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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**
23 **SOUTHERN DIVISION**

24 BENNION & DEVILLE FINE
25 HOMES, INC., a California
26 corporation, BENNION & DEVILLE

27 FINE HOMES SOCAL, INC., a
28 California corporation,
WINDERMERE SERVICES
SOUTHERN CALIFORNIA, INC., a
California corporation,

Plaintiffs,

v.

WINDERMERE REAL ESTATE
SERVICES COMPANY, a

) Case No. 5:15-cv-01921 JCG
) *Hon. Jay C. Gandhi*

JOINT STATUS REPORT

) Status Conference: November 3, 2017
) Time: 2:00 p.m.
) Courtroom: 6A, 6th Floor

) Complaint filed: September 17, 2015

) First Amended Complaint filed:
) November 16, 2015

1 Washington corporation; and DOES)
1-10.) First Amended Counterclaim filed:
2 Defendants.) October 14, 2015

3 _____)
4 AND RELATED COUNTERCLAIMS)
5 _____)

6 Pursuant to the Court’s Order of October 17, 2017 [D.E. 148], Plaintiffs/Counter-
7 Defendants Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal,
8 Inc., Windermere Services Southern California, Inc., Counter-Defendant Robert L.
9 Bennion (collectively, the “B&D Parties”), and Defendant/Counter-Claimant
10 Windermere Real Estate Services Company’s (“WSC”), by and through their
11 undersigned counsel, hereby provide this Joint Status Report.

12 **1. Setting of dates for final pretrial conference and for trial**

13 The parties have requested a jury trial and estimate that it will take 12 to 15 days to
14 complete. The parties seek a trial start date of May 28, 2018, and a pre-trial conference
15 date of February 22, 2018. To the extent that the Court cannot accommodate the parties’
16 requested dates, the parties provide the following dates of unavailability during the 2018
17 calendar year:

18 The B&D Parties dates of unavailability for trial:

- 19 • January 23 – February 2, 2018;
- 20 • February 20 – 23, 2018;
- 21 • February 26 – March 2, 2018;
- 22 • March 12 – 17, 2018;
- 23 • June 21 – 29, 2018;

24 WSC’s dates of unavailability for trial:

- 25 • April 9 – 27, 2018;
- 26 • September 10 – 14, 2018;

27 **2. Motion Practice**

1 As the Court has noted, there remain several outstanding *in limine* motions filed by
2 the parties. These remaining motions are summarized below:

3 The B&D Parties' seven outstanding *in limine* motions are as follows:

- 4 • Motion *in limine* #1 – to exclude evidence of breach by Windermere
5 Services Southern California, Inc., not identified in the notice of
6 termination [D.E. 85];
- 7 • Motion *in limine* #2 – to exclude evidence relating to any loans issued to the
8 B&D Parties by any entity not a party to this suit [D.E. 86];
- 9 • Motion *in limine* #3 – to exclude evidence relating to the financial status of
10 Plaintiffs Joseph R. Deville or Robert L. Bennion [D.E. 87];
- 11 • Motion *in limine* #4 – to preclude WSC from introducing evidence and
12 arguing that Bennion & Deville Fine Homes, Inc. was obligated to transfer
13 internet domains and evidence of expenses for obtaining domain names
14 [D.E. 99];
- 15 • Motion *in limine* #5 – to preclude WSC from introducing evidence of work
16 performed on the Sundberg Report prior to October 2013 [D.E. 100];
- 17 • Motion *in limine* #6 – to preclude WSC from introducing evidence withheld
18 on grounds of privilege [D.E. 101];
- 19 • Motion *in limine* #7 – to Preclude WSC from referring to the B&D Parties
20 collectively [D.E. 102].

21 WSC's four outstanding *in limine* motions are as follows:¹

- 22 • Motion *in limine* #2 – to exclude portions of the B&D Parties' rebuttal
23 report [D.E. 104];
- 24 • Motion *in limine* #3 – to exclude evidence related to dismissed claims [D.E.
25 105];

26
27 ¹ WSC's motion *in limine* #1 – to exclude the B&D Parties' Expert Peter Wrobel [D.E.
28 103] – was denied by the Court on May 31, 2017. [See D.E. 138, 139, 140, 141.]

- 1 • Motion *in limine* #4 – to exclude evidence of WSC’s offer to purchase
- 2 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes
- 3 SoCal, Inc., and Windermere Services Southern California, Inc. [D.E. 106];
- 4 • Motion *in limine* #5 – to Preclude Testimony of Gary Kruger [D.E. 142].

5 The parties request a hearing date of January 11, 2018 for the Court to address the
6 motions *in limine*.

7 In addition to the above referenced motions *in limine*, WSC will file a motion for
8 summary judgment regarding interpretation of one or more of the parties’ contracts. The
9 B&D Parties object to WSC’s request to file another motion for summary judgment on
10 the grounds that (1) summary judgment motions were submitted in the case long ago, (2)
11 WSC did not identify its intent to file a summary judgment motion in its portion of the
12 pretrial conference order or the amended pretrial conference order as required by Local
13 Rule 16-7.2 and Pretrial Form No. 1 to the Local Rules, and (3) WSC affirmatively
14 represented in the pretrial conference orders that “no other[motions], are pending or
15 contemplated.” [See D.E. 79, p. 91, 130, p. 40.] Thus, WSC should be precluded from
16 pursuing another summary judgment motion now.

17 **3. Proposed pre-trial conference order**

18 On September 12, 2016, the parties lodged their proposed final pretrial conference
19 order. [D.E. 57-1.] This final pretrial conference order was approved by the Court on
20 January 10, 2017. [D.E. 79.] On May 11, 2017, and due to the delay in the time to trial,
21 the Court ordered the parties to submit a proposed amended final pretrial conference
22 order. [D.E. 125.]

23 On May 23, 2017, the parties lodged their proposed amended pretrial conference
24 order. [D.E. 130.] The amended pretrial conference order has yet to be ruled on by the
25 Court.

26 Counsel for the parties have conferred and do not require the filing of a proposed
27 second amended pretrial conference order.

1 **4. Joint witness list**

2 On August 29, 2016, the parties filed separate witnesses lists with the court. [D.E.
3 50, 53.] On May 22, 2017, and following an extended continuance of the trial date, the
4 B&D Parties amended their original witnesses list. [D.E. 128.] WSC objected to the
5 B&D Parties' amended witness lists, and the B&D Parties filed a response. [D.E. 131,
6 137.] The Court has yet to rule on WSC's objections.

7 Again, due to the time that has elapsed since the most recent filing of witness lists,
8 the B&D Parties request an opportunity to file a second amended witness list by no later
9 than January 26, 2018. WSC objects to the B&D Parties request for leave to amend.
10 However, if the Court allows the B&D Parties an opportunity to file an amended witness
11 list, WSC requests the opportunity to depose any witnesses not appearing on the B&D
12 Parties' original witness list filed on August 29, 2016.

13 **5. Joint exhibit list**

14 The parties filed with the Court a proposed amended joint exhibit list on May 26,
15 2017. [D.E. 135.] They are in agreement that this exhibit list is final for purposes of trial.

16 **6. Joint jury instructions**

17 The parties request a deadline of two weeks before trial to submit joint jury
18 instructions.

19 **7. Joint verdict form**

20 The parties request a deadline of one week before trial to submit a joint verdict
21 form.

22 **8. Proposed voir dire questions**

23 The parties request a deadline of one week before trial to submit proposed *voir dire*
24 questions.

25 **9. Jury selection process**

26 The parties request permission from the Court to allow their counsel to *voir dire*
27 the jury.

28

1 **10. Technology**

2 Both sides are expected to display on the courtroom television monitor the exhibits
3 that are introduced into evidence and various demonstrative exhibits and PowerPoint
4 presentations. They have agreed to work with the same third-party vendor to assist in this
5 process.

6 **11. The courtroom and related ancillary matters**

7 The parties do not have any further comments on this topic other than those
8 identified above.

9
10 Dated: October 27, 2017

MULCAHY LLP

11
12 By: /s/ Kevin A. Adams
13 James M. Mulcahy
14 Kevin A. Adams
15 Attorneys for Plaintiffs and Counter-Defendants

16 Dated: October 27, 2017

PEREZ WILSON VAUGHN & FEASBY

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18 By: /s/ Jeffrey A. Feasby
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