuant to the Franchise License Agreements.

2           28.     What has also become apparent is that Windermere and Windermere SoCal have  
3 capitalized upon the knowledge that they possessed regarding Cross-Complainants' intention to  
4 terminate the Franchise License Agreement and the expiration of their Lease Agreements for  
5 their own personal benefit.  
6

7           29.     For example, knowing full well that MRJR's lease was due to expire, Windermere  
8 SoCal entered into negotiations with MRJR's landlord for purposes of trying to enter into a lease  
9 agreement at the very premises where MRJR's current Windermere franchise is located.

10           30.     As a result, the landlord initially refused to enter into discussions with MRJR  
11 about extending/renewing the current lease agreement. After several discussions with the  
12 landlord, it was ultimately agreed that the landlord would enter into a new Lease Agreement with  
13 MRJR.  
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15           31.     However, such a Lease Agreement came at a substantial increase in the monetary  
16 terms of the Lease Agreement that were provided to MRJR. Again, Windermere SoCal's  
17 actions, with knowledge of and/or participation by Windermere, have had a direct, adverse  
18 impact on Cross-Complainants' businesses.

19           32.     In addition, Windermere SoCal has engaged in a campaign to disparage the  
20 Cross-Complainants to other Windermere franchisees in the Southern California market and to  
21 other competitors of the Cross-Complainants. Namely, when one of LS Solana's top agents was  
22 being recruited recently by another Windermere franchisee, an act which is specifically  
23 prohibited by Windermere, the agent was being solicited with a cautionary sales pitch that if he  
24 did not leave the employ of LS Solana, "he would be on the wrong team." When asked what that  
25 meant, the rival franchisee stated that they were aware that LS Solana and LS owed One Million  
26 Dollars to Windermere and Windermere SoCal and that Windermere SoCal was out to "get" LS  
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1 Solana and LS.

2 33. The amount of money allegedly owed to Windermere and Windermere SoCal was  
3 not common knowledge, and would only be known to another Windermere franchisee by virtue  
4 of Windermere and/or Windermere SoCal stating this to the franchisee. However, such a  
5 statement that One Million Dollars was owed was knowingly false and misleading. At the time,  
6 Windermere was only claiming that it was owed an amount substantially less than One Million  
7 Dollars. There is certainly no reason for another Windermere franchisee to have access to Cross-  
8 Complainants' financial situation, much less know that Windermere SoCal has targeted our  
9 clients.  
10

11 34. Clearly, such disparaging and untrue comments were designed to damage Cross-  
12 Complainants and destroy any possibility that they could continue to carry out the remainder of  
13 their Windermere franchises, much less their respective future business endeavors.  
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15 35. Because of Windermere and Windermere SoCal's injurious and anticompetitive  
16 conduct, Cross-Complainants transitioned over to their new brand, Real Living, as of April 26,  
17 2011. Cross-Complainants simultaneously accomplished a complete de-association with and de-  
18 identification of their business from their former posture as Windermere franchises. Windermere  
19 and Windermere SoCal's injurious conduct has continued unabated however.  
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21 36. As a result, Cross-Complainants have suffered damages.

22 37. All conditions precedent to the commencement of this action have occurred, or  
23 have been performed, excused, satisfied or waived.

24 38. Cross-Complainants have been compelled to retain the services of the  
25 undersigned attorneys and have agreed to pay their attorneys a reasonable fee for services  
26 rendered. Cross-Complainants are entitled to recover from Cross-Defendants their attorney's  
27 fees and costs.  
28

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 (Against All Cross-Defendants For Intentional Interference With Contractual Relations)

4 39. Cross-Complainants incorporate each and every allegation set forth in paragraphs  
5 1 through 38, *supra*, as if fully set forth herein.

6 40. Cross-Complainants possess several valid and enforceable contractual relations  
7 with agents for the purposes of providing real estate brokerage services.

8 41. Cross-Defendants knew about the agreements between Cross-Complainants and  
9 their agents and, were, indeed, compensated by virtue of royalty payments as a result of these  
10 agreements.

11 42. Cross-Defendants arbitrarily, wrongfully, and intentionally interfered with the  
12 agreements between Cross-Complainants and their agents. Cross-Defendants' intentional acts  
13 were designed to induce a breach or disruption of the contractual relationships that Cross-  
14 Complainants enjoyed with their agents.

15 43. Cross-Defendants' intentional acts caused an actual breach or disruption of the  
16 contractual relationships that Cross-Complainants enjoyed with their agents.

17 44. Cross-Defendants' actions as explained above, were undertaken in outrageous  
18 disregard for the rights of the Cross-Complainants, and as such support an award of punitive  
19 damages.

20 45. As a direct, proximate and foreseeable result of Cross-Defendants' intentional and  
21 tortious interference with the contractual relations between Cross-Complainants and their agents.  
22 Cross-Defendants have caused Cross-Complainants to suffer substantial damages.

23 **SECOND CAUSE OF ACTION**

24 (Against All Cross-Defendant for Interference with Prospective Economic Advantage)

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46. Cross-Complainants incorporate each and every allegation set forth in paragraphs 1 through 38, *supra*, as if fully set forth herein.

47. Cross-Complainants have economic relationships with their agents, with the probability of future economic benefit to the Cross-Complainants.

48. As described above, Cross-Defendants committed intentional acts designed to disrupt the relationships between Cross-Complainants and their agents. Specifically, Cross-Defendants' actions are designed to deceive Cross-Complainants' former agents that the business relationships maintained with Cross-Complainants are in some way unlawful.

49. Cross-Defendants' actions were independently unlawful, in addition to interfering with Cross-Complainants' relationship with their agents, to the extent that they violate California's Unfair/Unlawful Competition Law and constitute a tortious violation of duties imposed by law.

50. Cross-Defendants' intentional acts of interference have resulted in actual disruption to the relationships between Cross-Complainants and their agents, and have proximately caused economic harm to Cross-Complainants, and Cross-Complainants have suffered substantial damages.

**THIRD CAUSE OF ACTION**

(Against All Cross-Defendants for Trade Libel)

51. Cross-Complainants incorporate each and every allegation set forth in paragraphs 1 through 38, *supra*, as if fully set forth herein.

52. Cross-Defendants have made false statements concerning the quality of services of Cross-Complainants' business.

53. Cross-Defendants' false statements were intended to cause Cross-Complainants' business financial harm.



1 business practices.” Cross-Complainants have suffered and will continue to suffer substantial  
2 harm. As such, Cross-Complainants seek restitution and disgorgement of all profits gained as a  
3 result of Cross-Defendants’ wrongful conduct.

4 62. Cross-Complainants have developed and maintained business relationships with  
5 their agents.

6 63. Cross-Defendants have misappropriated assets from the Cross-Complainants’  
7 businesses which have served to destroy the Cross-Complainants’ businesses as an ongoing  
8 concern.

9 64. In addition, Cross-Complainants maintain existing and prospective business  
10 relationships with their agents, which Cross-Defendants have interfered with and are attempting  
11 to destroy.

12 65. Cross-Complainants have a substantial likelihood of prevailing on the merits of  
13 their claims. 66. There is no legal remedy available to address the loss of goodwill,  
14 reputation and customer base that the Cross-Complainants will suffer if Cross-Defendants  
15 continue to engage in the aforementioned conduct until these claims are resolved on the merits.

16 67. Cross-Defendants’ actions have and will continue to destroy the Cross-  
17 Complainants’ businesses and prevent the Cross-Complainants from operating their business.

18 68. Public interest factors also weigh heavily in favor of granting the requested  
19 injunctive relief.

20 Most notably, if Cross-Defendants refuse to cease engaging in the subject conduct. Cross-  
21 Complainants will have no other alternative than to cease operating their businesses.

22 69. The relief sought by the Cross-Complainants will not harm Cross-Defendants, but  
23 will only assure that the *status quo* is preserved pending resolution of this controversy.

24 **PRAYER FOR RELIEF**



1 action pursuant to the Franchise License Agreement between the parties;

2 C. For punitive or exemplary damages which sum should be sufficient to punish  
3 Cross-Defendants' conduct and by way of example;

4 D. For interest at the maximum legal rate on all sums awarded; and

5 E. For such other and further relief as this Court deems appropriate.  
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7 **FOURTH CAUSE OF ACTION**

8 A. As against Cross-Defendants for restitution and disgorgement of all profits gained  
9 as a result of their wrongful conduct;

10 B. For a preliminary and permanent injunction against Cross-Defendants requiring  
11 Cross-Defendants to cease contacting any of Cross-Complainants' agents for the purpose of  
12 interfering with and misappropriating the business relationships enjoyed by Cross-Complainants  
13 with these agents.  
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15 C. That the requested TRO remain in effect until such time as the Cross-  
16 Complainants' Motion for Preliminary and Permanent Injunction can be heard by this Court, and  
17 a full hearing can take place; and

18 D. For reasonable attorneys' fees and costs of suit incurred in the prosecution of this  
19 action pursuant to the Franchise License Agreement between the parties;

20 E. For interest at the maximum legal rate on all sums awarded; and


21 F. For such other and further relief as this Court deems appropriate.  
22

23 Respectfully submitted,

24 Winton Larson & Solecki, LLP

25 Dated: May 21, 2011

By:

  
26 Steven W. Winton  
27 Attorneys for Cross-Complainants  
28