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**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.

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

Hon. Douglas F. McCormick

**SUPPLEMENTAL PROPOSED
SPECIAL JURY INSTRUCTIONS**

Complaint Filed: September 17, 2015

Counterclaim Filed: October 13, 2015

AND RELATED COUNTERCLAIMS

Plaintiffs/Counter-Defendants Bennion & Deville Fine Homes, Inc.,
Bennion & Deville Fine Homes SoCal, Inc., Windermere Services Southern
California, Inc., Counter-Defendants Robert L. Bennion and Joseph R. Deville (all
collectively, the “B&D Parties”) respectfully submit the following supplemental

1 list of proposed special jury instructions for the above-captioned matter. The B&D
2 Parties reserve the right to submit further and additional instructions as may be
3 required by the Court's ruling or the presentation of evidence at trial.

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5 **INDEX OF SPECIAL JURY INSTRUCTIONS**

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No.	Title	Source	Page
2	Registration Of Franchise Required Before Offer Or Sale Of Franchise	Special Instruction No. 2.	3
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4	Material Breach Of Contract Requires Damages	Special Instruction No. 4.	5

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16 DATED: July 10, 2018

MULCAHY LLP

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18 By: /s/ Kevin A. Adams
19 Kevin A. Adams
20 *Attorneys for Plaintiffs/Counter-*
21 *Defendants Bennion & Deville Fine*
22 *Homes, Inc., Bennion & Deville Fine*
23 *Homes SoCal, Inc., Windermere*
24 *Services Southern California, Inc.,*
25 *and Counter-Defendants Robert L.*
26 *Bennion and Joseph R. Deville*

1 **The B&D Parties Proposed SPECIAL INSTRUCTION NO. 2 –**
2 **REGISTRATION OF FRANCHISE REQUIRED BEFORE OFFER OR**
3 **SALE OF FRANCHISE**

4 In California, it is unlawful for any person to offer or sell any franchise
5 unless the offer of the franchise, along with the franchisor’s franchise disclosure
6 document, has been registered with the California Department of Business
7 Oversight.

8 To grant the power to offer or sell a franchise, the application must become
9 registered. Mere filing of the application is not sufficient.

10 A franchise registration is valid for a period of one year and may be renewed
11 for additional periods of one year each.

12 A person that violates this rule is subject to civil and criminal liability. A
13 person that willfully violates this registration requirement, and is convicted of a
14 criminal violation, shall be fined up to \$100,000 and/or imprisoned for no more
15 than one year.

16 Given as proposed _____

17 Given as modified _____

18 Refused _____

19 Withdrawn _____

20 **STATEMENT OF LAW**

21 California Corporations Code §§ 31110, 31114, 31116 31120, 31121, 31410.

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1 **The B&D Parties Proposed SPECIAL INSTRUCTION NO. 3 – NOTICE OF**
2 **BREACH AND OPPORTUNITY TO CURE**

3 Where a contract requires written notice of an alleged breach and an
4 opportunity to cure that breach, the parties to the contract are required to give
5 written notice before attempting to terminate the contract. The written notice must
6 provide fair notice of a failure to perform and describe with sufficient specificity
7 the work that has not been performed in order to allow the receiving party to cure
8 within the prescribed period of time.

9 Only those breaches listed in the written notice of breach must be cured to
10 avoid default or termination pursuant to that notice. Breaches not listed in the
11 written notice cannot be held against the breaching party.

12 Given as proposed _____
13 Given as modified _____
14 Refused _____
15 Withdrawn _____

16 **STATEMENT OF LAW**

17 *Silverado Modjeska Recreation & Park District v. County of Orange*, 197 Cal.
18 App. 4th 282, 312-13 (2011); *Stonebrae, L.P. v. Toll Bros., Inc.*, No. C-08-0221,
19 2009 WL 1082067 (N.D. Cal. Apr. 22, 2009); *see also Little v. Harbor Pacific*
20 *Mortgage Investors*, 175 Cal. App. 3d 717 (1985); *Raddick v. Equilon Enter., LLC*,
21 No. 07-cv-1153, 2008 WL 4104511 (S.D. Cal. Sept. 3, 2008); *Khorenian v. Union*
22 *Oil Co. of California*, 761 F.2d 533, 535 fn. 1 (9th Cir. 1985).
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1 **The B&D Parties Proposed SPECIAL INSTRUCTION NO. 6 – MATERIAL**
2 **BREACH OF CONTRACT REQUIRES DAMAGES**

3 A breach that does not cause any harm is not a material breach as a matter
4 of law.

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6 Given as proposed _____

7 Given as modified _____

8 Refused _____

9 Withdrawn _____

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11 **STATEMENT OF LAW**

12 *Viacom Int'l Inc. v. MGA Entm't, Inc.*, No. CV 15-9621-R, 2016 WL
13 7448142, at *1 (C.D. Cal. Aug. 11, 2016); *Boston LLC v. Juarez*, 245 Cal. App.
14 4th 75, 87 (2016); *Coupons, Inc. v. Stottlemire*, No. CV 07-03457 HRL, 2009 WL
15 975438, at *6 (N.D. Cal. Apr. 9, 2009).