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

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

21 Plaintiffs,

22 v.

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

26 Defendant.

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

**OBJECTION TO DECLARATION
OF JEFFREY A. FEASBY IN
SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: November 21, 2016
Time: 10:00 a.m.
Courtroom: 8

*[Filed concurrently with Reply Brief;
Reply to Defendants Opposition to
Separate Statement of Uncontroverted
Facts & Opposition to Defendant's
Separate Statement of Genuine
Disputes]*

Action Filed: September 17, 2015
Pretrial Conf.: November 14, 2016
Trial: January 31, 2017

27 **AND RELATED COUNTERCLAIMS**
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Pursuant to Federal Rule of Civil Procedure (“FRCP”) 56(c)(3), Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”), Windermere Services Southern California, Inc. (“Services SoCal”), and Counter-Defendants Robert Bennion (“Bennion”) and Joseph Deville (“Deville”) (collectively, the “Moving Parties”) hereby respectfully submit the following evidentiary objections to the Declaration of Jeffrey A. Feasby, and the exhibits thereto, submitted by Defendant Windermere Real Estate Services Company (“WSC”) in support of its Opposition to the Moving Parties’ Motion for Partial Summary Judgment.

I. INTRODUCTION

In opposition to the Moving Parties’ motion for partial summary judgment, WSC submitted the lone declaration of its litigation counsel, Jeffrey A. Feasby. [D.E. 68-2.] Through the declaration, Mr. Feasby attempts to introduce thirteen exhibits that he is not capable of authenticating. As explained in detail below, exhibits A, B, C, H, I, J, K, L, M, and N to Mr. Feasby’s declaration should be rejected by the Court because Mr. Feasby lacks the personal knowledge necessary to establish the authenticity and lay the proper foundation to render the exhibits admissible.

II. OBJECTIONS TO DECLARATION OF JEFFREY A. FEASBY

EXHIBIT	ASSOCIATED DECLARATION TEXT	OBJECTION
A	“This document was attached to the parties’ respective complaints and counterclaims, was exchanged in discovery, and was attached as an exhibit to a number of depositions of the parties	Fed. R. Evid. 602, 901. Mr. Feasby does not lay the proper foundation for Exhibit A. Exhibits are not rendered admissible merely by being attached to a complaint. <i>Ellipsis, Inc. v. The Color Works, Inc.</i> , No. 03-2939 B, 2006 WL 1207589, at *8 (W.D. Tenn. May 4, 2006); <i>see also Szymankiewicz v.</i>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>and their representatives.” (Decl. of Jeffrey A. Feasby in Support of Counter- Claimants’ Opp. to Pls. and Counter-Defs.’ Mot. for Partial Summ. J. (“Decl.”), ¶ 3.)</p>	<p><i>Picard</i>, No. 04-C-186-C, 2005 WL 1154210, at *1 (W.D. Wis. May 13, 2005) (“In addition, plaintiff referred to documentary exhibits attached to his complaint, but such exhibits do not become admissible simply because they are attached to a verified complaint.”); <i>Willis v. Ritter</i>, No. CIV. 04-2303WQHJMA, 2008 WL 821828, at *7 (S.D. Cal. Mar. 26, 2008) (finding that declaration that did not set forth facts made on personal knowledge, even if it referred to exhibits attached to complaint, was not true affidavit). Exhibit A is not deemed authentic and admissible by being attached to a complaint. <i>See Ellipsis, Inc.</i>, 2006 WL 1207589, at *8; <i>see also</i> <i>Szymankiewicz</i>, 2005 WL 1154210, at *1; <i>Willis</i>, 2008 WL 821828, at *7. Also, WSC does not identify who produced the document in discovery, and the document does not bear the Moving Parties’ Bates stamp. <i>See Orr</i> <i>v. Bank of America, NT & SA</i>, 285 F.3d 764, 777 fn. 20, 21(9th Cir. 2002). Finally, WSC fails to cite to a transcript that authenticates Exhibit A. <i>Id.</i> at p. 774-75, fn. 12, 13.</p>
<p>22 23 24 25 26 27 28</p>	<p>B “This document was attached to the parties’ respective complaints and counterclaims, was exchanged in discovery, and was attached as an exhibit to a number of depositions of the parties and their representatives.” (Decl., ¶ 4.)</p>	<p>Fed. R. Evid. 602, 901. Mr. Feasby does not lay the proper foundation for Exhibit B. Exhibit B is not deemed authentic and admissible by being attached to a complaint. <i>See Ellipsis,</i> <i>Inc.</i>, 2006 WL 1207589, at *8; <i>see also</i> <i>Szymankiewicz</i>, 2005 WL 1154210, at *1; <i>Willis</i>, 2008 WL 821828, at *7. Also, WSC does not identify who produced the document in discovery,</p>

1		and the document does not bear the Moving Parties' Bates stamp. <i>See Orr</i> , 285 F.3d at 777 fn. 20, 21. Finally, WSC fails to cite to a transcript that authenticates Exhibit B. <i>See Orr</i> , 285 F.3d at 774-75, fn. 12, 13.
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5	C	“This document was attached to the parties’ respective complaints and counterclaims, was exchanged in discovery, and was attached as an exhibit to a number of depositions of the parties and their representatives.” (Decl., ¶ 5.)
6		Fed. R. Evid. 602, 901. Mr. Feasby does not lay the proper foundation for Exhibit C. Exhibit C is not deemed authentic and admissible by being attached to a complaint. <i>See Ellipsis, Inc.</i> , 2006 WL 1207589, at *8; <i>see also Szymankiewicz</i> , 2005 WL 1154210, at *1; <i>Willis</i> , 2008 WL 821828, at *7. Also, WSC does not identify who produced the document in discovery, and the document does not bear the Moving Parties' Bates stamp. <i>See Orr</i> , 285 F.3d at 777 fn. 20, 21. Finally, WSC fails to cite to a transcript that authenticates the Exhibit C. <i>See Orr</i> , 285 F.3d at 774-75, fn. 12, 13.
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16	H	“These documents were attached to the parties’ respective complaints and counterclaims, were exchanged in discovery, and were attached as exhibits to Mr. Deville’s deposition. Included in the deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is testimony from Mr. Deville further authenticating these documents.” (Decl., ¶ 10.)
17		Fed. R. Evid. 602, 901. Mr. Feasby’s declaration does not lay the proper foundation for Exhibit H. Exhibit H is not deemed authentic and admissible by being attached to a complaint. <i>See Ellipsis, Inc.</i> , 2006 WL 1207589, at *8; <i>see also Szymankiewicz</i> , 2005 WL 1154210, at *1; <i>Willis</i> , 2008 WL 821828, at *7. Also, Defendant does not identify who produced the document in discovery, and the document does not bear Plaintiffs’ bates stamp. <i>See Orr</i> , 285 F.3d at 777 fn. 20, 21. Finally, Defendant fails to cite to a transcript that authenticates Exhibit H. <i>See Orr</i> , 285 F.3d at 774-75, fn. 12, 13.
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28	I	“This document was exchanged in discovery
		Fed. R. Evid. 602, 901. Mr. Feasby’s declaration does not lay the proper

<p>1 2 3 4 5 6 7 8 9</p>	<p>and was attached as an exhibit to Mr. Deville’s deposition. Included in the deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is testimony from Mr. Deville further authenticating these documents.” (Decl., ¶ 11.)</p>	<p>foundation for Exhibit I. WSC does not identify who produced the document in discovery, and the document does not bear the Moving Parties’ Bates stamp; in fact it bears WSC’s Bates stamp, and therefore cannot be authenticated on the grounds that it was produced by a party-opponent. <i>See Orr</i>, 285 F.3d at 777 fn. 20, 21. Furthermore, WSC fails to cite to the page and line in the transcript that allegedly authenticates Exhibit I. <i>See Orr</i>, 285 F.3d at 774-75, fn. 12, 13.</p>
<p>10 11 12 13 14 15 16 17 18 19</p>	<p>J This document was exchanged in discovery and was attached as an exhibit to Mr. Deville’s deposition. Included in the deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is testimony from Mr. Deville further authenticating these documents.” (Decl., ¶ 12.)</p>	<p>Fed. R. Evid. 602, 901. Mr. Feasby’s declaration does not lay the proper foundation for Exhibit J. WSC does not identify who produced the document in discovery, and the document does not bear the Moving Parties’ Bates stamp; in fact it bears WSC’s Bates stamp and cannot be authenticated as a document produced by a party-opponent. <i>See Orr</i>, 285 F.3d at 777 fn. 20, 21. Furthermore, WSC fails to cite to the page and line in the transcript that authenticates Exhibit J. <i>See Orr</i>, 285 F.3d at 774-75, fn. 12, 13.</p>
<p>20 21 22 23 24 25 26 27 28</p>	<p>K “This document was attached to the parties’ respective complaints and counterclaims, was exchanged in discovery, and was attached as an exhibit to a number of depositions of the parties and their representatives. Included in the deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is testimony</p>	<p>Fed. R. Evid. 602, 901. Mr. Feasby’s declaration does not lay the proper foundation for Exhibit K. Exhibit K is not deemed authentic and admissible by being attached to a complaint. <i>See Ellipsis, Inc.</i>, 2006 WL 1207589, at *8; <i>see also Szymankiewicz</i>, 2005 WL 1154210, at *1; <i>Willis</i>, 2008 WL 821828, at *7. WSC does not identify who produced the document in discovery, and the document does not bear the Moving Party’s Bates stamp; in fact it bears WSC’s Bates stamp,</p>

<p>1 2 3 4 5</p>	<p>from Mr. Deville further authenticating these documents.” (Decl., ¶ 13.)</p>	<p>and therefore, cannot be authenticated as a document produced by a party-opponent. <i>See Orr</i>, 285 F.3d at 777 fn. 20, 21. Furthermore, WSC fails to cite to the page and line in the transcript that authenticates Exhibit K. <i>See Orr</i>, 285 F.3d at 774-75, fn. 12, 13.</p>
<p>6 7 8 9 10 11 12 13 14</p>	<p>L “Attached as Exhibit L to this declaration is a true and correct copy of pages that I printed from the California Bureau of Real Estate’s website – www.dre.ca.gov – regarding Fine Homes.” (Decl., ¶ 14.)</p>	<p>Fed. R. Evid. 602, 801, 805, 901. The Declaration does not lay the proper foundation for Exhibit L. Defendant’s counsel has personal knowledge that he printed the page, but not as to the contents of the website. The fact that it is a print out of a state agency website does not deem it <i>per se</i> authentic, and is thus inadmissible. Fed R. Evid. 902; <i>see also Jimena</i>, 2011 WL 2551413, at *4; <i>see also In re Homestore.com, Inc. Sec. Litig.</i>, 347 F. Supp. 2d at 782–83; <i>San Luis</i>, 136 F. Supp. 2d at 1146.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>M “Attached as Exhibit M to this declaration is a true and correct copy of pages that I printed from the California Bureau of Real Estate’s website – www.dre.ca.gov – regarding.” (Decl., ¶ 15.)</p>	<p>Fed. R. Evid. 602, 801, 805, 901. Mr. Feasby’s declaration does not lay the proper foundation for Exhibit M. WSC’s counsel has personal knowledge that he printed the page, but not as to the contents of the website the page was printed from or the accuracy of the information displayed on the page printed. The fact that it is a printout from the website of a state agency does not deem it <i>per se</i> authentic, and, without more, is thus inadmissible. Fed R. Evid. 902; <i>see Jimena v. UBS AG Bank, Inc.</i>, No. 1:07-CV-00367 OWW, 2011 WL 2551413, at *4 (E.D. Cal. June 27, 2011) (holding that e-mails not authenticated or admissible where declarant attested to having read and printed them); <i>see also In re</i></p>

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		<i>Homestore.com, Inc. Sec. Litig.</i> , 347 F. Supp. 2d 769, 782–83 (C.D. Cal. 2004) (finding that print-out of website did not bear indicia of reliability for self-authenticating documents under FRE 902); <i>San Luis v. Badgley</i> , 136 F. Supp. 2d 1136, 1146 (E.D. Cal. 2000) (denying judicial notice request for print-out of federal website with real-time monitoring data for failure to show reliability and admissibility).
N	“Attached as Exhibit N to this declaration is a true and correct copy of pages I printed from the California Secretary of State’s website – https://businessfilings.sos.ca.gov – regarding WSSC.” (Decl., ¶ 16.)	Fed. R. Evid. 602, 801, 805, 901. Mr. Feasby’s declaration does not lay the proper foundation for Exhibit N. WSC’s counsel has personal knowledge that he printed the page, but not as to the contents of the website. The fact that it is a print out of a state agency website does not deem it <i>per se</i> authentic, and is thus inadmissible. Fed R. Evid. 902; <i>see also Jimena</i> , 2011 WL 2551413, at *4; <i>see also In re Homestore.com, Inc. Sec. Litig.</i> , 347 F. Supp. 2d at 782–83; <i>San Luis</i> , 136 F. Supp. 2d at 1146.

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1 **III. CONCLUSION**

2 Exhibits A through C and H through N to the declaration of Mr. Feasby, and
3 associated paragraphs, are inadmissible on the grounds set forth above because
4 they are not authenticated, and the Declaration does not lay the proper foundation
5 for their admission. Accordingly, this Court should not consider the same in its
6 analysis of the Moving Party's motion for partial summary judgment.

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8 Dated: November 7, 2016

MULCAHY LLP

9
10 By: /s/ Kevin A. Adams
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18 *Bennion and Joseph R. Deville*
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