

1 **MULCAHY LLP**

2 James M. Mulcahy (SBN 213547)

3 *jmulcahy@mulcahyllp.com*

4 Kevin A. Adams (SBN 239171)

5 *kadams@mulcahyllp.com*

6 Douglas R. Luther (SBN 280550)

7 *dluther@mulcahyllp.com*

8 Four Park Plaza, Suite 1230

Irvine, California 92614

Telephone: (949) 252-9377

Facsimile: (949) 252-0090

9 *Attorneys for Plaintiffs and Counter-Defendants*

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12	BENNION & DEVILLE FINE	)	Case No. 5:15-cv-01921-R-KK
13	HOMES, INC., a California	)	<i>Hon. Manual L. Real</i>
14	corporation, BENNION & DEVILLE	)	
15	FINE HOMES SOCAL, INC., a	)	<b>DECLARATION OF KEVIN A.</b>
16	California corporation,	)	<b>ADAMS ISO PLAINTIFFS' AND</b>
17	WINDERMERE SERVICES	)	<b>COUNTER-DEFENDANTS'</b>
18	SOUTHERN CALIFORNIA, INC., a	)	<b>MOTION TO STRIKE REBUTTAL</b>
19	California corporation,	)	<b>EXPERT REPORT</b>
20		)	
21	Plaintiffs,	)	
22		)	Date: May 1, 2017
23	v.	)	Time: 10:00 a.m.
24		)	Courtroom: 880
25	WINDERMERE REAL ESTATE	)	
26	SERVICES COMPANY, a	)	Action Filed: September 17, 2015
27	Washington corporation; and DOES	)	Trial: May 30, 2017
28	1-10.	)	
		)	
	Defendants.	)	

26 AND RELATED COUNTERCLAIMS )

1 I, Kevin A. Adams, declare as follows:

2 1. I am one of the attorneys of record for Plaintiffs/Counter-Defendants  
3 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc.,  
4 Windermere Services Southern California, Inc., and Counter-Defendants Robert L.  
5 Bennion and Joseph R. Deville (collectively, the “B&D Parties”) in the above-  
6 named action. I am a member in good standing of the State Bar of California, and  
7 duly admitted to practice law before all of the courts of the State of California,  
8 including the United States District Court, Central District of California and the  
9 United States Court of Appeals for the Ninth Circuit.

10 2. I make this Declaration in support of the B&D Parties’ motion to  
11 strike Windermere Real Estate Services Company’s (“Windermere”) rebuttal  
12 expert report.

13 3. I personally assisted the B&D Parties in the preparation and service  
14 of their initial expert disclosures pursuant to Rule 26 of the Federal Rules of Civil  
15 Procedure (“FRCP”) on September 16, 2016. A true and correct copy of the B&D  
16 Parties’ initial expert disclosures is attached hereto as **Exhibit A**. The B&D Parties  
17 have not made any subsequent supplemental or amended disclosures. Windermere  
18 served its initial expert disclosures the same day, which identified Neil J. Beaton  
19 (“Beaton”) as Windermere’s damages expert.

20 4. Under FRCP 26(a)(2)(D)(ii), any rebuttal report was due on or before  
21 October 17, 2016. No such report was served. Since that time, the B&D Parties and  
22 their expert, Peter D. Wrobel (“Wrobel”), have been preparing for trial under the  
23 premise that Windermere was not submitting a rebuttal report.

24 5. Incredibly, and without advance notice, Windermere served the  
25 rebuttal expert report of Beaton on March 3, 2017 – *more than five months late*.  
26 Windermere never requested for an extension to file the report more than five  
27 months late and no such extension was granted. A true and correct copy of  
28

1 Windermere's rebuttal expert report is attached hereto as **Exhibit B**.

2 6. We considered expert disclosures and designations to be completed as  
3 of late October 2016. Now, with such late notice, we have been forced to prepare  
4 for trial with this improper curveball. The B&D Parties have incurred attorneys'  
5 fees and will continue to do so given this (*untimely*) new information.

6 I declare under penalty of perjury under the laws of the State of California  
7 and the laws of the United States of America that the foregoing is true and correct  
8 and that this Declaration was executed this 3rd day of April, 2017 at Irvine,  
9 California.

10 /s/ Kevin A. Adams  
11 Kevin A. Adams  
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