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14 (Admitted *pro hac vice*)

15 *Attorneys for Plaintiffs*

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF ORANGE**

18 QUONIX NETWORKS, INC; ANTHONY
19 WILLIAMS dba ENVIRO INK; SUE HIATT
20 dba HOUSE OF BOUNCE, LLC; DAVE
21 CARLSON dba CARLSON TIMBER
22 PRODUCTS, INC.; ROY HEILBRON dba
23 CARING CARDIOLOGY, P.A.; TERRY
24 HENDRICKS dba BRILLIANCE
25 ACADEMY, LLC.; JOSEPH JENKINS dba
26 BONNETTE- HARRISON POST NO. 502
27 OF THE AMERICAN LEGION; LOUIS
28 MANNICK dba ADF, INC.; JESSE
MENDOZA dba 5JIA, LLC; CATHY
NGUYEN dba FLASH ELECTRONICS,
LLC; TOM SCHIEFER dba SCHIEFER
TRANSPORT, INC.; MICHAEL
SCHWARTZ dba INDUSTRIAL STEEL
PRODUCTS, LLC; THOMAS SCIMONE
dba PRIVATE LABEL EXECUTIVE GIFTS,
INC. ELISA SIM dba PURICLE, INC.; and
WILLIAM SNODGRASS dba NASHVILLE
HIGHLIGHT, LLC

Plaintiffs,

vs.

BENCHMARK FINANCIAL GROUPS,
LLC, a California Limited Liability
Company, and DOES 1 through 100,
Inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

04/08/2011 at 02:23:00 PM

Clerk of the Superior Court
By Margaret M Demaria, Deputy Clerk

Case No.: 30-2009 00270463
(Assigned to the Hon. David C. Velasquez)

**PLAINTIFFS' EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF MARCUS DAVIN
FILED IN SUPPORT OF
DEFENDANT'S MOTION FOR
ORDER SEVERING THIS ACTION
INTO SEPARATE COMPLAINTS OR
ALTERNATIVELY INTO SEPARATE
TRIALS AS TO EACH PLAINTIFF**

Date: April 21, 2011
Time: 1:30 p.m.
Dept. CX101

KHORRAMI POLLARD & ABIR LLP

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1 Plaintiffs hereby submit the following objections to the Declaration of Marcus Davin
2 filed in support of Defendant's Motion for an order severing this action into separate
3 complaints or alternatively into separate trials as to each Plaintiff.

4 **OBJECTIONS TO THE DECLARATION OF MARCUS DAVIN**

5 Plaintiffs object to the Declaration of Marcus Davin, and every statement contained in
6 Paragraphs 3 through 18, on the ground that the testimony contained therein lacks foundation
7 (Cal. Evid. Code §403) insofar as Declarant fails to identify the factual basis for any of the
8 assertions made.

9 **OBJECTION NO. 1**

10 Material objected to: "Quonix abruptly cancelled the contract while we were working to
11 obtain financing." Davin Declaration, p. 1:12-23.

12 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352
13 due to its tendency to mislead and confuse the true facts and issues;

14 Second ground for objection: Such testimony constitutes the drawing of an improper
15 legal conclusion (Cal. Evid. Code § 800) as to what constitutes "cancellation" of the contract.

16 Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
17 insofar as Declarant fails to identify the factual basis for any of the assertions made.

18 Court's ruling on Objection No. 1: Sustained: _____

19 Overruled: _____

20 **OBJECTION NO. 2**

21 Material objected to: "Quonix admitted that it was also seeking lease financing with
22 another company." Davin Declaration, p. 1:13-14.

23 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352
24 due to its tendency to mislead and confuse the true facts and issues;

25 Second ground for objection: Such testimony constitutes hearsay.

26 Third ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
27 and § 210;

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Fourth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made.

Court’s ruling on Objection No. 2: Sustained: _____

Overruled: _____

OBJECTION NO. 3

Material objected to: “Almost a month later, Quonix requested we work on the financing again.” Davin Declaration, p. 1:14-15.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made.

Court’s ruling on Objection No. 3: Sustained: _____

Overruled: _____

OBJECTION NO. 4

Material objected to: “Benchmark obtained approval for financing some of the equipment in a few days, and more in a week and a half.” Davin Declaration, p. 1:12-20.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made.

Court’s ruling on Objection No. 4: Sustained: _____

Overruled: _____



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Court’s ruling on Objection No. 12: Sustained: _____
Overruled: _____

OBJECTION NO. 13

Material objected to: “CARLSON refused to sign this lease as well, claiming it didn’t have to agree to separate leases even though the contract expressly stats that Lessor was entitled to provide separate funding where the equipment could be split into separate leases.” Davin Declaration, p. 2:59.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made.

Fourth ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fifth ground for objection: Such testimony constitutes hearsay.

Sixth ground for objection: Such testimony is vague, ambiguous and unintelligible.

Court’s ruling on Objection No. 13: Sustained: _____
Overruled: _____

OBJECTION NO. 14

Material objected to: “Caring Cardiology represented it was a cardiology practice with offices in Florida and New Mexico, but after we obtained the financing, we subsequently found out that it was not a medical practice, was a start up business, and the invoices from the vendor showed it was operating under a different name.” Davin Declaration, p. 2:10-15.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;



1 American Legion Post getting video equipment from the vendor.” Davin Declaration, p. 2:25-27.

2 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
3 and § 210;

4 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
5 352 due to its tendency to mislead and confuse the true facts and issues;

6 Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
7 insofar as Declarant fails to identify the factual basis for any of the assertions made.

8 Fourth ground for objection: Such testimony constitutes the drawing of an improper
9 legal conclusion (Cal. Evid. Code § 800).

10 Fifth ground for objection: Such testimony constitutes hearsay.

11 Sixth ground for objection: Such testimony is vague, ambiguous and unintelligible.

12 Court’s ruling on Objection No. 20: Sustained: _____

13 Overruled: _____

14 **OBJECTION NO. 21**

15 Material objected to: “At funding, the check was not from the American Legion, the
16 person we were dealing with was not affiliated, and the equipment was illegal gambling
17 equipment.” Davin Declaration, p. 2:27-3:1.

18 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
19 and § 210;

20 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
21 352 due to its tendency to mislead and confuse the true facts and issues;

22 Third ground for objection: Such testimony constitutes the drawing of an improper
23 legal conclusion (Cal. Evid. Code § 800).

24 Fourth ground for objection: Such testimony constitutes hearsay and constitutes
25 improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

26 Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
27 insofar as Declarant fails to identify the factual basis for any of the assertions made;

28 Sixth ground for objection: Such testimony is vague, ambiguous and unintelligible.



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Court’s ruling on Objection No. 23: Sustained: _____
Overruled: _____

OBJECTION NO. 24

Material objected to: “5J1 LLC had very little credit information.” Davin Declaration, p. 3:7.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made.

Court’s ruling on Objection No. 24: Sustained: _____
Overruled: _____

OBJECTION NO. 25

Material objected to: It also turned out that the two owners had only two credit accounts reporting over 5 years before, a prior bankruptcy, past liens, and less than \$500 in their bank accounts.” Davin Declaration, p. 3:8-10.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Court’s ruling on Objection No. 25: Sustained: _____
Overruled: _____



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OBJECTION NO. 28

Material objected to: “We obtained approval, but we were then asked to finance a lease to FLASH ELECTRONICS, and the signer would be Cathy Nguyen!” Davin Declaration, p. 3:16-18.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Court’s ruling on Objection No. 28: Sustained: _____

Overruled: _____

OBJECTION NO. 29

Material objected to: “We then discovered that FLASH ELECTRONICS LLC turned out to be the vendor selling equipment to Cathy’s Cleaners.” Davin Declaration, p. 3:18-20.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes hearsay.

Fourth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Court’s ruling on Objection No. 29: Sustained: _____

Overruled: _____

OBJECTION NO. 30

Material objected to: “We suspected some sort of fraud and asked for further info which was not forthcoming.” Davin Declaration, p. 3:20-21.



1 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
2 and § 210;

3 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
4 352 due to its tendency to mislead and confuse the true facts and issues;

5 Third ground for objection: Such testimony constitutes hearsay.

6 Fourth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
7 insofar as Declarant fails to identify the factual basis for any of the assertions made;

8 Court’s ruling on Objection No. 32: Sustained: _____

9 Overruled: _____

10 **OBJECTION NO. 33**

11 Material objected to: “Owner claimed the trucks were worth \$50k, but could not
12 substantiate this and they appeared to be worth only \$20k which we got approved.” Davin
13 Declaration, p. 3:24-27.

14 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
15 and § 210;

16 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
17 352 due to its tendency to mislead and confuse the true facts and issues;

18 Third ground for objection: Such testimony constitutes the drawing of an improper
19 legal conclusion (Cal. Evid. Code § 800).

20 Fourth ground for objection: Such testimony constitutes hearsay.

21 Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
22 insofar as Declarant fails to identify the factual basis for any of the assertions made;

23 Court’s ruling on Objection No. 33: Sustained: _____

24 Overruled: _____

25 **OBJECTION NO. 34**

26 Material objected to: “Customer also agreed at one point to a deal for \$10k with less
27 collateral, but despite the fact that we could get him \$20k, he finally cancelled.” Davin
28 Declaration, p. 3:27-4:1.



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OBJECTION NO. 36

Material objected to: "It applied for \$100k." Davin Declaration, p. 4:3.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Third ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Fourth ground for objection: Such testimony is vague, ambiguous and unintelligible.

Court's ruling on Objection No. 36: Sustained: _____

Overruled: _____

OBJECTION NO. 37

Material objected to: "After evaluating the 3 pieces of equipment Industrial was using as collateral, we valued them at only \$52k." Davin Declaration, p. 4:4-5.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Court's ruling on Objection No. 37: Sustained: _____

Overruled: _____



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OBJECTION NO. 38

Material objected to: “One was worth \$18k and we obtained approval for an \$18k lease on that one.” Davin Declaration, p. 4:5-6.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 38: Sustained: _____

Overruled: _____

OBJECTION NO. 39

Material objected to: “Industrial refused to do a deal for only \$18 and backed out despite the fact that the contract allows for separate leases.” Davin Declaration, p. 4:7-8.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).



1 Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
2 insofar as Declarant fails to identify the factual basis for any of the assertions made;

3 Sixth ground for objection: Such testimony is vague, ambiguous and unintelligible.

4 Court’s ruling on Objection No. 39: Sustained: _____

5 Overruled: _____

6 **OBJECTION NO. 40**

7 Material objected to: “We worked for, and got approval, of the lease amount requested by
8 Private Label Executive Gifts, Inc.” Davin Declaration, p. 4:9-10.

9 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352
10 due to its tendency to mislead and confuse the true facts and issues;

11 Second ground for objection: Such testimony constitutes the drawing of an improper
12 legal conclusion (Cal. Evid. Code § 800).

13 Third ground for objection: Such testimony constitutes hearsay and constitutes
14 improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

15 Fourth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
16 insofar as Declarant fails to identify the factual basis for any of the assertions made;

17 Fifth ground for objection: Such testimony is vague and ambiguous.

18 Court’s ruling on Objection No. 40: Sustained: _____

19 Overruled: _____

20 **OBJECTION NO. 41**

21 Material objected to: “We proceeded with the ACH withdrawal of the deposit as provided
22 in the contract.” Davin Declaration, p. 4:10-12

23 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
24 and § 210;

25 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
26 352 due to its tendency to mislead and confuse the true facts and issues;

27 Third ground for objection: Such testimony constitutes the drawing of an improper
28 legal conclusion (Cal. Evid. Code § 800).



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Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 41: Sustained: _____

Overruled: _____

OBJECTION NO. 42

Material objected to: “Private Label then cancelled because they decided to buy a used machine instead of leasing the new one.” Davin Declaration, p. 4:12-13.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 42: Sustained: _____

Overruled: _____

OBJECTION NO. 43

Material objected to: “They then claimed that as they had never supplied us with a deposit check and therefore no agreement had ever been reached, we should have never done the ACH withdrawal.” Davin Declaration, p. 4:13-16.



1 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
2 and § 210;

3 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
4 352 due to its tendency to mislead and confuse the true facts and issues;

5 Third ground for objection: Such testimony constitutes the drawing of an improper
6 legal conclusion (Cal. Evid. Code § 800).

7 Fourth ground for objection: Such testimony constitutes hearsay and constitutes
8 improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

9 Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
10 insofar as Declarant fails to identify the factual basis for any of the assertions made;

11 Sixth ground for objection: Such testimony is vague and ambiguous.

12 Court’s ruling on Objection No. 43: Sustained: _____
13 Overruled: _____

14 **OBJECTION NO. 44**

15 Material objected to: “However, we had received from Private Label a six page fax
16 including our cover letter, the 2 page lease agreement which states in Paragraph 9 that Private
17 Lable authorized the ACH deposit, and a copy of the deposit check.” Davin Declaration, p. 4:16-
18 20.

19 First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350
20 and § 210;

21 Second ground for objection: Such testimony is not relevant under Cal. Evid. Code §
22 352 due to its tendency to mislead and confuse the true facts and issues;

23 Third ground for objection: Such testimony constitutes the drawing of an improper
24 legal conclusion (Cal. Evid. Code § 800).

25 Fourth ground for objection: Such testimony constitutes hearsay and constitutes
26 improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

27 Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403)
28 insofar as Declarant fails to identify the factual basis for any of the assertions made;



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Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 44: Sustained: _____

Overruled: _____

OBJECTION NO. 45

Material objected to: “We are entitled to keep the deposit because of the signed lease, our work, and their cancellation.” Davin Declaration, p. 4:20-21.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 45: Sustained: _____

Overruled: _____

OBJECTION NO. 46

Material objected to: “Nashville Highlight, LLC was declined at two of our lending sources, but a third approved requesting full financials because Nashville intended to further lease the equipment to other companies, and because Nashville also changed the vendor and the equipment.” Davin Declaration, p. 4:22-28

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;



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OBJECTION NO. 48

Material objected to: “Pursuant to the terms of the contract, we were entitled to retain the deposit because of this failure of Nashville to perform.” Davin Declaration, p. 5:5-7.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).

Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

Sixth ground for objection: Such testimony is vague and ambiguous.

Court’s ruling on Objection No. 48: Sustained: _____

Overruled: _____

OBJECTION NO. 49

Material objected to: Benchmark did not originate the subject contracts, as I only put our logo on contracts I had seen used by many other leasing companies in the industry. I simply copied them, and all of the terms therein, almost verbatim. Davin Declaration, p. 5:8-11.

First ground for objection: Such testimony is not relevant under Cal. Evid. Code § 350 and § 210;

Second ground for objection: Such testimony is not relevant under Cal. Evid. Code § 352 due to its tendency to mislead and confuse the true facts and issues;

Third ground for objection: Such testimony constitutes the drawing of an improper legal conclusion (Cal. Evid. Code § 800).

Fourth ground for objection: Such testimony constitutes hearsay and constitutes improper secondary evidence of a writing (Cal. Evid. Code § 1521, *et. seq.*).



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Fifth ground for objection: Such testimony lacks foundation (Cal. Evid. Code § 403) insofar as Declarant fails to identify the factual basis for any of the assertions made;

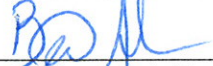
Sixth ground for objection: Such testimony is vague and ambiguous.

Court's ruling on Objection No. 49: Sustained: _____
Overruled: _____

Submitted by:

DATED: April 8, 2011

KHORRAMI POLLARD & ABIR LLP

By:  _____

Shawn Khorrami, Esq.
Robert Drexler, Jr., Esq.
Bevin E. Allen, Esq.
Katherine McSweeney, Esq.

POGUST, BRASLOW & MILLROOD, LLC
Derek T. Braslow

*Attorneys for Plaintiffs,
Quonix Networks, Inc., et al.*

SO ORDERED:

DATE: _____

Hon. David C. Velasquez

KHORRAMI POLLARD & ABIR LLP



1 **PROOF OF SERVICE**

2 *Quonix Networks, Inc. v. Benchmark Financial Groups, LLC, et al.*

3 Case No. 30-2009-00270463

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am employed in the State of California, County of Los Angeles. I am over the age
6 of 18 and not a party to the within action. My business address is 444 S. Flower St, 33rd
7 Floor, Los Angeles, CA 90071.

8 On **April 8, 2011** I served the document described as: **PLAINTIFFS’
9 EVIDENTARY OBJECTIONS TO THE DECLARATION OF MARCUS DAVIN
10 FILED IN SUPPORT OF DEFENDANT’S MOTION FOR ORDER SEVERING THIS
11 ACTION INTO SEPARATE COMPLAINTS OR ALTERNATIVELY INTO
12 SEPARATE TRIALS AS TO EACH PLAINTIFF** on the interested parties as follows:

13 Templeton Briggs, Esq.
14 BREWER & BREWER
15 3183 E-Airway Avenue
16 Costa Mesa, CA 92626

Telephone: (714) 424-6300
Facsimile: (714) 424-6313

Attorneys for Defendants

17 / X / **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
18 for mailing in the ordinary course of business at Los Angeles, California. I am
19 “readily familiar” with this firm’s practice of collection and processing
20 correspondence for mailing. Under that practice, sealed envelopes are deposited
21 with the U.S. Postal Service that same day in the ordinary course of business with
22 postage thereon fully prepaid at Los Angeles, California.

23 / / **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
24 California, by e-mail delivery on the parties listed herein at their most recent known
25 e-mail address or e-mail of record in this action.

26 / / **BY FAX:** I hereby certify that this document was served from Los Angeles,
27 California, by facsimile delivery on the parties listed herein at their most recent fax
28 number of record in this action.

/ / **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed
envelope, by hand to the offices of the addressee(s) named herein.

/ / **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of
collection and processing correspondence for overnight delivery. Under that
practice, overnight packages are enclosed in a sealed envelope with a packing slip
attached thereto fully prepaid. The packages are picked up by the carrier at our
offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Executed this **April 8, 2011** at Los Angeles, California.

Carol A. Miller _____



Signature