

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

KLEIN & HEUCHAN, INC.

Plaintiff

v.

COSTAR REALTY INFORMATION, INC.,  
and COSTAR GROUP, INC.

Civil No.: 8:08-cv-01227-JSM-EAJ

Defendants / Counter-Plaintiffs

v.

SCOTT BELL and KLEIN & HEUCHAN,  
INC.

Counter-Defendants

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**SUPPLEMENTAL LOCAL RULE 3.01(G) CERTIFICATION REGARDING  
MOTION TO STRIKE AND INCORPORATED MEMORANDUM OF LAW**

Defendant / Counter-Defendant KLEIN & HEUCHAN, INC. (hereinafter “K&H”), by and through its undersigned counsel, hereby respectfully submits this Supplement to its Local Rule 3.01(g) certification contained within the *Motion to Strike and Incorporated Memorandum of Law* [D.E. 75] filed on October 16, 2009. Counsel for K&H has attempted in good faith to confer with counsel for Defendants / Counter-Plaintiffs but has been unable to resolve the issues raised by the motion.

In the late night hours of October 15, 2009 the undersigned wrote to opposing counsel Sauers seeking his clients’ position regarding the motion. A copy of the undersigned’s October 15, 2009 correspondence is attached as “Exhibit A.” Thereafter, the undersigned telephoned opposing counsel Sauers leaving a voicemail message on the

afternoon of Friday, October 15, 2009. On Monday, October 19, 2009, the undersigned again wrote to opposing counsel Sauers. A copy of the October 19, 2009 correspondence is attached as "Exhibit B." On Tuesday, October 20, 2009, the undersigned again telephoned and left a voicemail for opposing counsel Sauers.

Having not received any response to the attempts to confer, on Tuesday, October 27, 2009, the undersigned again wrote to opposing counsel Sauers. A copy of the October 27, 2009 correspondence is attached as "Exhibit C." Thereafter, the undersigned received an "Out of Office AutoReply" indicated that opposing counsel Sauers was out of the office. A copy of the "Out of Office AutoReply" is attached as "Exhibit D." On Wednesday, October 28, 2009 the undersigned wrote to opposing counsel Kerksiek. A copy of the October 28, 2009 correspondence is attached as "Exhibit E." Having not received a response, at approximately 5:00 p.m. on Wednesday, October, 28, 2009, the undersigned telephoned opposing counsel Kerksiek and again left a voice mail message.

As of the date and time of this filing, the undersigned has not received any response to any of the prior attempts to confer with opposing counsel and is therefore unable to state Defendants / Counter-Plaintiffs' position with regard to the *Motion to Strike and Incorporated Memorandum of Law*. [D.E. 75].

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

RESPECTFULLY SUBMITTED this 29th day of October, 2009.

/s/ Jeffrey W. Gibson  
J. PAUL RAYMOND, ESQ.  
Florida Bar No. 0169268  
jpr@macfar.com  
JEFFREY W. GIBSON, ESQ.  
Florida Bar No.: 0568074  
jg@macfar.com  
Macfarlane Ferguson & McMullen  
P.O. Box 1669  
Clearwater, FL 33757  
(727) 441-8966 – Phone  
(727) 442-8470 – Facsimile  
Attorneys for Defendant  
Klein & Heuchan, Inc.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 29, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

William J. Sauers, Esq.  
Shari Ross Lahlou, Esq.  
Sanja Sarich Kerksiek, Esq.  
Crowell & Moring, LLP  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Randall J. Love, Esq.  
Randall J. Love & Associates, P.A.  
5647 Gulf Dr.  
New Port Richey, FL 34652-4019

*Counsel for Counter-Defendant Scott Bell*

William Cooper Guerrant, Jr.  
Hill Ward Henderson  
101 E. Kennedy Blvd, Suite 3700  
P.O. Box 2231  
Tampa, FL 33601

*Counsel for Defendants-Counter-Plaintiffs  
CoStar Realty Information, Inc. and CoStar  
Group, Inc.*

/s/ Jeffrey W. Gibson  
JEFFREY W. GIBSON, ESQ.  
Florida Bar No.: 0568074

## Jeffrey W. Gibson

---

**From:** Jeffrey W. Gibson  
**Sent:** Thursday, October 15, 2009 11:58 PM  
**To:** Sauers, William  
**Subject:** K&H v. Costar

Bill:

Pursuant to Local Rule 3.01(g) I write to determine whether you will agree to withdraw the following documents filed in support of your clients' Motion for Summary Judgment: (1) Declaration of Robert Lardizabal [D.E. 69-5]; (2) Exhibits 1, 2 and 3 of COSTAR's Motion for Summary Judgment [D.E. 69-8, 69-9, 69-10]; and (3) "Exhibit 10" of Declaration of Steven J. Williams [D.E. 69-4 pp.3-13]. I intend to Move to Strike these supporting documents. I intend to move to strike the Declaration of Mr. Lardizabal because his name was never previously disclosed. Additionally I intend to seek to strike Exhibits 1, 2, and 3 of the Motion for Summary Judgment along with Exhibit 10 to Mr. Williams Declaration as those documents were not previously disclosed.

I assume that you will not agree with my request but seek your position pursuant to my obligation under Local Rule 3.01(g).

Thank you for your reply.

- Jeff

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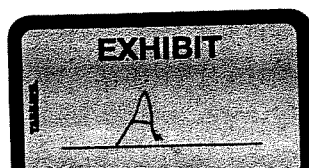
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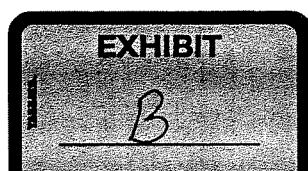


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Thank you

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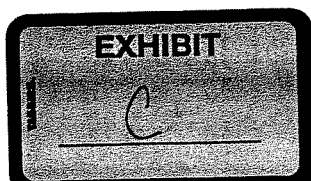
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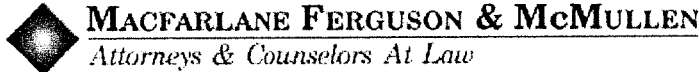
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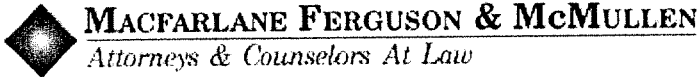


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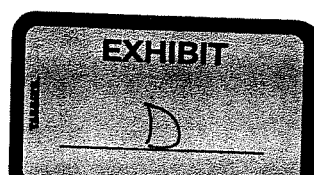
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**Jeffrey W. Gibson**

---

**From:** Sauers, William [WSauers@crowell.com]  
**Sent:** Tuesday, October 27, 2009 5:25 PM  
**To:** Jeffrey W. Gibson  
**Subject:** Out of Office AutoReply: K&H v. Costar

Thank you for your e-mail. I am out of the office October 26-28 on business and will have limited access to e-mail. Please contact my assistant, Cathy Ryan, 202-508-8797, with any urgent issues.



**Jeffrey W. Gibson**

---

**From:** Jeffrey W. Gibson  
**Sent:** Wednesday, October 28, 2009 9:56 AM  
**To:** Kerksiek, Sanya  
**Cc:** 'Sauers, William'  
**Subject:** FW: K&H v. Costar

Sanya:

I understand that Mr. Sauers is out today. Can you provide any assistance in obtaining your clients position on the recently filed Motion to Strike. Your help would be appreciated.

- Jeff

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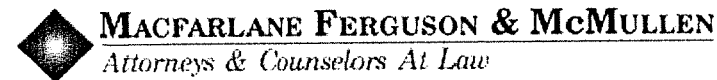
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Tracking: