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Windermere Real Estate Services Company
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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

24 Defendant.

25 AND RELATED COUNTERCLAIMS
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Case No. 5:15-CV-01921-JCG

Hon. Jay C. Gandhi

**DEFENDANT WINDERMERE
REAL ESTATE SERVICES
COMPANY'S NOTICE OF
MOTION AND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: March 1, 2018

Time: 10:00 a.m.

Courtroom: 6A

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 1, 2018, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard before the Honorable Jay C. Gandhi of United
4 States District Court, Ronald Reagan Federal Building and United States
5 Courthouse located at 411 W. Fourth St., Santa Ana, CA 92701, Courtroom 6A,
6 Defendant and Counterclaimant Windermere Real Estate Services Company
7 (“WSC”) will move the Court for partial summary judgment pursuant to Federal
8 Rules of Civil Procedure, Rule 56(a) and (g) as to the Plaintiffs and Counter-
9 Defendants’ claim for damages arising out the alleged breach of the Area
10 Representation Agreement.

11 This motion is made on the grounds that there is no genuine issue of material
12 fact that the Area Representation Agreement (“ARA”) is clear and ambisuous and it
13 specifically identifies the methodology for calculating the amount to which a party
14 is entitled in the event the Agreement is terminated without cause (the “Termination
15 Obligation”). This motion is further made on the grounds that there is no genuine
16 issue of material fact that future revenues cannot be considered when determining
17 the Termination Obligation, and only revenue actually received by Windermere
18 Services Southern California Inc. from licensees other than Bennion & Deville Fine
19 Homes Inc. and Bennion & Deville Fine Homes SoCal Inc. in the 12 months
20 preceding termination of the ARA can be considered in determining the Termination
21 Obligation.

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1 This motion is based on this notice, the memorandum of points and
2 authorities and separate statement of uncontroverted facts and conclusions of law
3 filed concurrently herewith, the matters of which this Court may be requested to
4 take judicial notice, and upon such other matters, whether written or oral, as may be
5 presented to the Court at or prior to the hearing on this motion.

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DATED: January 31, 2018 PEREZ VAUGHN & FEASBY Inc.

By: /s/ Jeffrey A. Feasby
Jeffrey A. Feasby
Attorneys for
Windermere Real Estate Services Company