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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

24 Defendant.

25
26 **AND RELATED COUNTERCLAIMS**
27
28

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

Hon. Manual L. Real

**DECLARATION OF MARK OSTER
IN SUPPORT OF REPLY IN
SUPPORT OF
COUNTERCLAIMANT
WINDERMERE REAL ESTATE
SERVICES COMPANY'S
APPLICATIONS FOR RIGHT TO
ATTACH ORDERS AND ORDERS
FOR ISSUANCE OF WRITS OF
ATTACHMENT**

Date: December 19, 2016

Time: 10:00 a.m.

Courtroom: 8

Complaint Filed: September 17, 2015

1 I, Mark Oster, declare as follows:

2 1. I am a CPA licensed to practice in the state of Washington. The
3 statements in this declaration are based upon my personal knowledge, and if called
4 as a witness, I could testify competently thereto.

5 2. I am the Chief Financial Officer for Counterclaimant Windermere Real
6 Estate Services Company (“WSC”) in this action and I have served full-time in that
7 position for approximately one year. Prior to that time I had served as WSC’s Vice
8 President of Finance since August of 2011. As Chief Financial Officer for WSC, I
9 am responsible for overseeing all financial matters for WSC, including but not
10 limited to accounts receivable. As a part of my duties, I am the custodian of WSC’s
11 financial business records.

12 3. Attached hereto as Exhibit 1 is a true and correct copy of a summary I
13 prepared reflecting the payment of monthly license and technology fees that were
14 reported by Windermere Services Southern California (“WSSC”) as having been
15 paid by WSC’s franchisees in Southern California for the months July, 2014 through
16 August, 2015. This statement was prepared using WSC’s financial business records.

17 4. Pursuant the parties’ Area Representation Agreement, WSSC kept one-
18 half of the license fees collected, as reported in the column on the far right of the
19 summary. The other one-half of the license fees collected were remitted to WSC as
20 reflected in the second column from the right. All of the technology fees that were
21 collected were remitted to WSC as reflected in the third column from the right.

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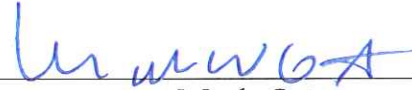
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1 5. As reflected on Exhibit 1, WSSC retained \$265,891.05 in license fees
2 paid by the other Southern California franchisees for the months June, 2014 through
3 August, 2015.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the forgoing is true and correct, executed this 5th day of December,
6 2016, at Seattle, Washington.

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Mark Oster

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EXHIBIT 1

Office Name	Report Month	Deposit Date	Total License fee	Technology fee	WSC License fee	WSSCA License Fee
Chino Hills	01-Jul-14	26-Sep-14	\$2,952.21	\$1,450.00	\$1,476.11	\$1,476.10
Chino Hills	01-Sep-14	28-Oct-14	\$4,920.21	\$1,450.00	\$2,460.11	\$2,460.10
Chino Hills	01-Oct-14	24-Dec-14	\$8,815.06	\$1,300.00	\$4,407.53	\$4,407.53
Chino Hills	01-Nov-14	24-Dec-14	\$3,340.09	\$1,200.00	\$1,670.05	\$1,670.04
Chino Hills	01-Dec-14	27-Jan-15	\$4,184.35	\$1,200.00	\$2,092.18	\$2,092.17
Del Mar	01-Jul-14	26-Aug-14	\$858.73	\$950.00	\$429.37	\$429.36
Del Mar	01-Aug-14	26-Sep-14	\$3,855.96	\$1,000.00	\$1,927.98	\$1,927.98
Del Mar	01-Sep-14	28-Oct-14	\$3,878.41	\$1,050.00	\$1,939.21	\$1,939.20
Del Mar	01-Oct-14	26-Nov-14	\$7,643.81	\$1,400.00	\$3,821.91	\$3,821.90
Del Mar	01-Nov-14	24-Dec-14	\$8,162.94	\$1,600.00	\$4,081.47	\$4,081.47
Del Mar	01-Dec-14	27-Jan-15	\$5,459.46	\$1,700.00	\$2,729.73	\$2,729.73
Del Mar	01-Jan-15	26-Feb-15	\$1,650.25	\$1,700.00	\$825.13	\$825.12
Del Mar	01-Feb-15	26-Mar-15	\$10,728.65	\$1,900.00	\$5,364.33	\$5,364.32
Del Mar	01-Mar-15	27-Apr-15	\$7,186.74	\$1,850.00	\$3,593.37	\$3,593.37
Del Mar	01-Apr-15	26-May-15	\$4,419.94	\$1,750.00	\$2,209.97	\$2,209.97
Del Mar	01-May-15	26-Jun-15	\$12,512.39	\$1,800.00	\$6,256.20	\$6,256.19
Del Mar	01-Jun-15	28-Jul-15	\$5,613.12	\$1,700.00	\$2,806.56	\$2,806.56
Del Mar	01-Jul-15	26-Aug-15	\$8,907.96	\$1,750.00	\$4,453.98	\$4,453.98
Del Mar	01-Aug-15	28-Sep-15	\$7,173.18	\$1,700.00	\$3,586.59	\$3,586.59
Fallbrook	01-Nov-14	24-Dec-14		\$350.00		\$0.00
Fallbrook	01-Dec-14	27-Jan-15	\$355.64	\$400.00	\$177.82	\$177.82
Fallbrook	01-Jan-15	26-Feb-15	\$395.65	\$400.00	\$197.82	\$197.83
Fallbrook	01-Feb-15	26-Mar-15	\$187.51	\$400.00	\$93.76	\$93.75
Fallbrook	01-Mar-15	27-Apr-15	\$993.00	\$450.00	\$496.50	\$496.50
Fallbrook	01-Apr-15	26-May-15	\$520.63	\$500.00	\$260.32	\$260.31
Fallbrook	01-May-15	26-Jun-15	\$1,133.64	\$500.00	\$566.82	\$566.82
Fallbrook	01-Jun-15	28-Jul-15	\$561.50	\$450.00	\$280.75	\$280.75
Fallbrook	01-Jul-15	26-Aug-15	\$607.86	\$600.00	\$303.93	\$303.93
Fallbrook	01-Aug-15	28-Sep-15	\$398.44	\$650.00	\$199.22	\$199.22
La Jolla	01-Apr-15	26-May-15	\$97.25	\$250.00	\$48.63	\$48.62
La Jolla	01-May-15	26-Jun-15		\$300.00		\$0.00
La Jolla	01-Jun-15	28-Jul-15	\$639.74	\$250.00	\$319.87	\$319.87
La Jolla	01-Jul-15	26-Aug-15		\$250.00		\$0.00
La Jolla	01-Aug-15	28-Sep-15		\$250.00		\$0.00
Rancho Bernardo	01-Jul-14	26-Aug-14	\$3,872.27	\$2,400.00	\$1,936.14	\$1,936.13
Rancho Bernardo	01-Aug-14	26-Sep-14	\$3,373.95	\$2,450.00	\$1,686.98	\$1,686.97
Rancho Bernardo	01-Sep-14	28-Oct-14	\$4,247.18	\$2,550.00	\$2,123.59	\$2,123.59
Rancho Bernardo	01-Oct-14	26-Nov-14	\$3,628.66	\$2,550.00	\$1,814.33	\$1,814.33
Rancho Bernardo	01-Nov-14	24-Dec-14	\$4,737.71	\$3,050.00	\$2,368.86	\$2,368.85
Rancho Bernardo	01-Dec-14	27-Jan-15	\$2,817.42	\$3,300.00	\$1,408.71	\$1,408.71
Rancho Bernardo	01-Jan-15	26-Feb-15	\$5,727.36	\$3,350.00	\$2,863.68	\$2,863.68
Rancho Bernardo	01-Feb-15	26-Mar-15	\$16,549.91	\$3,400.00	\$8,274.96	\$8,274.95
Rancho Bernardo	01-Mar-15	27-Apr-15	\$12,548.52	\$3,050.00	\$6,274.26	\$6,274.26
Rancho Bernardo	01-Apr-15	26-May-15	\$8,553.19	\$3,150.00	\$4,276.60	\$4,276.59
Rancho Bernardo	01-May-15	26-Jun-15	\$11,191.18	\$3,150.00	\$5,595.59	\$5,595.59
Rancho Bernardo	01-Jun-15	28-Jul-15	\$18,109.40	\$3,350.00	\$9,054.70	\$9,054.70
Rancho Bernardo	01-Jul-15	26-Aug-15	\$10,882.48	\$3,550.00	\$5,441.24	\$5,441.24

Rancho Bernardo	01-Aug-15	28-Sep-15	\$7,725.40	\$3,800.00	\$3,862.70	\$3,862.70
Rancho Bernardo- The Plaza	01-Mar-15	27-Apr-15	\$514.32	\$500.00	\$257.16	\$257.16
Rancho Bernardo- The Plaza	01-Apr-15	26-May-15	\$793.13	\$550.00	\$396.57	\$396.56
Rancho Bernardo- The Plaza	01-May-15	26-Jun-15	\$1,234.86	\$550.00	\$617.43	\$617.43
Rancho Bernardo- The Plaza	01-Jun-15	28-Jul-15	\$452.16	\$950.00	\$226.08	\$226.08
Rancho Bernardo- The Plaza	01-Jul-15	26-Aug-15	\$2,060.10	\$1,000.00	\$1,030.05	\$1,030.05
Rancho Bernardo- The Plaza	01-Aug-15	28-Sep-15	\$1,018.97	\$1,000.00	\$509.49	\$509.48
Riverside	01-Jul-14	26-Aug-14	\$2,141.25	\$250.00	\$1,070.63	\$1,070.62
Riverside	01-Aug-14	26-Sep-14	\$1,424.56	\$250.00	\$712.28	\$712.28
Riverside	01-Sep-14	28-Oct-14	\$2,623.50	\$250.00	\$1,311.75	\$1,311.75
Riverside	01-Oct-14	26-Nov-14	\$2,336.69	\$250.00	\$1,168.35	\$1,168.34
Riverside	01-Nov-14	24-Dec-14	\$848.75	\$250.00	\$424.38	\$424.37
Riverside	01-Dec-14	30-Jan-15		\$250.00		\$0.00
Riverside	01-Jan-15	26-Feb-15	\$368.07	\$250.00	\$184.04	\$184.03
Riverside	01-Feb-15	26-Mar-15		\$250.00		\$0.00
Riverside	01-Mar-15	27-Apr-15	\$1,647.00	\$1,550.00	\$823.50	\$823.50
Riverside	01-Apr-15	26-May-15	\$3,054.00	\$1,850.00	\$1,527.00	\$1,527.00
Riverside	01-May-15	26-Jun-15	\$16,545.89	\$1,800.00	\$8,272.95	\$8,272.94
Riverside	01-Jun-15	28-Jul-15	\$20,775.75	\$1,800.00	\$10,387.88	\$10,387.87
Riverside	01-Jul-15	26-Aug-15	\$12,493.69	\$1,800.00	\$6,246.85	\$6,246.84
Riverside	01-Aug-15	28-Sep-15	\$12,148.80	\$1,800.00	\$6,074.40	\$6,074.40
Santaluz	01-Jul-14	26-Aug-14	\$2,811.25	\$1,200.00	\$1,405.63	\$1,405.62
Santaluz	01-Aug-14	26-Sep-14	\$2,519.19	\$1,300.00	\$1,259.60	\$1,259.59
Santaluz	01-Sep-14	28-Oct-14	\$5,878.92	\$1,450.00	\$2,939.46	\$2,939.46
Santaluz	01-Oct-14	26-Nov-14	\$4,012.58	\$1,200.00	\$2,006.29	\$2,006.29
Santaluz	01-Nov-14	24-Dec-14	\$1,576.25	\$1,300.00	\$788.13	\$788.12
Santaluz	01-Dec-14	27-Jan-15	\$4,424.69	\$1,300.00	\$2,212.35	\$2,212.34
Santaluz	01-Jan-15	26-Feb-15	\$2,495.51	\$1,400.00	\$1,247.76	\$1,247.75
Santaluz	01-Feb-15	26-Mar-15	\$4,640.00	\$1,300.00	\$2,320.00	\$2,320.00
Santaluz	01-Mar-15	27-Apr-15	\$2,976.12	\$1,350.00	\$1,488.06	\$1,488.06
Santaluz	01-Apr-15	26-May-15	\$5,880.13	\$1,250.00	\$2,940.07	\$2,940.06
Santaluz	01-May-15	26-Jun-15	\$6,791.02	\$1,150.00	\$3,395.51	\$3,395.51
Santaluz	01-Jun-15	28-Jul-15	\$3,525.01	\$950.00	\$1,762.51	\$1,762.50
Santaluz	01-Jul-15	26-Aug-15	\$2,159.29	\$1,150.00	\$1,079.65	\$1,079.64
Santaluz	01-Aug-15	28-Sep-15	\$3,654.75	\$950.00	\$1,827.38	\$1,827.37
Scripps Ranch	01-Jul-15	26-Aug-15	\$1,302.08	\$1,350.00	\$651.04	\$651.04
Scripps Ranch	01-Aug-15	28-Sep-15	\$838.92	\$1,350.00	\$419.46	\$419.46
South Carlsbad- Aviara	01-Jul-14	26-Aug-14	\$5,419.51	\$3,050.00	\$2,709.76	\$2,709.75
South Carlsbad- Aviara	01-Aug-14	26-Sep-14	\$6,288.79	\$3,100.00	\$3,144.40	\$3,144.39
South Carlsbad- Aviara	01-Sep-14	28-Oct-14	\$9,145.93	\$3,150.00	\$4,572.97	\$4,572.96
South Carlsbad- Aviara	01-Oct-14	26-Nov-14	\$9,780.18	\$3,000.00	\$4,890.09	\$4,890.09
South Carlsbad- Aviara	01-Nov-14	24-Dec-14	\$7,849.66	\$3,100.00	\$3,924.83	\$3,924.83
South Carlsbad- Aviara	01-Dec-14	27-Jan-15	\$12,756.19	\$3,300.00	\$6,378.10	\$6,378.09
South Carlsbad- Aviara	01-Jan-15	26-Feb-15	\$10,750.25	\$3,350.00	\$5,375.13	\$5,375.12
South Carlsbad- Aviara	01-Feb-15	26-Mar-15	\$11,193.39	\$3,300.00	\$5,596.70	\$5,596.69
South Carlsbad- Aviara	01-Mar-15	27-Apr-15	\$13,403.38	\$3,400.00	\$6,701.69	\$6,701.69
South Carlsbad- Aviara	01-Apr-15	26-May-15	\$7,109.85	\$3,650.00	\$3,554.93	\$3,554.92
South Carlsbad- Aviara	01-May-15	26-Jun-15	\$11,965.02	\$3,800.00	\$5,982.51	\$5,982.51
South Carlsbad- Aviara	01-Jun-15	28-Jul-15	\$19,829.97	\$3,850.00	\$9,914.99	\$9,914.98

South Carlsbad- Aviara	01-Jul-15	26-Aug-15	\$15,564.35	\$3,900.00	\$7,782.18	\$7,782.17
South Carlsbad- Aviara	01-Aug-15	28-Sep-15	\$20,639.92	\$4,050.00	\$10,319.96	\$10,319.96
			\$531,782.54	\$162,650.00	\$265,891.49	\$265,891.05
					\$428,541.49	