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Windermere Real Estate Services Company  
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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

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

19 Plaintiffs,

20 v.

21 WINDERMERE REAL ESTATE  
22 SERVICES COMPANY, a Washington  
corporation; and DOES 1-10

23 Defendant.  
24

25  
26 AND RELATED COUNTERCLAIMS  
27  
28

Case No. 5:15-CV-01921-JCG

Hon. Jay C. Gandhi

**DEFENDANT WINDERMERE  
REAL ESTATE SERVICES  
COMPANY'S STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Date: March 1, 2018

Time: 10:00 a.m.

Courtroom: 6A

1 Pursuant to Local Rule 56-1, Defendant and Counterclaimant Windermere  
 2 Real Estate Services Company (“WSC”) submits the following Statement of  
 3 Uncontroverted Facts and Conclusions of Law.

<b><u>Uncontroverted Facts:</u></b>	<b><u>Supporting Evidence:</u></b>
4 5 1. On May 1, 2004, WSC and 6 Windermere Services Southern 7 California, Inc. (“WSSC”), an entity 8 owned by Bennion and Deville, entered 9 into the Area Representation Agreement (“ARA”).	1. Feasby Decl. Ex. 1, p. 1; Feasby Decl. Ex. E, Deposition of Robert L. Bennion (“Bennion Dep.”) 77:7- 13; Feasby Decl. Ex. F, Drayna Dep. 46:18-47:1.
10 2. Section 4.2 of the ARA states that, 11 in the event either party elects to 12 terminate the ARA pursuant to Section 13 4.1(b), the Terminated Party “will be 14 paid an amount equal to the fair market 15 value of the Terminated Party’s interest in the Agreement (the ‘Termination Obligation’), in accordance with the provisions of this Agreement.”	2. Feasby Decl. Ex. 1, p. 5, § 4.2.
16 3. Section 4.2 of the ARA states that 17 the Termination Obligation “will be 18 determined ... without consideration of 19 speculative factors including, specifically, future revenues.”	3. Feasby Decl. Ex. 1, p. 5, § 4.2.
20 4. Section 4.2 of the ARA states that 21 the Termination Obligation shall be 22 determined by looking “at the gross 23 revenues received under the [ARA] 24 during the twelve months preceding the 25 termination date from then existing 26 licensees that remain with or affiliate 27 with the Terminating Party.” 28	4. Feasby Decl. Ex. 1, p. 5, § 4.2.

<b><u>Uncontroverted Facts:</u></b>	<b><u>Supporting Evidence:</u></b>
<p>5. Section 4.4 of the ARA states that “Except as specifically provided herein neither party will owe any obligation to the other following termination of the [ARA], except for final accounting and settlement of any previously accrued license fees....”</p>	<p>5. Feasby Decl. Ex. 1, p. 6, § 4.4.</p>
<p>6. Following termination of the ARA on September 30, 2015, Bennion &amp; Deville Fine Homes Inc. and Bennion &amp; Deville Fine Homes SoCal Inc. did not remain with or affiliate with WSC.</p>	<p>6. Declaration of Paul S. Drayna, ¶¶ 7-8.</p>

DATED: January 31, 2018      PEREZ VAUGHN & FEASBY Inc.

By: /s/ Jeffrey A. Feasby  
 Jeffrey A. Feasby  
 Attorneys for  
 Windermere Real Estate Services Company

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