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Attorneys for Defendant and Counterclaimant

Windermere Real Estate Services Company

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

**BENNION & DEVILLE FINE
HOMES, INC.**, a California
corporation, **BENNION & DEVILLE
FINE HOMES SOCAL, INC.**, a
California corporation, **WINDERMERE
SERVICES SOUTHERN
CALIFORNIA, INC.**, a California
corporation,

Plaintiffs,

v.

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

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 5:15-CV-01921 R (KKx)
Hon. Manual L. Real

**JOINT STIPULATION TO
CONTINUE TRIAL AND RELATED
DATES**

Courtroom: 8

Current Trial Date:

October 18, 2016

Proposed New Trial Date:

November 8, 2016

Complaint Filed: September 17, 2015

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 It is hereby stipulated and agreed by and between 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 (all collectively referred to herein as the “B&D Parties”),
6 on the one hand, and Defendant/Counter-Claimant Windermere Real Estate Services
7 Company’s (“WSC”), on the other hand, by and through their undersigned counsel, that
8 good cause exists and the parties request that the Court continue the pretrial and trial
9 deadlines based on the following:

10 A. Plaintiffs filed their initial Complaint in this matter on September 17, 2015.

11 B. WSC filed its Counterclaim on October 13, 2015, and its First Amended
12 Counterclaim on October 14, 2015.

13 C. Plaintiffs filed their First Amended Complaint on November 16, 2015.

14 D. The parties have engaged in significant written discovery including written
15 discovery, the production of more than 100,000 pages of documents, related law and
16 motion practice, and have taken and scheduled numerous depositions.

17 E. WSC has recently taken five depositions of the B&D Parties and their
18 affiliated witnesses.

19 F. The B&D Parties have noticed and are preparing to take eight depositions of
20 WSC, its representatives, and affiliated witnesses (collectively, the “WSC Deponents”) in
21 Seattle, Washington during the week of August 22, 2016.

22 G. The B&D Parties have been unable to take the depositions of the WSC
23 Deponents until now. As the Court is aware, there was a longstanding discovery dispute
24 involving WSC’s written discovery responses and production of documents. The B&D
25 Parties originally served discovery on WSC on December 21, 2015. [Docket Entry (“Dkt.
26 42”).] Following numerous meet and confer communications, the parties filed a Joint
27 Stipulation Re: Plaintiffs’ Motion to Compel Production of Documents and Responses on
28 May 6, 2016. [*Id.*]

1 H. On June 8, 2016, the Court issued an Order granting in part and denying in
2 part the B&D Parties' Motion to Compel. As part of the Order, the Court directed WSC
3 to (1) "produce all remaining responsive materials in its possession, custody or control,"
4 (2) "provide all further supplemental interrogatory responses," and (3) "provide
5 declarations or affidavits detailing the extent of its efforts to comply with Plaintiffs'
6 discovery requests." [Dkt. 46.] The deadline set by the Court for WSC compliance with
7 the above Order was July 1, 2016 at 12:00 PM PST. [*Id.*]

8 I. On July 1, 2016, Jeffrey A. Feasby, counsel for WSC, submitted a
9 declaration concerning the completeness of his client's discovery responses and
10 compliance efforts. [Dkt. 47.] Prior to this date, the B&D Parties contend that they were
11 not in a position to take the depositions of the WSC Deponents due to concerns regarding
12 the completeness of WSC's discovery responses and document production.

13 J. Prior to the July 1, 2016 date, although the B&D Parties were not in a
14 position to take the depositions of the WSC Dependents, counsel for the parties had
15 already begun coordinating the depositions of the WSC Deponents in WSC's home state
16 of Washington. Counsel also jointly coordinated the depositions of the B&D Parties'
17 witnesses.

18 K. Due to the number of depositions needed, the number of parties involved,
19 and the multiple locations for said depositions, the parties required a deposition schedule
20 that started in July, 2016 and ran through August, 2016.

21 L. Notwithstanding the parties' intent and efforts to complete all depositions
22 before August, 2016, this has not been possible.

23 M. Because the deposition schedule in the case is expected to last through
24 August, 2016, as reflected above, the parties will not be in a position to make their initial
25 expert disclosures until mid-September, 2016. The September, 2016 deadline will
26 provide the experts time to review and rely upon the parties' deposition testimony before
27 reaching their opinions and drafting and submitting their reports.

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1 N. Moreover, consistent with the mid-September, 2016 initial expert disclosure
2 deadline, the parties will need to extend their rebuttal expert disclosures to early October,
3 2016 in order to give the rebuttal experts sufficient time to review the reports provided by
4 the initial experts and to prepare their rebuttal reports.

5 O. The proposed mid-September and early October initial and rebuttal expert
6 disclosure deadlines are necessary for the parties and experts to properly prepare the case
7 for trial. Additional time will be required for the parties to depose these expert witnesses.

8 P. The case is presently schedule for trial on October 18, 2016. [Dkt. 35.] The
9 trial date of October 18, 2016 is the initial trial date set in this matter, and there have been
10 no previous trial continuances or requests for trial continuances made in this case.

11 Q. On December 5, 2015, the parties submitted a Joint Rule 26(f) Report jointly
12 requesting a trial date in February, 2017. [Dkt. 33.] The parties came to agreement on this
13 proposed trial date after meeting and conferring on the scope of the case, the volume of
14 anticipated discovery and document production, the number and location of deponents,
15 and the logistics involved with taking the depositions and completing the discovery in
16 this case.

17 R. On December 9, 2015, the Court issued a scheduling order that scheduled
18 trial for October 18, 2016. [Dkt. 35.]

19 S. As anticipated by the parties at the time they agreed to a February, 2017 trial
20 date, more than 100,000 pages of responsive documents have been produced by the
21 parties during the discovery phase of this case. Additional records have been (and are
22 expected to be produced) in response to third-party subpoenas. Locating, reviewing, and
23 producing this volume of documents has been a significant and time-consuming
24 undertaking for all parties and their counsel. Notwithstanding the parties' best efforts, this
25 volume of documents has precluded the parties from being in a position to complete
26 expert disclosures prior to early September, 2016.

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1 T. As reflected above, notwithstanding the parties' best efforts to prepare the
2 case for the October 18, 2016 trial date and related pre-trial disclosure deadlines, these
3 are deadlines that they cannot meet.

4 U. The parties need additional time to complete discovery, prepare and
5 designate their expert witnesses and complete the pre-trial disclosures.

6 V. In light of the above, good cause exists as required by Rule 16(b)(4) of the
7 Federal Rules of Civil Procedure for the Court to modify the Scheduling Order entered on
8 December 9, 2016 [Dkt. 35], and to continue the trial and pre-trial deadlines in
9 accordance with the below schedule jointly proposed by the parties.

10 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,
11 through their attorneys of record, the trial and related pre-trial deadlines should be
12 modified as follows:

	Current Deadlines	Proposed Deadlines
Jury Trial	October 18, 2016	November 8, 2016
Final Pre-Trial Conference	September 19, 2016	November 1, 2016
Lodging of Pre-Trial Conference Order	September 12, 2016	October 25, 2016
File Memoranda of Contentions of Fact and Law	August 29, 2016	October 11, 2016
File Exhibit Lists	August 29, 2016	October 11, 2016
File Witnesses Lists	August 29, 2016	October 11, 2016
Discovery Cut-Off Date	August 29, 2016	October 11, 2016

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1 The Parties agree that the terms of this stipulation shall not be binding or effective
2 unless and until accepted by the Court.

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4 DATED: August 9, 2016

MULCAHY LLP

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6 By: /s/ Kevin A. Adams
7 James M. Mulcahy
8 Kevin A. Adams
9 Attorneys for Plaintiffs/Counter-Defendants
10 Bennion & Deville Fine Homes, Inc.,
11 Bennion & Deville Fine Homes SoCal, Inc.,
12 Windermere Services Southern California,
13 Inc., and Counter-Defendants Robert L.
14 Bennion and Joseph R. Deville

15
16 DATED: August 9, 2016

PEREZ WILSON VAUGHN & FEASBY

17 By: /s/ Jeffrey A. Feasby
18 John D. Vaughn
19 Jeffrey A. Feasby
20 Attorneys for Defendant/Counter-Claimant
21 Windermere Real Estate Services Company
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