

FILED

10 OCT 19 AM 11:19

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 David L. Aronoff (CA Bar No. 152606)
daronoff@winston.com
2 Gayle I. Jenkins (CA Bar No. 168962)
gjenkins@winston.com
3 Saul S. Rostamian (CA Bar No. 235292)
srostamian@winston.com
4 WINSTON & STRAWN LLP
333 S. Grand Avenue, 38th Floor
5 Los Angeles, CA 90071-1543
6 (213) 615-1700; Facsimile: (213) 615-1750
7

8 Attorneys for Plaintiff,
9 F.M. Tarbell Co. dba Tarbell, Realtors

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA

12 SACV10-01589 JVS (Ex)
13 Case No. _____

13 F.M. TARBELL CO. DBA TARBELL,)
14 REALTORS, a California corporation,)
15 Plaintiff,)

16 COMPLAINT FOR:

17 v.)

17 A & L PARTNERS, INC. a California)
18 corporation; ANDREA MARQUEZ, an)
19 individual; JOSEPH R. DEVILLE, an)
20 individual; BENNION & DEVILLE)
21 FINE HOMES, INC., a California)
22 corporation; BOB BENNION, an)
23 individual; KRG REALTY GROUP,)
24 INC., a California corporation,)
25 RICHARD MICHAEL KING, an)
26 individual,)

- 1. TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A);
- 2. UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200, ET SEQ.;
- 3. FALSE ADVERTISING UNDER CAL. BUS. & PROF. CODE § 17500, ET SEQ.;
- 4. COMMON LAW TRADEMARK INFRINGEMENT;
- 5. BREACH OF CONTRACT
- 6. INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

27 Defendants.)
28

DEMAND FOR JURY TRIAL

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

COMPLAINT

1
2 Plaintiff F.M. Tarbell Co. dba Tarbell, Realtors (“Tarbell”), by its attorneys, for
3 its Complaint against Defendants A & L PARTNERS, INC. a California corporation;
4 ANDREA MARQUEZ, an individual, JOSEPH R. DEVILLE, an individual,
5 BENNION & DEVILLE FINE HOMES, INC., a California corporation, BOB
6 BENNION, an individual, KRG REALTY GROUP, INC., a California corporation,
7 RICHARD MICHAEL KING, an individual (collectively “Defendants”), alleges as
8 follows:
9

NATURE OF THIS ACTION

10
11 1. This is an action for trademark infringement and unfair competition
12 pursuant to 15 U.S.C. § 1125(a) of the Trademark Act of 1946 (the “Lanham Act”),
13 California Business and Professions Code §§ 17200, *et seq.* & 17500, *et seq.*, and
14 common law, and breach of contract (settlement agreement) and intentional
15 interference with contractual relations for conduct occurring after the resolution of
16 USDC Case No. 2:10-cv-04048-PSG –E. Plaintiff Tarbell is the largest family-owned
17 real estate agency in Southern California, a community that it has proudly served for
18 the last eighty years. Founded in 1926 by Frank Tarbell, Tarbell, Realtors has
19 dedicated more than 80 years of service to America’s dream of home ownership.
20 Through years of tremendous growth and expansion, Tarbell, Realtors has positioned
21 itself as a leader in real estate today.

22 2. For more than a decade, Tarbell has devoted special resources and
23 attention to buyers and sellers of upper scale homes in the Southern California area
24 through its Preferred PropertiesSM division. Tarbell’s Preferred PropertiesSM services
25 focus upon assisting members of the Southern California community locate or sell
26 some of the most elite housing available in the area. Moreover, during this period,
27 Tarbell has expended significant resources to establish and promote the Preferred
28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 PropertiesSM services. Through extensive marketing and sales, Tarbell has developed
2 substantial goodwill in and consumer recognition of the Preferred Properties mark
3 such that residents of the Southern California community readily recognize and
4 identify Tarbell as the source of Preferred PropertiesSM services.

5 3. When Tarbell first discovered the Defendants’ unauthorized and unlawful
6 use of Tarbell’s Preferred Properties mark in connection with Defendants’ recruiting
7 of real estate agents and marketing of residential real estate for sales and purchases by
8 members of the Southern California community through the incorporation of Tarbell’s
9 mark into the trade name “Windermere Real Estate/Preferred Properties and using
10 “Windermerepreferred.com” in web addresses and email addresses for the new Brea
11 office, Tarbell immediately commenced legal action against the parties it could
12 identify as associated with that conduct (Marquez, King and later adding A & L
13 Partners, Inc.). That action was filed on May 28, 2010 and was assigned Case No.
14 CV10-4048 PSG (Ex) (the “First Action”). Immediately upon filing of the lawsuit,
15 Tarbell was contacted by counsel for Marquez, former Sales Manager Jim Crotwell,
16 and A & L Partners, Inc. dba Windermere Preferred Properties.

17 4. Despite certain defendants appearing to resolve that dispute, including
18 the signing of a settlement agreement covenanting not to use Tarbell’s service mark,
19 Defendants have continued to engage in blatant misappropriation of Tarbell’s valuable
20 intellectual property rights in Tarbell’s Preferred Properties mark. Defendants’ use of
21 a confusingly similar mark is likely to deceive the purchasing public into believing
22 that Defendants’ services are affiliated with, related to, sponsored by or connected
23 with Tarbell and/or Tarbell’s Preferred PropertiesSM services. Defendants’ conduct
24 has caused, and its intended conduct will cause, substantial damage to Tarbell’s
25 goodwill and reputation in the marketplace. Accordingly, Tarbell seeks corrective
26 advertising and/or marketing, compensatory damages, statutory damages, treble
27 damages for willful infringement, and attorneys’ fees and costs.

28

THE PARTIES

1
2 5. Plaintiff F.M. Tarbell Co. dba Tarbell, Realtors is a California
3 corporation with its principal place of business in Santa Ana, California.

4 6. A & L Partners, Inc. is a California corporation that operates an entity
5 referred to as Windermere Preferred Properties and Windermere Preferred Living on
6 realtor listings and advertisements relating to the Windermere franchise located at
7 135 S. State College Blvd. #110, Brea CA 92821 (“Windermere Brea”).

8 7. At the time of the First Action, Defendant Andrea Marquez (“Marquez”)
9 previously held herself out as the Chief Financial Officer and Managing Partner of
10 Defendant Windermere Real Estate/Preferred Properties’ location at 135 S. State
11 College Blvd, Suite 110, Brea CA. Marquez has since revealed herself to be the
12 Owner of Windermere Brea. Based upon Defendant Marquez’s identification of
13 herself as working at the Windermere Brea address, Tarbell is informed and believes
14 that Marquez is a resident of the District.

15 8. Joseph R. Deville (“Deville”) is the licensed broker of record for
16 Windermere Brea. Mr. Deville became the licensed broker of record after the filing of
17 the First Action, at which time Richard Michael King was the licensed broker of
18 record. Mr. Deville is also the licensed broker of record and co-owner of co-
19 defendant Bennion & Deville Fine Homes, Inc., which does business as Windermere
20 Real Estate of Coachella Valley (“Windermere Coachella Valley”). Based upon
21 Deville’s identification of his mailing and work addresses with the California
22 Department of Real Estate (“DRE”) as being in Rancho Mirage, California Tarbell is
23 informed and believes that Deville is a resident of this District.

24 9. Bennion & Deville Fine Homes, Inc. is a California corporation that
25 operates an entity referred to as Windermere Real Estate Coachella Valley relating to
26 the Windermere franchise located at 71-691 Highway 111, Rancho Mirage, CA
27 (“Windermere Coachella Valley”).

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Bob Bennion (“Bennion”) is also a co-owner of co-defendant Bennion & Deville Fine Homes, Inc., which does business as Windermere Real Estate of Coachella Valley (“Windermere Coachella Valley”). Tarbell is informed and believes that Mr. Bennion is not a DRE licensee. Based upon Bennion’s co-ownership of Windermere Coachella Valley in Rancho Mirage, California Tarbell is informed and believes that Deville is a resident of this District.

11. KRG Realty Group, Inc. (“KRG”) is a California corporation that operates an entity referred to as Windermere Real Estate King Realty Group relating to the Windermere franchise located at 2130 Grand Avenue, #A, Chino Hills, CA 91709 (“Windermere Chino Hills”).

12. Defendant Richard Michael King (“King”) is a licensed real estate broker with the DRE. At the time of the filing of the First Action, King’s DRE-assigned Broker Number of 00815016 is listed as the Broker Number in documentation relating Defendant Windermere Real Estate/Preferred Properties’ location at 135 S. State College Blvd, Suite 110, Brea CA. However, Defendant King’s current status with the DRE is that he is operating under the fictitious name of “Windermere Real Estate King Realty Group. Based on King’s contact information listed with the DRE, Tarbell is informed and believes that King is a resident of the County of San Bernardino, State of California.

13. Tarbell is informed and believes that each of the defendants is the agent, employee, successor or assign of each other defendant and each of them, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency, employment, succession of interest or assignment.

JURISDICTION AND VENUE

14. This action arises under the Trademark Act of July 5, 1946, as amended, commonly known as the Lanham Act, 15 U.S.C. § 1051, *et seq.*; Cal. Bus. & Prof. Code §§ 17200, *et seq.* & 17500, *et seq.*; and common law.

15. This Court has subject matter jurisdiction over the claims in this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

16. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b). In addition, the acts constituting the state law violations alleged herein occurred within this judicial district.

17. This Court has personal jurisdiction over Defendants because, on information and belief, (a) each of the corporate defendants has established its sale business address in this district and is actively recruiting agents in order to offer services in this judicial district; and (b) each of the individual defendants reside in this district and their conduct as outlined in this complaint occurred in this judicial district.

TARBELL AND ITS PREFERRED PROPERTIESSM SERVICES

18. For over eighty years, Tarbell has been engaged in the business of assisting existing and prospective homeowners in the Southern California communities in the Counties of Orange, Riverside, San Bernardino, Los Angeles and San Diego. For at least the last five years, Tarbell’s specialized Preferred PropertiesSM division has been widely recognized as the premiere resource for sellers of upscale residences in the counties served by Tarbell. Only the higher echelon agents are permitted to be associated with Tarbell’s Preferred PropertiesSM division. Clients serviced by the Preferred PropertiesSM division are ensured that their properties are appropriately marketed because “Special Homes Deserve Special Attention.”

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 19. Tarbell has devoted substantial resources to the development and
2 maintenance of its Preferred PropertiesSM division and high quality services. Clients
3 of this division are expecting the following service amenities from Tarbell:



4
5
6 **Preferred Properties** offers the special attention that a
7 distinctive home requires. That attention includes the
8 following:

9 **Individual Pictorial Brochures**, complete with color photo to
10 present your home at its best.

11 **Property News Releases** placed in major and local
12 newspapers.

13 **Professional Photography** that insures consistent quality.

14 **Full Page Color Advertising** that reaches a large number of
15 prospective buyers.

16 **World Wide Exposure** - All Preferred Properties' listings can
17 be seen on the internet, exposing them to buyers from
18 all over the world.

19 **Distinctive Personalized Signs**, with your agents name and
20 direct voice mail phone numbers.

21 **A Network of Skilled Professionals** - When a home is entered
22 into the Preferred Properties Division, full color
23 brochures are distributed to Tarbell's network of offices,
24 putting your home at the fingertips of hundreds of real estate
25 professionals with prospective buyers

26 20. In order to provide these specialized services, Tarbell has engaged
27 specialized support services to develop and cultivate the smaller market of upscale
28 homes in the Southern California area. Tarbell also set aside specific web-based
resources, including the maintenance of <http://tarbell.com/preferred.html> and

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 associated links to market the Preferred PropertiesSM services to prospective
2 consumers.

3 21. At least as early as the beginning of 2005, Tarbell began using the
4 Preferred Properties mark in connection with its marketing to potential sellers and
5 purchasers of upscale residences in Southern California.

6 22. Tarbell is the exclusive user of the Preferred Properties mark in
7 connection with real estate services in the Southern California communities Tarbell
8 services. Tarbell’s Preferred Properties mark is an extremely valuable asset to
9 Tarbell.

10
11 **WINDERMERE AND ITS WRONGFUL ACTS**

12 23. On or around April 2010, Tarbell became aware that defendants A & L
13 Partners, Marquez and King were planning to open an office in Brea, California and
14 had applied for a city business license with the City of Brea using the name
15 “Windermere Preferred Properties” and/or “Windermere Real Estate/Preferred
16 Properties” in connection with real estate services in the County of Orange, City of
17 Brea and surrounding communities. These are same communities served by Tarbell
18 and its Preferred PropertiesSM division, operating through offices located throughout
19 Orange County and the Inland Empire, including those offices closest to Brea in
20 Anaheim, East Anaheim, Anaheim Hills and Yorba Linda. Defendants A & L
21 Partners, Marquez and Deville opened the Windermere Brea office on May 3, 2010
22 and was operating as “Windermere Preferred Properties” and “Windermere Real
23 Estate/Preferred Properties”.

24 24. Additionally, as of May 3, 2010, Defendants A & L Partners, Marquez
25 and Deville started using the Tarbell’s Preferred Properties mark in listing its
26 businesses with the Brea Chamber of Commerce and real estate-related websites.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 25. After securing Tarbell’s agreement to dismiss the First Action by, among
2 other things, covenanting to no longer use the Preferred Properties mark, Defendants,
3 and each of them, caused advertising to appear in the October 16, 2010 edition of the
4 Desert Sun that continued to refer to the Windermere Brea office as “Windermere
5 Preferred Properties” even though each of the defendants were fully aware of the
6 settlement with Tarbell, and knew that the Windermere Brea defendants (A & L
7 Partners and Marquez) had covenanted to not use that name in the future and that the
8 proper name of the Windermere Brea office under the DRE approval process was now
9 “Windermere Preferred Living.”

10 26. Additionally, Defendants A & L Partners and Marquez, who were
11 signatories to the agreement with Tarbell that also covenanted that they would ensure
12 that their agents did not use “Windermere Preferred Properties” in their marketing or
13 advertising, failed to do so. Defendant Deville, who is the broker of record and thus
14 the person charged with ensuring that real estates salespersons working for
15 Windermere Preferred Living accurately identify the brokerage with whom they are
16 associated, knows or should know that “Windermere Preferred Properties” is being
17 used by its agents for active listings.

18 27. It is in the Defendants’ collective interest for the public to continue to
19 associate the name “Preferred Properties” with the Defendants, despite the settlement
20 agreement and covenant with A & L Partners/Marquez because of the cache and client
21 recognition of that term, synonymous with luxury homes and exceptional client
22 service.

23 28. Tarbell is informed and believes that Defendants devised a plan whereby
24 Deville, as the broker of record for Windermere Brea and the owner/broker of
25 Windermere Coachella Valley, would continue to propagate the Windermere
26 Preferred Properties name in conjunction with all of the Defendants by engaging in
27 advertising that continued to identified Windermere Brea as “Windermere Preferred
28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Properties” in advertising paid for by Windermere Real Estate Coachella Valley that included references to all three of the defendant Windermere franchises for their mutual benefit and enjoyment, and to the detriment of Tarbell and interfering with Tarbell’s contract with A & L Partners/Marquez. Tarbell is further informed and believes that such advertising was executed with the express approval, ratification and authorization of A & L Partners/Marquez.

29. Defendants’ continued prominent use of Tarbell’s Preferred Properties mark in its name, and in combination with the services in residential real estate, is likely to mislead or deceive real estate professionals and the consuming public into believing that Defendants or their services are sponsored by or associated with Tarbell. Defendants’ use of Tarbell’s Preferred Properties mark is without authorization from Tarbell. In addition, Defendants’ use of Tarbell’s Preferred Properties mark will result in lost sales opportunities for Tarbell.

30. Defendants’ conduct is continuing and will continue unless restrained by the Court. Defendants’ conduct Defendants use of Tarbell’s Preferred Properties mark in the marketing of their job opportunities and services to the same communities served by Tarbell actively promotes confusion among real estate professionals and consumers such that Tarbell had no choice but to file the instant complaint to stop the continuing irreparable injury to Tarbell and the Tarbell’s Preferred PropertiesSM division. Unless Defendants are enjoined from engaging in the wrongful conduct described above, Tarbell will suffer irreparable injury and further harm.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CLAIM FOR RELIEF
Trademark Infringement, Unfair Competition
and False Designation of Origin 15 U.S.C. § 1125(a)
Against All Defendants

31. Tarbell repeats and realleges the allegations set forth in paragraphs 1 through 30 above, as though fully set forth herein.

32. Tarbell has built up valuable goodwill in its Preferred Properties mark within Southern California. Defendants' wrongful acts have permitted or will permit Defendants to make substantial sales and profits on the strength of Tarbell's substantial advertising, sales, consumer recognition, and goodwill.

33. With knowledge of the value of breadth and depth of recognition of Tarbell's Preferred Properties mark within the Southern California real estate industry and local communities, and without Tarbell's authorization and consent, Defendants have traded and continue to trade on the goodwill associated with Tarbell's Preferred Properties mark and mislead the public into assuming a connection between Defendants' services and those of Tarbell.

34. As a direct and proximate result of Defendants' wrongful conduct, Tarbell has been and will be deprived of the value of the Preferred Properties mark as a commercial asset. Defendants' prominent use of Tarbell's Preferred Properties mark in connection with recruiting real estate sales persons and the offering of services in relation to the purchase and sale of upscale homes, and advertising of its related services without consent of Tarbell, is likely to cause and is causing confusion and deception among real estate professionals and the general consuming public as to the origin of Defendants' services. Defendants' actions are likely to deceive the public into believing that the employment opportunities and services being offered by Defendants originated from, are sponsored by, or are associated with, or otherwise authorized by Tarbell.

1 35. Defendants’ activities have caused, and will continue to cause Tarbell to
2 suffer substantial injury. Tarbell has no adequate remedy at law and, if Defendants’
3 activities in the use of “Preferred Properties” are not enjoined, Tarbell will continue to
4 suffer irreparable harm and injury to its goodwill and reputation.

5
6 **SECOND CLAIM FOR RELIEF**

7 **Unfair Competition Under Cal. Bus. & Prof. Code § 17200, et seq.**

8 **Against All Defendants**

9 36. Tarbell repeats and realleges the allegations contained in the foregoing
10 paragraphs 1 through 35, as if fully set forth herein.

11 37. The above-described acts and practices by Defendants are likely to
12 mislead the general public and therefore constitute unfair and fraudulent business
13 practices and unfair, deceptive, untrue, and misleading advertising in violation of
14 California Business and Professions Code § 17200, et seq.

15 38. Tarbell has built valuable goodwill in its Preferred Properties mark.
16 Defendants’ use of Tarbell’s Preferred Properties mark in advertising and marketing is
17 likely to confuse and deceive real estate professionals and the public such that they
18 will believe there is a connection or affiliation between Tarbell and Defendants. This
19 conduct results in damage to Tarbell’s goodwill and reputation and unjust enrichment
20 of Defendants.

21 39. Defendants have also unfairly competed with Tarbell by violating
22 California Code of Regulations regarding the identification of the provider of services,
23 opening for business while failing to register this operation with the Department of
24 Real Estate, and failing to identify new real estate affiliations with the DRE and thus
25 shielding itself from accountability with the Department of Real Estate.

26 40. The unfair and fraudulent business practices and deceptive and untrue
27 advertising of Defendants described above presents a continuing threat to members of
28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 the public in that Defendants intend to promote and advertise their services by
2 wrongfully trading on the name and goodwill of Tarbell and the Tarbell Preferred
3 Properties mark.

4 41. Defendants' conduct has injured Tarbell and, unless enjoined, will
5 continue to cause great, immediate, and irreparable injury to Tarbell. Tarbell is
6 entitled to injunctive relief and an order for restitutionary disgorgement of all of
7 Defendants' ill-gotten gains.

8

9

THIRD CLAIM FOR RELIEF

10

Deceptive, False and Misleading Advertising

11

under Under Cal. Bus. & Prof. Code § 17500, et seq.

12

Against All Defendants

13

42. Tarbell repeats and realleges the allegations set forth in paragraphs 1
14 through 41 above, as though fully set forth herein.

15

43. The above-described acts of Defendants constitute untrue and misleading
16 advertising as defined by California Business & Professions Code § 17500, et seq.

17

44. The acts of untrue and misleading advertising by Defendants described
18 above present a continuing threat to members of the public in that Defendants' will
19 misrepresent the source of their services.

20

45. Defendants' false and misleading advertising will permit them to make
21 substantial sales and profits on the strength of Tarbell's success, goodwill, and
22 consumer recognition.

23

46. As a direct and proximate result of Defendants' wrongful conduct,
24 Tarbell will be injured by Defendants' wrongful acts, and such harm will continue
25 unless the Court enjoins Defendants' acts. Tarbell has no adequate remedy at law for
26 Defendants' continuing violations of Tarbell's rights.

27

28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

FOURTH CLAIM FOR RELIEF

Trademark Infringement under Common Law

Against All Defendants

47. Tarbell repeats and realleges the allegations set forth in paragraphs 1 through 46 above, as though fully set forth herein.

48. Tarbell has valid and existing common law rights with respect to the Preferred Properties mark.

49. The above acts by Defendants constitute trademark infringement of the Preferred Properties mark, in violation of Tarbell’s common law rights.

50. Defendants’ wrongful acts will permit them to make substantial sales and profits on the strength of Tarbell’s success, goodwill, and consumer recognition.

51. As a direct and proximate result of Defendants’ wrongful conduct, Tarbell, among other things, will be deprived of the value of its Preferred Properties mark as a commercial asset.

52. As a direct and proximate result of Defendants’ wrongful conduct, Tarbell will be injured by Defendants’ wrongful acts, and such harm will continue unless the Court enjoins Defendants’ acts. Tarbell has no adequate remedy at law for Defendants’ continuing violations of Tarbell’s rights.

FIFTH CLAIM FOR RELIEF

Breach of Contract against

A & L Partners/Marquez

53. Tarbell repeats and realleges the allegations set forth in paragraphs 1 through 52 above, as though fully set forth herein.

54. Tarbell entered into a valid and existing contract in the form of a settlement agreement with defendants A & L Partners, Marquez and former Sales Manager Jim Crotwell.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 55. Tarbell fully performed under the contract by, among another things,
2 allowing the First Action to be dismissed.

3 56. Defendants A & L Partners and Marquez breached the contract by failing
4 to ensure that “Windermere Preferred Properties” was no longer used in advertising
5 for Windermere Brea, and by not ensuring that their agents used “Windermere
6 Preferred Living” rather than “Windermere Preferred Properties”.

7 57. Tarbell has been damaged by the breach in an amount to be proven at
8 trial.

9 58. Because the settlement agreement included covenants regarding the
10 conduct of A & L Partners and Marquez with which A & L Partners and Marquez
11 have failed to comply, Tarbell is entitled to injunctive relief to enforce the terms of
12 settlement that governs the conduct of the defendants in the settlement.

13
14
15 **SIXTH CLAIM FOR RELIEF**

16 **Intentional Interference with Contractual Relations against**
17 **Deville, Bennion & Deville Fine Homes, Inc., Bob Bennion**
18 **KGR and King**

19 59. Tarbell repeats and realleges the allegations set forth in paragraphs 1
20 through 58 above, as though fully set forth herein.

21 60. Defendants Deville, Bennion & Deville Fine Homes, Inc., Bob Bennion,
22 KGR and King, and each of them, by virtue of their relationship with the owner and
23 broker of Windermere Brea and their collective interests in promoting Windermere in
24 Southern California, had knowledge of the terms of the settlement and that Tarbell had
25 secured a covenant from A & L Partners and Marquez that the name “Windermere
26 Preferred Properties” would no longer be used by the Windermere Brea office.

27
28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 from any further conduct suggesting or tending to suggest that any services
2 Defendants offer are directly or indirectly sponsored by, approved by, or affiliated
3 with Tarbell.

4 C. Awarding Tarbell damages, costs, attorneys' fees, and investigator's fees,
5 and an accounting of Defendants' profits attributable to Defendants' unauthorized use
6 of Tarbell's trademarks.

7 D. Awarding Tarbell treble damages, pursuant to 15 U.S.C. § 1117(b), as a
8 result of Defendants' wanton, deliberate, malicious, and willful conduct.

9 E. Entering an order, pursuant to 15 U.S.C. § 1118 and other applicable law,
10 directing Defendants to deliver for impoundment and destruction all manuals,
11 packaging, images, and promotional materials bearing any unauthorized use of
12 Tarbell's Preferred Properties trademark or any simulation, reproduction, counterfeit,
13 copy, confusingly similar variation, or colorable imitation thereof.

14 F. Ordering Defendants A & L Partners, Inc. and Marquez to pay damages
15 arising from their breach of contract.

16 G. Ordering Defendants Deville, Bennion & Deville Fine Homes, Inc., Bob
17 Bennion, KGR and King to pay damages arising from their intentional interference of
18 Tarbell's contract with Defendants A & L Partners, Inc. and Marquez.

19 H. Directing that Defendants pay to Tarbell the costs of this action,
20 including their reasonable attorneys' fees incurred herein.

21 I. Awarding Tarbell punitive damages in an amount sufficient to punish
22 Defendants.

23 J. Awarding Tarbell pre-judgment and post-judgment interest on any
24 monetary awards.

25 K. Ordering Defendants to disgorge all of their ill-gotten gains pursuant to
26 California Business & Professions Code § 17203.

27
28

1 L. Granting Tarbell any other and further relief as the Court may deem just
2 and proper.

3 **Jury Demand**

4 Plaintiff Tarbell demands a trial by jury on all issues so triable.
5

6 Respectfully submitted,

7
8
9 By 

Dated: October 19, 2010

10 David L. Aronoff (State Bar No. 152606)
daronoff@winston.com
11 Gayle I. Jenkins (State Bar No. 168962)
gjenkins@winston.com
12 Saul S. Rostamian (State Bar No. 235292)
srostamian@winston.com
13 WINSTON & STRAWN LLP
14 333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
15 (213) 615-1700; Facsimile: (213) 615-1750

16 Attorneys for Plaintiff F.M. Tarbell Co. dba
Tarbell, Realtors
17

18 LA:280700.1
19
20
21
22
23
24
25
26
27
28

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

David L. Aronoff 152606
Gayle I. Jenkins 168962
Winston & Strawn LLP
333 S. Grand Ave., Ste 3800, 333 S. Grand Ave., Suite
3800, Los Angeles, CA 90071
213.615.1700
213.615.1750

Plaintiff, F.M. Tarbell Co. dba Tarbell, Realtors

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

F.M. TARBELL CO. DBA TARBELL, REALTORS, a
California corporation,

PLAINTIFF(S)

v.

A & L PARTNERS, INC. a California corporation;
ANDREA MARQUEZ, an individual, JOSEPH R.
DEVILLE, an individual; BENNION & DEVILLE
FINE HOMES, INC., a California corporation, BOB
BENNION, an individual; KRG REALTY GROUP,
INC., a California corporation, RICHARD MICHAEL
KING, an individual,

DEFENDANT(S).

CASE NUMBER

~~SACV10-01589~~ JVS (Ex)

SUMMONS

TO:DEFENDANT(S): A & L PARTNERS, INC. a California corporation; ANDREA MARQUEZ, an individual, JOSEPH R. DEVILLE, an individual; BENNION & DEVILLE FINE HOMES, INC., a California corporation, BOB BENNION, an individual; KRG REALTY GROUP, INC., a California corporation, RICHARD MICHAEL KING, an individual,

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, WINSTON & STRAWN LLP, whose address is 333 S. Grand Ave., Suite 3800, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: OCT 19 2010

By: CHRISTOPHER POWERS
Deputy Clerk



(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

<p>I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) F.M. TARBELL CO. DBA TARBELL, REALTORS, a California corporation,</p>	<p>DEFENDANTS A & L PARTNERS, INC. a California corporation; ANDREA MARQUEZ, an individual, JOSEPH R. DEVILLE, an individual; BENNION & DEVILLE FINE HOMES, INC., a California corporation, BOB BENNION, an individual; KRG REALTY GROUP, INC., a California corporation, RICHARD MICHAEL KING, an individual,</p>
<p>(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) David L. Aronoff Gayle I. Jenkins 168962 Winston & Strawn LLP 333 S. Grand Ave., Suite 3800 Los Angeles, CA 90071 213.615.1700</p>	<p>Attorneys (If Known)</p>

<p>II. BASIS OF JURISDICTION (Place an X in one box only.)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)</p> <table style="width:100%;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ tt.00

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only.)

<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Act</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Info. Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> <p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>TORTS PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Fed. Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury-Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury-Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>TORTS PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>BANKRUPTCY</p> <p><input type="checkbox"/> 22 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 American with Disabilities - Employment</p> <p><input type="checkbox"/> 446 American with Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus/Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p>FORFEITURE / PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety /Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input checked="" type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 61 HIA(1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW 405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>
--	---	---	---	---	--

FOR OFFICE USE ONLY: Case Number: SACV10-01589

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): USDC Case No. 2:10-cv-04048-PSG -E

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
ORANGE	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	A & L PARTNERS, INC.- Orange County; ANDREA MARQUEZ - Orange County; JOSEPH R. DEVILLE - Riverside County; BENNION & DEVILLE FINE HOMES, INC.- Riverside County; BOB BENNION - Riverside County; KRG REALTY GROUP, INC. - San Bernardino County, RICHARD MICHAEL KING - San Bernardino County,

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

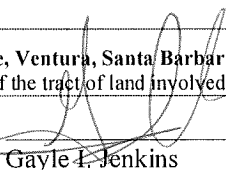
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
ORANGE	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Gayle F. Jenkins

Date October 19, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))