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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**01/23/2012 at 10:17:00 AM**  
Clerk of the Superior Court  
By James M Haines, Deputy Clerk

5 Attorneys for Defendant, BENNION & DEVILLE FINE HOMES, INC. DBA  
WINDERMERE REAL ESTATE COACHELLA VALLEY (erroneously sued as  
6 WINDERMERE REAL ESTATE COACHELLA VALLEY

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF ORANGE**

10

11 DANIEL GONZALES, BIANCA FELIX, ) **CASE NO.: 30-2011-00524603**  
12 )  
Plaintiffs, )  
13 ) **DEFENDANT BENNION & DEVILLE**  
vs. ) **FINE HOMES, INC. DBA WINDERMERE**  
14 ) **REAL ESTATE COACHELLA VALLEY'S**  
MIKE BAILEY; JUDITH BAILEY; ) **ANSWER TO PLAINTIFFS' COMPLAINT**  
15 )  
WINDERMERE REAL ESTATE SERVICES )  
16 )  
COMPANY; WINDERMERE REAL ESTATE )  
17 )  
SOCAL, INC.; WINDERMERE REAL )  
18 )  
ESTATE COACHELLA VALLEY; and )  
DOES 1 to 50, inclusive, )  
19 )  
Defendants. )  
20 ) **JUDGE: Hon. Charles Margines**  
21 ) **DEPT.: C-19**  
22 ) **Complaint Filed: 11/22/2011**  
23 ) **Trial Date: Not Yet Assigned**

22

23 COMES NOW Defendant BENNION & DEVILLE FINE HOMES, INC. DBA  
24 WINDERMERE REAL ESTATE COACHELLA VALLEY (erroneously sued as  
25 WINDERMERE REAL ESTATE COACHELLA VALLEY), (hereafter referred to  
26 as "Answering Defendant"), and in answer to the Complaint filed  
27 by Plaintiffs, DANIEL GONZALES and BIANCA FELIX (hereinafter  
28 referred to as "Plaintiffs") allege as follows:

1 Pursuant to §431.30(d) of the Code of Civil Procedure, this  
2 Answering Defendant denies generally and specifically each and  
3 every allegation contained in the Complaint, the whole thereof  
4 and each and every cause of action set forth therein. This  
5 Answering Defendant specifically denies that Plaintiffs have  
6 been damaged in the amounts therein alleged, or in any other  
7 amounts, or at all by reason of any act, breach or omission on  
8 the part of this Answering Defendant. As used herein, words  
9 including singular numbers shall include plural, words including  
10 the plural shall include the singular, and words importing the  
11 masculine gender shall include the feminine gender.

12 FIRST AFFIRMATIVE DEFENSE

13 (Failure to State a Cause of Action)

14 1. This Answering Defendant is informed and believes and  
15 thereon alleges that each and every allegation contained in the  
16 Complaint fails to state facts sufficient to constitute a Cause  
17 of Action against this Answering Defendant.

18 SECOND AFFIRMATIVE DEFENSE

19 (Comparative Negligence)

20 2. This Answering Defendant is informed and believes and  
21 thereon alleges that Plaintiffs are barred from any recovery or  
22 relief on the basis that their own negligence was the sole and  
23 proximate cause of any damages they may have sustained or will  
24 sustain. In the event that a determination is made that this  
25 Answering Defendant was negligent and/or otherwise responsible  
26 to Plaintiffs and such negligence and/or responsibility  
27 proximately contributed to Plaintiffs' damages, the amount of  
28 recovery, if any, shall be reduced on the basis of Plaintiffs'

1 own comparative negligence which contributed to the damages  
2 sought by Plaintiffs against this Answering Defendant.

3 THIRD AFFIRMATIVE DEFENSE

4 (Laches)

5 3. This Answering Defendant is informed and believes and  
6 thereon alleges that each and every allegation and cause of  
7 action alleged in the Complaint against this Answering Defendant  
8 is barred under the equitable doctrine of laches.

9 FOURTH AFFIRMATIVE DEFENSE

10 (Unclean Hands)

11 4. This Answering Defendant is informed and believes and  
12 thereon alleges that each and every cause of action alleged in  
13 the Complaint against this Answering Defendants is barred by the  
14 doctrine of unclean hands in that Plaintiffs, by their own  
15 conduct, have acted in such a manner as to preclude any recovery  
16 against this Answering Defendant.

17 FIFTH AFFIRMATIVE DEFENSE

18 (Superseding Acts of Third Parties)

19 5. This Answering Defendant is informed and believes and  
20 thereon alleges that the damages alleged in the Complaint were  
21 exclusively caused or contributed to by the negligence or other  
22 acts or omissions of other defendants, persons, or entities,  
23 whether parties to this action or not. Said negligence or other  
24 acts or omissions were an intervening and superseding cause of  
25 injuries and damages, if any, and that such superseding forces  
26 are unforeseeable, independent, intervening actions breaking the  
27 chain of causation and barring recovery by Plaintiffs against  
28 this Answering Defendant.



1 including the whole thereof, of the injuries and damages  
2 complained of by Plaintiffs in this action. The fault, if any,  
3 of this Answering Defendant should be compared with the fault or  
4 contributory negligence of other defendant(s), and damages, if  
5 any, should be apportioned among the same in direct relation to  
6 each such defendant(s)'/Defendants' comparative fault. This  
7 Answering Defendant should be obligated to pay only such  
8 damages, if any, which are directly attributable to its  
9 percentage of comparative fault. To require this Answering  
10 Defendant to pay any more than its percentage of comparative  
11 fault violates the Equal Protection and Due Process Clauses of  
12 the Constitution of the United States and the Constitution of  
13 the State of California.

14 NINTH AFFIRMATIVE DEFENSE

15 (Not Responsible for Acts of Does)

16 9. This Answering Defendant is informed and believes and  
17 thereon alleges that this Answering Defendant is not legally  
18 responsible for the acts and/or omissions of those defendant(s)  
19 named herein as Does 1 through 25, inclusive.

20 TENTH AFFIRMATIVE DEFENSE

21 (Waiver)

22 10. This Answering Defendant is informed and believes  
23 and thereon alleges that Plaintiffs have engaged in conduct and  
24 activities sufficient to constitute a waiver of any alleged  
25 breach of contract claim, negligence, or any other conduct, if  
26 any, as set forth in the Complaint.

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ELEVENTH AFFIRMATIVE DEFENSE

(Several Liability)

11. This Answering Defendant is informed and believes and thereon alleges that its liability, if any, for non-economic general damages is several only and not joint pursuant to California Civil Code §1431.2.

TWELFTH AFFIRMATIVE DEFENSE

(Improper Prosecution of Action)

12. This Answering Defendant is informed and believes and thereon alleges that Plaintiffs are prosecuting this litigation in bad faith and for an improper purpose. The claims of Plaintiffs are frivolous and therefore entitle this Answering Defendant to an award of reasonable expenses and attorneys' fees.

THIRTEENTH AFFIRMATIVE DEFENSE

(Absence of Probable Cause/Presence of Malicious Intent)

13. This Answering Defendant is informed and believes and thereon alleges that Plaintiffs are prosecuting this litigation without probable cause against this Answering Defendant and with malicious intent.

FIFTEENTH AFFIRMATIVE DEFENSE

(Absence of Actual/Proximate Causation)

15. This Answering Defendant is informed and believes and thereon alleges that any and all damages or injuries alleged by Plaintiffs were not, and are not, the result of acts or omissions by this Answering Defendant.

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1 v. Yellow Cab, Plaintiffs' contributory negligence and/or fault  
2 shall reduce any and all damages sustained by Plaintiffs.

3 SEVENTEENTH AFFIRMATIVE DEFENSE

4 (Statute of Limitations)

5 17. This Answering Defendant is informed and believes and  
6 thereon alleges that the Complaint, and each and every cause of  
7 action contained therein, is barred by the statute of limitation  
8 provisions contained in, but not limited to Code of Civil  
9 Procedure §335.1.

10 EIGHTEENTH AFFIRMATIVE DEFENSE

11 (Complaint Presented for an Improper Purpose)

12 18. This Answering Defendant is informed and believes and  
13 thereon alleges that Code of Civil Procedure §128.7 provides  
14 that an attorney or party who presents a document to the Court  
15 certifies, to the best of his/her knowledge, that after a  
16 reasonable inquiry, that certain conditions have been met.  
17 Those conditions are as follows:

18 "1. That the document/pleading is not being presented  
19 primarily for an *improper purpose*, such as to harass  
20 or to cause unnecessary delay or needless increase in  
21 the cost of litigation. 2. That the claim or other  
22 legal contention presented in the document/pleading is  
23 *warranted by existing law* or by a nonfrivolous  
24 argument for the extension, modification or reversal  
25 of existing law or the establishment of new law. 3.  
26 That the allegations or other factual contentions have  
27 evidentiary support or, if specifically so identified,  
28 are likely to have evidentiary support *after a*

1 reasonable opportunity for further investigation or  
2 discovery. 4. The denials of factual contentions are  
3 warranted on the evidence or, if specifically so  
4 identified, are reasonably based on a lack of  
5 information or belief."

6 As such, sanctions under §128.7 of the Code of Civil  
7 Procedure are appropriate in an amount sufficient to deter  
8 repetition, and further, the subject Court herein should award  
9 to this Answering Defendant, if it is a prevailing party, the  
10 reasonable expenses and attorneys' fees incurred in presenting  
11 any such motion contemplated under said statute.

12 NINETEENTH AFFIRMATIVE DEFENSE

13 (Unasserted Defenses)

14 19. This Answering Defendant is informed and believes and  
15 thereon alleges that it may have additional, as yet unasserted,  
16 defenses to the Complaint or the purported causes of action  
17 contained therein. This Answering Defendant specifically  
18 reserves the right to assert additional affirmative defenses as  
19 deemed appropriate at a later time.

20 **WHEREFORE**, this Answering Defendant prays for judgment in  
21 its favor and against Plaintiffs as follows:

- 22 1. That Plaintiffs take nothing by way of their  
23 Complaint;
- 24 2. For all costs of suit herein;
- 25 3. For reasonable attorneys' fees; and

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4. For such other and further relief as the Court may deem just and proper.

DATED: January 20, 2012

**SUNDERLAND | McCUTCHAN, LLP**

By:   
Robert J. Sunderland  
Ann Marie Thompson  
Attorneys for Defendant,  
BENNION & DEVILLE FINE HOMES,  
INC. dba WINDERMERE REAL  
ESTATE COACHELLA VALLEY