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12

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

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

19 Plaintiffs,

20 v.

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

24 Defendant.
25
26

27 **AND RELATED COUNTERCLAIMS**
28

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

Hon. Manuel L. Real

**DEFENDANT WINDERMERE
REAL ESTATE SERVICES
COMPANY'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF JOSEPH R.
DEVILLE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: October 17, 2016

Time: 10:00 a.m.

Courtroom: 8

1 Pursuant to Federal Rule of Civil Procedure 56(c)(3), Defendant and
2 Counterclaimant Windermere Real Estate Services Company (“WSC”) respectfully
3 submits the following evidentiary objections to the Declaration of Joseph R. Deville
4 in Support of Plaintiffs’ Opposition to Defendant’s Motion for Partial Summary
5 Judgment (“Declaration”).

6 **Objection Number 1**

7 Paragraph 4 of the Declaration, beginning at page 2, line 22, the portion that
8 reads “on the flawed premise that the Area Representation Agreement between
9 WSC and Services SoCal does not qualify as a “franchise” or “area franchise” under
10 the CFRA. While I understand from counsel that WSC’s legal arguments are
11 misguided.”

12 **Grounds for Objection 1:**

13 **Improper Argument/Conclusions.** The statements identified are improper
14 arguments and self-serving conclusions that are not admissible in opposition to
15 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
16 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff’s self-serving
17 declaration in opposition to summary judgment only if it states conclusions rather
18 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
19 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
20 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
21 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
22 argument are not evidence and they cannot by themselves create a factual dispute
23 sufficient to defeat a summary judgment motion where no dispute otherwise
24 exists.”).

25 **Lacks Foundation.** The statements identified lack proper foundation as there
26 is no admissible evidence sufficient to support a finding that the declarant has
27 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
28 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving

1 declaration for purposes of summary judgment” when the declaration states “facts
2 beyond the declarant's personal knowledge and “provide[s] no indication how [the
3 declarant] knows [these facts] to be true.” [Quotations omitted]; *Hexcel Corp. v.*
4 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
5 made with personal knowledge; declarations not based on personal knowledge are
6 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
7 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
8 portion of affidavit as to which affiant clearly had no personal knowledge).

9 Hearsay. The statements identified regarding what the declarant understood
10 from his counsel is inadmissible hearsay. FRE 801, 802. Affidavits containing
11 hearsay (statements by others) fail FRCP 56(c)(4) standards. *See Scosche*
12 *Industries, Inc. v. Visor Gear Inc.* (9th Cir. 1997) 121 F3d 675, 681 (“(H)earsay
13 evidence in Rule 56 affidavits is entitled to no weight.” [internal quotes omitted]).

14 **Objection Number 2**

15 Paragraph 4 of the Declaration, beginning at page 3, line 19, the portion that
16 reads “Although WSC has breached certain portions of the parties’ agreements for
17 years – and to some extent, outside of the relevant statutory period – the conduct
18 give rise to those breaches is not at issue in this case. Instead, Plaintiffs’ only seek
19 damages for conduct of WSC after September 17, 2011.”

20 **Grounds for Objection 2:**

21 Improper Argument/Conclusions. The statements identified are improper
22 arguments and self-serving conclusions that are not admissible in opposition to
23 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
24 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
25 declaration in opposition to summary judgment only if it states conclusions rather
26 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
27 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
28 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*

1 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
2 argument are not evidence and they cannot by themselves create a factual dispute
3 sufficient to defeat a summary judgment motion where no dispute otherwise
4 exists.”).

5 Lacks Foundation. The statements identified lack proper foundation as there
6 is no admissible evidence sufficient to support a finding that the declarant has
7 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
8 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
9 declaration for purposes of summary judgment” when the declaration states “facts
10 beyond the declarant's personal knowledge and “provide[s] no indication how [the
11 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
12 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
13 made with personal knowledge; declarations not based on personal knowledge are
14 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
15 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
16 portion of affidavit as to which affiant clearly had no personal knowledge).

17 Objection Number 3

18 Paragraph 7 of the Declaration in its entirety, including subparagraphs (a)
19 through (e).

20 Grounds for Objection 3:

21 Improper Argument/Conclusions. The statements identified are improper
22 arguments and self-serving conclusions that are not admissible in opposition to
23 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
24 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
25 declaration in opposition to summary judgment only if it states conclusions rather
26 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
27 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
28 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*

1 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
2 argument are not evidence and they cannot by themselves create a factual dispute
3 sufficient to defeat a summary judgment motion where no dispute otherwise
4 exists.”).

5 Lacks Foundation. The statements identified lack proper foundation as there
6 is no admissible evidence sufficient to support a finding that the declarant has
7 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
8 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
9 declaration for purposes of summary judgment” when the declaration states “facts
10 beyond the declarant's personal knowledge and “provide[s] no indication how [the
11 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
12 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
13 made with personal knowledge; declarations not based on personal knowledge are
14 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
15 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
16 portion of affidavit as to which affiant clearly had no personal knowledge).

17 Objection Number 4

18 Exhibit 1 to the Declaration, referenced as being attached at paragraph 7(a),
19 page 3, line 28.

20 Grounds for Objection 4:

21 Improper Authentication. The exhibit referenced herein and attached to the
22 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
23 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
24 referred to in a declaration must be properly authenticated – their attachment to a
25 declaration does not make them admissible evidence). As a result, this exhibit
26 cannot be considered in opposition to WSC’s Motion for Partial Summary
27 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d

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1 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
2 motion for summary judgment.”).

3 Hearsay. Aside from the first half of the first page of this exhibit (the October
4 14, 2014 email from Mike Teather), this exhibit contains inadmissible hearsay. FRE
5 801, 802. Documents and exhibits or exhibits containing hearsay are not admissible
6 for purposes of opposing a motion for summary judgment. *See Orr v. Bank of*
7 *America, NT & SA*, 285 F.3d 764, 778-779 (9th Cir. 2002).

8 **Objection Number 5**

9 Exhibit 2 to the Declaration, referenced as being attached at paragraph 7(b),
10 page 4, line 5.

11 **Grounds for Objection 5:**

12 Improper Authentication. The exhibit referenced herein and attached to the
13 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
14 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
15 referred to in a declaration must be properly authenticated – their attachment to a
16 declaration does not make them admissible evidence). As a result, this exhibit
17 cannot be considered in opposition to WSC’s Motion for Partial Summary
18 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d
19 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
20 motion for summary judgment.”).

21 Hearsay. This exhibit contains inadmissible hearsay. FRE 801, 802.
22 Documents and exhibits or exhibits containing hearsay are not admissible for
23 purposes of opposing a motion for summary judgment. *See Orr v. Bank of America,*
24 *NT & SA*, 285 F.3d 764, 778-779 (9th Cir. 2002).

25 **Objection Number 6**

26 Exhibit 3 to the Declaration, referenced as being attached at paragraph 7(c),
27 page 4, line 11.

28 ///

1 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
2 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
3 portion of affidavit as to which affiant clearly had no personal knowledge).

4 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
5 content of documents. FRE 1002, 1007.

6 **Objection Number 9**

7 Paragraph 10 of the Declaration in its entirety.

8 **Grounds for Objection 9:**

9 Improper Argument/Conclusions. The statements identified are improper
10 arguments and self-serving conclusions that are not admissible in opposition to
11 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
12 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
13 declaration in opposition to summary judgment only if it states conclusions rather
14 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
15 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
16 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
17 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
18 argument are not evidence and they cannot by themselves create a factual dispute
19 sufficient to defeat a summary judgment motion where no dispute otherwise
20 exists.”); *King v. National Industries, Inc.*, 512 F.2d 29, 33–34 (6th Cir. 1975) (“An
21 affidavit stating what the attorney believes or intends to prove at trial is insufficient
22 to comply with the burden placed on a party opposing a motion for summary
23 judgment under Rule 56.”).

24 Lacks Foundation. The statements identified lack proper foundation as there
25 is no admissible evidence sufficient to support a finding that the declarant has
26 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
27 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
28 declaration for purposes of summary judgment” when the declaration states “facts

1 beyond the declarant's personal knowledge and “provide[s] no indication how [the
2 declarant] knows [these facts] to be true.” [Quotations omitted]; *Hexcel Corp. v.*
3 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
4 made with personal knowledge; declarations not based on personal knowledge are
5 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
6 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
7 portion of affidavit as to which affiant clearly had no personal knowledge).

8 **Objection Number 10**

9 Paragraph 11 of the Declaration in its entirety.

10 **Grounds for Objection 10:**

11 **Improper Argument/Conclusions.** The statements identified are improper
12 arguments and self-serving conclusions that are not admissible in opposition to
13 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
14 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
15 declaration in opposition to summary judgment only if it states conclusions rather
16 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
17 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
18 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
19 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
20 argument are not evidence and they cannot by themselves create a factual dispute
21 sufficient to defeat a summary judgment motion where no dispute otherwise
22 exists.”).

23 **Lacks Foundation.** The statements identified lack proper foundation as there
24 is no admissible evidence sufficient to support a finding that the declarant has
25 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
26 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
27 declaration for purposes of summary judgment” when the declaration states “facts
28 beyond the declarant's personal knowledge and “provide[s] no indication how [the

1 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
2 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
3 made with personal knowledge; declarations not based on personal knowledge are
4 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
5 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
6 portion of affidavit as to which affiant clearly had no personal knowledge).

7 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
8 content of documents. FRE 1002, 1007.

9 **Objection Number 11**

10 Paragraph 12 of the Declaration in its entirety.

11 **Grounds for Objection 11:**

12 Improper Argument/Conclusions. The statements identified are improper
13 arguments and self-serving conclusions that are not admissible in opposition to
14 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
15 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
16 declaration in opposition to summary judgment only if it states conclusions rather
17 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
18 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
19 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
20 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
21 argument are not evidence and they cannot by themselves create a factual dispute
22 sufficient to defeat a summary judgment motion where no dispute otherwise
23 exists.”).

24 Lacks Foundation. The statements identified lack proper foundation as there
25 is no admissible evidence sufficient to support a finding that the declarant has
26 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
27 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
28 declaration for purposes of summary judgment” when the declaration states “facts

1 beyond the declarant's personal knowledge and “provide[s] no indication how [the
2 declarant] knows [these facts] to be true.” [Quotations omitted]; *Hexcel Corp. v.*
3 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
4 made with personal knowledge; declarations not based on personal knowledge are
5 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
6 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
7 portion of affidavit as to which affiant clearly had no personal knowledge).

8 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
9 content of documents. FRE 1002, 1007.

10 **Objection Number 12**

11 Paragraph 13 of the Declaration, beginning at page 6, line 11, the portion that
12 reads “However, those failures did not negate WSC’s obligation to provide us with
13 adequate technology and a functioning system throughout the entire term of our
14 relationship. After all, we continued to pay WSC significant technology fees
15 throughout the term of our relationship with the understanding that technology that
16 worked in our region would be provided. WSC continued to collect those fees and
17 promise to correct any issues. In fact, there were instances where the technology
18 shortcomings were corrected. However, this did not last. Plaintiffs now file suit for
19 WSC’s breaches of the parties’ agreements in these areas after September 17, 2011.”

20 **Grounds for Objection 12:**

21 Improper Argument/Conclusions. The statements identified are improper
22 arguments and self-serving conclusions that are not admissible in opposition to
23 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
24 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
25 declaration in opposition to summary judgment only if it states conclusions rather
26 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
27 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
28 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*

1 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
2 argument are not evidence and they cannot by themselves create a factual dispute
3 sufficient to defeat a summary judgment motion where no dispute otherwise
4 exists.”).

5 Lacks Foundation. The statements identified lack proper foundation as there
6 is no admissible evidence sufficient to support a finding that the declarant has
7 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
8 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
9 declaration for purposes of summary judgment” when the declaration states “facts
10 beyond the declarant's personal knowledge and “provide[s] no indication how [the
11 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
12 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
13 made with personal knowledge; declarations not based on personal knowledge are
14 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
15 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
16 portion of affidavit as to which affiant clearly had no personal knowledge).

17 **Objection Number 13**

18 Paragraph 14 of the Declaration in its entirety.

19 **Grounds for Objection 13:**

20 Improper Argument/Conclusions. The statements identified are improper
21 arguments and self-serving conclusions that are not admissible in opposition to
22 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
23 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
24 declaration in opposition to summary judgment only if it states conclusions rather
25 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
26 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
27 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
28 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral

1 argument are not evidence and they cannot by themselves create a factual dispute
2 sufficient to defeat a summary judgment motion where no dispute otherwise
3 exists.”).

4 Lacks Foundation. The statements identified lack proper foundation as there
5 is no admissible evidence sufficient to support a finding that the declarant has
6 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
7 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
8 declaration for purposes of summary judgment” when the declaration states “facts
9 beyond the declarant's personal knowledge and “provide[s] no indication how [the
10 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
11 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
12 made with personal knowledge; declarations not based on personal knowledge are
13 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
14 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
15 portion of affidavit as to which affiant clearly had no personal knowledge).

16 **Objection Number 14**

17 Exhibits 7, 8, and 9 to the Declaration, referenced as being attached at page 6,
18 line 28.

19 **Grounds for Objection 14:**

20 Improper Authentication. The exhibit referenced herein and attached to the
21 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
22 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
23 referred to in a declaration must be properly authenticated – their attachment to a
24 declaration does not make them admissible evidence). As a result, this exhibit
25 cannot be considered in opposition to WSC’s Motion for Partial Summary
26 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d
27 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
28 motion for summary judgment.”).

1 made with personal knowledge; declarations not based on personal knowledge are
2 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
3 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
4 portion of affidavit as to which affiant clearly had no personal knowledge).

5 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
6 content of documents. FRE 1002, 1007.

7 **Objection Number 16**

8 Paragraph 16 of the Declaration, beginning at page 7, line 10, the portion that
9 reads “Drayna’s flawed legal instructions concerning the disclosure to prospective
10 franchisees did not end there.”

11 **Grounds for Objection 16:**

12 Improper Argument/Conclusions. The statements identified are improper
13 arguments and self-serving conclusions that are not admissible in opposition to
14 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
15 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff’s self-serving
16 declaration in opposition to summary judgment only if it states conclusions rather
17 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
18 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
19 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
20 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
21 argument are not evidence and they cannot by themselves create a factual dispute
22 sufficient to defeat a summary judgment motion where no dispute otherwise
23 exists.”).

24 Lacks Foundation. The statements identified lack proper foundation as there
25 is no admissible evidence sufficient to support a finding that the declarant has
26 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
27 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
28 declaration for purposes of summary judgment” when the declaration states “facts

1 beyond the declarant's personal knowledge and “provide[s] no indication how [the
2 declarant] knows [these facts] to be true.” [Quotations omitted]; *Hexcel Corp. v.*
3 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
4 made with personal knowledge; declarations not based on personal knowledge are
5 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
6 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
7 portion of affidavit as to which affiant clearly had no personal knowledge).

8 **Objection Number 17**

9 Paragraph 16 of the Declaration at page 7, lines 13-18, the entire block quote.

10 **Grounds for Objection 17:**

11 **Secondary/Best Evidence Rule.** This is inadmissible testimony regarding the
12 content of documents. FRE 1002, 1007.

13 **Objection Number 18**

14 Paragraph 17 of the Declaration beginning at page 7, line 19, the portion that
15 reads “As reflected in his email, Drayna conceded that the Southern California FDD
16 registration packet had not yet been approved (or even received) by the DBO.”

17 **Grounds for Objection 18:**

18 **Secondary/Best Evidence Rule.** This is inadmissible testimony regarding the
19 content of documents. FRE 1002, 1007.

20 **Objection Number 19**

21 Paragraph 17 of the Declaration beginning at page 7, line 21, the portion that
22 reads “Nonetheless, he continued to hide WSC’s breach of its obligation to maintain
23 registration of the Southern California FDD by instructing Plaintiffs to provide
24 prospective franchisees in San Diego the wrong FDD.”

25 **Grounds for Objection 19:**

26 **Improper Argument/Conclusions.** The statements identified are improper
27 arguments and self-serving conclusions that are not admissible in opposition to
28 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784

1 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
2 declaration in opposition to summary judgment only if it states conclusions rather
3 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
4 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
5 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
6 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
7 argument are not evidence and they cannot by themselves create a factual dispute
8 sufficient to defeat a summary judgment motion where no dispute otherwise
9 exists.”).

10 Lacks Foundation. The statements identified lack proper foundation as there
11 is no admissible evidence sufficient to support a finding that the declarant has
12 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
13 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
14 declaration for purposes of summary judgment” when the declaration states “facts
15 beyond the declarant's personal knowledge and “provide[s] no indication how [the
16 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
17 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
18 made with personal knowledge; declarations not based on personal knowledge are
19 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
20 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
21 portion of affidavit as to which affiant clearly had no personal knowledge).

22 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
23 content of documents. FRE 1002, 1007.

24 Objection Number 20

25 Paragraph 18 of the Declaration in its entirety.

26 Grounds for Objection 20:

27 Improper Argument/Conclusions. The statements identified are improper
28 arguments and self-serving conclusions that are not admissible in opposition to

1 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
2 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
3 declaration in opposition to summary judgment only if it states conclusions rather
4 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
5 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
6 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
7 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
8 argument are not evidence and they cannot by themselves create a factual dispute
9 sufficient to defeat a summary judgment motion where no dispute otherwise
10 exists.”).

11 Lacks Foundation. The statements identified lack proper foundation as there
12 is no admissible evidence sufficient to support a finding that the declarant has
13 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
14 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
15 declaration for purposes of summary judgment” when the declaration states “facts
16 beyond the declarant's personal knowledge and “provide[s] no indication how [the
17 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
18 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
19 made with personal knowledge; declarations not based on personal knowledge are
20 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
21 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
22 portion of affidavit as to which affiant clearly had no personal knowledge).

23 Objection Number 21

24 Paragraph 19 of the Declaration in its entirety.

25 Grounds for Objection 21:

26 Improper Argument/Conclusions. The statements identified are improper
27 arguments and self-serving conclusions that are not admissible in opposition to
28 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784

1 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
2 declaration in opposition to summary judgment only if it states conclusions rather
3 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
4 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
5 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
6 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
7 argument are not evidence and they cannot by themselves create a factual dispute
8 sufficient to defeat a summary judgment motion where no dispute otherwise
9 exists.”).

10 Lacks Foundation. The statements identified lack proper foundation as there
11 is no admissible evidence sufficient to support a finding that the declarant has
12 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
13 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
14 declaration for purposes of summary judgment” when the declaration states “facts
15 beyond the declarant's personal knowledge and “provide[s] no indication how [the
16 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
17 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
18 made with personal knowledge; declarations not based on personal knowledge are
19 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
20 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
21 portion of affidavit as to which affiant clearly had no personal knowledge).

22 Objection Number 22

23 Paragraph 19 of the Declaration beginning at page 8, line 4, the portion that
24 reads “ ‘last week,’ and [i]n the mean time (sic) you may proceed with the Northern
25 California [FDD] as we discussed.’ ”

26 Grounds for Objection 22:

27 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
28 content of documents. FRE 1002, 1007.

1 **Objection Number 23**

2 Paragraph 20 of the Declaration in its entirety.

3 **Grounds for Objection 23:**

4 **Improper Argument/Conclusions.** The statements identified are improper
5 arguments and self-serving conclusions that are not admissible in opposition to
6 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
7 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
8 declaration in opposition to summary judgment only if it states conclusions rather
9 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
10 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
11 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
12 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
13 argument are not evidence and they cannot by themselves create a factual dispute
14 sufficient to defeat a summary judgment motion where no dispute otherwise
15 exists.”).

16 **Lacks Foundation.** The statements identified lack proper foundation as there
17 is no admissible evidence sufficient to support a finding that the declarant has
18 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
19 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
20 declaration for purposes of summary judgment” when the declaration states “facts
21 beyond the declarant's personal knowledge and “provide[s] no indication how [the
22 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
23 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
24 made with personal knowledge; declarations not based on personal knowledge are
25 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
26 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
27 portion of affidavit as to which affiant clearly had no personal knowledge).

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Objection Number 24

Paragraph 20 of the Declaration, beginning at page 8, line 14, the portion that reads “ ‘as is, even though it doesn’t yet reflect the terms [Services SoCal has] discussed with them. Those terms will be shown in the new [Southern California FDD], and in the real license agreement they will sign asap.’ ”

Grounds for Objection 24:

Secondary/Best Evidence Rule. This is inadmissible testimony regarding the content of documents. FRE 1002, 1007.

Objection Number 25

Paragraph 21 of the Declaration in its entirety.

Grounds for Objection 25:

Improper Argument/Conclusions. The statements identified are improper arguments and self-serving conclusions that are not admissible in opposition to summary judgment. *See also Nigro v. Sears, Roebuck & Co.*, 784 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff’s self-serving declaration in opposition to summary judgment only if it states conclusions rather than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual support, are insufficient to defeat summary judgment”); *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral argument are not evidence and they cannot by themselves create a factual dispute sufficient to defeat a summary judgment motion where no dispute otherwise exists.”).

Lacks Foundation. The statements identified lack proper foundation as there is no admissible evidence sufficient to support a finding that the declarant has personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving declaration for purposes of summary judgment” when the declaration states “facts beyond the declarant’s personal knowledge and “provide[s] no indication how [the

1 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
2 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
3 made with personal knowledge; declarations not based on personal knowledge are
4 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
5 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
6 portion of affidavit as to which affiant clearly had no personal knowledge).

7 **Objection Number 26**

8 Paragraph 22 of the Declaration, beginning at page 8, line 21, the portion that
9 reads “From May 1, 2014 through September 30, 2015, Services SoCal served as the
10 Area Representative for WSC’s franchise system in the Southern California region.”

11 **Grounds for Objection 26:**

12 **Lacks Foundation.** The statements identified lack proper foundation as there
13 is no admissible evidence sufficient to support a finding that the declarant has
14 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
15 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
16 declaration for purposes of summary judgment” when the declaration states “facts
17 beyond the declarant's personal knowledge and “provide[s] no indication how [the
18 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
19 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
20 made with personal knowledge; declarations not based on personal knowledge are
21 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
22 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
23 portion of affidavit as to which affiant clearly had no personal knowledge).

24 **Objection Number 27**

25 Paragraph 23 of the Declaration in its entirety.

26 **Grounds for Objection 27:**

27 **Improper Argument/Conclusions.** The statements identified are improper
28 arguments and self-serving conclusions that are not admissible in opposition to

1 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
2 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
3 declaration in opposition to summary judgment only if it states conclusions rather
4 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
5 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
6 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
7 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
8 argument are not evidence and they cannot by themselves create a factual dispute
9 sufficient to defeat a summary judgment motion where no dispute otherwise
10 exists.”).

11 Lacks Foundation. The statements identified lack proper foundation as there
12 is no admissible evidence sufficient to support a finding that the declarant has
13 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
14 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
15 declaration for purposes of summary judgment” when the declaration states “facts
16 beyond the declarant's personal knowledge and “provide[s] no indication how [the
17 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
18 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
19 made with personal knowledge; declarations not based on personal knowledge are
20 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
21 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
22 portion of affidavit as to which affiant clearly had no personal knowledge).

23 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
24 content of documents. FRE 1002, 1007.

25 **Objection Number 28**

26 Paragraph 24 of the Declaration in its entirety.

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1 **Objection Number 32**

2 Paragraph 27 of the Declaration in its entirety, including subparagraphs (a)
3 through (g).

4 **Grounds for Objection 32:**

5 **Improper Argument/Conclusions.** The statements identified are improper
6 arguments and self-serving conclusions that are not admissible in opposition to
7 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
8 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
9 declaration in opposition to summary judgment only if it states conclusions rather
10 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
11 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
12 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
13 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
14 argument are not evidence and they cannot by themselves create a factual dispute
15 sufficient to defeat a summary judgment motion where no dispute otherwise
16 exists.”).

17 **Lacks Foundation.** The statements identified lack proper foundation as there
18 is no admissible evidence sufficient to support a finding that the declarant has
19 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
20 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
21 declaration for purposes of summary judgment” when the declaration states “facts
22 beyond the declarant's personal knowledge and “provide[s] no indication how [the
23 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
24 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
25 made with personal knowledge; declarations not based on personal knowledge are
26 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
27 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
28 portion of affidavit as to which affiant clearly had no personal knowledge).

1 **Objection Number 33**

2 Exhibit 13 to the Declaration, reference as being attached at paragraph 27(a),
3 page 10, line 2.

4 **Grounds for Objection 33:**

5 **Improper Authentication.** The exhibit referenced herein and attached to the
6 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
7 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
8 referred to in a declaration must be properly authenticated – their attachment to a
9 declaration does not make them admissible evidence). As a result, this exhibit
10 cannot be considered in opposition to WSC’s Motion for Partial Summary
11 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d
12 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
13 motion for summary judgment.”).

14 **Hearsay.** This exhibit contains inadmissible hearsay. FRE 801, 802.
15 Documents and exhibits or exhibits containing hearsay are not admissible for
16 purposes of opposing a motion for summary judgment. *See Orr v. Bank of America,*
17 *NT & SA*, 285 F.3d 764, 778-779 (9th Cir. 2002).

18 **Objection Number 34**

19 Exhibit 14 to the Declaration, reference as being attached at paragraph 27(b),
20 page 10, line 21.

21 **Grounds for Objection 34:**

22 **Improper Authentication.** The exhibit referenced herein and attached to the
23 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
24 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
25 referred to in a declaration must be properly authenticated – their attachment to a
26 declaration does not make them admissible evidence). As a result, this exhibit
27 cannot be considered in opposition to WSC’s Motion for Partial Summary
28 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d

1 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
2 motion for summary judgment.”).

3 Hearsay. This exhibit contains inadmissible hearsay. FRE 801, 802.
4 Documents and exhibits or exhibits containing hearsay are not admissible for
5 purposes of opposing a motion for summary judgment. *See Orr v. Bank of America,*
6 *NT & SA*, 285 F.3d 764, 778-779 (9th Cir. 2002).

7 **Objection Number 35**

8 Exhibit 15 to the Declaration, reference as being attached at paragraph 27(c),
9 page 10, line 10.

10 **Grounds for Objection 35:**

11 Improper Authentication. The exhibit referenced herein and attached to the
12 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
13 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
14 referred to in a declaration must be properly authenticated – their attachment to a
15 declaration does not make them admissible evidence). As a result, this exhibit
16 cannot be considered in opposition to WSC’s Motion for Partial Summary
17 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d
18 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
19 motion for summary judgment.”).

20 Hearsay. This exhibit contains inadmissible hearsay. FRE 801, 802.
21 Documents and exhibits or exhibits containing hearsay are not admissible for
22 purposes of opposing a motion for summary judgment. *See Orr v. Bank of America,*
23 *NT & SA*, 285 F.3d 764, 778-779 (9th Cir. 2002).

24 **Objection Number 36**

25 Exhibit 16 to the Declaration, reference as being attached at paragraph 27(d),
26 page 10, line 14.

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1 declaration in opposition to summary judgment only if it states conclusions rather
2 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
3 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
4 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
5 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
6 argument are not evidence and they cannot by themselves create a factual dispute
7 sufficient to defeat a summary judgment motion where no dispute otherwise
8 exists.”).

9 Lacks Foundation. The statements identified lack proper foundation as there
10 is no admissible evidence sufficient to support a finding that the declarant has
11 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
12 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
13 declaration for purposes of summary judgment” when the declaration states “facts
14 beyond the declarant's personal knowledge and “provide[s] no indication how [the
15 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
16 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
17 made with personal knowledge; declarations not based on personal knowledge are
18 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
19 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
20 portion of affidavit as to which affiant clearly had no personal knowledge).

21 Objection Number 40

22 Paragraph 29 of the Declaration in its entirety.

23 Grounds for Objection 40:

24 Improper Argument/Conclusions. The statements identified are improper
25 arguments and self-serving conclusions that are not admissible in opposition to
26 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
27 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
28 declaration in opposition to summary judgment only if it states conclusions rather

1 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
2 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
3 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
4 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
5 argument are not evidence and they cannot by themselves create a factual dispute
6 sufficient to defeat a summary judgment motion where no dispute otherwise
7 exists.”).

8 Lacks Foundation. The statements identified lack proper foundation as there
9 is no admissible evidence sufficient to support a finding that the declarant has
10 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
11 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
12 declaration for purposes of summary judgment” when the declaration states “facts
13 beyond the declarant's personal knowledge and “provide[s] no indication how [the
14 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
15 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
16 made with personal knowledge; declarations not based on personal knowledge are
17 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
18 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
19 portion of affidavit as to which affiant clearly had no personal knowledge).

20 **Objection Number 41**

21 Paragraph 30 of the Declaration in its entirety.

22 **Grounds for Objection 41:**

23 Improper Argument/Conclusions. The statements identified are improper
24 arguments and self-serving conclusions that are not admissible in opposition to
25 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
26 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
27 declaration in opposition to summary judgment only if it states conclusions rather
28 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d

1 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
2 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
3 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
4 argument are not evidence and they cannot by themselves create a factual dispute
5 sufficient to defeat a summary judgment motion where no dispute otherwise
6 exists.”).

7 Lacks Foundation. The statements identified lack proper foundation as there
8 is no admissible evidence sufficient to support a finding that the declarant has
9 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
10 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
11 declaration for purposes of summary judgment” when the declaration states “facts
12 beyond the declarant's personal knowledge and “provide[s] no indication how [the
13 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
14 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
15 made with personal knowledge; declarations not based on personal knowledge are
16 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
17 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
18 portion of affidavit as to which affiant clearly had no personal knowledge).

19 **Objection Number 42**

20 Paragraph 31 of the Declaration in its entirety.

21 **Grounds for Objection 42:**

22 Improper Argument/Conclusions. The statements identified are improper
23 arguments and self-serving conclusions that are not admissible in opposition to
24 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
25 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
26 declaration in opposition to summary judgment only if it states conclusions rather
27 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
28 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual

1 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
2 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
3 argument are not evidence and they cannot by themselves create a factual dispute
4 sufficient to defeat a summary judgment motion where no dispute otherwise
5 exists.”).

6 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
7 content of documents. FRE 1002, 1007.

8 Objection Number 43

9 Paragraph 32 of the Declaration in its entirety.

10 Grounds for Objection 43:

11 Improper Argument/Conclusions. The statements identified are improper
12 arguments and self-serving conclusions that are not admissible in opposition to
13 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
14 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
15 declaration in opposition to summary judgment only if it states conclusions rather
16 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
17 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
18 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
19 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
20 argument are not evidence and they cannot by themselves create a factual dispute
21 sufficient to defeat a summary judgment motion where no dispute otherwise
22 exists.”).

23 Lacks Foundation. The statements identified lack proper foundation as there
24 is no admissible evidence sufficient to support a finding that the declarant has
25 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
26 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
27 declaration for purposes of summary judgment” when the declaration states “facts
28 beyond the declarant's personal knowledge and “provide[s] no indication how [the

1 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
2 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
3 made with personal knowledge; declarations not based on personal knowledge are
4 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
5 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
6 portion of affidavit as to which affiant clearly had no personal knowledge).

7 **Objection Number 44**

8 Paragraph 33 of the Declaration in its entirety.

9 **Grounds for Objection 44:**

10 **Improper Argument/Conclusions.** The statements identified are improper
11 arguments and self-serving conclusions that are not admissible in opposition to
12 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
13 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
14 declaration in opposition to summary judgment only if it states conclusions rather
15 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
16 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
17 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
18 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
19 argument are not evidence and they cannot by themselves create a factual dispute
20 sufficient to defeat a summary judgment motion where no dispute otherwise
21 exists.”).

22 **Lacks Foundation.** The statements identified lack proper foundation as there
23 is no admissible evidence sufficient to support a finding that the declarant has
24 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
25 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
26 declaration for purposes of summary judgment” when the declaration states “facts
27 beyond the declarant's personal knowledge and “provide[s] no indication how [the
28 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*

1 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
2 made with personal knowledge; declarations not based on personal knowledge are
3 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
4 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
5 portion of affidavit as to which affiant clearly had no personal knowledge).

6 Secondary/Best Evidence Rule. This is inadmissible testimony regarding the
7 content of documents. FRE 1002, 1007.

8 **Objection Number 45**

9 Exhibits 19, 20, and 21 to the Declaration, reference as being attached at
10 paragraph 33, page 12, lines 1-2.

11 **Grounds for Objection 45:**

12 Improper Authentication. The exhibit referenced herein and attached to the
13 declaration is not properly authenticated. FRE 602, 901. *See also Orr v. Bank of*
14 *America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002) (documents or evidence
15 referred to in a declaration must be properly authenticated – their attachment to a
16 declaration does not make them admissible evidence). As a result, this exhibit
17 cannot be considered in opposition to WSC’s Motion for Partial Summary
18 Judgment. FRCP 56(c)(4). *See also Canada v. Blain's Helicopters, Inc.*, 831 F.2d
19 920, 925 (9th Cir. 1987) (“unauthenticated documents cannot be considered on a
20 motion for summary judgment.”).

21 **Objection Number 46**

22 Paragraph 34 of the Declaration in its entirety.

23 **Grounds for Objection 46:**

24 Improper Argument/Conclusions. The statements identified are improper
25 arguments and self-serving conclusions that are not admissible in opposition to
26 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
27 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
28 declaration in opposition to summary judgment only if it states conclusions rather

1 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
2 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
3 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
4 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
5 argument are not evidence and they cannot by themselves create a factual dispute
6 sufficient to defeat a summary judgment motion where no dispute otherwise
7 exists.”).

8 Lacks Foundation. The statements identified lack proper foundation as there
9 is no admissible evidence sufficient to support a finding that the declarant has
10 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
11 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
12 declaration for purposes of summary judgment” when the declaration states “facts
13 beyond the declarant's personal knowledge and “provide[s] no indication how [the
14 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
15 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
16 made with personal knowledge; declarations not based on personal knowledge are
17 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
18 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
19 portion of affidavit as to which affiant clearly had no personal knowledge).

20 **Objection Number 47**

21 Paragraph 36 of the Declaration in its entirety.

22 **Grounds for Objection 47:**

23 Improper Argument/Conclusions. The statements identified are improper
24 arguments and self-serving conclusions that are not admissible in opposition to
25 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
26 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
27 declaration in opposition to summary judgment only if it states conclusions rather
28 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d

1 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual
2 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
3 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
4 argument are not evidence and they cannot by themselves create a factual dispute
5 sufficient to defeat a summary judgment motion where no dispute otherwise
6 exists.”).

7 Lacks Foundation. The statements identified lack proper foundation as there
8 is no admissible evidence sufficient to support a finding that the declarant has
9 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
10 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
11 declaration for purposes of summary judgment” when the declaration states “facts
12 beyond the declarant's personal knowledge and “provide[s] no indication how [the
13 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
14 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
15 made with personal knowledge; declarations not based on personal knowledge are
16 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
17 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
18 portion of affidavit as to which affiant clearly had no personal knowledge).

19 **Objection Number 48**

20 Paragraph 37 of the Declaration in its entirety.

21 **Grounds for Objection 48:**

22 Improper Argument/Conclusions. The statements identified are improper
23 arguments and self-serving conclusions that are not admissible in opposition to
24 summary judgment. FRCP 56(c)(4). *See also Nigro v. Sears, Roebuck & Co.*, 784
25 F.3d 495, 497-498 (9th Cir. 2015) (court may disregard plaintiff's self-serving
26 declaration in opposition to summary judgment only if it states conclusions rather
27 than admissible evidence); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d
28 496, 502 (9th Cir. 1997) (“Conclusory allegations of collusion, without factual

1 support, are insufficient to defeat summary judgment”); *British Airways Bd. v.*
2 *Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“Legal memoranda and oral
3 argument are not evidence and they cannot by themselves create a factual dispute
4 sufficient to defeat a summary judgment motion where no dispute otherwise
5 exists.”).

6 Lacks Foundation. The statements identified lack proper foundation as there
7 is no admissible evidence sufficient to support a finding that the declarant has
8 personal knowledge of the matters stated. FRE 602; FRCP 56(c)(4). *See also SEC*
9 *v. Phan*, 500 F.3d 895, 910 (9th Cir. 2007) (a court may “disregard a self-serving
10 declaration for purposes of summary judgment” when the declaration states “facts
11 beyond the declarant's personal knowledge and “provide[s] no indication how [the
12 declarant] knows [these facts] to be true.” [Quotations omitted]); *Hexcel Corp. v.*
13 *Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations “must be
14 made with personal knowledge; declarations not based on personal knowledge are
15 inadmissible and cannot raise a genuine issue of material fact”); *Argo v. Blue Cross*
16 *& Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006) (striking
17 portion of affidavit as to which affiant clearly had no personal knowledge).

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DATED: October 3, 2016 PEREZ WILSON VAUGHN & FEASBY

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