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12 BARDAV INC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN DIEGO, CENTRAL DIVISION

15 PROPER MEDIA, LLC, a California limited
16 liability company; CHRISTOPHER RICHMOND,
17 an individual; and DREW SCHOENTRUP, an
18 individual,

19 Plaintiffs,

20 v.

21 BARDAV INC, a California corporation, and
22 DAVID MIKKELSON, an individual,

23 Defendants,

24 AND RELATED CROSS-ACTIONS

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

Case No. 37-2017-00016311-CU-BC-CTL

**OBJECTIONS TO EVIDENCE FILED
BY PLAINTIFFS IN SUPPORT OF
DEFENDANT BARDAV INC.'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: August 4, 2017
Time: 10:30 a.m.
Dept.: C-68
Judge: Hon. Judith F. Hayes

Complaint Filed: May 4, 2017
Trial Date: Not set

IMAGED FILE

1 Defendant/Cross-complainant BARDAV INC. (“Bardav”) respectfully objects to the
 2 following evidence filed with Plaintiffs/Cross-defendants PROPER MEDIA, LLC (“Proper
 3 Media”) and DREW SCHOENTRUP (“Schoentrup”), and Plaintiff CHRISTOPHER RICHMOND
 4 (“Richmond”) (collectively, “Plaintiffs”)’s Motion for Preliminary Injunction:
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6 **I. DECLARATION OF DREW SCHOENTRUP**
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<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>
9 1. “In 2015, Proper Media entered into a 10 General Services Agreement with Bardav 11 (the “General Services Agreement”), under which Proper Media would manage all content and advertising accounts for Snopes in exchange for payment” 12 (Declaration of Drew Schoentrup in Support of Plaintiff’s Motion for Preliminary 13 Injunction (“Schoentrup Decl.”), ¶ 4 at p. 14 1:11-14.)	Best Evidence Rule. (Evid. Code § 1520.)
15 2. “Since July 2016, Proper Media has also been a 50% owner of Bardav. Proper 16 Media bought its single share— representing a 50% equity interest in Bardav— from Bardav co-founder 17 Barbara Mikkelson (“Barbara”) 18 (Schoentrup Decl., ¶ 6 at p. 1:21-23.)	Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.) Improper Conclusion/Argument. This statement contains conclusions of law and fact and improper argument rather than statements of fact.
19 3. “However, the deal was structured as a 20 sale by Barbara to Proper Media’s individual shareholders, but for the benefit of Proper Media. Proper Media’s interest 21 in Bardav was therefore taken in the name of its individual members proportionate to 22 our individual ownership interests in Proper Media.” 23 (Schoentrup Decl., ¶ 6 at p. 1:23-27.)	Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.) Improper Conclusion/Argument. This statement contains conclusions of law and fact and improper argument rather than statements of fact. Best Evidence Rule. (Evid. Code § 1520.)
24 4. “Thus, Richmond and I hold a total of 25 40% of Bardav in our names, and the other members of Proper Media hold the 26 remaining 10% in their names.” 27 (Schoentrup Decl., ¶ 6 at p. 1:27-28.)	Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.) Improper Conclusion/Argument. This statement contains conclusions of law and fact and improper argument rather than statements of fact.

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>
<p>5. “A significant portion of Proper Media’s purchase of Barbara’s equity was financed by Diamond Creek Capital, LLC (the “DCC Loan”). Proper Media is a party to the financing and loan agreements with DCC, and is also a party to a promissory note with Barbara. The individual members of Proper Media are not parties to the promissory note with Barbara. From the Closing through April 2017, Proper Media, Richmond, and I have made all payments on the DCC Loan and to Barbara for the purchase of Barbara’s share. To be clear, the other individuals in whose name Proper Media’s share is held, including Green, have not personally made any payments related to Proper Media’s acquisition of ownership interests in Bardav.”</p> <p>(Schoentrup Decl., ¶ 7 at p. 2:1-9.)</p>	<p>Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)</p> <p>Improper Conclusion/Argument. This statement contains conclusions of law and fact and improper argument rather than statements of fact.</p> <p>Best Evidence Rule. (Evid. Code § 1520.)</p>
<p>6. “In late 2016, the issue of Mikkelson’s salary from Bardav was discussed and a “2016 Compensation Agreement” governing the same was drafted, which effectively increased Mikkelson’s salary for the year by 355%”</p> <p>(Schoentrup Decl., ¶ 8 at p. 2:10-12.)</p>	<p>Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)</p> <p>Irrelevant. (Evid. Code §§ 350 and 351.)</p> <p>Best Evidence Rule. (Evid. Code § 1520.)</p>
<p>7. “I ... am informed and believe other members of Proper Media signed[] the 2016 Compensation Agreement based on a promise by Mikkelson that he would thereafter enter into a compensation agreement for 2017 that would keep his salary and business expenses moderate and predictable.”</p> <p>(Schoentrup Decl., ¶ 9 at p. 2:13-16.)</p>	<p>Lack of Personal Knowledge. (Evid. Code § 702(a).)</p> <p>Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)</p> <p>Vague/Ambiguous.</p> <p>Hearsay. (Evid. Code § 1200.)</p> <p>Irrelevant. (Evid. Code §§ 350 and 351.)</p>
<p>8. “Mikkelson never signed the 2016 Compensation Agreement himself.”</p> <p>(Schoentrup Decl., ¶ 9 at p. 2:16-17.)</p>	<p>Lack of Personal Knowledge. (Evid. Code § 702(a).)</p> <p>Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)</p> <p>Irrelevant. (Evid. Code §§ 350 and 351.)</p>

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<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>
9. "I am informed and believe Mikkelson did so with the assistance of Green and perhaps other former members of Proper Media." (Schoentrup Decl., ¶ 10 at p. 2:20-22.)	Lack of Personal Knowledge. (Evid. Code § 702(a).) Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.) Irrelevant. (Evid. Code §§ 350 and 351.)

II. DECLARATION OF KARL KRONENBERGER

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>
10. "Schoentrup, as a director of Bardav" (Declaration of Karl Kronenberger in Support of Plaintiff's Motion for Preliminary Injunction ("Kronenberger Decl."), ¶ 3 at p. 1:12.)	Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)
11. "Proper Media, Schoentrup, and Richmond, as beneficial owners and owners of equity in Bardav" (Kronenberger Decl., ¶ 3 at p. 1:13-14.)	Lack of Foundation/Failure to Establish Preliminary Facts. (Evid. Code § 403.)

DATED: July 24, 2017

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

By: 
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Attorneys for Defendant/Cross-Complainant,
BARDV INC