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Windermere Real Estate Services Company
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 BENNION & DEVILLE FINE
HOMES, INC., a California
11 corporation, BENNION & DEVILLE
FINE HOMES SOCAL, INC., a
12 California corporation, WINDERMERE
SERVICES SOUTHERN
13 CALIFORNIA, INC., a California
corporation,

14 Plaintiffs,

15 v.

16 WINDERMERE REAL ESTATE
17 SERVICES COMPANY, a Washington
corporation; and DOES 1-10
18

19 Defendant.

20 AND RELATED COUNTERCLAIMS
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Case No. 5:15-CV-01921 R (KKx)

Hon. Manual L. Real

**ANSWER OF DEFENDANT
WINDERMERE REAL ESTATE
SERVICES COMPANY TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Courtroom: 8

Complaint Filed: September 17, 2015

1 Defendant/Counterclaimant Windermere Real Estate Services Company
2 (“WSC”), through its counsel, answers the First Amended Complaint of plaintiffs
3 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc.,
4 and Windermere Services Southern California, Inc. (collectively, “Plaintiffs”), as set
5 forth below. Unless specifically admitted, WSC denies each of the allegations in
6 Plaintiffs’ First Amended Complaint.

7 **NATURE OF THE ACTION**

8 1. As to paragraph 1 of the First Amended Complaint, WSC admits that
9 plaintiffs Bennion & Deville Fine Homes, Inc. (“B&D Homes”) and Bennion &
10 Deville Fine Homes SoCal, Inc. (“B&D So Cal”) were franchisees of WSC. WSC
11 further admits that plaintiff Windermere Services Southern California, Inc.
12 (“WSSC”) was WSC’s “Area Representative” under a May 1, 2004 Area
13 Representation Agreement between those parties. WSC further admits that it is a
14 large real estate brokerage company based in the Pacific Northwest. WSC further
15 admits that B&D Homes and S&D SoCal operated various franchises in Southern
16 California, including in San Diego and the Coachella Valley. Except as expressly
17 admitted herein, WSC denies the remaining allegations in paragraph 1.

18 2. As to paragraph 2 of the First Amended Complaint, WSC denies the
19 allegations contained therein.

20 3. As to paragraph 3 of the First Amended Complaint, WSC denies the
21 allegations contained therein.

22 4. As to paragraph 4 of the First Amended Complaint, WSC denies the
23 allegations contained therein.

24 5. As to paragraph 5 of the First Amended Complaint, WSC denies the
25 allegations contained therein.

26 6. As to paragraph 6 of the First Amended Complaint, WSC denies the
27 allegations contained therein.

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1 knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations set forth therein, and, on that basis, denies each and every allegation set
3 forth therein.

4 17. As to paragraph 17 of the First Amended Complaint, WSC is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations
6 set forth therein, and, on that basis, denies each and every allegation set forth
7 therein.

8 **B. The Coachella Valley Franchise Agreement**

9 18. As to paragraph 18 of the First Amended Complaint, WSC admits the
10 allegations contained therein. WSC further admits that what appears to be a copy of
11 the noted agreement appears to be attached to the First Amended Complaint as
12 Exhibit A.

13 19. As to paragraph 19 of the First Amended Complaint, WSC admits that
14 the Windermere name and brand carry with it certain recognition and goodwill. To
15 the extent that paragraph purports to represent the terms and/or obligations of a
16 document, that document speaks for itself and WSC denies those allegations to the
17 extent they differ from the terms of said document or seek to impose obligations
18 different from those imposed by said document. WSC is without knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations set
20 forth therein, and, on that basis, denies each and every allegation set forth therein.

21 20. As to paragraph 20 of the First Amended Complaint, to the extent that
22 paragraph purports to represent the terms and/or obligations of a document, that
23 document speaks for itself and WSC denies those allegations to the extent they
24 differ from the terms of said document or seek to impose obligations different from
25 those imposed by said document.

26 a. As to paragraph 20(a) of the First Amended Complaint, to the extent
27 that paragraph purports to represent the terms and/or obligations of a
28 document, that document speaks for itself and WSC denies those

1 allegations to the extent they differ from the terms of said document or
2 seek to impose obligations different from those imposed by said
3 document.

4 b. As to paragraph 20(b) of the First Amended Complaint, to the extent
5 that paragraph purports to represent the terms and/or obligations of a
6 document, that document speaks for itself and WSC denies those
7 allegations to the extent they differ from the terms of said document or
8 seek to impose obligations different from those imposed by said
9 document.

10 c. As to paragraph 20(c) of the First Amended Complaint, to the extent
11 that paragraph purports to represent the terms and/or obligations of a
12 document, that document speaks for itself and WSC denies those
13 allegations to the extent they differ from the terms of said document or
14 seek to impose obligations different from those imposed by said
15 document.

16 21. As to paragraph 21 of the First Amended Complaint, to the extent that
17 paragraph purports to represent the terms and/or obligations of a document, that
18 document speaks for itself and WSC denies those allegations to the extent they
19 differ from the terms of said document or seek to impose obligations different from
20 those imposed by said document.

21 22. As to paragraph 22 of the First Amended Complaint, to the extent that
22 paragraph purports to represent the terms and/or obligations of a document, that
23 document speaks for itself and WSC denies those allegations to the extent they
24 differ from the terms of said document or seek to impose obligations different from
25 those imposed by said document.

26 23. As to paragraph 23 of the First Amended Complaint, WSC admits that
27 Plaintiffs opened a franchise in Palm Springs CA. WSC is without knowledge or

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1 information sufficient to form a belief as to the truth of the remaining allegations
2 and, on that basis, denies those allegations.

3 24. As to paragraph 24 of the First Amended Complaint, WSC admits that
4 WSSC became WSC's "Area Representative" under a May 1, 2004 Area
5 Representation Agreement between those parties. WSC further admits that B&D
6 Homes and B&D So Cal opened a number of WSC franchises in Southern
7 California. Except as expressly admitted, Answering Defendant denies each and
8 every allegation set forth therein.

9 **C. Bennion And Deville Become Windermere Area Representatives For The**
10 **Southern California Region**

11 25. As to paragraph 25 of the First Amended Complaint, WSC admits the
12 allegations contained therein. WSC further admits that what appears to be a copy of
13 the noted agreement appears to be attached to the First Amended Complaint as
14 Exhibit B.

15 26. As to paragraph 26 of the First Amended Complaint, to the extent that
16 paragraph purports to represent the terms and/or obligations of a document, that
17 document speaks for itself and WSC denies those allegations to the extent they
18 differ from the terms of said document or seek to impose obligations different from
19 those imposed by said document.

20 27. As to paragraph 27 of the First Amended Complaint, to the extent that
21 paragraph purports to represent the terms and/or obligations of a document, that
22 document speaks for itself and WSC denies those allegations to the extent they
23 differ from the terms of said document or seek to impose obligations different from
24 those imposed by said document.

25 28. As to paragraph 28 of the First Amended Complaint, to the extent that
26 paragraph purports to represent the terms and/or obligations of a document, that
27 document speaks for itself and WSC denies those allegations to the extent they

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1 differ from the terms of said document or seek to impose obligations different from
2 those imposed by said document.

3 29. As to paragraph 29 of the First Amended Complaint, to the extent that
4 paragraph purports to represent the terms and/or obligations of a document, that
5 document speaks for itself and WSC denies those allegations to the extent they
6 differ from the terms of said document or seek to impose obligations different from
7 those imposed by said document.

8 30. As to paragraph 30 of the First Amended Complaint, to the extent that
9 paragraph purports to represent the terms and/or obligations of a document, that
10 document speaks for itself and WSC denies those allegations to the extent they
11 differ from the terms of said document or seek to impose obligations different from
12 those imposed by said document.

13 a. As to paragraph 30(a) of the First Amended Complaint, to the extent
14 that paragraph purports to represent the terms and/or obligations of a
15 document, that document speaks for itself and WSC denies those
16 allegations to the extent they differ from the terms of said document or
17 seek to impose obligations different from those imposed by said
18 document.

19 b. As to paragraph 30(b) of the First Amended Complaint, to the extent
20 that paragraph purports to represent the terms and/or obligations of a
21 document, that document speaks for itself and WSC denies those
22 allegations to the extent they differ from the terms of said document or
23 seek to impose obligations different from those imposed by said
24 document.

25 c. As to paragraph 30(c) of the First Amended Complaint, to the extent
26 that paragraph purports to represent the terms and/or obligations of a
27 document, that document speaks for itself and WSC denies those
28 allegations to the extent they differ from the terms of said document or

1 seek to impose obligations different from those imposed by said
2 document.

3 d. As to paragraph 30(d) of the First Amended Complaint, to the extent
4 that paragraph purports to represent the terms and/or obligations of a
5 document, that document speaks for itself and WSC denies those
6 allegations to the extent they differ from the terms of said document or
7 seek to impose obligations different from those imposed by said
8 document.

9 e. As to paragraph 30(e) of the First Amended Complaint, to the extent
10 that paragraph purports to represent the terms and/or obligations of a
11 document, that document speaks for itself and WSC denies those
12 allegations to the extent they differ from the terms of said document or
13 seek to impose obligations different from those imposed by said
14 document.

15 f. As to paragraph 30(f) of the First Amended Complaint, to the extent
16 that paragraph purports to represent the terms and/or obligations of a
17 document, that document speaks for itself and WSC denies those
18 allegations to the extent they differ from the terms of said document or
19 seek to impose obligations different from those imposed by said
20 document.

21 g. As to paragraph 30(g) of the First Amended Complaint, to the extent
22 that paragraph purports to represent the terms and/or obligations of a
23 document, that document speaks for itself and WSC denies those
24 allegations to the extent they differ from the terms of said document or
25 seek to impose obligations different from those imposed by said
26 document.

27 31. As to paragraph 31 of the First Amended Complaint, to the extent that
28 paragraph purports to represent the terms and/or obligations of a document, that

1 document speaks for itself and WSC denies those allegations to the extent they
2 differ from the terms of said document or seek to impose obligations different from
3 those imposed by said document.

4 32. As to paragraph 32 of the First Amended Complaint, to the extent that
5 paragraph purports to represent the terms and/or obligations of a document, that
6 document speaks for itself and WSC denies those allegations to the extent they
7 differ from the terms of said document or seek to impose obligations different from
8 those imposed by said document.

9 33. As to paragraph 33 of the First Amended Complaint, WSC denies the
10 allegations contained therein.

11 **D. Bennion and Deville Significantly Expand Their Windermere Business**

12 34. As to paragraph 34 of the First Amended Complaint, to the extent that
13 paragraph purports to represent the terms and/or obligations of a document, that
14 document speaks for itself and WSC denies those allegations to the extent they
15 differ from the terms of said document or seek to impose obligations different from
16 those imposed by said document. WSC is without knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations set forth
18 therein, and, on that basis, denies each and every allegation set forth therein.

19 35. As to paragraph 35 of the First Amended Complaint, WSC admits the
20 allegations contained therein except to the extent they infer that all of the franchised
21 locations opened by Plaintiffs were previously authorized by WSC. WSC denies
22 that all of the franchised locations opened by Plaintiffs were previously authorized
23 by WSC.

24 36. As to paragraph 36 of the First Amended Complaint, WSC is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 set forth therein, and, on that basis, denies each and every allegation set forth
27 therein.

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1 **E. Services SoCal Becomes A Party To The Coachella Valley Franchise**
2 **Agreement**

3 37. As to paragraph 37 of the First Amended Complaint, WSC denies the
4 allegations contained therein.

5 38. As to paragraph 38 of the First Amended Complaint, WSC admits these
6 allegations except the allegations that WSSC, or any of the other Plaintiffs, continue
7 to be entitled to a portion of any franchise fees. WSC denies that any of the
8 Plaintiffs continue to be entitled to any portion of the franchise fees.

9 **F. Bennion and Deville Enter Into New Windermere License Agreement**

10 39. As to paragraph 39 of the First Amended Complaint, WSC admits that
11 on or about March 29, 2011, it entered into a Windermere Real Estate Franchise
12 License Agreement with Bennion & Deville SoCal. WSC further admits that what
13 appears to be a copy of the noted agreement appears to be attached to the First
14 Amended Complaint as Exhibit D. WSC denies the remaining allegations contained
15 therein.

16 40. As to paragraph 40 of the First Amended Complaint, to the extent that
17 paragraph purports to represent the terms and/or obligations of a document, that
18 document speaks for itself and WSC denies those allegations to the extent they
19 differ from the terms of said document or seek to impose obligations different from
20 those imposed by said document. WSC denies the remaining allegations contained
21 therein.

22 41. As to paragraph 41 of the First Amended Complaint, to the extent that
23 paragraph purports to represent the terms and/or obligations of a document, that
24 document speaks for itself and WSC denies those allegations to the extent they
25 differ from the terms of said document or seek to impose obligations different from
26 those imposed by said document.

27 a. As to paragraph 41(a) of the First Amended Complaint, to the extent
28 that paragraph purports to represent the terms and/or obligations of a

1 document, that document speaks for itself and WSC denies those
2 allegations to the extent they differ from the terms of said document or
3 seek to impose obligations different from those imposed by said
4 document.

5 b. As to paragraph 41(b) of the First Amended Complaint, to the extent
6 that paragraph purports to represent the terms and/or obligations of a
7 document, that document speaks for itself and WSC denies those
8 allegations to the extent they differ from the terms of said document or
9 seek to impose obligations different from those imposed by said
10 document.

11 c. As to paragraph 41(c) of the First Amended Complaint, to the extent
12 that paragraph purports to represent the terms and/or obligations of a
13 document, that document speaks for itself and WSC denies those
14 allegations to the extent they differ from the terms of said document or
15 seek to impose obligations different from those imposed by said
16 document.

17 42. As to paragraph 42 of the First Amended Complaint, to the extent that
18 paragraph purports to represent the terms and/or obligations of a document, that
19 document speaks for itself and WSC denies those allegations to the extent they
20 differ from the terms of said document or seek to impose obligations different from
21 those imposed by said document.

22 43. As to paragraph 43 of the First Amended Complaint, WSC denies the
23 allegations contained therein.

24 44. As to paragraph 44 of the First Amended Complaint, WSC admits that
25 it encouraged and supported Plaintiffs' operations in Southern California. WSC is
26 without knowledge or information sufficient to form a belief as to the truth of the
27 remaining allegations set forth therein, and, on that basis, denies each and every
28 allegation set forth therein.

1 **G. The Windermere Brand Is Severely Damaged In Southern California By**
2 **Windermere Watch**

3 45. As to paragraph 45 of the First Amended Complaint, WSC admits that
4 Mr. Kruger initiated “Windermere Watch.” WSC is without knowledge or
5 information sufficient to form a belief as to the truth of the remaining allegations
6 and, on that basis, denies those allegation.

7 46. As to paragraph 46 of the First Amended Complaint, WSC is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations
9 regarding the date on which the www.windmerewatch.com website became
10 operational or Mr. Kruger’s actual intentions and, on that basis, denies each and
11 every one of those allegations set forth therein. WSC admits that what appears to be
12 a copy of a printout from www.windmerewatch.com appears to be attached to the
13 First Amended Complaint as Exhibit E.

14 47. As to paragraph 47 of the First Amended Complaint, to the extent that
15 paragraph purports to represent the substance of the windmerewatch.com website,
16 that website speaks for itself and WSC denies those allegations to the extent they
17 differ from the substance of said website.

18 48. As to paragraph 48 of the First Amended Complaint, to the extent that
19 paragraph purports to represent the substance of the www.windmerewatch.com
20 website, that website speaks for itself and WSC denies those allegations to the
21 extent they differ from the substance of said website. WSC is without knowledge or
22 information sufficient to form a belief as to the truth of the remaining allegations set
23 forth therein, and, on that basis, denies those allegation.

24 49. As to paragraph 49 of the First Amended Complaint, WSC is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 regarding the date on which the www.windmerewatch2.com website became
27 operational as set forth therein, and, on that basis, denies each and every one of
28 those allegations set forth therein. To the extent that paragraph purports to represent

1 the substance of the www.windermerewatch2.com website, that website speaks for
2 itself and WSC denies those allegations to the extent they differ from the substance
3 of said website.

4 50. As to paragraph 50 of the First Amended Complaint, WSC admits that,
5 like all consumer industries, internet marketing is also used in the real estate
6 industry. WSC denies “the loss of actual and potential clients as a result of
7 Windermere Watch” and further denies the “Windermere Watch . . . forced many
8 agents to disassociate themselves from Windermere.” WSC denies all remaining
9 allegations.

10 51. As to paragraph 51 of the First Amended Complaint, WSC admits that
11 Mr. Kruger sent out “mailings and postcards.” WSC further admits that what appear
12 to be copies of some of Kruger’s mailings appear to be attached to the First
13 Amended Complaint as Exhibit E. WSC denies all remaining allegations.

14 52. As to paragraph 52 of the First Amended Complaint, to the extent that
15 paragraph purports to represent the terms and/or obligations of a document, that
16 document speaks for itself and WSC denies those allegations to the extent they
17 differ from the terms of said document or seek to impose obligations different from
18 those imposed by said document. WSC denies the remaining allegations contained
19 therein.

20 53. As to paragraph 53 of the First Amended Complaint, WSC denies the
21 allegations contained therein.

22 54. As to paragraph 54 of the First Amended Complaint, WSC denies the
23 allegations contained therein.

24 **H. The Parties Amend The Terms Of The Franchise Agreements To Account**
25 **For The Damage Caused By Windermere Watch**

26 55. As to paragraph 55 of the First Amended Complaint, WSC admits that
27 the parties to the listed agreements agreed to amend those agreements. To the extent
28 that paragraph purports to represent the terms and/or obligations of a document, that

1 document speaks for itself and WSC denies those allegations to the extent they
2 differ from the terms of said document or seek to impose obligations different from
3 those imposed by said document.

4 56. As to paragraph 56 of the First Amended Complaint, to the extent that
5 paragraph purports to represent the terms and/or obligations of a document, that
6 document speaks for itself and WSC denies those allegations to the extent they
7 differ from the terms of said document or seek to impose obligations different from
8 those imposed by said document. WSC admits that what appear to be a copy of the
9 Modification Agreement is attached to the First Amended Complaint as Exhibit G.

10 57. As to paragraph 57 of the First Amended Complaint, to the extent that
11 paragraph purports to represent the terms and/or obligations of a document, that
12 document speaks for itself and WSC denies those allegations to the extent they
13 differ from the terms of said document or seek to impose obligations different from
14 those imposed by said document.

15 a. As to paragraph 57(a) of the First Amended Complaint, to the extent
16 that paragraph purports to represent the terms and/or obligations of a
17 document, that document speaks for itself and WSC denies those
18 allegations to the extent they differ from the terms of said document or
19 seek to impose obligations different from those imposed by said
20 document.

21 b. As to paragraph 57(b) of the First Amended Complaint, to the extent
22 that paragraph purports to represent the terms and/or obligations of a
23 document, that document speaks for itself and WSC denies those
24 allegations to the extent they differ from the terms of said document or
25 seek to impose obligations different from those imposed by said
26 document.

27 c. As to paragraph 57(c) of the First Amended Complaint, to the extent
28 that paragraph purports to represent the terms and/or obligations of a

1 document, that document speaks for itself and WSC denies those
2 allegations to the extent they differ from the terms of said document or
3 seek to impose obligations different from those imposed by said
4 document.

5 d. As to paragraph 57(d) of the First Amended Complaint, to the extent
6 that paragraph purports to represent the terms and/or obligations of a
7 document, that document speaks for itself and WSC denies those
8 allegations to the extent they differ from the terms of said document or
9 seek to impose obligations different from those imposed by said
10 document.

11 e. As to paragraph 57(e) of the First Amended Complaint, to the extent
12 that paragraph purports to represent the terms and/or obligations of a
13 document, that document speaks for itself and WSC denies those
14 allegations to the extent they differ from the terms of said document or
15 seek to impose obligations different from those imposed by said
16 document.

17 58. As to paragraph 58 of the First Amended Complaint, to the extent that
18 paragraph purports to represent the terms and/or obligations of a document, that
19 document speaks for itself and WSC denies those allegations to the extent they
20 differ from the terms of said document or seek to impose obligations different from
21 those imposed by said document.

22 59. As to paragraph 59 of the First Amended Complaint, WSC denies the
23 allegations contained therein.

24 **I. WSC Continues To Ignore Its Obligations To Take Action Against**
25 **Windermere Watch**

26 60. As to paragraph 60 of the First Amended Complaint, WSC denies the
27 allegations contained therein.

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1 61. As to paragraph 61 of the First Amended Complaint, WSC admits that
2 the parties participated in a conference call on or about February 11, 2013, in order
3 to discuss Windermere Watch's anti-marketing campaign. WSC denies all
4 remaining allegations contained therein.

5 62. As to paragraph 62 of the First Amended Complaint, WSC admits that
6 Bennion and Deville sent a number of emails to WSC representatives on March 29,
7 2013. To the extent that paragraph purports to represent the substance of said
8 emails, those emails speak for themselves and WSC denies those allegations to the
9 extent they differ from the substance of said emails. WSC denies all remaining
10 allegations contained therein.

11 63. As to paragraph 63 of the First Amended Complaint, WSC admits that
12 Deville sent an email to WSC representatives on April 20, 2013. To the extent that
13 paragraph purports to represent the substance of said email, that email speaks for
14 itself and WSC denies those allegations to the extent they differ from the substance
15 of said email. WSC denies all remaining allegations contained therein.

16 64. As to paragraph 64 of the First Amended Complaint, WSC admits that
17 Windermere Watch has posted anti-Windermere content on its websites and sent out
18 mailings. WSC denies all remaining allegations contained therein.

19 65. As to paragraph 65 of the First Amended Complaint, WSC admits that
20 Mr. Drayna received emails from Bennion and Deville on June 12, 2013. To the
21 extent that paragraph purports to represent the substance of the emails, the emails
22 speak for themselves and WSC denies those allegations to the extent they differ
23 from the substance of the said emails. WSC denies all remaining allegations
24 contained therein.

25 66. As to paragraph 66 of the First Amended Complaint, WSC admits that
26 Mr. Drayna received an email from Bennion. To the extent that paragraph purports
27 to represent the substance of the email, the email speaks for itself and WSC denies

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1 those allegations to the extent they differ from the substance of the email. WSC
2 denies all remaining allegations contained therein.

3 67. As to paragraph 67 of the First Amended Complaint, WSC admits that
4 Messrs. Drayna and Woods received emails from Plaintiffs on July 4, 2013, and
5 July 8, 2013. To the extent that paragraph purports to represent the substance of the
6 emails, the emails speak for themselves and WSC denies those allegations to the
7 extent they differ from the substance of the emails. WSC denies all remaining
8 allegations contained therein.

9 68. As to paragraph 68 of the First Amended Complaint, the allegations
10 state arguments or legal conclusions to which no answer is required. To the extent
11 further response is required, WSC denies each and every allegation set forth therein.

12 69. As to paragraph 69 of the First Amended Complaint, WSC admits that
13 Deville sent an email to Mr. Drayna on July 24, 2013. To the extent that paragraph
14 purports to represent the substance of the email, the email speaks for itself and WSC
15 denies those allegations to the extent they differ from the substance of the email.
16 WSC denies all remaining allegations contained therein.

17 70. As to paragraph 70 of the First Amended Complaint, WSC admits that
18 Deville sent Messrs. Drayna and Woods an email on July 31, 2013. WSC further
19 admits that what appears to be a copy of this document appears to be attached to the
20 First Amended Complaint as Exhibit H. To the extent that paragraph purports to
21 represent the substance of the email, the email speaks for itself and WSC denies
22 those allegations to the extent they differ from the substance of the email.

23 71. As to paragraph 71 of the First Amended Complaint, to the extent that
24 paragraph purports to represent the substance of certain written communications,
25 those communications speak for themselves and WSC denies those allegations to
26 the extent they differ from the substance of the written communications. WSC
27 denies all remaining allegations contained therein.

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1 72. As to paragraph 72 of the First Amended Complaint, WSC admits that
2 Mr. Drayna received an email from Deville on August 10, 2013. To the extent that
3 paragraph purports to represent the substance of the email, the email speaks for itself
4 and WSC denies those allegations to the extent they differ from the substance of the
5 email. WSC denies all remaining allegations contained therein.

6 73. As to paragraph 73 of the First Amended Complaint, WSC denies that
7 it “fail[ed] to take action.” WSC is without knowledge or information sufficient to
8 form a belief as to the truth of the remaining allegations set forth therein and, on that
9 basis, denies those allegations.

10 74. As to paragraph 74 of the First Amended Complaint, WSC admits that
11 Messrs. Drayna and Wood received an email from Deville on August 24, 2013. To
12 the extent that paragraph purports to represent the substance of the email, the email
13 speaks for itself and WSC denies those allegations to the extent they differ from the
14 substance of the said email. WSC denies all remaining allegations contained
15 therein.

16 75. As to paragraph 75 of the First Amended Complaint, WSC admits that
17 Robert Sunderland sent Mr. Drayna an email on August 26, 2013. To the extent that
18 paragraph purports to represent the substance of written communications, those
19 communications speak for themselves and WSC denies those allegations to the
20 extent they differ from the substance of the communications. WSC denies all
21 remaining allegations contained therein.

22 76. As to paragraph 76 of the First Amended Complaint, WSC denies all
23 allegations contained therein.

24 77. As to paragraph 77 of the First Amended Complaint, is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 of Plaintiffs’ actions or the actions of Plaintiffs’ competitors as set forth therein and,
27 on that basis, denies those allegations set forth therein. WSC denies all remaining
28 allegations contained therein.

1 78. As to paragraph 78 of the First Amended Complaint, WSC admits that
2 Bennion and Deville sent a letter to WSC on January 10, 2014. WSC further admits
3 that what appears to be a copy of this document appears to be attached to the First
4 Amended Complaint as Exhibit R. To the extent that paragraph purports to
5 represent the substance of the letter, the letter speaks for itself and WSC denies
6 those allegations to the extent they differ from the substance of the said letter. WSC
7 denies all remaining allegations contained therein.

8 79. As to paragraph 79 of the First Amended Complaint, WSC admits that
9 Mr. Wood sent Deville an email on January 16, 2014. WSC further admits that
10 what appears to be a copy of this document appears to be attached to the First
11 Amended Complaint as Exhibit I. To the extent that paragraph purports to represent
12 the substance of the email, the email speaks for itself and WSC denies those
13 allegations to the extent they differ from the substance of the said email. WSC
14 denies all remaining allegations contained therein.

15 80. As to paragraph 80 of the First Amended Complaint, the allegations
16 state arguments or legal conclusions to which no answer is required. To the extent
17 further response is required, WSC denies each and every allegation set forth therein.

18 81. As to paragraph 81 of the First Amended Complaint, the allegations
19 state arguments or legal conclusions to which no answer is required. To the extent
20 further response is required, WSC denies each and every allegation set forth therein.

21 82. As to paragraph 82 of the First Amended Complaint, WSC denies the
22 allegations contained therein.

23 **J. WSC Disregarded State And Federal Franchise Registration And Disclosure**
24 **Laws Subjecting Bennion And Deville To Civil And Criminal Liability**

25 83. As to paragraph 83 of the First Amended Complaint, the allegations
26 state arguments or legal conclusions to which no answer is required. To the extent
27 further response is required, WSC denies each and every allegation set forth therein.

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1 84. As to paragraph 84 of the First Amended Complaint, the allegations
2 state arguments or legal conclusions to which no answer is required. To the extent
3 further response is required, WSC denies each and every allegation set forth therein.

4 85. As to paragraph 85 of the First Amended Complaint, the allegations
5 state arguments or legal conclusions to which no answer is required. To the extent
6 further response is required, WSC denies each and every allegation set forth therein.

7 86. As to paragraph 86 of the First Amended Complaint, the allegations
8 state arguments or legal conclusions to which no answer is required. To the extent
9 further response is required, WSC denies each and every allegation set forth therein.

10 87. As to paragraph 87 of the First Amended Complaint, the allegations
11 state arguments or legal conclusions to which no answer is required. To the extent
12 further response is required, WSC denies each and every allegation set forth therein.

13 88. As to paragraph 88 of the First Amended Complaint, WSC admits that
14 what appears to be a copy of its April 18, 2013 FDD for Northern California is
15 attached to the First Amended Complaint as Exhibit J. The remaining allegations
16 state arguments or legal conclusions to which no answer is required. To the extent
17 further response is required, WSC denies each and every allegation set forth therein.

18 89. As to paragraph 89 of the First Amended Complaint, the allegations
19 state arguments or legal conclusions to which no answer is required. To the extent
20 further response is required, WSC denies each and every allegation set forth therein.

21 90. As to paragraph 90 of the First Amended Complaint, WSC admits that
22 it filed a franchise renewal for Northern California on April 19, 2013. WSC further
23 admits that, due to Plaintiffs' failure to timely provide WSC with required financial
24 information and resulting breach of contract, WSC was not able to file a franchise
25 renewal for Southern California until June 17, 2013,. WSC further admits that a
26 copy of what appears to be a printout from the DBO's website is attached to the
27 First Amended Complaint as Exhibit K. WSC denies all remaining allegations
28 contained therein.

1 91. As to paragraph 91 of the First Amended Complaint, WSC admits that
2 what appears to be a copy of a DBO document is attached to the First Amended
3 Complaint as Exhibit L. The remaining allegations state arguments or legal
4 conclusions to which no answer is required. To the extent further response is
5 required, WSC denies each and every allegation set forth therein.

6 92. As to paragraph 92 of the First Amended Complaint, the allegations
7 state arguments or legal conclusions to which no answer is required. To the extent
8 further response is required, WSC denies each and every allegation set forth therein.

9 93. As to paragraph 93 of the First Amended Complaint, WSC admits that
10 Mr. Drayna sent an email to Deville on June 12, 2013. WSC further admits that
11 what appears to be a copy of this email appears to be attached to the First Amended
12 Complaint as Exhibit M. To the extent that paragraph purports to represent the
13 substance of the email, the email speaks for itself and WSC denies those allegations
14 to the extent they differ from the substance of the said email. WSC denies all
15 remaining allegations contained therein.

16 94. As to paragraph 94 of the First Amended Complaint, WSC admits that
17 Mr. Drayna sent an email to Plaintiffs on June 14, 2013. WSC further admits that
18 what appears to be a copy of this email appears to be attached to the First Amended
19 Complaint as Exhibit N. To the extent that paragraph purports to represent the
20 substance of the email, the email speaks for itself and WSC denies those allegations
21 to the extent they differ from the substance of the said email. WSC denies all
22 remaining allegations contained therein.

23 95. As to paragraph 95 of the First Amended Complaint, to the extent that
24 paragraph purports to represent the substance of email communications, those
25 communications speak for themselves and WSC denies those allegations to the
26 extent they differ from the substance of the said communications. WSC denies all
27 remaining allegations contained therein.

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1 96. As to paragraph 96 of the First Amended Complaint, WSC admits that
2 Mr. Wood sent an email to Plaintiffs on June 21, 2013. WSC further admits that
3 what appears to be a copy of this email appears to be attached to the First Amended
4 Complaint as Exhibit O. To the extent that paragraph purports to represent the
5 substance of the email, the email speaks for itself and WSC denies those allegations
6 to the extent they differ from the substance of the said email. WSC denies all
7 remaining allegations contained therein.

8 97. As to paragraph 97 of the First Amended Complaint, WSC admits that
9 Mr. Drayna sent an email to WSSC on July 3, 2013. WSC further admits that what
10 appears to be a copy of this email appears to be attached to the First Amended
11 Complaint as Exhibit P. To the extent that paragraph purports to represent the
12 substance of the email, the email speaks for itself and WSC denies those allegations
13 to the extent they differ from the substance of the said email. WSC denies all
14 remaining allegations contained therein.

15 98. As to paragraph 98 of the First Amended Complaint, to the extent that
16 paragraph purports to represent the substance of written communications, those
17 communications speak for themselves and WSC denies those allegations to the
18 extent they differ from the substance of the said communications. WSC denies all
19 remaining allegations contained therein.

20 99. As to paragraph 99 of the First Amended Complaint, WSC admits that
21 the DBO did not approve WSC's Southern California FDD until July 5, 2013, and
22 that this approval notice was not received by WSC until July 12, 2013. WSC further
23 admits that what appears to be a copy of an email from Mr. Drayna is attached to the
24 First Amended Complaint as Exhibit Q.

25 100. As to paragraph 100 of the First Amended Complaint, the allegations
26 state arguments or legal conclusions to which no answer is required. To the extent
27 further response is required, WSC denies each and every allegation set forth therein.

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1 101. As to paragraph 101 and subparts a – c of the First Amended
2 Complaint, the allegations state arguments or legal conclusions to which no answer
3 is required. To the extent further response is required, WSC denies each and every
4 allegation set forth therein.

5 102. As to paragraph 102 of the First Amended Complaint, the allegations
6 state arguments or legal conclusions to which no answer is required. To the extent
7 further response is required, WSC denies each and every allegation set forth therein.

8 103. As to paragraph 103 of the First Amended Complaint, WSC admits
9 that, due to Plaintiffs' failure to provide required audited financial information in
10 breach of the Area Representation Agreement, WSC was unable to timely renew the
11 Southern California FDD for the 2014 year. WSC denies all remaining allegations
12 contained therein.

13 **K. WSC Implements A Strategy To Take Back The Southern California**
14 **Region From Bennion And Deville**

15 104. As to paragraph 104 of the First Amended Complaint, WSC denies the
16 allegations contained therein.

17 105. As to paragraph 105 of the First Amended Complaint, WSC denies the
18 allegations contained therein.

19 106. As to paragraph 106 of the First Amended Complaint, WSC admits that
20 Mr. Teather met with Deville in spring 2014 to discuss WSC business. WSC denies
21 all remaining allegations contained therein.

22 107. As to paragraph 107 of the First Amended Complaint, WSC admits that
23 it and WSSC entered into substantive discussion regarding WSC reacquiring area
24 representative responsibilities from WSSC. WSC denies the remaining allegations
25 contained therein.

26 108. As to paragraph 108 of the First Amended Complaint, WSC denies the
27 allegations contained therein.

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1 109. As to paragraph 109 of the First Amended Complaint, WSC denies the
2 allegations contained therein.

3 110. As to paragraph 110 of the First Amended Complaint, the allegations
4 state arguments or legal conclusions to which no answer is required. To the extent
5 further response is required, WSC denies each and every allegation set forth therein.

6 (i) **WSC surreptitiously elected not to register a Southern California**
7 **FDD for 2014 year, thus, precluding Bennion and Deville from**
8 **bringing on new franchisees**

9 111. As to paragraph 111 of the First Amended Complaint, WSC admits that
10 it registered or renewed its franchise application for the Southern California region
11 for every year from 2003 through 2013. WSC denies all remaining allegations
12 contained therein.

13 112. As to paragraph 112 of the First Amended Complaint, WSC denies the
14 allegations contained therein.

15 113. As to paragraph 113 of the First Amended Complaint, WSC admits that
16 Deville sent Mr. Drayna an email on October 28, 2014. WSC further admits that
17 what appears to be a copy of this email appears to be attached to the First Amended
18 Complaint as Exhibit S. To the extent that paragraph purports to represent the
19 substance of the email, the email speaks for itself and WSC denies those allegations
20 to the extent they differ from the substance of the said email. WSC denies all
21 remaining allegations contained therein.

22 114. As to paragraph 114 of the First Amended Complaint, WSC admits that
23 Mr. Drayna sent Plaintiffs an email on October 28, 2014. WSC further admits that
24 what appears to be a copy of this email appears to be attached to the First Amended
25 Complaint as Exhibit T. To the extent that paragraph purports to represent the
26 substance of the email, the email speaks for itself and WSC denies those allegations
27 to the extent they differ from the substance of the said email. WSC denies all
28 remaining allegations contained therein.

1 115. As to paragraph 115 of the First Amended Complaint, admits that
2 Mr. Drayna sent Plaintiffs an email on October 31, 2014. To the extent that
3 paragraph purports to represent the terms and of any documents, those documents
4 speak for themselves and WSC denies those allegations to the extent they differ
5 from the terms of said documents. With regard to the remaining allegations, WSC
6 denies all remaining allegations contained therein.

7 116. As to paragraph 116 of the First Amended Complaint, the allegations
8 state arguments or legal conclusions to which no answer is required. To the extent
9 further response is required, WSC denies each and every allegation set forth therein.

10 117. As to paragraph 117 of the First Amended Complaint, the allegations
11 state arguments or legal conclusions to which no answer is required. To the extent
12 further response is required, WSC denies each and every allegation set forth therein.

13 118. As to paragraph 118 of the First Amended Complaint, the allegations
14 state arguments or legal conclusions to which no answer is required. To the extent
15 further response is required, WSC denies each and every allegation set forth therein.

16 119. As to paragraph 119 of the First Amended Complaint, the allegations
17 state arguments or legal conclusions to which no answer is required. To the extent
18 further response is required, WSC denies each and every allegation set forth therein.

19 120. As to paragraph 120 of the First Amended Complaint, WSC denies the
20 allegations contained therein.

21 (ii) **WSC attempted to surreptitiously acquire Bennion and Deville's**
22 **technology and other services offered to the Southern California**
23 **franchisees**

24 121. As to paragraph 121 of the First Amended Complaint, WSC denies the
25 allegations contained therein.

26 122. As to paragraph 122 of the First Amended Complaint, WSC denies the
27 allegations contained therein.

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1 123. As to paragraph 123 of the First Amended Complaint, WSC admits that
2 Mr. Teather sent Plaintiffs an email on July 18, 2014, which included the language
3 quoted in this paragraph. WSC denies all remaining allegations contained therein.

4 124. As to paragraph 124 of the First Amended Complaint, to the extent that
5 paragraph purports to represent the substance of the email, the email speaks for itself
6 and WSC denies those allegations to the extent they differ from the substance of the
7 said email. WSC denies all remaining allegations contained therein.

8 125. As to paragraph 125 of the First Amended Complaint, WSC denies the
9 allegations contained therein.

10 126. As to paragraph 126 of the First Amended Complaint, WSC denies the
11 allegations contained therein.

12 127. As to paragraph 127 of the First Amended Complaint, WSC denies the
13 allegations contained therein.

14 **(iii) WSC interfered with Bennion and Deville's relationships with**
15 **prospective and existing franchisees in the Southern California**
16 **region in attempt to disrupt these relationships**

17 128. As to paragraph 128 of the First Amended Complaint, WSC admits that
18 Mr. Teather did interact directly with franchisees at various times. WSC denies all
19 remaining allegations contained therein.

20 129. As to paragraph 129 of the First Amended Complaint, WSC denies the
21 allegations contained therein.

22 130. As to paragraph 130 of the First Amended Complaint, WSC is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations
24 regarding Deville's interaction with the existing franchisee as set forth therein or
25 Deville's decision-making process as set forth therein and, on that basis, denies each
26 and every one of those allegations set forth therein. WSC denies all remaining
27 allegations contained therein.

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1 131. As to paragraph 131 of the First Amended Complaint, WSC admits that
2 Mr. Teather sent Plaintiffs an email on October 3, 2014. WSC further admits that
3 what appears to be a copy of this email appears to be attached to the First Amended
4 Complaint as Exhibit U. To the extent that paragraph purports to represent the
5 substance of the email, the email speaks for itself and WSC denies those allegations
6 to the extent they differ from the substance of the said email. WSC denies all
7 remaining allegations contained therein.

8 132. As to paragraph 132 of the First Amended Complaint, WSC denies the
9 allegations contained therein.

10 133. As to paragraph 133 of the First Amended Complaint, WSC denies the
11 allegations contained therein.

12 **L. WSC's Termination Of The Area Representation Agreement Was A**
13 **Material Breach Of The Franchise Agreements**

14 134. As to paragraph 134 of the First Amended Complaint, WSC admits that
15 Mr. Drayna sent Plaintiffs a letter on January 28, 2015 terminating the Area
16 Representation Agreement. WSC further admits that what appears to be a copy of
17 this document appears to be attached to the First Amended Complaint as Exhibit V.
18 WSC denies all remaining allegations contained therein.

19 135. As to paragraph 135 of the First Amended Complaint, WSC denies the
20 allegations contained therein.

21 136. As to paragraph 136 of the First Amended Complaint, WSC is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 regarding Plaintiffs' motivations as set forth therein, and, on that basis, denies each
24 and every one of those allegations set forth therein. WSC denies all remaining
25 allegations contained therein.

26 137. As to paragraph 137 of the First Amended Complaint, to the extent that
27 paragraph purports to represent the terms, rights or obligations of any agreements,
28 those agreements speak for themselves and WSC denies those allegations to the

1 extent they differ from the terms, rights or obligations of said agreements or seek to
2 impose obligations different from those imposed by said agreements. WSC denies
3 all remaining allegations contained therein.

4 138. As to paragraph 138 of the First Amended Complaint, the allegations
5 state arguments or legal conclusions to which no answer is required. To the extent
6 further response is required, WSC denies each and every allegation set forth therein.

7 **M. WSC Failed to Provide The Technology Services Implied In Each**

8 **Agreement**

9 139. As to paragraph 139 of the First Amended Complaint, WSC denies the
10 allegations contained therein.

11 140. As to paragraph 140 of the First Amended Complaint, to the extent that
12 paragraph purports to represent the terms, rights or obligations of any agreements,
13 those agreements speak for themselves and WSC denies those allegations to the
14 extent they differ from the terms, rights or obligations of said agreements or seek to
15 impose obligations different from those imposed by said agreements. WSC denies
16 all remaining allegations contained therein.

17 141. As to paragraph 141 of the First Amended Complaint, to the extent that
18 paragraph purports to represent the terms, rights or obligations of any agreements,
19 those agreements speak for themselves and WSC denies those allegations to the
20 extent they differ from the terms, rights or obligations of said agreements or seek to
21 impose obligations different from those imposed by said agreements. WSC denies
22 all remaining allegations contained therein.

23 142. As to paragraph 142 of the First Amended Complaint, the allegations
24 state arguments or legal conclusions to which no answer is required. To the extent
25 further response is required, WSC denies each and every allegation set forth therein.

26 143. As to paragraph 143 of the First Amended Complaint, WSC denies the
27 allegations contained therein.

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1 144. As to paragraph 144 of the First Amended Complaint, WSC denies the
2 allegations contained therein.

3 a. As to paragraph 144(a) of the First Amended Complaint, WSC denies
4 the allegations contained therein.

5 b. As to paragraph 144(b) of the First Amended Complaint, WSC denies
6 the allegations contained therein.

7 c. As to paragraph 144(c) of the First Amended Complaint, WSC denies
8 the allegations contained therein.

9 d. As to paragraph 144(d) of the First Amended Complaint, WSC denies
10 the allegations contained therein.

11 145. As to paragraph 145 of the First Amended Complaint, WSC denies the
12 allegations contained therein.

13 146. As to paragraph 146 of the First Amended Complaint, WSC denies the
14 allegations contained therein.

15 147. As to paragraph 147 of the First Amended Complaint, the allegations
16 state arguments or legal conclusions to which no answer is required. To the extent
17 further response is required, WSC denies each and every allegation set forth therein.

18 **FIRST CLAIM FOR RELIEF**

19 **Breach of Contract – Coachella Valley Franchise Agreement**

20 (By B&D Fines Homes and Services SoCal against WSC)

21 148. As to paragraph 148 of the First Amended Complaint, WSC hereby
22 incorporates by reference the preceding paragraphs and incorporates them herein, as
23 if set forth in full.

24 149. As to paragraph 149 of the First Amended Complaint, WSC admits that
25 B&D Homes and WSC entered into the Coachella Valley Franchise Agreement on
26 August 1, 2001, and the Modification Agreement on December 18, 2012. WSC
27 denies the remaining allegations contained therein.

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1 150. As to paragraph 150 of the First Amended Complaint, WSC denies the
2 allegations contained therein.

3 151. As to paragraph 151 of the First Amended Complaint, WSC denies the
4 allegations contained therein.

5 a. As to paragraph 151(a) of the First Amended Complaint, WSC denies
6 the allegations contained therein.

7 b. As to paragraph 151(b) of the First Amended Complaint, WSC denies
8 the allegations contained therein.

9 c. As to paragraph 151(c) of the First Amended Complaint, WSC denies
10 the allegations contained therein.

11 d. As to paragraph 151(d) of the First Amended Complaint, WSC denies
12 the allegations contained therein.

13 152. As to paragraph 152 of the First Amended Complaint, WSC denies the
14 allegations contained therein.

15 153. As to paragraph 153 of the First Amended Complaint, the allegations
16 state arguments or legal conclusions to which no answer is required. To the extent
17 further response is required, WSC denies each and every allegation set forth therein.

18 154. As to paragraph 154 of the First Amended Complaint, the allegations
19 state arguments or legal conclusions to which no answer is required. To the extent
20 further response is required, WSC denies each and every allegation set forth therein.

21 **SECOND CLAIM FOR RELIEF**

22 **Breach of Implied Covenant of Good Faith and Fair Dealing – Coachella**
23 **Valley Franchise Agreement**

24 (By B&D Fines Homes and Services SoCal against WSC)

25 155. As to paragraph 155 of the First Amended Complaint, WSC hereby
26 incorporates by reference the preceding paragraphs and incorporates them herein, as
27 if set forth in full.

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1 156. As to paragraph 149 of the First Amended Complaint, WSC admits that
2 B&D Homes and WSC entered into the Coachella Valley Franchise Agreement on
3 August 1, 2001, and the Modification Agreement on December 18, 2012. WSC
4 denies the remaining allegations contained therein.

5 157. As to paragraph 157 of the First Amended Complaint, WSC denies the
6 allegations contained therein.

7 158. As to paragraph 158 of the First Amended Complaint, the allegations
8 state arguments or legal conclusions to which no answer is required. To the extent
9 further response is required, WSC denies each and every allegation set forth therein.

10 a. As to paragraph 158(a) of the First Amended Complaint, WSC denies
11 the allegations contained therein.

12 b. As to paragraph 158(b) of the First Amended Complaint, WSC denies
13 the allegations contained therein.

14 c. As to paragraph 158(c) of the First Amended Complaint, WSC denies
15 the allegations contained therein.

16 d. As to paragraph 158(d) of the First Amended Complaint, WSC denies
17 the allegations contained therein.

18 159. As to paragraph 159 of the First Amended Complaint, WSC denies the
19 allegations contained therein.

20 **THIRD CLAIM FOR RELIEF**

21 **Breach of Contract – Area Representation Agreement**

22 (By Services SoCal against WSC)

23 160. As to paragraph 160 of the First Amended Complaint, WSC hereby
24 incorporates by reference the preceding paragraphs and incorporates them herein, as
25 if set forth in full.

26 161. As to paragraph 161 of the First Amended Complaint, WSC admits the
27 allegations contained therein.

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1 162. As to paragraph 162 of the First Amended Complaint, WSC denies the
2 allegations contained therein.

3 163. As to paragraph 163 of the First Amended Complaint, WSC denies the
4 allegations contained therein.

5 a. As to paragraph 163(a) of the First Amended Complaint, WSC denies
6 the allegations contained therein.

7 b. As to paragraph 163(b) of the First Amended Complaint, WSC denies
8 the allegations contained therein.

9 c. As to paragraph 163(c) of the First Amended Complaint, WSC denies
10 the allegations contained therein.

11 d. As to paragraph 163(d) of the First Amended Complaint, WSC denies
12 the allegations contained therein.

13 e. As to paragraph 163(e) of the First Amended Complaint, WSC denies
14 the allegations contained therein.

15 f. As to paragraph 163(f) of the First Amended Complaint, WSC denies
16 the allegations contained therein.

17 g. As to paragraph 163(g) of the First Amended Complaint, WSC denies
18 the allegations contained therein.

19 h. As to paragraph 163(h) of the First Amended Complaint, WSC denies
20 the allegations contained therein.

21 i. As to paragraph 163(i) of the First Amended Complaint, WSC denies
22 the allegations contained therein.

23 j. As to paragraph 163(j) of the First Amended Complaint, WSC denies
24 the allegations contained therein.

25 164. As to paragraph 164 of the First Amended Complaint, WSC denies the
26 allegations contained therein.

27 165. As to paragraph 165 of the First Amended Complaint, WSC is without
28 knowledge or information sufficient to form a belief as to the truth of the allegations

1 set forth therein regarding this particular relief Plaintiffs ostensibly seek and, on that
2 basis, denies each and every allegation set forth therein.

3 166. As to paragraph 166 of the First Amended Complaint, the allegations
4 state arguments or legal conclusions to which no answer is required. To the extent
5 further response is required, WSC denies each and every allegation set forth therein.

6 **FOURTH CLAIM FOR RELIEF**

7 **Breach of Implied Covenant of Good Faith and Fair Dealing – Area**

8 **Representation Agreement**

9 (By Services SoCal against WSC)

10 167. As to paragraph 167 of the First Amended Complaint, WSC hereby
11 incorporates by reference the preceding paragraphs and incorporates them herein, as
12 if set forth in full.

13 168. As to paragraph 168 of the First Amended Complaint, WSC admits the
14 allegations contained therein.

15 169. As to paragraph 169 of the First Amended Complaint, WSC denies the
16 allegations contained therein.

17 170. As to paragraph 170 of the First Amended Complaint, the allegations
18 state arguments or legal conclusions to which no answer is required. To the extent
19 further response is required, WSC denies each and every allegation set forth therein.

20 a. As to paragraph 170(a) of the First Amended Complaint, WSC denies
21 the allegations contained therein.

22 b. As to paragraph 170(b) of the First Amended Complaint, WSC denies
23 the allegations contained therein.

24 c. As to paragraph 170(c) of the First Amended Complaint, WSC denies
25 the allegations contained therein.

26 d. As to paragraph 170(d) of the First Amended Complaint, WSC denies
27 the allegations contained therein.

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1 e. As to paragraph 170(e) of the First Amended Complaint, WSC denies
2 the allegations contained therein.

3 171. As to paragraph 171 of the First Amended Complaint, WSC denies the
4 allegations contained therein.

5 **FIFTH CLAIM FOR RELIEF**

6 **Breach of Contract – SoCal Franchise Agreement**

7 (By B&D SoCal and Services SoCal against WSC)

8 172. As to paragraph 172 of the First Amended Complaint, WSC hereby
9 incorporates by reference the preceding paragraphs and incorporates them herein, as
10 if set forth in full.

11 173. As to paragraph 173 of the First Amended Complaint, WSC admits the
12 allegations contained therein.

13 174. As to paragraph 174 of the First Amended Complaint, WSC denies the
14 allegations contained therein.

15 175. As to paragraph 175 of the First Amended Complaint, WSC denies the
16 allegations contained therein.

17 a. As to paragraph 175(a) of the First Amended Complaint, WSC denies
18 the allegations contained therein.

19 b. As to paragraph 175(b) of the First Amended Complaint, WSC denies
20 the allegations contained therein.

21 c. As to paragraph 175(c) of the First Amended Complaint, WSC denies
22 the allegations contained therein.

23 d. As to paragraph 175(d) of the First Amended Complaint, WSC denies
24 the allegations contained therein.

25 176. As to paragraph 176 of the First Amended Complaint, WSC denies the
26 allegations contained therein.

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1 177. As to paragraph 177 of the First Amended Complaint, the allegations
2 state arguments or legal conclusions to which no answer is required. To the extent
3 further response is required, WSC denies each and every allegation set forth therein.

4 **SIXTH CLAIM FOR RELIEF**

5 **Breach of Implied Covenant of Good Faith and Fair Dealing**

6 (By B&D SoCal and Services SoCal against WSC)

7 178. As to paragraph 178 of the First Amended Complaint, WSC hereby
8 incorporates by reference the preceding paragraphs and incorporates them herein, as
9 if set forth in full.

10 179. As to paragraph 179 of the First Amended Complaint, WSC admits the
11 allegations contained therein.

12 180. As to paragraph 180 of the First Amended Complaint, WSC denies the
13 allegations contained therein.

14 181. As to paragraph 181 of the First Amended Complaint, the allegations
15 state arguments or legal conclusions to which no answer is required. To the extent
16 further response is required, WSC denies each and every allegation set forth therein.

17 a. As to paragraph 181(a) of the First Amended Complaint, WSC denies
18 the allegations contained therein.

19 e. As to paragraph 181(e) of the First Amended Complaint, WSC denies
20 the allegations contained therein.

21 f. As to paragraph 181(f) of the First Amended Complaint, WSC denies
22 the allegations contained therein.

23 g. As to paragraph 181(g) of the First Amended Complaint, WSC denies
24 the allegations contained therein.

25 h. As to paragraph 181(h) of the First Amended Complaint, WSC denies
26 the allegations contained therein.

27 182. As to paragraph 182 of the First Amended Complaint, WSC denies the
28 allegations contained therein.

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SEVENTH CLAIM FOR RELIEF

Violation of the California Franchise Relations Action (Cal. Bus. & Prof. Code § 20020)

(By Services SoCal against WSC)

183. As to paragraph 183 of the First Amended Complaint, WSC hereby incorporates by reference the preceding paragraphs and incorporates them herein, as if set forth in full.

184. As to paragraph 184 of the First Amended Complaint, the allegations state arguments or legal conclusions to which no answer is required. To the extent further response is required, WSC denies each and every allegation set forth therein.

185. As to paragraph 184 of the First Amended Complaint, the allegations state arguments or legal conclusions to which no answer is required. To the extent further response is required, WSC denies each and every allegation set forth therein.

186. As to paragraph 186 of the First Amended Complaint, WSC admits that Plaintiffs are seeking the relief set forth therein but deny the validity of the requested relief.

RELIEF REQUESTED

WSC denies that Plaintiffs are entitled to any damages, penalties, or other relief including, but not limited to, the relief requested in their prayer for relief in the First Amended Complaint. WSC respectfully requests that the Court enter an Order and Judgment that Plaintiffs take nothing as to their allegations and claims against WSC, dismissing their allegations and claims with prejudice and awarding to WSC its costs and attorneys' fees.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The alleged causes of action in the First Amended Complaint, and each of them, fail to state facts sufficient to constitute a cause of action and fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Uncertainty)

Plaintiffs' claims against WSC are barred because the alleged causes of action, and each of them, are uncertain, ambiguous and/or unintelligible.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

The First Amended Complaint and each claim for relief therein is barred by the applicable statutes of limitations, including but not limited to California Code of Civil Procedure sections 336a, 337, 337.5, 338, 339, 340, 341.5, 343, 344, 349, and 349½.

FOURTH AFFIRMATIVE DEFENSE

(Contractual Bar -- Integration Clauses / Parol Evidence Rule)

The First Amended Complaint and each claim for relief therein are barred in whole or in part by the Parol Evidence Rule and the integration provisions of Section 16 of the Modification Agreement.

FIFTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Acts of Third Parties)

Plaintiffs' damages, if any, resulted from the acts or omissions of third parties over whom WSC had no control. The acts of such third parties constitute intervening or superseding causes of the harm, if any, suffered by Plaintiffs.

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SIXTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs’ claims are barred in whole or in part by the equitable doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

(No Actual Loss)

Plaintiffs have not suffered an actual loss as a result of any actions by WSC.

EIGHTH AFFIRMATIVE DEFENSE

(Set-Off)

WSC is entitled to certain set-offs to all of Plaintiffs’ claims as set forth in the First Amended Complaint.

NINTH AFFIRMATIVE DEFENSE

(Detrimental Reliance)

WSC has relied upon the actions and inactions of Plaintiffs all to WSC’s detriment.

TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs have engaged in careless, negligent, and other wrongful conduct and are therefore barred from recovering any relief against WSC by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs are, by their own conduct, representations, and omissions, barred from asserting any claims or damages or from seeking other relief from WSC by the doctrine of estoppel.

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TWELFTH AFFIRMATIVE DEFENSE

(Compliance with Applicable Laws)

Plaintiffs’ claims are barred, in whole or in part, by reason of WSC’s compliance with all applicable laws, statutes, and regulations.

THIRTEENTH AFFIRMATIVE DEFENSE

(Valid Business Purpose)

The claims in the First Amended Complaint are barred because the alleged conduct of WSC was at all times justified, fair, and undertaken in the good faith exercise of a valid business purpose.

FOURTEENTH AFFIRMATIVE DEFENSE

(Apportionment)

WSC is not legally responsible for any damages claimed by Plaintiffs. If, however, WSC is found to be legally responsible, WSC’s legal responsibility is not the sole and proximate cause of any injury, and damages awarded to Plaintiffs, if any, should be apportioned according to the respective fault and legal responsibility of all parties, persons and entities, and/or the agents, servants and employees who contributed to and/or caused said incidents according to proof presented at the time of trial.

FIFTEENTH AFFIRMATIVE DEFENSE

(Damages Not Ascertainable)

Some or all of the claims for damages in the First Amended Complaint are barred because the damages alleged, if any, are not ascertainable in their nature and origin, and therefore cannot be recovered pursuant to California Civil Code section 3301.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Full Performance)

WSC is informed and believes and thereon alleges that it has performed and fully discharged any and all obligations and legal duties, if any, to Plaintiffs pertinent to the matters alleged in the First Amended Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiffs consented to and approved all or some of the acts and omissions about which Plaintiffs now complain. Accordingly, Plaintiffs are barred from pursuing this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Discharge)

Any purported obligation alleged in the First Amended Complaint that WSC may have owed to Plaintiffs has been discharged and extinguished.

NINETEENTH AFFIRMATIVE DEFENSE

(Fault of Plaintiffs)

Plaintiffs have been damaged, if at all, in whole or in part, by virtue of their own acts and omissions and by the acts and omission of their own agents and employees, and to that extent, the damages alleged, if any, must be diminished in whole or in part according to proof thereof at the time of trial.

TWENTIETH AFFIRMATIVE DEFENSE

(Lack of Causation)

None of the acts, conduct and/or omissions attributed to WSC in the First Amended Complaint may be regarded as the actual or proximate cause of any damages Plaintiffs seek to recover.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Good Faith)

At all times referenced in the First Amended Complaint, WSC acted in good faith and did not directly or indirectly induce any act or acts contributing to the alleged damages suffered by Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Plaintiffs, by their own acts and/or omissions, are barred from any recovery against WSC based on the doctrine of unjust enrichment.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Conduct Privileged)

Some or all of the claims for damages in the First Amended Complaint are barred in that WSC’s actions in connection with the matters alleged were done in good faith and based on its legitimate economic interest and within the course and scope of its authority and were, therefore, privileged.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Conduct Justified)

Without admitting the truth of the allegations in the First Amended Complaint (the truth of which WSC, in fact, denies), WSC’s conduct regarding the matters alleged in the First Amended Complaint was justified, and Plaintiffs are barred from any recovery against WSC.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs have failed to exercise reasonable care and diligence to avoid loss and to minimize or mitigate the damages, if any, that they claim to have suffered.

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DEMAND FOR JURY TRIAL

In accordance with Federal Rules of Civil Procedure, Rule 38(b), WSC demands a trial by jury on all issues so triable.

DATED: December 7, 2015 PEREZ WILSON VAUGHN & FEASBY

By: /s/ John D. Vaughn
John D. Vaughn
Attorneys for
Windermere Real Estate Services Company