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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

23 Defendant.  
24  
25  
26

27 **AND RELATED COUNTERCLAIMS**  
28

Case No. 5:15-CV-01921 R (KKx)

Hon. Manuel L. Real

**DEFENDANT AND  
COUNTERCLAIMANT'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION *IN LIMINE* TO  
EXCLUDE EVIDENCE RELATED  
TO ITS OFFER TO PURCHASE  
PLAINTIFFS AND COUNTER-  
DEFENDANTS**

**[Motion *In Limine* No. 4 of 4]**

Date: May 15, 2017

Time: 10:00 a.m.

Courtroom: 880

Complaint Filed: September 17, 2015

1 Defendant and Counterclaimant Windermere Real Estate Services Company  
2 (“WSC”) bring this motion *in limine* requesting an order excluding evidence of  
3 offers WSC and/or its principals’ made to purchase Plaintiffs Bennion & Deville  
4 Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc., Windermere  
5 Services Southern California, Inc. (“WSSC”), and/or any of their related entities  
6 (collectively the “B&D Entities”). As set forth below, this evidence should be  
7 excluded because these are irrelevant and, to the extent they have any relevance, it is  
8 substantially outweighed by the prejudicial effect it would have if it were presented  
9 to the jury.

10 WSC anticipates that Plaintiffs and Counter-Defendants may seek to admit  
11 evidence at trial regarding an offer made by WSC’s principals to purchase the B&D  
12 Entities for approximately \$12.5 million. These offers were set forth in two letters  
13 of intent dated July 28, 2015 and August 2, 2015, and included as Plaintiffs and  
14 Counter-Defendants’ proposed exhibit numbers 249 and 250, respectively. WSC  
15 anticipates that Plaintiffs and Counter-Defendants may seek to enter these exhibits  
16 into evidence in order to mislead the jury regarding the value of one or more of the  
17 B&D Entities. They may also use this evidence to help validate the opinion of their  
18 expert Peter Wrobel regarding the “net value” of WSSC.

19 Under Federal Rule of Evidence 401, “[e]vidence is relevant if (a) it has any  
20 tendency to make a fact more or less probable than it would be without the  
21 evidence; and (b) the fact is of consequence in determining the action.” “Irrelevant  
22 evidence is not admissible.” Fed. R. Evid. 402. Here, any offers made by WSC’s  
23 principals to purchase the B&D Entities are irrelevant to the parties’ respective  
24 claims in this case. As set forth in WSC’s Motion *in Limine* No. 1 of 4, any  
25 payment due to WSSC as a result of the termination of its Area Representation  
26 Agreement with WSC is set forth specifically in that document. Therefore, any  
27 offer to purchase all of the B&D Entities – not just WSSC – is wholly irrelevant to  
28 the resolution of the parties’ claims. Therefore, this evidence should be excluded.

1 To the extent the Court determines that this evidence has some relevance (it  
2 does not), the evidence should still be excluded. Rule 403 of the Federal Rules of  
3 Evidence provides, in relevant part, “[t]he court may exclude relevant evidence if its  
4 probative value is substantially outweighed by a danger of one or more of the  
5 following: unfair prejudice, confusing the issues, misleading the jury.” Here, an  
6 offer to purchase all of the B&D Entities for \$12.5 million would mislead the jury  
7 into thinking that this might be a valid basis for determining damages in this case.  
8 The jury might even believe this was a settlement offer and an indication that WSC  
9 believed it somehow owed something to Plaintiffs. As a result, an offer of this  
10 magnitude would prejudice the jury against WSC. Thus, this evidence should also  
11 be excluded under Rule 403.

12 Therefore, for all of these reasons, the Court should grant WSC’s Motion in  
13 Limine No. 4 of 4 to Exclude Evidence Related to its Offer to Purchase Plaintiffs  
14 and Counter-Defendants.

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16 DATED: April 17, 2017 PEREZ VAUGHN & FEASBY INC.

17  
18 By: /s/ Jeffrey A. Feasby  
19 John D. Vaughn  
20 Jeffrey A. Feasby  
21 Attorneys for  
22 Windermere Real Estate Services Company  
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