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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 v.

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

27 Defendants.

28 AND RELATED COUNTERCLAIMS

) Case No. 5:15-cv-01921-R-KK

) *Hon. Manual L. Real*

)

) **NOTICE OF MOTION AND**
) **PLAINTIFFS' MOTION TO**
) **COMPEL PRODUCTION OF**
) **DOCUMENTS AND RESPONSES**

)

) Date: June 6, 2016

) Time: 10:00 a.m.

) Place: Courtroom No. 8

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) Discovery Cutoff: August 29, 2016

) Pretrial Conference: September 19, 2016

) Trial: October 18, 2016

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 6, 2016, or as soon thereafter as counsel
3 may be heard, in the courtroom of the Honorable Manuel L. Real, United States District
4 Court Judge, located at Courtroom 8 of the United States Courthouse, 312 North Spring
5 Street, Los Angeles, California 90012, Plaintiffs and Counter-Defendants Bennion &
6 Deville Fine Homes, Inc. (“B&D Fine Homes”), Bennion & Deville Fine Homes SoCal,
7 Inc. (“B&D SoCal”) and Windermere Services Southern California, Inc. (“Windermere
8 SoCal”) (collectively, “Plaintiffs”) will, and hereby do move the Court for an order
9 compelling Defendant and Counterclaimant Windermere Real Estate Services Company
10 (“WSC”) to produce documents responsive to B&D Fine Homes’ First and Second Set of
11 Requests for Production 4, 6, 7, 10, 11, 12, 15, 18, 19, 24, 26, 27, 28, 30, 32, 34, 35, 36,
12 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 51, 53, 54, 55, 57, 59, 60, 65, 66, 67, 68, 71, 76, 77,
13 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 88. WSC indicated in its responses to the
14 aforementioned requests that it would produce responsive documents either in whole or
15 part but has either produced nothing or has not produced all responsive documents.

16 Plaintiffs additionally move the Court for an order compelling WSC to provide
17 complete responses to B&D Fine Homes’ First and Second Set of Interrogatories Nos. 3,
18 4, 5, 6, 7, 10, 16, 17, 22, 23 and 25. Despite agreeing in its responses and in later meet
19 and confer correspondence to provide the bates range of responsive information and the
20 names of responsive witnesses, WSC has not done so.

21 This motion is necessary as WSC’s continuing delay in producing responsive
22 documents and information, now lasting over 4 months, is severely prejudicing Plaintiffs’
23 ability to bring its case and dispute WSC’s counterclaims. The Court has set this matter
24 for jury trial on October 18, 2016. Six months from this trial, Plaintiffs have not received
25 documents and information from their first document requests and interrogatories. Any
26 further delay will threaten Plaintiffs’ ability to take depositions, issue any necessary
27 follow-up discovery and prepare dispositive motions prior to trial.

1 This motion is filed pursuant to Local Rule 37, the concurrently filed Join
2 Stipulation and declarations, any supplemental briefing of the parties, and such
3 arguments and other evidence that may be offered at the hearing.
4

5 DATED: May 6, 2016

MULCAHY LLP

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7 By: /s/ James M. Mulcahy

8 James M. Mulcahy

9 Kevin A. Adams

Attorneys for Plaintiffs/Counter-Defendants
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 and not
4 a party to the within action; my business address 4 Park Plaza, Suite 1230, Irvine, CA 92614.

5 On May 6, 2016, I served document(s) described as **NOTICE OF MOTION AND**
6 **PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND**
RESPONSES on the following person at the addresses and/or facsimile number below:

7 Pérez Wilson Vaughn & Feasby
8 John Vaughn
9 750 B. Street, 33rd Floor
10 San Diego, CA 92101
11 vaughn@perezwilson.com

12 [] VIA FACSIMILE – Based on an agreement by the parties to accept service by fax
13 transmission, I faxed the documents from a fax machine in Irvine, California, with the
14 number 949-252-0090, to the parties and/or attorney for the parties at the facsimile
15 transmission number(s) shown herein. The facsimile transmission was reported as complete
16 without error by a transmission report, issued by the facsimile transmission upon which the
17 transmission was made, a copy of which is attached hereto.

18 [X] BY ELECTRONIC SERVICE – Based on a court order or agreement of the parties to accept
19 service by electronic transmission, I caused the documents to be sent to the persons at the
20 electronic notification addresses listed herein on the above referenced date. I did not receive,
21 within a reasonable time after the transmission, any electronic message or other indication
22 that the transmission was unsuccessful.

23 [] BY MAIL - I am "readily familiar" with the firm's practice of collection and processing
24 correspondence for mailing. Under that practice it would be deposited with the U.S. postal
25 service on that same day, with postage thereon fully prepaid, at Irvine, California in the
26 ordinary course of business. I am aware that on motion of the party served, service is
27 presumed invalid if postal cancellation date or postage meter date is more than one day after
28 date of deposit for mailing in affidavit.

[] BY CERTIFIED MAIL - I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with the
U.S. postal service on that same day, with postage thereon fully prepaid, at Irvine, California
in the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after
date of deposit for mailing in affidavit.

[] BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and
processing correspondence for Federal Express. Under that practice it would be deposited

1 with Federal Express on that same day in the ordinary course of business for overnight
2 delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

3 [] BY MESSENGER SERVICE – I served the documents by placing them in an envelope or
4 package addressed to the persons at the addresses listed herein and providing them to a
5 professional messenger service for service. A declaration by the messenger service will be
6 filed separately.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States of America that the above is true and correct.

9 Executed on **May 6, 2016** at Irvine, California.

10 By: /s/ Barbara Calvert
11 Barbara Calvert