

1 **MULCAHY LLP**

2 James M. Mulcahy (SBN 213547)

3 *jmulcahy@mulcahyllp.com*

4 Kevin A. Adams (SBN 239171)

5 *kadams@mulcahyllp.com*

6 Douglas R. Luther (SBN 280550)

7 *dluther@mulcahyllp.com*

8 Four Park Plaza, Suite 1230

9 Irvine, California 92614

10 Telephone: (949) 252-9377

11 Facsimile: (949) 252-0090

12 *Attorneys for Plaintiffs and Counter-Defendants*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 BENNION & DEVILLE FINE
16 HOMES, INC., a California
17 corporation, BENNION & DEVILLE
18 FINE HOMES SOCAL, INC., a
19 California corporation, WINDERMERE
20 SERVICES SOUTHERN
21 CALIFORNIA, INC., a California
22 corporation,

23 Plaintiffs,

24 v.

25 WINDERMERE REAL ESTATE
26 SERVICES COMPANY, a Washington
27 corporation; and DOES 1-10

28 Defendant.

AND RELATED COUNTERCLAIMS

Case No. 5:15-CV-01921 R (KKx)

Hon. Manual L. Real

**DECLARATION OF KEVIN A.
ADAMS IN SUPPORT OF THE
B&D PARTIES' MOTION FOR
CLARIFICATION, OR, IN THE
ALTERNATIVE, MOTION FOR
RECONSIDERATION OF THE
COURT'S MAY 31, 2017 ORDER
(DKT. NO. 138)**

Date: July 17, 2017

Time: 10:00 a.m.

Courtroom: 880

Action Filed: September 17, 2015

Disc. Cut-Off: August 29, 2016

Pretrial Conf.: November 15, 2016

1 I, Kevin A. Adams, state as follows:

2 1. I am one of the attorneys of record for Plaintiffs/Counter-Defendants
3 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc.,
4 Windermere Services Southern California, Inc., and Counter-Defendants Robert L.
5 Bennion and Joseph R. Deville (collectively, the “B&D Parties”) in the above-named
6 action. I am a member in good standing of the State Bar of California and duly admitted
7 to practice law before all of the courts of the State of California, including the United
8 States District Court, Central District of California and the United States Court of
9 Appeals for the Ninth Circuit. I make this Declaration in support of the B&D Parties’
10 Motion For Clarification, Or, In The Alternative, Motion For Reconsideration Of The
11 Court’s May 31, 2017 Order (Dkt. No. 138).

12 2. As counsel for the B&D Parties, I am intimately familiar with the discovery
13 that has taken place in this action, including the written discovery, documents produced,
14 and deposition testimony. The written discovery requests, responses, and deposition
15 transcripts have all been reviewed by me and are maintained at my office.

16 3. During the discovery phase of this case, both parties produced documents
17 that detail the losses the B&D Parties endured in connection with their Encinitas and
18 Little Italy offices. For instance, on April 8, 2016, the B&D Parties produced documents
19 that detail the operating losses incurred at the Encinitas and Little Italy offices through
20 the termination of the parties’ relationships in 2015. **Exhibit A** to my declaration is a true
21 and correct copy of the cover letter indicating the date and Bates number range of the
22 production. **Exhibit B** contains true and correct copies of profit and loss statements
23 produced by the B&D Parties reflecting, among other things, the Little Italy and
24 Encinitas offices.¹

26 ¹ Although these financial records were produced to WSC in full, unredacted form, they
27 are being produced in redacted form in connection with this declaration in order to
28 protect protect B&D SoCal’s sensitive financial information contained within. These
reocdrds can be made available to the Court for *in camera* review upon request.

1 4. Additionally, on May 6, 2016, WSC produced copies of the lease
2 agreements for the Encinitas and Little Italy locations. **Exhibit C** is a true and correct
3 copy of the cover letter indicating the date and Bates number range of WSC’s production
4 while **Exhibits D and E** are true and correct copies of the lease agreements for these
5 offices. These lease records show the B&D parties monthly financial obligations an the
6 remaining term of those obligations.

7 5. On September 16, 2016, and long after the above documents were
8 produced during discover, the B&D Parties served the expert report of their damages
9 expert Peter Wrobel (“Wrobel”). A true and correct copy of Wrobel’s expert report is
10 attached hereto as **Exhibit F**.

11 6. On March 3, 2017, WSC served their damages expert Neil J. Beaton’s
12 (“Beaton”) rebuttal expert report. WSC designated Beaton to analyze and rebut Wrobel’s
13 damage calculations. Beaton’s rebuttal report indicates that Beaton conducted an in-depth
14 analysis of these damages, as set forth in Wrobel’s report. A true and correct copy of
15 Beaton’s rebuttal expert report is attached hereto as **Exhibit G**.

16 7. On April 5, 2017, WSC deposed Wrobel. WSC questioned Wrobel about his
17 expert opinion regarding B&D SoCal’s losses at the Encinitas and Little Italy locations.
18 Importantly, Beaton was present for Wrobel’s entire deposition. A true and correct copy
19 of relevant portions of the transcript from Wrobel’s deposition is attached hereto as
20 **Exhibit H**. I personally defended this deposition. Beaton was present at Wrobel’s
21 deposition and actively participated in the deposition by assisting WSC’s counsel with
22 questions for Wrobel.

23 8. On May 17, 2017, I deposed WSC’s damages expert, Beaton. This
24 deposition occurred long after WSC (i) learned of the B&D Parties’ damages in
25 connection with the Little Italy and Encinitas offices, (ii) received Wrobel’s expert report
26 on damages, and (iii) obtained Wrobel’s entire file and substantiation for his Little Italy
27 and Encinitas damage calculations. During Beaton’s deposition, I enquired extensively
28 about Beaton’s review of Wrobel’s expert report concerning this category of damages. A

1 true and correct copy of portions of the transcript of Beaton's deposition is attached
2 hereto as **Exhibit I**.

3 I declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct and that this Declaration was executed this 9th day
5 of June, 2017 in Irvine, California.

6 /s/ Kevin A. Adams
7 Kevin A. Adams
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