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9 *Attorneys for Plaintiffs and Counter-Defendants*

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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, )

19 Plaintiffs,

21 v.

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

26 Defendants.

27 AND RELATED COUNTERCLAIMS )  
28 )

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

) *Hon. Manual L. Real*

) **PLAINTIFFS BENNION & DEVILLE**  
) **FINE HOMES, INC., BENNION &**  
) **DEVILLE FINE HOMES SOCAL,**  
) **INC., AND WINDERMERE**  
) **SERVICES SOUTHERN**  
) **CALIFORNIA, INC.’S NOTICE OF**  
) **MOTION AND MOTION TO**  
) **DISMISS FIRST AMENDED**  
) **COUNTERCLAIM PURSUANT TO**  
) **F.R.C.P. 12(b)(6)**

) Date: December 7, 2015

) Time: 10:00 a.m.

) Courtroom: 8

) First Amended Counterclaim filed:

) October 14, 2015

) Complaint filed: September 17, 2015

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on December 7, 2015, at 10:00 a.m., or as soon  
3 thereafter as counsel may be heard, in the courtroom of the Honorable Manuel L. Real,  
4 United States District Court Judge, located at Courtroom 8 of the United States  
5 Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs and  
6 Counter defendants Bennion & Deville Fine Homes, Inc. (“B&D Fine Homes”), Bennion  
7 & Deville Fine Homes SoCal, Inc. (“B&D SoCal”) and Windermere Services Southern  
8 California, Inc. (“Windermere SoCal”) (collectively, “B&D Parties”) will, and hereby do,  
9 move the Court for an order dismissing the following causes of action set forth in  
10 Defendant and Counterclaimant Windermere Real Estate Services Company’s (“WSC”)   
11 First Amended Counterclaim:

- 12 1. WSC’s Fifth Cause of Action for Violation of the Anticybersquatting &  
13 Consumer Protection Act;
- 14 2. WSC’s Sixth Cause of Action for Trademark Infringement; and
- 15 3. WSC’s Seventh Cause of Action for Unfair Business Practices.

16 The B&D Parties move this Court pursuant to Federal Rule of Civil Procedure  
17 12(b)(6) for an order dismissing the above claims for failing to state a claim upon which  
18 relief can be granted.

19 This Motion is based on this Notice of Motion and Motion to Dismiss, the  
20 Memorandum of Points and Authorities in support of this Motion, all pleadings and  
21 papers on file in this action, and upon such other matters as may be presented to the Court  
22 at or before the time of the hearing.

1 DATED: November 4, 2015

**MULCAHY LLP**

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3 By: /s/ James M. Mulcahy

4 James M. Mulcahy

5 Kevin A. Adams

6 *Attorneys for Plaintiffs Bennion & Deville*

7 *Fine Homes, Inc., Bennion & Deville Fine*

8 *Homes SoCal, Inc., Windermere Services*

9 *Southern California, Inc.*

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