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7	UNITED STATES	DISTRICT COURT
8	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	
9	CENTRAL DISTRIC	I OF CALIFORNIA
10	BENNION & DEVILLE FINE HOMES,	) CASE NO. EDCV 15-1921-R
11	INC., a California corporation, et al.,	)
12	Plaintiffs,	) ORDER DENYING PLAINTIFFS AND ) COUNTER-DEFENDANTS' MOTION TO
13	V.	) STRIKE DEFENDANTS AND ) COUNTER-PLAINTIFF'S REBUTTAL
14	WINDERMERE REAL ESTATE SERVICES	) EXPERT REPORT
15	COMPANY, a Washington corporation, and	
16	DOES 1-10,	)
17	Defendant.	)
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19	Before the Court is Plaintiffs Bennion and Deville Fine Homes SoCal, Inc. ("B&D	
20	SoCal"), and Windermere Services Southern California, Inc. ("Services SoCal"), and Counter-	
21	Defendants Robert Bennion ("Bennion") and Joseph R. Deville's ("Deville") (collectively,	
22	"Plaintiffs") Motion to Strike Defendant and Counter Plaintiff's Rebuttal Expert Report (Dkt. No.	
23	84) which was filed on April 3, 2017. Having been fully briefed by both parties, the Court took	
24	the matter under submission on May 25, 2017.	
25	The Final Pretrial Conference was initially	y scheduled for September 19, 2016, but was
26	ultimately continued until November 15, 2016. Similarly, trial was initially set in this matter for	
27	January 9, 2017, but was continued to May 30, 2017. The B&D Parties served their initial expert	
28	disclosure on September 16, 2016. Plaintiffs' accountant produced a document relied upon by	

Plaintiffs' expert, Peter Wrobel, in his report. Defendant sought to depose the accountant prior to finalizing its expert report rebutting Wrobel's report. Due to discovery issues, the deposition was rescheduled. Around the same time, the parties engaged in mediation in an effort to resolve their disputes. Apparently, those efforts were unsuccessful. Several months later, on March 3, 2017, WSC produced its rebuttal report by its expert, Neal Beaton.

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Plaintiff moves to strike Beaton's rebuttal report on the grounds that it is untimely. 6 Federal Rule of Civil Procedure 26(a)(2)(D)(ii) provides that "evidence [that] is intended solely to 7 8 rebut evidence on the same subject matter identified by another party under Rule 29(a)(2)(B) or 9 (C), [must be disclosed] within 30 days after the other party's disclosure." If a party fails to 10 disclose information required under Rule 26(a) such information may be excluded unless the failure to disclose was harmless or substantially justified. Fed. R. Civ. P. 37(c)(1). In exercising 11 its discretion to exclude an untimely expert report a court must consider: "1) the public's interest in 12 13 expeditious resolution of litigation; 2) the court's need to manage its docket; 3) the risk of prejudice to the defendants; 4) the public policy favoring disposition of cases on their merits; 5) 14 the availability of less drastic sanctions." Wendt v. Host Intern, Inc. 125 F.3d 806, 814 (9th Cir. 15 1997). 16

Here, the failure to disclose the rebuttal report was harmless. Plaintiffs received the 17 rebuttal report 90 days before trial was scheduled. In such time Plaintiffs were able to analyze and 18 19 respond to the rebuttal report. Plaintiffs assert that they are harmed because if not for the continuance of trial "the rebuttal report would not have been available," allowing Defendant to 20 "exploit the Court's trial date continuance" would prejudice Plaintiff, and because Plaintiffs will 21 be forced to incur more time and expense analyzing the rebuttal report than they would had 22 23 Defendant not filed one. Plaintiffs' claimed harm is nothing more than the mere existence of the 24 rebuttal report. Plaintiffs point out that if not for the continuance of trial, there would not have been a rebuttal report. Additionally, Plaintiffs contend that if there is a rebuttal report they will 25 have to analyze it. These reasons do not constitute sufficient harm to merit sanctions. The 26 27 opposite conclusion would render meaningless the requirement that a delayed disclosure be 28 harmful in order to merit sanctions. If the mere existence of a delayed rebuttal report was

1	sufficient harm to require sanctions, then any delayed disclosure would be harmful. Accordingly,	
2	since Plaintiffs fail to show any harm as a result of the delay in disclosure of the rebuttal report,	
3	sanctions are not warranted.	
4	IT IS HEREBY ORDERED that Plaintiffs' Motion to Strike Defendant and Counter	
5	Plaintiff's Rebuttal Expert Report (Dkt. No. 84) is DENIED.	
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7	Dated: May 25, 2017.	
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10	MANUEL L. REAL UNITED STATES DISTRICT JUDGE	
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