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

Hon. Manuel L. Real

**DEFENDANT WINDERMERE
REAL ESTATE SERVICES
COMPANY'S STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: October 17, 2016

Time: 10:00 a.m.

Courtroom: 8

1 Pursuant to Local Rule 56-1, Defendant and Counterclaimant Windermere
 2 Real Estate Services Company submits the following Statement of Uncontroverted
 3 Facts and Conclusions of Law.

<u>Uncontroverted Facts:</u>	<u>Supporting Evidence:</u>
1. WSC and Bennion & Deville Fine Homes, Inc. (“B&D Fine Homes”), an entity owned by Bennion and Deville, entered into the Coachella Valley Franchise Agreement on August 1, 2001.	1. Declaration of Jeffrey A. Feasby (“Feasby Decl.”) Ex. A, p. 1; Feasby Decl. Ex. F, Deposition of Paul Drayna (“Drayna Depo.”), 28:21-29:13.
2. In exchange for the license fees, WSC agreed to “provide a variety of services to [B&D Fine Homes] for the benefit of [B&D Fine Homes] and other licensees, designed to complement the real estate brokerage business activities of [B&D Fine Homes] and to enhance its profitability.”	2. Feasby Decl. Ex A, p. 2, ¶ 1.
3. WSC also granted B&D Fine Homes the right to use the “Windermere System.”	3. Feasby Decl. Ex. A, p. 2, ¶ 2.
4. On May 1, 2004, WSC and Windermere Services Southern California, Inc. (“Services SoCal”), an entity owned by Bennion and Deville, entered into the Area Representation Agreement.	4. Feasby Decl. Ex. B, p. 1; Feasby Decl. Ex. E, Deposition of Robert L. Bennion (“Bennion Dep.”) 77:7-13; Feasby Decl. Ex. F, Drayna Dep. 46:18-47:1.
5. Pursuant to the Area Representation Agreement, WSC agreed to provide Services SoCal with a non-exclusive right to offer WSC licensees use of the “Windermere System.”	5. Feasby Decl. Ex. B, p. 2, ¶ 2.

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<u>Uncontroverted Facts:</u>	<u>Supporting Evidence:</u>
6. WSC agreed to provide Services SoCal with “servicing support in connection with the marketing, promotion and administration of the Trademark and Windermere System.”	6. Feasby Decl. Ex. B, pp. 3-4, ¶ 3.
7. WSC also agreed to make available to Services SoCal WSC’s “key people to the extent necessary to assist [Services SoCal] in carrying out its obligations as set forth in” the Area Representation Agreement.	7. Feasby Decl. Ex. B, pp. 3-4, ¶ 3.
8. On March 29, 2011, WSC and Bennion & Deville Fines Homes SoCal, Inc. (“B&D Fine Homes SoCal”), another entity owned entirely by Bennion and Deville, entered into the Southern California Franchise Agreement.	8. Feasby Decl. Ex. C, p. 1; Feasby Decl. Ex. F, Drayna Dep. 134:8-22.
9. Like the Coachella Valley Franchise Agreement, the Southern California Franchise Agreement granted B&D Fine Homes SoCal a revocable and non-exclusive right to use the “Windermere System” in the conduct of real estate brokerage services.	9. Feasby Decl. Ex. C, p. 2, ¶ 1.
10. WSC agreed to “provide guidance” to B&D Fine Homes SoCal with respect to the Windermere System.	10. Feasby Decl. Ex. C, p. 3, ¶ 3
11. Plaintiffs claim that WSC never provided them with a viable Windermere System.	11. Feasby Decl. Ex. D, Deposition of Joseph R. Deville (“Deville Dep.”) 67:5-68:6.

<u>Uncontroverted Facts:</u>	<u>Supporting Evidence:</u>
12. Plaintiffs claim that WSC never provided them with sufficient technology.	12. Feasby Decl. Ex. D, Deposition of Joseph R. Deville (“Deville Dep.”) 67:5-68:6.
13. Plaintiffs admitted that they have not been subjected to either criminal or civil liability arising out of WSC’s alleged failure to comply with California franchise laws.	13. Feasby Decl. Ex. G, p. 14-16.
14. Services SoCal also did not pay a franchise fee to WSC.	14. Feasby Decl. Ex. B, p. 8, ¶ 9.
15. Mark Ewing was an independent third party who had contracted with WSC, he was not an affiliate of WSC.	15. Feasby Decl. Ex. G, Deposition of Geoffrey P. Wood (“Wood Dep.”) 118:18; Feasby Decl. Ex. F, Drayna Dep. 43:15-44:13.
16. The amounts paid by Services SoCal were paid to Mr. Ewing in order to purchase from him the right to receive the revenue he had been receiving from the Carlsbad, Escondido, and Solana Beach locations.	16. Feasby Decl. Ex. B, ¶ 14, Feasby Decl. Ex. A, ¶ 1; Feasby Decl. Ex. G, Wood Dep. 119:2-6; Feasby Decl. Ex. F, Drayna Dep. 44:14-46:3.
17. Services SoCal did not have the right to sell or negotiate the sale of franchises for WSC.	17. Feasby Decl. Ex. B, p. 2, ¶ 2.

DATED: September 19, 2016 PEREZ WILSON VAUGHN & FEASBY

By: /s/ Jeffrey A. Feasby
 Jeffrey A. Feasby
 Attorneys for
 Windermere Real Estate Services Company