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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CENTURY 21 REAL ESTATE LLC, a CASE NO. CIV. 2:10-2751
Delaware Limited Liability
Company formerly known as
Century 21 Real Estate
Corporation,

Plaintiff,

v.

ALL PROFESSIONAL REALTY, INC.,
a California corporation doing
business as CENTURY 21 ALL
PROFESSIONAL; STEVEN M.
WRIGHT, an individual; and
CAROL WRIGHT, an individual,

Defendants.

_____ /

STEVE WRIGHT, CAROL WRIGHT and CASE NO. CIV. 2:10-2846
ALL PROFESSIONAL REALTY, INC.,

Plaintiffs,

v.

CENTURY 21 REAL ESTATE LLC,
and DOES 1-100, inclusive,

Defendants.

_____ /

MEMORANDUM AND ORDER RE:
MOTIONS FOR A PRELIMINARY
INJUNCTION

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3 Century 21 Real Estate LLC ("Century 21") filed an
4 action against All Professional Realty, Inc. ("All
5 Professional"), Steven M. Wright, and Carol Wright arising from
6 All Professional's continued use of Century 21's trademarks
7 following the terminations of real estate brokerage franchise
8 agreements for unpaid fees. (No. 2:10-2751.) Steve Wright,¹
9 Carol Wright, and All Professional filed a related action against
10 Century 21 arising from the franchise agreements. (No.
11 2:10-2846.) Presently before the court are Century 21's motion
12 for a preliminary injunction against All Professional, Steve
13 Wright, and Carol Wright in the action initiated by it and Steve
14 Wright, Carol Wright, and All Professional's motion for a
15 preliminary injunction against Century 21 in the action initiated
16 by them.

17 Both sides' motions for preliminary injunction were
18 originally set for hearing on December 20, 2010. In order to
19 accommodate the various evidentiary objections made by each side
20 to the declarations submitted by the other, the court permitted
21 the parties to file supplemental declarations to cure the alleged
22 defects and permitted the parties to call witnesses to testify in
23 support of or opposition to the motions. An evidentiary hearing
24 was held on January 11, 2011.

25 I. Factual and Procedural Background

26 _____
27 ¹ The parties use "Steve Wright" and "Steven M. Wright."
28 Because he is captioned as Steve Wright in the action initiated
by him, the court will use Steve Wright.

1 In 1994, Steve and Carol Wright formed All
2 Professional, a real estate brokerage company. (Steve Wright
3 Decl. in Supp. of Mot. for P.I. against Def. Century 21 ("Steve
4 Wright Decl. II") ¶ 2 (No. 2:10-2846, Docket No. 9); Carol Wright
5 Decl. in Supp. of Mot. for P.I. against Def. Century 21 ("Carol
6 Wright Decl. II") ¶ 2 (No. 2:10-2846, Docket No. 9); see also
7 Steve Wright Decl. in Opp'n to Century 21's Mot. for P.I. against
8 Defs. ("Steve Wright Decl. I") ¶ 2 (No. 2:10-2751, Docket No.
9 18); Carol Wright Decl. in Opp'n to Century 21's Mot. for P.I.
10 against Defs. ("Carol Wright Decl. I") ¶ 2 (No. 2:10-2751, Docket
11 No. 18).) All Professional signed its first franchise agreement
12 with Century 21 in 1995, which allowed it to operate an office
13 under the name "Century 21 All Professional." (Steve Wright
14 Decl. II ¶ 3; Carol Wright Decl. II ¶ 3; see also Steve Wright
15 Decl. I ¶ 3; Carol Wright Decl. I ¶ 3.) Century 21 is a
16 franchisor of real estate brokerages. (Bertet Decl. in Supp. of
17 Opp'n by Century 21 to Pls.' Mot. for P.I. ("Bertet Decl.") ¶ 3
18 (No. 2:10-2846, Docket No. 12); see also Rudin Decl. in Supp. of
19 Reply of Mot. for P.I. by Century 21 against Defs. ("Rudin Decl.
20 I") Ex. A, ¶ 3 (No. 2:10-2751, Docket No. 22).)

21 All Professional operates multiple offices and each
22 office is governed by a separate franchise agreement with Century
23 21. In November of 2005, All Professional signed three ten-year
24 franchise agreements with Century 21 for two offices in
25 Sacramento and one office in Folsom, California, with an
26 effective date of December 1, 2005, for each franchise agreement.
27 (Bertet Decl. Exs. A-C §§ 1.5, 1.7; see also Iuliano Decl. in
28 Supp. of Century 21's Mot. for P.I. against Defs. ("Iuliano Decl.

1 I") Exs. B-C §§ 1.5, 1.7 (No. 2:10-2751, Docket No. 10).) The
2 Wrights state that at the time they signed the franchise
3 agreements on behalf of All Professional they were told that
4 Century 21 would be providing "new" tools and systems to grow
5 their offices. (Steve Wright Decl. II ¶ 4; Carol Wright Decl. II
6 ¶ 4; see also Steve Wright Decl. I ¶ 4; Carol Wright Decl. I ¶
7 4.) The Wrights signed a personal guaranty. (Bertet Decl. Exs.
8 A-C at 43-44; see also Iuliano Decl. I Exs. B-C at 43-44.)

9 Section 4.1 of the franchise agreements granted All
10 Professional the nonexclusive license to use Century 21's "Marks"
11 and "System." (Bertet Decl. Exs. A-C § 4.1; see also Iuliano
12 Decl. I Exs. B-C § 4.1.) "Marks" meant Century 21's trademarks,
13 service marks, and trade dress. (Bertet Decl. Exs. A-C § 3.1.8;
14 see also Iuliano Decl. I Exs. B-C § 3.1.8.) "System" meant,
15 inter alia, "policies, procedures, and techniques designed to
16 enable [] offices to compete more effectively in the real estate
17 sales market." (Bertet Decl. Exs. A-C § 3.1.14; see also Iuliano
18 Decl. I Exs. B-C § 3.1.14.) Century 21's System also included
19 "common use and promotion of certain Marks, copyrights, trade
20 secrets, centralized advertising programs, recruiting programs,
21 referral programs and sales management training programs." (Id.)

22 Century 21 has numerous registered trademarks. (See
23 Iuliano Decl. I ¶¶ 3-4, Ex. A; see also Iuliano Decl. in Supp. of
24 Opp'n by Century 21 to Pls.' Mot. for P.I. ("Iuliano Decl. II")
25 ¶¶ 3-4, Ex. A (No. 2:10-2846, Docket No. 18).) According to
26 Century 21, Century 21 uses the trademarks on goods and in
27 advertisements, education, training manuals, newsletters, global
28 computer networks, and residential, commercial, and mortgage

1 brokerage services. (Iuliano Decl. I ¶ 6; see also Iuliano Decl.
2 II ¶ 6.) The trademarks have become well recognized because of
3 advertisements and promotions of goods and services offered by
4 Century 21. (Iuliano Decl. I ¶ 6; see also Iuliano Decl. II ¶
5 6.)

6 In exchange for the rights granted under the franchise
7 agreements, All Professional agreed to pay royalty fees of six
8 percent of gross revenue, with an initial monthly minimum fee of
9 \$500.00, due at the time of settlement or close of escrow.

10 (Bertet Decl. Exs. A-C §§ 7-8; see also Iuliano Decl. I Exs. B-C
11 §§ 7-8.) All Professional also agreed to pay two percent of its
12 gross revenue for a National Advertising Fund ("NAF") for
13 advertising expenses, with an initial monthly minimum fee of
14 \$562.00, due on the tenth of the following month.

15 Section 16.2.3 of the franchise agreements provided
16 that Century 21 could terminate the agreement for good cause,
17 which included curable and non-curable defaults. (Id. §
18 16.2.3.) Section 16.2.4, governing termination for curable
19 defaults, provided that Century 21 could terminate the agreement
20 with 30 days notice of the "proposed termination and the
21 opportunity to cure the breach during the entire notice period,
22 or such longer or shorter notice as is required or permitted by
23 the law of the state where the Office is located," if the curable
24 breach was the failure to pay financial obligations. (Id. §
25 16.2.4.)

26 In addition to entering into the three franchise
27 agreements in November of 2005, All Professional borrowed
28 \$75,000.00 from Century 21 pursuant to a Development Advance

1 Promissory Note ("Note"). The Note provided for a long-term,
2 annual repayment plan. (Bertet Decl. Ex. D; see also Iuliano
3 Decl. I Ex. D.) The Wrights signed a personal guaranty of the
4 Note. (Id.) Provided that All Professional was not in breach of
5 its franchise agreements, the yearly amount due would be forgiven
6 if All Professional reached certain gross revenue annual
7 thresholds. (Id.) The Wrights state that they executed the Note
8 relying on statements from Century 21 that it would provide All
9 Professional with the "necessary" tools, resources, and systems
10 to enable All Professional to meet the threshold requirements.
11 (Steve Wright Decl. II ¶ 7; Carol Wright Decl. II ¶ 6; see also
12 Steve Wright Decl. I ¶ 7; Carol Wright Decl. I ¶ 7.) Thereafter,
13 All Professional did not meet the annual thresholds and thus
14 annual payments were not forgiven. (Steve Wright Decl. II ¶ 8;
15 Carol Wright Decl. II ¶ 7; see also Steve Wright Decl. I ¶ 8;
16 Carol Wright Decl. I ¶ 8.) The Wrights state that All
17 Professional was unable to meet the threshold requirements
18 because Century 21 failed to provide the necessary tools,
19 resources, and systems. (Steve Wright Decl. II ¶ 8.; Carol
20 Wright Decl. II ¶ 7; see also Steve Wright Decl. I ¶ 8.; Carol
21 Wright Decl. I ¶ 8.) When All Professional failed to make its
22 annual payment for 2007, Century 21 offered to cancel the payment
23 in exchange for a one-year extension of each franchise agreement
24 and a general release of claims. (Suppl. Steve Wright Decl. in
25 Supp. of Pls.' Mot. for P.I. ("Suppl. Steve Wright Decl.") ¶ 8,
26 Ex. 12 (No. 2:10-2846, Docket No. 13).) All Professional
27 rejected Century 21's offer: "I refused to agree to release
28 Century 21 from any liability because I thought that Century 21's

1 representatives had actively misrepresented material facts to me.
2 I did not believe that such a request was proper, and I felt that
3 Century 21 was violating its duties to me by asking for such a
4 waiver." (Steve Wright Decl. II ¶ 8; see also Steve Wright Decl.
5 I ¶ 8.) Century 21 rejected All Professional's counteroffer.
6 (Suppl. Steve Wright Decl. ¶ 8, Ex. 12.) Thereafter, All
7 Professional failed to make its annual payments on the Note.

8 Beginning in 2008, Steve Wright informed Century 21
9 about franchisees "openly competing with [him] and stealing [his]
10 business and employees" in violation of Century 21's "Code of
11 Conduct."² (Steve Wright Decl. II ¶ 9; see also Carol Wright
12 Decl. II ¶ 8; Steve Wright Decl. I ¶ 9; Carol Wright Decl. I ¶
13 9.) Steve Wright states that in about 2006 other Century 21
14 franchisees in the area began hiring agents away from All
15 Professional and one Sacramento franchisee "stole" a commission
16 check from All Professional.³ (Steve Wright Decl. II ¶ 9; see
17 also Steve Wright Decl. I ¶ 9.)

18 All Professional began to experience "short term cash
19

20 ² Century 21's Policies and Procedures Manual stated that
21 franchisees "should avoid" recruiting sales associates of other
22 franchisees and "advised that aggressive sales associates
23 recruiting practices may subject the broker involved to claims of
24 business interference by other brokers under applicable state
25 law." (Steve Wright Decl. in Supp. of Mot. for P.I. against
26 Century 21 ("Steve Wright Decl. I") Ex. 2 (No. 2:10-2846, Docket
27 No. 9); see also Steve Wright Decl. in Opp'n to Century 21's Mot.
28 for P.I. ("Steve Wright Decl. II") Ex. 2 (No. 2:10-2751, Docket
No. 18).)

26 ³ Steve Wright states that Century 21 also refused to do
27 anything when a real estate office, not affiliated with Century
28 Realty," arguably diluting All Professional's trade name as
"Century 21 All Professional." (Steve Wright Decl. I ¶ 11; see
also Steve Wright Decl. II ¶ 11.)

1 flow problems in 2009" and decided to "temporarily" close the
2 Folsom office. (Steve Wright Decl. II ¶ 10; see also Steve
3 Wright Decl. I ¶ 10.) Another Century 21 franchisee then moved
4 into the office that All Professional had vacated. (Steve Wright
5 Decl. II ¶ 10; see also Steve Wright Decl. I ¶ 10.) Steve Wright
6 states that he "continued to complain to Century 21 about the
7 misrepresentations by Century 21 and the actions of other Century
8 21 franchisees" and became "concerned" that Century 21 was
9 "actively trying" to "run us out of business." (Steve Wright
10 Decl. II ¶ 11; Steve Wright Decl. I ¶ 11.) Steve Wright had
11 heard "rumors" from other franchisees' agents that All
12 Professional was being "forced out" and that other franchisees
13 should recruit All Professional's agents. (Steve Wright Decl. II
14 ¶ 11; Steve Wright Decl. I ¶ 11.)

15 With respect to Steve Wright's complaints to Century
16 21, Century 21 had no obligation in the agreements to prevent
17 other franchisees from recruiting All Professional's agents. To
18 the contrary, Century 21 did not have the right to do so.

19 Section 21.2 provided:

20 [Century 21] will have no obligation to pay your
21 commissions, taxes, wages or other expenses, and will
22 have no right to regulate or participate in the
23 recruitment, selection, engagement, retention, discipline
24 or termination of your sales associates or employees, or
25 to determine or limit the parties from whom you may
26 accept listings or to or for whom you may sell property,
27 the commission rates you charge, the commission splits
28 between you and your sales associates, your working
conditions, the manner or details of work performed by
you or your sales associates or employees, except as may
be necessary to protect the Marks and goodwill.

(Bertet Decl. Exs. A-C § 21.2; see also Iuliano Decl. I Exs. B-C
§ 21.2.) The remedy, as brought out at the evidentiary hearing,

1 was for All Professional to sue Select, the Century 21 franchisee
2 that allegedly recruited All Professional's agents and moved into
3 the same Folsom office that All Professional vacated.

4 According to Steve Wright's testimony, Bob Popp, a
5 field representative for Century 21, did call Select about Steve
6 Wright's complaints, even though Century 21 was not required to
7 do so. It was Steve Wright's belief that Select denied
8 recruiting All Professional's agents. This left Century 21 in
9 what the court would characterize as a "he-said, she-said"
10 dilemma. Century 21 did not have the right to run either
11 business. It was at best in the position of a mediator, with no
12 authority to enforce sanctions against either party. Steve
13 Wright testified that he did not know what Bob Popp did beyond
14 making a call, and the court finds it quite possible that Century
15 21 did do something about Steve Wright's complaint. Regardless,
16 Select's alleged recruiting of All Professional's agents was no
17 excuse for All Professional to stop paying fees to Century 21.

18 There is also no evidence that Century 21 cut off
19 recruiting training because of Steve Wright's complaints. Steve
20 Wright complained in 2008, and in that year Tara Scholl of
21 Century 21 cut off recruiting training. No connection between
22 the recruiting training and the complaints has been shown.

23 Beginning in May of 2009, All Professional stopped
24 paying many of its franchise fees. All Professional knew it had
25 failed to pay them. Century 21's System provides its franchisees
26 with "detailed summaries of their account balances owed to
27 Century 21, including specific information detailing the amounts
28 owed by that franchisee, when the amounts are due, and the type

1 of amount due (i.e., royalty fee, national advertising fee fund
2 fee, Development Advance Note, etc.)[" (Suppl. Rodriguez Decl.
3 in Supp. of Opp'n by Century 21 to Pls.' Mot. for P.I. ("Suppl.
4 Rodriguez Decl.") ¶ 4 (No. 2:10-2846, Docket No. 19).); see also
5 Rudin Decl. I Ex. A ¶ 21.) All Professional had access to these
6 detailed account summaries. (Suppl. Rodriguez Decl ¶ 4; see also
7 Rudin Decl. I Ex. A ¶ 21.) Century 21 has provided the Custom
8 Account Reports for each franchise agreement. (Suppl. Rodriguez
9 Decl Ex. A; see also Iuliano Decl. I Exs. I-J.) The Custom
10 Account Report specifies the date, amount, transaction type, and
11 due date.

12 In letters dated April 5, 2010, Century 21 notified All
13 Professional of its intent to terminate the three agreements and
14 of All Professional's opportunity to cure. (Bertet Decl. Exs. E-
15 G; see also Iuliano Decl. I Exs. E-F.) The notice pertaining to
16 the River Park Drive office stated in pertinent part:

17 Century 21 has advised you on numerous occasions that you
18 are delinquent in the payment of your account. Upon
19 review, we have determined that you are in default of the
20 above-referenced Agreement for failing to pay fees when
due. Your default constitutes a material breach of the
Agreement, for which Century 21 may terminate the
franchise.

21 As of February 24, 2010, your account balance for this
22 office was \$59,327.41.

23 In order to avoid termination, you must pay the balance
in full no later than May 10, 2010.

24 (Bertet Decl. Ex. E; see also Iuliano Decl. I Ex. E.) The notice
25 also provided contact information for Jacqueline Bertet, Century
26 21's Senior Director of Financial Services, and informed All
27 Professional that failure to pay the balance would result in
28 immediate termination of the franchise, which would then require

1 All Professional to pay the amount past due at the time of
2 termination, sums assessed in a post-termination audit, the
3 remaining balance of the Note, and lost profits. (Bertet Decl.
4 Ex. E; see also Iuliano Decl. I Ex. E.) The notice pertaining to
5 the Florin Road, Sacramento, office contained similar language
6 and stated that the balance was \$23,492.69 as of February 24,
7 2010, requiring payment by May 10, 2010. (Bertet Decl. Ex. G;
8 see also Iuliano Decl. I Ex. F.) The notice pertaining to the
9 Folsom office contained similar language and stated that the
10 balance was \$13,274.34 as of February 24, 2010, and required
11 payment by May 10, 2010. (Bertet Decl. Ex. F.)

12 Following receipt of the notices, both Steve and Carol
13 Wright called representatives of Century 21. Carol Wright called
14 Shalina ("Shelly") Rodriguez, a Director of Financial Services
15 for Century 21. Carol Wright states that in the telephone call
16 she asked for an accounting and "disputed certain discrepancies I
17 saw in the notices of default." (Carol Wright Decl. II ¶ 12; see
18 also Carol Wright Decl. I ¶ 13.) Carol Wright states that she
19 identified the following issues in the telephone call: (1) the
20 default amounts included amounts owed under the Note, which was
21 not part of a franchise agreement; (2) Century 21 was "trying" to
22 charge fees for the Folsom office even though it had been closed
23 since August of 2009; and (3) there was a credit that All
24 Professional should have received. (Carol Wright Decl. II ¶ 12;
25 see also Carol Wright Decl. I ¶ 13.)

26 Carol Wright "specifically asked what would be required
27 to resolve the claimed default":

28 [Rodriguez] informed me that we would need to pay

1 \$124,432.20 and that Corporate would want a promissory
2 note since the figure was greater than \$100,000. Our
3 discussion revealed that Corporate was including the
4 outstanding amount allegedly owed under [the Note],
5 even though payment was not required under any of the
6 Franchise Agreements. The pay-off amount included the
7 Hawaii office even though that franchise was owned by a
8 separate entity.

9 (Suppl. Carol Wright Decl. in Supp. Of Pls.' Mot. for P.I.
10 ("Suppl. Carol Wright Decl.") ¶ 4 (No. 2:10-2846, Docket No.
11 13).)

12 In her declaration, Rodriguez states that she received
13 the call from Carol Wright on May 6, 2010, and Carol Wright
14 stated that she wanted to discuss a "possible payment plan for
15 the amounts owed." (Suppl. Rodriguez Decl. ¶ 2.) Wright did not
16 ask for an accounting, nor did she state that All Professional
17 would pay the amounts due upon receipt of an accounting. (Id.)

18 Following the phone conversation, Carol Wright e-mailed
19 a letter to Rodriguez identifying "items we need to address
20 before proceeding": (1) removing minimum royalty and NAF fees
21 from the Folsom office account balance because it had been closed
22 since August 31, 2009; (2) determining the cutoff date for "final
23 payment calculations," with a possible date of March 31, 2010;⁴
24 (3) "handling" the Hawaii office separately; (4) removing minimum
25 royalty and NAF fees from January, February, and March of 2010;
26 (5) separating the Note amount owed because of a "separate issue"
27 as to why All Professional was not paying it; and (6) crediting
28 \$304.50 because of a Century 21 error. Lastly, Carol Wright

⁴ This appears to be in reference to a possible payment plan for the amounts owed, with March 31, 2010, being the cutoff date for determining the total amount owed under the payment plan.

1 stated that the "totals will obviously have to be recalculated
2 before we can talk about payment arrangements" and said that she
3 would make payments on "April 2010 transactions to start anew."⁵
4 (Carol Wright Decl. II Ex. 8; see also Carol Wright Decl. I Ex.
5 8.)

6 Steve Wright states that All Professional took issue
7 with the notices of default because they (1) included amounts
8 owed under the Note and (2) because there were "some questionable
9 amounts included in the calculation of default." (Steve Wright
10 Decl. II ¶ 13; see also Steve Wright Decl. I ¶ 13.) Based on
11 conversations with representatives of Century 21, Steve Wright
12 states that he believed that "Century 21 was working to correct
13 the accounting errors and would be contacting [them] to resolve
14 the issues so [they] could work out a plan to cure the default."
15 (Steve Wright Decl. II ¶ 13; see also Steve Wright Decl. I ¶ 13;
16 Suppl. Steve Wright Decl. ¶ 5.)

17 Shortly after May 17, 2010, when Rodriguez returned
18 from vacation, she and the Wrights spoke again about a possible
19 payment plan. (Suppl. Rodriguez Decl. ¶ 6.) Rodriguez did not
20 agree to provide the Wrights with a revised accounting "because
21 at no time did [she] tell Steve or Carol Wright that any of the
22 amounts Century 21 was seeking to collect under separate
23 franchise agreements were not in fact owed to Century 21." (Id. ¶
24

25 ⁵ The evidentiary hearing revealed that while All
26 Professional may have resumed paying royalty fees on current
27 transactions, beginning in April of 2010, it still continued to
28 fail to pay NAF fees on current transactions. (See Suppl.
Rodriguez Decl. in Supp. of Opp'n by Century 21 to Pls.' Mot. for
P.I. ("Suppl. Rodriguez Decl.") ¶ 10 (No. 2:10-2846, Docket No.
19).) Thus, All Professional continued to fall behind on its
franchise fees.

1 6.) Rodriguez and the Wrights spoke again in mid-June "to
2 discuss the terms of a possible payment plan of amounts owed by
3 All Professional," but these discussions were not successful,
4 according to the Wrights' testimony and Rodriguez's declaration.
5 (Id. ¶ 10.) All Professional never did pay the unpaid franchise
6 fees.

7 In letters dated July 7, 2010, Century 21 terminated
8 the franchise agreements governing the two Sacramento offices,
9 effective July 9, 2010.⁶ (Bertet Decl. Exs. H-I; see also
10 Iuliano Decl. I Exs. G-H.) The letter regarding the River Park
11 Drive office stated that the account balance was \$72,407.97 as of
12 July 6, 2010, an additional \$41,667.00 was owed under the Note,
13 and an additional \$250,029.34 was owed for lost profits, pursuant
14 to calculations prescribed by the franchise agreement. The
15 letter regarding the Florin Road office stated that the account
16 balance was \$33,934.30 as of July 6, 2010, and an additional
17 \$155,671.48 was owed for lost profits. All Professional was
18 instructed to follow the post-termination procedures, governed by
19 section 16.4⁷ of the franchise agreements, which required All
20

21 ⁶ In a May 24, 2010, letter, Century 21 terminated the
22 franchise agreement governing the Folsom office, which All
23 Professional had closed. (Bertet Decl. in Supp. of Opp'n by
Century 21 to Pls.' Mot. for P.I. ("Bertet Decl.") Ex. J (No.
2:10-2846, Docket No. 12).) This termination is not at issue.

24 ⁷ Section 16.4 requires, inter alia, (1) returning of
25 Century 21's property, (2) discontinuing use of Century 21's
26 Marks, (3) discontinuing use of signs or cross arm signposts
27 displaying Century 21's logo, colors, color patterns and designs
28 or Marks, (4) taking any affirmative action necessary to remove
any use of Century 21's Marks, (5) "de-identifying" from Century
21 in a manner that does not confuse the public about the fact
that they are no longer associated with Century 21, and (6)
causing internet sites or web masters to removes Century 21's
Marks from their web pages.

1 Professional to cease use of Century 21's trademarks. Upon
2 termination of the franchise agreements, Century 21 denied All
3 Professional access to Century 21's server, e-mail, databases,
4 and the Preferred Client Club. (Steve Wright Decl. II ¶ 14;
5 Carol Wright Decl. II ¶ 13; see also Steve Wright Decl. I ¶ 14;
6 Carol Wright Decl. I ¶ 14.)

7 In their declarations, the Wrights claim not to have
8 anticipated the terminations. Carol Wright states that, based on
9 her communications with Rodriguez and Shawn Holland of Century
10 21:

11 I was lead [sic] to believe that we would receive an
12 accounting of the actual amounts owed and that we would
13 be able to work out a payment plan. I was ready to cure
14 any default once we were provided with a proper
15 accounting. I waited for this accounting. However, I
16 never received an accounting or an adjustment of the
17 amounts owed as I had requested.

18 (Carol Wright Decl. II ¶ 13; see also Carol Wright Decl. I ¶ 14.)
19 Steve Wright makes a similar statement about waiting for an
20 accounting. (Steve Wright Decl. II ¶ 14; Steve Wright Decl. I ¶
21 14.)

22 However, the Wrights' testimony and Steve Wright's July
23 16, 2010, letter, requesting reinstatement show that the
24 terminations were not unanticipated. (Steve Wright Decl. II Ex.
25 3; see also Steve Wright Decl. I Ex. 3.) The letter stated in
26 pertinent part:

27 It was never our intention not to pay Century 21 the
28 royalty fees and NAF fees due. The only part that was in
29 contention was the repayment of the Development Advance
30 Note. And it was that point that communications failed.
31 . . . We are open to discussion for an acceptable payment
32 plan.

33 Century 21 subsequently denied the request for reinstatement in a

1 letter dated July 29, 2010. (See Steve Wright Decl. II Ex. 4;
2 see also Steve Wright Decl. I Ex. 4.) In an August 2, 2010,
3 letter, the Wrights wrote that they were "perplexed" by the
4 denial of the request for reinstatement and were "curious as to
5 what this denial of [their] reinstatement was based on since our
6 message to Shelley was that we were willing to pay what was due
7 Century 21 and that we were willing to sign [Century 21's] note."
8 (Steve Wright Decl. II Ex. 5; see also Steve Wright Decl. I Ex.
9 5.)

10 The purpose of all of these discussions was essentially
11 to see if some kind of alternative payment plan could be worked
12 out between Century 21 and All Professional to relieve All
13 Professional of some of the financial hardship in which it found
14 itself. All Professional had an obligation to pay the full
15 amount immediately. Century 21 was not obligated by the
16 agreements or otherwise to enter into these discussions. Century
17 21 may or may not have proposed a note, but there is no evidence
18 of the terms of a note. There is only evidence of a discussion.
19 The Wrights' August 2, 2010, letter's reference to a message to
20 Rodriguez about a willingness to sign a note is too vague and
21 came only after Century 21 had terminated the agreements. The
22 court cannot find any terms of an actual note or an e-mail or a
23 letter with terms to which they agreed. Beyond the fact that
24 Century 21 did not need to agree to a note, to this day the court
25 cannot find what the terms would be of a note. The sole reason
26 All Professional did not pay the franchise fees was simply that
27 it could not afford the fees.

28 In late August, Century 21 conducted inspections of the

1 Sacramento offices to determine whether All Professional had
2 complied with what it believed were All Professional's post-
3 termination obligations under the franchise agreements. The
4 reports indicated that All Professional continued to use Century
5 21's trademarks. (Iuliano Decl. I Exs. K-L; see also Miles Decl.
6 in Supp. Of Century 21's Mot. for P.I. against Defs. ("Miles
7 Decl.") ¶¶ 2-4, Exs. A-C (No. 2:10-2751, Docket No. 11).) In a
8 September 17, 2010, letter, Century 21's counsel informed Steve
9 and Carol Wright of the results of the post-termination
10 inspections and demanded that they comply with the post-
11 termination franchise agreement obligations (Steve Wright Decl.
12 II Ex. 6; see also Steve Wright Decl. I Ex. 6), to which the
13 Wrights responded with a September 21, 2010, letter, proposing
14 terms under which All Professional would continue to be a
15 franchisee of Century 21. (Steve Wright Decl. II Ex. 7; see also
16 Steve Wright Decl. I Ex. 7.)

17 On September 30, 2010, Steve Wright, Carol Wright, and
18 All Professional filed an action in state court against Century
19 21 for violation of a termination provision of the California
20 Franchise Relations Act ("CFRA"), Cal. Bus. & Prof. Code § 20020,
21 violation of California's Unfair Competition Law ("UCL"), Cal.
22 Bus. & Prof. Code §§ 17200-17210, intentional interference with
23 business advantage, breach of contract, breach of the implied
24 covenant of good faith and fair dealing, fraud, negligent
25 interference with business advantage, and interference with
26 contract. (Notice of Removal Ex. A (No. 2:10-2846, Docket No.
27 1).) On October 6, 2010, the state court denied Steve Wright,
28 Carol Wright, and All Professional's ex parte application for a

1 temporary restraining order. (Id. Ex. J.) With a pending motion
2 for a preliminary injunction against it, Century 21 removed the
3 action on October 21, 2010.

4 On October 12, 2010, Century 21 filed a separate action
5 in this court against All Professional, Steve Wright, and Carol
6 Wright for claims of federal trademark infringement, 15 U.S.C. §
7 1114, common law trademark infringement, federal unfair
8 competition, 14 U.S.C. § 1125, California statutory trademark
9 infringement, Cal. Bus. & Prof. Code § 14340, violation of the
10 UCL, breach of contract, breach of guaranty, breach of promissory
11 note, account stated, quantum meruit, and accounting. (No. 2:10-
12 2751, Docket No. 1.)

13 On November 1, 2010, Century 21 filed the instant
14 motion for a preliminary injunction. (No. 2:10-2751, Docket No.
15 8.) Century 21 requests that the court enforce the post-
16 termination obligations under the franchise agreements, which
17 include All Professional's cessation of the use of Century 21's
18 trademarks. On November 19, 2010, Steve Wright, Carol Wright,
19 and All Professional filed the instant motion for a preliminary
20 injunction against Century 21. (No. 2:10-2846, Docket No. 9.)
21 They request that the court require Century 21 to restore All
22 Professional's benefits under the franchise agreements, including
23 access to Century 21's server, electronic mail, advertisement,
24 property listing services, prospecting databases and the
25 Preferred Client Club, and to enjoin Century 21 from denying All
26 Professional the right to use Century 21's trademarks.

27 II. Discussion

28 In the Ninth Circuit, "serious questions going to the

1 merits' and a hardship balance that tips sharply towards the
2 plaintiff can support issuance of an injunction, so long as the
3 plaintiff also shows a likelihood of irreparable injury and that
4 the injunction is in the public interest." Alliance for the Wild
5 Rockies v. Cottrell, 622 F.3d 1045, 1053 (9th Cir. 2010).⁸

6 A. Merits

7 The merits of Century 21's claims depend in part on
8 whether Century 21 properly terminated the franchise agreements.
9 See McDonald's Corp. v. Robertson, 147 F.3d 1301, 1308 (11th Cir.
10 1998) ("[W]e find that the Lanham Act's requirement that a
11 franchisor demonstrate that unauthorized trademark use occurred
12 to prevail on the merits of a trademark infringement claim
13 against a franchisee necessitates some type of showing that the
14 franchisor properly terminated the contract purporting to
15 authorize the trademarks' use, thus resulting in the unauthorized
16 use of trademarks by the former franchisee."); S & R Corp. v.
17 Jiffy Lube Int'l, Inc., 968 F.2d 371, 375 (3d Cir. 1992) ("Once a
18 franchise is terminated, the franchisor has the right to enjoin
19 unauthorized use of its trademark under the Lanham Act. Thus,
20 Jiffy Lube will merit preliminary injunctive relief if it can
21 adduce sufficient facts indicating that its termination of
22 Durst's franchises was proper."); see also Re/Max N. Cent., Inc.
23 v. Cook, 272 F.3d 424, 430 (7th Cir. 2001). Termination of a
24 franchise agreement may be improper under either the terms of the

25
26 ⁸ To the extent a party seeks a mandatory injunction,
27 "the district court should deny such relief unless the facts and
28 law clearly favor the moving party." Stanley v. Univ. of So.
Cal., 13 F.3d 1313, 1320 (9th Cir. 1994) (internal quotation
marks omitted).

1 agreement or state franchise laws. See Re/Max N. Cent., 272 F.3d
2 at 430.

3 Section 16.2.3 of the agreements provided that Century
4 21 could terminate the agreement for good cause, which included
5 curable and non-curable defaults. Section 16.2.4, governing
6 termination for curable defaults, provided that Century 21 could
7 terminate the agreement with 30 days notice of the "proposed
8 termination and the opportunity to cure the breach during the
9 entire notice period, or such longer or shorter notice as is
10 required or permitted by the law of the state where the Office is
11 located," if the curable breach was the failure to pay financial
12 obligations.

13 The CFRA, which the agreements incorporated by
14 reference, prohibits a franchisor from terminating a franchise
15 agreement absent good cause. Cal. Bus. & Prof. Code § 20020.
16 Good cause includes failure to comply with the franchise
17 agreement "after being given notice thereof and a reasonable
18 opportunity, which in no event need be more than 30 days, to cure
19 the failure." Id. Immediate notice of termination without
20 opportunity to cure is permitted when the "franchisee fails to
21 pay any franchise fees or other amounts due to the franchisor or
22 its affiliate within five days after receiving written notice
23 that such fees are overdue." Id. § 20021(j).

24 Here, it appears from the evidence that Century 21
25 properly terminated the franchise agreements under the terms of
26 the franchise agreements and the CFRA. Century 21 notified All
27 Professional of its intent to terminate the franchise agreements
28 and the opportunity to cure in April 5, 2010, letters, following

1 prior informal notices of failure to pay amounts due that All
2 Professional had ignored. Having not received payment of even
3 the undisputed fees, Century 21 terminated the Sacramento office
4 agreements effective July 9, 2010.

5 It was unequivocally clear from the testimony of the
6 Wrights that the only reason they did not pay the franchise fees
7 owed by them to Century 21 was that they did not have the money.
8 It was not because All Professional did not know the amount to
9 pay; nor was it because Century 21 had defaulted on its
10 obligations. Considering the economy at that time, particularly
11 in the business of home sales, the court can sympathize with the
12 Wrights' predicament, but it was simply no excuse for their
13 failure to pay the fees lawfully owed to Century 21 under the
14 agreements.

15 The testimony was that over the period of the franchise
16 relationship, All Professional paid over \$2 million in fees to
17 Century 21. Considering that All Professional paid approximately
18 eight percent of its income in fees, this means that All
19 Professional made approximately \$20 million in income over that
20 period. The Wrights knew how important it was to be a Century 21
21 franchisee. Each one testified to how crucial it was to be a
22 Century 21 dealer. Just to use the trademarks was of
23 immeasurable value to them, but that was only part of the
24 benefit. Century 21 also granted them access to Century 21's
25 server, e-mail, databases, and the Preferred Client Club. All
26 Professional chose not to prioritize the amount it owed to
27 Century 21 to maintain that privilege. When the Wrights elected
28 to pay their other debts ahead of the relatively small percentage

1 of their income it would have taken to maintain their Century 21
2 franchise, they made the decision that got them into this
3 situation.

4 Century 21's trademark and unfair competition claims
5 depend only in part on the proper termination of the franchise
6 agreements. A federal claim for trademark infringement pursuant
7 to section 32 of the Lanham Act also requires (1) ownership of a
8 registered trademark; (2) use of that mark beginning before the
9 alleged infringer's use; (3) the alleged infringer's use without
10 the alleged owner's consent; and (4) that the alleged infringer's
11 use is likely to cause confusion, or to cause mistake, or to
12 deceive. See 15 U.S.C. § 1114(a); Century 21 Real Estate v.
13 Sandlin, 846 F.2d 1175, 1178 (9th Cir. 1998); Intel Corp. v.
14 Americas News Intel Pub., LLC, No. C 09-05085, 2010 WL 2740063,
15 at *2 (N.D. Cal. July 12, 2010). The elements of a federal
16 unfair competition claim for false designation of origin of
17 services under section 43(a) of the Lanham Act is identical to
18 the federal trademark infringement claim, with the exception that
19 the trademark need not be registered. See 15 U.S.C. § 1125(a);
20 Intel Corp., 2010 WL 2740063, at *2.

21 The same "ultimate test" governs both federal claims:
22 "whether the public is likely to be deceived or confused by the
23 similarity of the marks." Century 21, 846 F.2d at 1178; see also
24 Jada Toys, Inc. v. Mattel, Inc., 518 F.3d 628, 632 (9th Cir.
25 2008). The "confusion must be probable, not simply a
26 possibility." Murray v. Cable Nat'l Broad. Co., 86 F.3d 858, 861
27 (9th Cir. 1996). With respect to California law claims for
28 trademark infringement and unfair competition, courts apply the

1 same likelihood of confusion test applied to a federal trademark
2 infringement claim. Levi Strauss & Co. v. Toyo Enterp. Co., 665
3 F. Supp. 2d 1084, 1096 (N.D. Cal. 2009) ("Accordingly, the
4 analysis set forth above under Plaintiff's federal trademark
5 infringement claim applies equally to Plaintiff's trademark and
6 unfair competition claims under California law."); see also Jada
7 Toys, Inc., 518 F.3d at 632 (federal claims for trademark
8 infringement and unfair competition and UCL claim were subject to
9 the same test); CytoSport, Inc. v. Vital Pharma., Inc., 617 F.
10 Supp. 2d 1051, 1066 n.1 (E.D. Cal. 2009) ("Likelihood of
11 confusion is also the test for trademark infringement and unfair
12 competition under California common and statutory law.").

13 The Ninth Circuit has established eight non-exhaustive
14 factors that are relevant to a likelihood-of-confusion
15 determination: (1) the strength of the alleged owner's trademark;
16 (2) proximity of the goods or services; (3) similarity of the
17 trademarks; (4) evidence of actual confusion; (5) marketing
18 channels used; (6) type of goods or services and the degree of
19 care likely to be used by the purchaser; (7) alleged infringer's
20 intent in selecting the mark; and (8) likelihood of expansion of
21 the product lines. AMF Inc. v. Sleekcraft Boats, 599 F.2d 341,
22 348-49 (9th Cir. 1979).

23 Here, the Wrights and All Professional have not argued
24 that All Professional's continued use of Century 21's trademarks
25 is not likely to cause confusion. Nonetheless, the court will
26 apply the Sleekcraft factors. On the similarity factor, All
27 Professional has undisputably continued to use Century 21's
28 trademarks. All Professional has not altered them. See, e.g.,

1 Century 21, 846 F.2d at 1179 (former franchisee argued against
2 likelihood of confusion when it omitted "21" from name). The
3 court also finds that Century 21's trademarks are strong. (See
4 Iuliano Decl. I ¶ 6). In Century 21 Real Estate Corp., 846 F.2d
5 at 1179, the Ninth Circuit found Century 21's trademarks strong
6 on the facts of that case based in part on the money spent on
7 advertisements containing the trademarks and the revenue
8 generated by use of the trademarks. Id.

9 While the court has not been presented with actual
10 evidence of confusion, the Wrights' declarations and testimony
11 suggest that All Professional desires to use Century 21's
12 trademarks to attract listings and qualified agents. (Steve
13 Wright Decl. I ¶ 17; Carol Wright Decl. I ¶ 17.) All
14 Professional uses Century 21's trademarks in connection with real
15 estate brokerage services, the same services offered by Century
16 21's franchisees. (Iuliano Decl. I ¶¶ 5, 21-22, Exs. K-L; Miles
17 Decl. ¶¶ 2-4, Exs. A-C.) Lastly, like Century 21 franchisees,
18 All Professional markets its services through signs, business
19 cards, and the internet. (Iuliano Decl. I ¶¶ 4-6, 21-22, Exs. K-
20 L; Miles Decl. ¶¶ 2-4, Exs. A-C.) Accordingly, the court finds a
21 likelihood of confusion based on the Sleekcraft factors. Because
22 it appears from the evidence that Century 21 properly terminated
23 the franchise agreements and that All Professional's continued
24 use of Century 21's trademarks will likely confuse the public,
25 the court finds that it is likely that Century 21 will succeed on
26 its federal and state trademark infringement and unfair
27 competition claims.

28 However, the court does not find the evidence

1 sufficient to support an injunction against Century 21 based on
2 All Professional's claims for violation of a termination
3 provision of the CFRA, violation of the UCL, intentional
4 interference with business advantage, breach of contract, breach
5 of the implied covenant of good faith and fair dealing, fraud,
6 negligent interference with business advantage, and interference
7 with contract.

8 B. Irreparable Harm

9 1. Century 21

10 Before Winter v. Natural Resources Defense Council,
11 Inc., 555 U.S. 7 (2008), and eBay Inc. v. MercExchange, L.L.C.,
12 547 U.S. 388, 393-94 (2006) (concluding that district courts must
13 apply traditional principles of equity, including assessing the
14 likelihood of irreparable harm, when granting a permanent
15 injunction in the context of patent infringement), courts applied
16 a presumption of irreparable harm upon a showing of a likelihood
17 of success on the merits in intellectual property infringement
18 cases.⁹ See El Pollo Loco, Inc. v. Hashim, 316 F.3d 1032, 1038
19 (9th Cir. 2003) (trademark infringement case); GoTo.Com, Inc. v.
20 Walt Disney Co., 202 F.3d 1199, 1205 n.4 (9th Cir. 2000) (same).
21 Subsequent to and in light of Winter and eBay, some courts
22 declined to apply the presumption. See, e.g., CytoSport, 617 F.
23 Supp. 2d at 1065 (trademark and trade dress infringement case);
24

25 ⁹ In the trademark infringement context, the reason for
26 the presumption "is that once a probability of proving likelihood
27 of confusion at trial is shown, the trademark owner's business
28 goodwill and reputation are at risk." Volkswagen AG v. Verdier
Microbus and Camper, Inc., No. C 09-00231, 2009 WL 928130, at *6
(N.D. Cal. 2009).

1 Volkswagen AG v. Verdier Microbus and Camper, Inc., No. C
2 09-00231, 2009 WL 928130, at *6 (N.D. Cal. 2009).

3 In Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &
4 Co., 571 F.3d 873, 877 (9th Cir. 2009), the Ninth Circuit upheld
5 a district court's application of the presumption in a trademark
6 infringement case. Id. ("Because the court found a likelihood of
7 success on the merits, it reasonably presumed irreparable injury
8"); see also TMX Funding, Inc. v. Impero Techns., Inc.,
9 No. C 10-00202, 2010 WL 2745484, at *7 (N.D. Cal. July 9, 2010)
10 (describing Marlyn as reaffirming the presumption in trademark
11 infringement cases); Protectmarriage.com v. Courage Campaign, 680
12 F. Supp. 2d 1225, 1228 (E.D. Cal. 2010) (explaining in dicta that
13 the presumption applies to trademark infringement cases). But
14 see Aurora World, Inc. v. Ty Inc., 719 F. Supp. 2d 1115, 1169
15 (C.D. Cal. 2009) ("The Marlyn court appeared to apply Winter and
16 did not consider the impact of the Supreme Court's decision in
17 eBay.") (copyright infringement case); see also Credit Bureau
18 Connection, Inc. v. Pardini, --- F. Supp. 2d ----, ----, 2010 WL
19 2737128, at *14 (E.D. Cal. July 12, 2010) (finding irreparable
20 harm in a copyright infringement case but citing eBay and
21 declining to presume irreparable harm).

22 In light of the foregoing, the viability of the
23 presumption of irreparable harm caused by trademark infringement
24 is at best still an open question. Regardless of whether the
25 presumption still applies, in this case it is clear that Century
26 21 will suffer irreparable harm if All Professional is not
27 enjoined from using its trademarks. While "economic injury alone
28 does not support a finding of irreparable harm, because such

1 injury can be remedied by a damage award," Rent-A-Center, Inc. v.
2 Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603
3 (9th Cir. 1991), the Ninth Circuit has recognized that damage to
4 goodwill is an irreparable harm. Id. Business goodwill includes
5 a company's reputation. See WMX Techs. v. Miller, 80 F.3d 1315,
6 1325 (9th Cir. 1996).

7 It appears obvious from the testimony of Steve Wright
8 and the e-mails and other communications exchanged between the
9 parties (see, e.g., Suppl. Steve Wright Decl. Ex. 12), that
10 Century 21 and All Professional, under the ownership of Steve and
11 Carol Wright, will never be able to resume a relationship of
12 mutual trust and respect. It is clear to the court that the
13 relationship between the parties has irreparably broken down.
14 For example, on May 13, 2009, Steve Wright went so far as to
15 threaten Century 21 with an action for fraud if Century 21 did
16 not compromise regarding the debt on the Note. Under the
17 circumstances, to allow All Professional to hold itself out to
18 potential buyers and sellers of real estate as the agent or
19 representative of Century 21 would be only to invite injury to
20 Century 21's good will and reputation.

21 In CytoSport, 617 F. Supp. 2d at 1080, Judge Damrell
22 pointed out that:

23 Trademarks serve as the identity of their owners and in
24 them resides the reputation and goodwill of their
25 owners. Thus, if another person infringes the marks,
26 that person borrows the owner's reputation, whose
27 quality no longer lies within the owner's control. A
28 trademark owner's loss of the ability to control its
marks, thus, creates the potential for damage to its
reputation. [citing Opticians Ass'n of Am. V. Indep.
Opticians of Am., 920 F.2d 187, 196 (3rd Cir. 1990).]

1 2. Wrights & All Professional

2 It is also clear to the court that the Wrights and All
3 Professional will likely suffer irreparable injury if they are
4 enjoined from using Century 21's trademarks. The evidence shows
5 that All Professional has already suffered economic damages by
6 its being denied access to Century 21's System. (Steve Wright
7 II ¶¶ 17-19; Carol Wright II ¶¶ 17-19; Suppl. Steve Wright Decl.
8 ¶ 7.) It is likely that denying All Professional the right to
9 use Century 21's trademarks would increase the economic harm.
10 Primarily, the System and trademarks attract listings and
11 qualified agents who generate revenue.

12 However, mere monetary harm is not irreparable harm.
13 Rent-A-Center, Inc., 944 F.2d at 603; Am. Trucking Ass'ns v.
14 City of L.A., 559 F.3d 1046, 1057 (9th Cir. 2009); see also
15 Dunkin' Donuts Franchised Restaurants LLC v. KEV Enterps., Inc.,
16 634 F. Supp. 2d 1324, 1336 (M.D. Fla. 2009) ("While the Court
17 recognizes that Defendants will sustain financial losses if a
18 preliminary injunction issues, that harm is the result of
19 Defendants' failure to comply with the requirements of the
20 Franchise Agreements. Weighing Defendants' self-inflicted
21 injury against Plaintiffs' immeasurable losses to its
22 hard-earned goodwill, the Court finds the balance of harms
23 weighs decisively in favor of granting the requested relief.").

24 Nonetheless, intangible injuries that are incapable of
25 measurement, like reputation, recruiting efforts, and goodwill,
26 may constitute irreparable harm. Rent-A-Center, Inc., Inc., 944
27 F.2d at 603. Century 21's System and trademarks attract
28 qualified agents and All Professional considers Century 21's

1 trademarks to be essential to its name "Century 21 All
2 Professional." (See Suppl. Steve Wright Decl. ¶¶ 2-4; Steve
3 Wright Decl. II ¶ 17-18; Steve Wright Decl. I ¶¶ 17-19.) Thus,
4 whatever the court decides on the pending motions will likely
5 result in irreparable harm to one side in this dispute.

6 C. Balance of Equities and Public Interest

7 A court looks to the balance of equities and the
8 public interest in deciding whether to issue an injunction.
9 Maxim Integrated Prods., Inc. v. Quintana, 654 F. Supp.2d 1024,
10 1035-26 (N.D. Cal. 2009). While the court cannot quantify the
11 irreparable harm that will befall each party in this action, the
12 court finds that the public interest weighs heavily in favor of
13 issuing an injunction in favor of Century 21. In the trademark
14 context, the public interest is usually the right of the public
15 not to be deceived or confused. See Internet Specialties West,
16 Inc. v. Milon-DiGiorgio Enters., Inc., 559 F.3d 985, 993-94 (9th
17 Cir. 2009); see e.g., CytoSport, 617 F. Supp. 2d at 1080;
18 Moroccanoil, Inc. v. Moroccan Gold, LLC, 590 F. Supp. 2d 1271,
19 1282 (C.D. Cal. 2008).

20 All Professional's continued use of the trademarks
21 will not only falsely represent to the public that All
22 Professional is a Century 21 broker in the good graces of its
23 franchisor, but will also deceive the public into believing that
24 All Professional enjoys all the tools, resources, and systems
25 normally provided by Century 21 to its franchisees. Preventing
26 such deception is strongly in the public interest.

27 Accordingly, the court will grant Century 21's motion
28 for a preliminary injunction and deny the Wrights' and All

1 Professional's motion for a preliminary injunction.

2 Century 21 has requested that the court enforce All
3 Professional's post-termination obligations under the
4 agreements, which exceed cessation of the use of Century 21's
5 trademarks. Such an injunction would not be necessary to
6 preserve the status quo in this case, and the court accordingly
7 will not order such relief in this preliminary injunction. The
8 court will only enjoin the Wrights and All Professional from
9 further unauthorized use of Century 21's Marks, as defined under
10 the franchise agreements. Such injunction should be sufficient
11 to ensure that the public does not mistakenly believe that All
12 Professional is a Century 21 franchisee.

13 D. Bond

14 Rule 65(c) of the Federal Rules of Civil Procedure
15 provides that:

16 The court may issue a preliminary injunction . . . only
17 if the movant gives security in an amount that the
18 court considers proper to pay the costs and damages
sustained by any party found to have been wrongfully
enjoined or restrained.

19

20 The parties have not addressed the amount of bond to be posted.
21 From the record presently before the court it is impossible to
22 quantify the damages All Professional may sustain as a result of
23 this injunction. From the testimony, however, it appears that
24 they are likely to be substantial. The court considers a bond
25 in the sum of \$100,000 to be appropriate under the
26 circumstances.

27 IT IS THEREFORE ORDERED that:

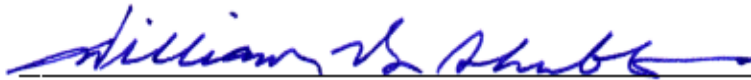
28 (1) Steve Wright, Carol Wright, and All Professional's

1 motion for a preliminary injunction be, and the same hereby is,
2 DENIED; and

3 (2) Century 21's motion for a preliminary injunction
4 be, and the same hereby is, GRANTED. Pending final hearing on
5 the merits of the parties' claims, or until otherwise ordered by
6 this court, Steve Wright, Carol Wright, and All Professional are
7 HEREBY ENJOINED from further unauthorized use of Century 21's
8 Marks, as defined in the franchise agreements. This preliminary
9 injunction shall become effective upon the posting by Century 21
10 of valid security in the amount of \$100,000.

11 IT IS SO ORDERED.

12 DATED: January 21, 2011

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15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE
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