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JAN 23 2014

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5 Attorneys for Cross-Defendants/Cross-Complainants, BENNION &
DEVILLE FINE HOMES, INC., dba WINDERMERE REAL ESTATE COACHELLA
6 VALLEY (erroneously sued as WINDERMERE REAL ESTATE),
CHRIS ANDERSON and TONY OTTEN
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8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF RIVERSIDE, PALM SPRINGS BRANCH

11	AMY COX,	)	CASE NO.: INC 1205192
12	Plaintiff,)	
13	vs.	)	CROSS-COMPLAINT OF BENNION &
14	CAPITIS, INC., CAPITIS	)	DEVILLE FINE HOMES, INC.,
15	SOTHEBY'S INTERNATIONAL REALTY,	)	dba WINDERMERE REAL ESTATE
16	SOTHEBY'S INTERNATIONAL REALTY	)	COACHELLA VALLEY, CHRIS ANDERSON
17	AFFILIATES, LLC, ERIC BENNETT,	)	and TONY OTTEN
18	DEAN SIPE, KEVIN BLESSING,)	
19	AND DOES 1-100,	)	JUDGE: Hon. David M. Chapman
20	Defendants.	)	DEPT.: PS2
21		)	Complaint Filed: 07/24/2012
22		)	Trial Date: Not Yet Assigned
23)	
24	CAPITIS, INC., CAPITIS)	
25	SOTHEBY'S INTERNATIONAL REALTY,)	
26	SOTHEBY'S INTERNATIONAL REALTY)	
27	AFFILIATES, LLC, ERIC BENNETT,)	
28	DEAN SIPE, KEVIN BLESSING,)	
	Cross-Complainants,)	
	vs.)	
	WINDERMERE REAL ESTATE, CHRIS)	
	ANDERSON, TONY OTTEN, STEPHEN)	
	A. LOCASCIO, MICHAEL RUSSEL,)	
	and ROES 1 through 50,)	
	Inclusive,)	
	Cross-Defendants.)	

Electronic Signature
Civil Code 16337

1 BENNION & DEVILLE FINE HOMES,)
 2 INC., dba WINDERMERE REAL)
 3 ESTATE COACHELLA VALLEY)
 4 (erroneously sued as)
 5 WINDERMERE REAL ESTATE),)
 6 CHRIS ANDERSON and TONY OTTEN,)
 7)
 8 Cross-Complainants,)
 9)
 10 vs.)
 11)
 12 CAPITIS, INC., CAPITIS)
 13 SOTHEBY'S INTERNATIONAL REALTY,)
 14 SOTHEBY'S INTERNATIONAL REALTY)
 15 AFFILIATES, LLC, ERIC BENNETT,)
 16 DEAN SIPE, KEVIN BLESSING,)
 17 AND ZOES 1-10,)
 18)
 19 Cross-Defendants.)
 20)

21 COME NOW Cross-Defendants/Cross-Complainants, BENNION &
 22 DEVILLE FINE HOMES, INC., dba WINDERMERE REAL ESTATE COACHELLA
 23 VALLEY, CHRIS ANDERSON and TONY OTTEN (hereinafter referred to
 24 collectively as "Cross-Complainants") and upon information and
 25 belief allege as follows:

26 **PRELIMINARY ALLEGATIONS**

27 1. Cross-Complainant BENNION & DEVILLE FINE HOMES, INC.,
 28 dba WINDERMERE REAL ESTATE COACHELLA VALLEY is, and at all times
 herein mentioned was, a corporation operating as a real estate
 brokerage, duly licensed under the laws of the State of
 California, with its principal place of business in the County
 of Riverside, State of California.

2. Cross-Complainant CHRIS ANDERSON is, and at all times
 herein mentioned was, an individual residing in the County of
 Riverside, State of California, and a duly licensed real estate

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1 agent affiliated with Defendant/Cross-Defendant/Cross-
2 Complainant BENNION & DEVILLE FINE HOMES, INC., dba WINDERMERE
3 REAL ESTATE COACHELLA VALLEY.

4 3. Cross-Complainant TONY OTTEN is, and at all times
5 herein mentioned was, an individual residing in the County of
6 Riverside, State of California, and a duly licensed real estate
7 agent affiliated with Defendant/Cross-Defendant/Cross-
8 Complainant BENNION & DEVILLE FINE HOMES, INC., dba WINDERMERE
9 REAL ESTATE COACHELLA VALLEY.

10 4. At all times herein mentioned, Cross-Defendant
11 CAPITIS, INC., (hereinafter "CAPITIS") was a corporation,
12 operating as a real estate brokerage, duly licensed under the
13 laws of the State of California, with its principal place of
14 business in the County of Riverside, State of California.

15 5. At all times herein mentioned, Cross-Defendant CAPITIS
16 SOTHEBY'S INTERNATIONAL REALTY (hereinafter ("CSIR") was a
17 corporation, operating as a real estate brokerage, duly licensed
18 under the laws of the State of California, with its principal
19 place of business in the County of Riverside, State of
20 California.

21 6. At all times herein mentioned, Cross-Defendant
22 SOTHEBY'S INTERNATIONAL REALTY AFFILIATES, LLC, (hereinafter
23 "SIRA") was a limited liability company, operating in the County
24 of Riverside, State of California.

25 7. At all times herein mentioned, Cross-Defendant
26 BRIDGE APPEAL, INC., (hereinafter "BRIDGE") was a corporation,
27 duly licensed under the laws of the State of California, with

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1 its principal place of business in the County of Riverside,
2 State of California.

3 8. At all times herein mentioned, Cross-Defendant ERIC
4 DEAN BENNETT (hereinafter "BENNETT") was an individual residing
5 in the County of Riverside and a duly licensed real estate agent
6 affiliated with Cross-Defendant CSIR.

7 9. At all times herein mentioned, Cross-Defendant DEAN
8 SIPE (hereinafter "SIPE") was an individual residing in the
9 County of Riverside and a duly licensed real estate agent
10 affiliated with Cross-Defendant CSIR.

11 10. At all times herein mentioned, Cross-Defendant ROB
12 SEVERE (hereinafter "SEVERE") was an individual residing in the
13 County of Riverside and a duly licensed real estate agent
14 affiliated with Cross-Defendant CSIR.

15 11. At all times herein mentioned, Cross-Defendant KEVIN
16 BLESSING (hereinafter "BLESSING") was an individual residing in
17 the County of Riverside and a duly licensed real estate agent
18 affiliated with Cross-Defendant CSIR.

19 12. Cross-Complainants are unaware of the true names and
20 capacities of Cross-Defendants sued herein as ZOES 1 through 10
21 inclusive, and therefore sue these Cross-Defendants by such
22 fictitious names. Cross-Complainants will seek leave to amend
23 this Cross-Complaint to show the true names and capacities of
24 such fictitiously named Cross-Defendants when the same has been
25 ascertained. Cross-Complainants allege that each of the Cross-
26 Defendants designated herein as a ZOE is legally responsible for
27 each of the acts, circumstances, events, and happenings herein
28 referred to, by either virtue of their negligence or otherwise.

1 13. Cross-Complainants allege that at all times herein
2 mentioned, each Cross-Defendant was the agent and/or employee of
3 the remaining Cross-Defendants, and in doing the things alleged
4 herein were acting within the course and scope of such agency
5 and/or employment.

6 14. Cross-Complainants intend service of this Cross-
7 Complaint to serve as a formal demand on Cross-Defendants that
8 they defend, hold harmless and indemnify Cross-Complainants from
9 the claims being made by Plaintiff, AMY COX, as they relate to
10 the transaction brokered by Cross-Defendants for Plaintiff's
11 sale of the real property located at 319 Westlake Terrace, Palm
12 Springs, CA 92264 ("Subject Property"). Cross-Complainants
13 further demand that Cross-Defendants reimburse Cross-
14 Complainants for all damages, judgments, litigation expenses,
15 attorneys' fees and other claims alleged against Cross-
16 Complainants. Should Cross-Defendants fail to respond to this
17 demand or file a responsive pleading to this Cross-Complaint,
18 Cross-Complainants will assume that Cross-Defendants have no
19 intention of accepting this demand.

20 **FIRST CAUSE OF ACTION**

21 (Indemnification against All Cross-Defendants)

22 15. Cross-Complainants incorporate herein by reference the
23 allegations set forth in Paragraphs 1 through 14, inclusive, as
24 though fully set forth herein.

25 16. On or about July 24, 2012, Plaintiff filed her
26 Complaint for Damages in the Riverside County Superior Court,
27 Case No. INC 1205192 as against Cross-Defendants relating to the
28 transaction to sell the Subject Property owned by Plaintiff.

1 Cross-Complainants were not named as Defendants in Plaintiff's
2 Complaint.

3 17. On or about October 30, 2013, Cross-Defendants filed a
4 Second Amended Cross-Complaint against Cross-Complainants for
5 indemnity for Plaintiff's claims against Cross-Defendants.
6 Although disputed, the specific allegations of Cross-Defendants'
7 Second Amended Cross-Complaint are incorporated herein by
8 reference, as though fully set forth herein.

9 18. Cross-Complainants served as the real estate broker
10 and agent who represented STEPHEN LOCASIO and MICHAEL RUSSEL in
11 connection with their offer to purchase the Subject Property
12 from Plaintiff.

13 19. Following demurrers, Cross-Complainants filed an
14 answer to Cross-Defendants' Second Amended Cross-Complaint.
15 Cross-Complainants deny that they are in any way responsible for
16 the damages, if any, allegedly sustained by Plaintiff and/or
17 Cross-Defendants, and have and will assert numerous affirmative
18 defenses. Cross-Complainants incorporate the allegations set
19 forth in their Answer to the Second Amended Cross-Complaint as
20 though fully set forth herein.

21 20. In connection with their representation of buyers
22 STEPHEN LOCASIO and MICHAEL RUSSEL's offer to purchase
23 Plaintiff's Subject Property, Cross-Defendants were required to
24 use reasonable care and perform their duties in accordance with
25 the applicable standard of care for real estate agents and
26 brokers. Plaintiff has alleged breach of fiduciary duties
27 against Cross-Defendants, not Cross-Complainants. To the extent
28 that any of these allegations against Cross-Defendants are true,

1 Cross-Complainants are informed and believe and thereon allege
2 that it was the fault and responsibility of Cross-Defendants who
3 were negligent and otherwise breached their duties to Plaintiff.
4 Plaintiff has made no claims against Cross-Complainants.

5 21. Cross-Defendants owed a fiduciary duty to Plaintiff
6 with respect to the transaction for the sale of the Subject
7 Property. All communications and information regarding LOCASIO
8 and RUSSEL's ability to purchase the Subject Property were
9 affirmatively made by Cross-Defendants (pursuant to Plaintiff's
10 Complaint) Cross-Defendants were aware that Plaintiff relied
11 upon them to confirm LOCASIO and RUSSEL's financial capabilities
12 to purchase the Subject Property and acknowledged that they
13 failed to do so (pursuant to Plaintiff's Complaint). Cross-
14 Defendants were negligent and breached their duties to Plaintiff
15 and are responsible for all damages flowing from said negligence
16 and breach of duty.

17 22. Cross-Complainants deny that they were, or are in any
18 way responsible for the events, happenings or damages mentioned
19 in the underlying Complaint against Cross-Defendants and/or the
20 Second Amended Cross-Complaint by Cross-Defendants. If
21 Plaintiff and/or Cross-Complainants did indeed sustain any
22 damages as alleged in the Complaint and Cross-Complaint, such
23 damages were caused entirely or partly by Cross-Defendants, and
24 each of them.

25 23. If Cross-Complainants are held responsible to
26 Plaintiff and/or Cross-Defendants for any of the matters alleged
27 therein, Cross-Complainants are entitled to complete, total or
28 partial indemnity from Cross-Defendants, and each of them, for

1 any and all sums which Cross-Complainants may be compelled to
2 pay as a result of any damages, judgments or other awards
3 recovered by Plaintiff, and for any and all losses Cross-
4 Complainants may sustain in this matter because of the conduct
5 of Cross-Defendants, and each of them, which conduct was the
6 proximate and actual cause of the facts upon which the causes of
7 actions of the underlying Complaint.

8 **SECOND CAUSE OF ACTION**

9 (Equitable Contribution against all Cross-Defendants)

10 24. Cross-Complainants incorporate herein by reference the
11 allegations set forth in Paragraphs 1 through 23, inclusive, as
12 though fully set forth herein.

13 25. Cross-Complainants deny any liability or
14 responsibility whatsoever with respect to the damages allegedly
15 sustained by Plaintiff and/or Cross-Defendants. However, if it
16 should be found that Cross-Complainants were in some manner
17 responsible for the damages allegedly sustained by Plaintiff
18 and/or Cross-Defendants, then any such damages found to have
19 been sustained in this action were proximately caused or
20 contributed to by the conduct of Cross-Defendants and each of
21 them.

22 26. Cross-Complainants are entitled to a determination of
23 a prorated degree of negligence and/or fault of Cross-Defendants
24 so that these Cross-Complainants will not be required to pay
25 more than their pro rata share of any damages, judgment, or
26 other award recovered. Cross-Complainants are entitled to
27 equitable contribution from the Cross-Defendants, and each of
28

1 them, in an amount consistent with Cross-Defendants' pro rata
2 degree of negligence and/or fault.

3 **THIRD CAUSE OF ACTION**

4 (Apportionment of Fault against all Cross-Defendants)

5 27. Cross-Complainants incorporate herein by reference the
6 allegations set forth in Paragraphs 1 through 26, inclusive, as
7 though fully set forth herein.

8 28. Cross-Complainants are informed and believe that
9 Cross-Defendants were responsible, in whole or in part, for the
10 injuries, if any, suffered by Plaintiff and/or Cross-Defendants.
11 If Cross-Complainants are adjudged to be liable, Cross-
12 Defendants should be required to:

13 (a) Pay a share of the judgment in favor of Plaintiff
14 which is in proportion to the comparative negligence of the
15 Cross-Defendants in causing such damages; and,

16 (b) Reimburse Cross-Complainants for any payments
17 they make in excess of their proportional share of all Cross-
18 Defendants' negligence.

19 **FOURTH CAUSE OF ACTION**

20 (Declaratory Relief Against all Cross-Defendants)

21 29. Cross-Complainants incorporate herein by reference the
22 allegations set forth in Paragraphs 1 through 28, inclusive, as
23 though fully set forth herein.

24 30. An actual controversy has arisen and now exists
25 between Cross-Complainants and Cross-Defendants, and each of
26 them, in that Cross-Complainants contend, and Cross-Defendants
27 deny the following:

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1 (a) That as between Cross-Complainants and Cross-
2 Defendants, a responsibility, if any, for the damages claimed by
3 Plaintiff herein rests entirely or partially on Cross-
4 Defendants;

5 (b) That as a result, Cross-Defendants, and each of
6 them, are obligated to totally indemnify or partially indemnify
7 Cross-Complainants for any sum or sums that Cross-Complainants
8 may be compelled to pay as a result of any damages, judgment or
9 other award recovered in the underlying action.

10 31. Cross-Complainants desire a judicial determination of
11 their respective rights and duties, and the rights and duties of
12 Cross-Defendants, and each of them, as to the damages complained
13 of in Plaintiff's Complaint and the Cross-Complaint of Cross-
14 Defendants.

15 32. Cross-Complainants, in particular, desire a
16 declaration of the respective liabilities of Cross-Complainants
17 and Cross-Defendants, and each of them, for such damages, if
18 any, and a declaration of Cross-Defendants' responsibility to
19 indemnify Cross-Complainants for the sum or sums, which Cross-
20 Complainants may be compelled to pay and for which Cross-
21 Defendants, and each of them, have been determined responsible.

22 33. Such a declaration is necessary and appropriate at
23 this time so that Cross-Complainants may ascertain their rights
24 and duties with respect to the claims made by Plaintiff and/or
25 Cross-Defendants in the action. Additionally, the claims of all
26 parties arise out of the same transaction and occurrence, and a
27 determination of all claims in one proceeding is necessary and
28 appropriate in order to avoid the multiplicity of actions that

1 would otherwise result if Cross-Complainants were required now
2 to defend against the claims of Cross-Defendants in their Second
3 Amended Cross-Complaint and then bring a separate action against
4 Cross-Defendants for contribution and indemnification of any sum
5 or sums which Cross-Complainants may be compelled to pay as a
6 result of any damages, judgment or other award recovered by
7 Plaintiff and/or Cross-Defendants against Cross-Complainants.

8 **WHEREFORE**, Cross-Complainants pray for judgment against
9 Cross-Defendants, and each of them, as follows:

10 1. Total and complete indemnity for any judgments
11 rendered against Cross-Complainants;

12 2. That judgment be rendered in favor of Cross-
13 Complainants in the amount, if any, that they may be compelled
14 to pay as a result of any damages, judgment or other awards
15 recovered;

16 3. That Cross-Defendants, and each of them, contribute
17 their pro rata share according to their respective degree of
18 negligence and/or fault for any damages, judgment or other
19 awards recovered against these Cross-Complainants;

20 4. A judicial determination of Cross-Complainants' and
21 Cross-Defendants' respective liabilities for the damages claimed
22 by Plaintiff in the action, if any are found to exist;

23 5. For attorney's fees as permitted by CCP §1021.6;

24 6. For costs of suit incurred herein; and,

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1 7. For all such other and further relief as the Court may
2 deem proper.

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4 DATED: January 22, 2014

SUNDERLAND | McCUTCHAN, LLP

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6 By: 
7 Robert J. Sunderland, Esq.
8 Ann Marie Thompson, Esq.
9 Attorneys for Cross-Defendants/
10 Cross-Complainants, BENNION &
11 DEVILLE FINE HOMES, INC., dba
12 WINDERMERE REAL ESTATE
13 COACHELLA VALLEY, CHRIS ANDERSON
14 and TONY OTTEN

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