

**E-FILED**

May 6, 2016 5:00 PM

David H. Yamasaki  
Chief Executive Officer/Clerk  
Superior Court of CA, County of Santa Clara  
Case #1-13-CV-258281 Filing #G-83397  
By R. Walker, Deputy

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9 Attorneys for Defendant/Cross-Defendant/Cross-Complainant  
10 JELD-WEN, Inc. dba SUMMIT WINDOW & PATIO DOOR (erroneously  
11 sued herein as separate entities "SUMMIT WINDOW & PATIO DOOR"  
12 and "Doe 3: Jeld-Wen, Inc. dba Summit Window & Patio Door")  
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC,  
Plaintiff,

Case No. 1-13-CV-258281

v.

WESTERN NATIONAL  
CONSTRUCTION, et al.

**RESPONSE TO WESTERN NATIONAL  
CONSTRUCTION'S OBJECTIONS TO  
EVIDENCE IN SUPPORT OF JELD-  
WEN, INC.'S MOTION FOR SUMMARY  
JUDGMENT**

Defendants.

*[FILED CONCURRENTLY WITH (1) REPLY TO WESTERN  
NATIONAL CONSTRUCTION'S OPPOSITION TO JELD-  
WEN, INC.'S MOTION FOR SUMMARY JUDGMENT AND  
(2) DECLARATION OF LUKE G. PEARS-DICKSON IN  
SUPPORT OF REPLY TO WESTERN NATIONAL  
CONSTRUCTION'S OPPOSITION TO JELD-WEN, INC.'S  
MOTION FOR SUMMARY JUDGMENT]*

AND ALL RELATED CROSS-ACTIONS.

Date: May 13, 2016  
Time: 9:00 a.m.  
Dept.: One (1)  
Judge: Hon. Peter H. Kirwan

Trial Date: June 13, 2016

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

Defendant/Cross-Defendant/Cross-Complainant JELD-WEN, Inc. dba SUMMIT  
WINDOW & PATIO DOOR (hereinafter "JELD-WEN") hereby submits its Response to  
WESTERN NATIONAL CONSTRUCTION (hereinafter "WESTERN") Objections to  
Evidence in Support of JELD-WEN's Motion for Summary Judgment, as follows:

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1 WESTERN has submitted three (3) Objections to Evidence offered by JELD-  
2 WEN in support of its Motion for Summary Judgment. All of WESTERN's Objections  
3 relate to the Declaration of Richard N. Sieving, submitted in support of JELD-WEN's  
4 Motion for Summary Judgment. WESTERN offers the following as the authority for its  
5 Objections: (1) Lack of personal knowledge (Evid. Code, § 702); (2) lack of foundation  
6 (Evid. Code, §§ 402, 403, and 405); (3) hearsay (Evid. Code, § 1200); and (4) improper  
7 legal conclusion (Snider v. Snider (1962) 200 Cal.App.2d 741, 751).

8 **Lack of Personal Knowledge and Hearsay**

9 Contrary to WESTERN's bald assertion, and as stated by the declaration itself,  
10 Mr. Sieving does in fact have personal knowledge of (1) JELD-WEN's status as a self-  
11 insured entity, (2) JELD-WEN's responsibility to fund any and all liability in this action,  
12 and (3) JELD-WEN's payment of any and all costs of defending this action. For  
13 example, Mr. Sieving, as principal of The Sieving Law Firm, would have direct and  
14 personal knowledge of to whom bills are sent and from whom checks are received. As  
15 Mr. Sieving has declared direct and personal knowledge of JELD-WEN's insurance  
16 program, any claim of hearsay cannot be said to apply. Mr. Sieving's declaration  
17 should not be stricken by WESTERN's baseless and unfounded assertions of a lack of  
18 personal knowledge or hearsay.

19 **Lack of Foundation**

20 WESTERN's claim that Mr. Sieving's declaration fails to lay proper foundation  
21 for his statements is without merit. Mr. Sieving's declaration states that he has "been  
22 actively involved in the preparation of this case for trial," and that he has "served as  
23 outside legal counsel for JELD-WEN since 1988." Mr. Sieving's nearly 30 years acting  
24 as legal counsel for JELD-WEN is ample foundation for his simple and clear  
25 statements. Moreover, his active role in preparing this case for trial sufficiently shows

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1 that he knows of the claims alleged herein. Mr. Sieving's stated extensive experience  
2 representing JELD-WEN provides sufficient foundation for his sworn statements.

3 **Improper Legal Conclusion**

4 WESTERN's objection of improper legal conclusion cites to Snider v. Snider  
5 (1962) 200 Cal.App.2d 741, 751 as authority. A review of the cited passage from  
6 Snider far from clarifies what exactly is WESTERN's basis for this objection. Snider  
7 discusses an amended counteraffidavit, filed in response to a motion for summary  
8 judgment. The court notes that the counteraffidavit "must meet the following  
9 requirements: 1) It must set forth facts with particularity; and 2) It must set forth facts  
10 within the personal knowledge of the affiant, to which, as the affidavit shall show  
11 affirmatively, the affiant can testify competently if called as a witness." Id. The Snider  
12 court criticizes the counteraffidavit in that it is nothing more than "a series of  
13 conclusions of law and fact, merely repeat[ing] the complaint." Again, it is unclear what  
14 application this authority has to the instant objection raised by WESTERN.

15 Mr. Sieving's declaration makes no legal conclusions. Instead, Mr. Sieving's  
16 declaration states simple facts, stemming from his personal knowledge (based on his  
17 28 years of experience representing JELD-WEN). The fact that JELD-WEN is a self-  
18 insured company which has been paying for its own defense (and will pay for any and  
19 all liability arising from this litigation) is not a legal conclusion. WESTERN's objection  
20 is without merit and should not be sustained.

21 Based upon the foregoing, JELD-WEN respectfully requests all of WESTERN's  
22 Objections to JELD-WEN's Evidence in support of its Motion for Summary Judgment  
23 be overruled.

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DATED: May 6, 2016

THE SIEVING LAW FIRM, A.P.C.

By: 

**LUKE G. PEARS-DICKSON**  
Attorney for Defendant/Cross-Defendant/  
Cross-Complainant JELD-WEN, Inc. dba  
SUMMIT WINDOW & PATIO DOOR  
(erroneously sued herein as separate  
entities "SUMMIT WINDOW & PATIO  
DOOR" and "Doe 3: Jeld-Wen, Inc. dba  
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