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13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16

17 BENNION & DEVILLE FINE  
18 HOMES, INC., a California  
19 corporation, BENNION & DEVILLE  
20 FINE HOMES SOCAL, INC., a  
21 California corporation, WINDERMERE  
22 SERVICES SOUTHERN  
23 CALIFORNIA, INC., a California  
24 corporation,

25 Plaintiffs,

26 v.

27 WINDERMERE REAL ESTATE  
28 SERVICES COMPANY, a Washington  
corporation; and DOES 1-10

Defendant.

**AND RELATED COUNTERCLAIMS**

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

*Hon. Manual L. Real*

**THE B&D PARTIES' REPLY IN  
SUPPORT OF THEIR MOTION IN  
LIMINE TO PRECLUDE WSC  
FROM INTRODUCING EVIDENCE  
OF THE PERSONAL WEALTH OF  
PLAINTIFFS BENNION OR  
DEVILLE**

**[Motion in Limine # 3]**

**Date: May 1, 2017**  
**Time: 10:00 a.m.**  
**Courtroom: 880**  
**Action Filed: September 17, 2015**  
**Disc. Cut-Off: August 29, 2016**  
**Pretrial Conf.: November 15, 2016**  
**Trial: May 30, 2017**

1 Plaintiffs/Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion &  
2 Deville Fine Homes SoCal, Inc. (collectively, the “B&D Franchisees”), Windermere  
3 Services Southern California, Inc. (“WSSC”), and Counter-Defendants Robert L.  
4 Bennion (“Bennion”) and Joseph R. Deville (“Deville”) (all collectively referred to  
5 herein as the “B&D Parties”) respectfully submit this Reply in Support of their Motion  
6 in *Limine* to preclude Windermere Real Estate Service Company (“WSC”) from  
7 introducing at trial exhibits, testimony, or other evidence relating to the wealth of  
8 Plaintiffs Joseph R. Deville or Robert L. Bennion.

9 **I. INTRODUCTION**

10 WSC intends to introduce evidence purposed only to prejudice the B&D Parties.  
11 This should be curtailed to safeguard resolution of this action on the merits rather than  
12 facts that WSC will use to paint the B&D Parties in bad light.

13 **II. EVIDENCE OF BENNION’S AND DEVILLE’S SALARY AND THE B&D**  
14 **FRANCHISEES’ SPENDING IS HIGHLY PREJUDICIAL**

15 Salary and spending are not relevant to the issues and would be highly prejudicial to  
16 the B&D Parties. Because WSC seeks to introduce evidence that would confuse the jury  
17 and would be unfairly prejudicial to the B&D Parties, it should be excluded from trial.  
18 Fed. R. Evid. 403.

19 First, the evidence and argument presented in the Opposition would confuse the  
20 jury. WSC conflates the obligations of WSSC with the obligations of the B&D  
21 Franchisees. WSSC, as WSC’s area representative, was charged with collecting fees from  
22 WSC franchisees in Southern California. (Oppo. to the B&D Parties’ Motion in *Limine*  
23 No. 3 (“Oppo.”), at 2.) Under their respective franchise agreements, the B&D Franchisees  
24 were obligated to pay certain licensing and franchise fees to WSC. (Oppo., at 2-3.) WSC  
25 concedes that “*WSSC was not the guarantor of uncollected fees.*” (Oppo., at 2.) Still,  
26 WSC will use the evidence to hold out WSSC as the *de facto* guarantor by pointing to the  
27 salaries and expenses that the B&D Franchisees paid. In so doing, WSC hopes to create a  
28 false equivalency of WSSC’s and the B&D Parties’ respective obligations, which would

1 confuse the jury. Given the complex commercial relationships and issues presented in this  
2 case, this evidence has no place at the trial.

3 Second, WSC's Opposition makes clear its intent to utilize the evidence to  
4 prejudice the B&D Parties. WSC claims that the B&D Franchisees breached their  
5 agreements by allegedly not paying fees to WSC. (Oppo., 1.) The B&D Franchisees claim  
6 that no fees were owed to WSC as a result of WSC's breach of the underlying franchise  
7 agreements. Thus, the question is whether WSC is entitled to the fees. Evidence that the  
8 B&D Franchisees paid salaries has no bearing on WSC's entitlement to fees. The Court  
9 need not go beyond the Opposition to find the prejudicial manner in which WSC would  
10 utilize this evidence. WSC states:

11 WSC will offer evidence of wages and personal expenditures Bennion and  
12 Deville took out of the B&D Franchisees while simultaneously failing and  
13 refusing to pay the franchise and related fees owed to WSC

14 . . .

15 At the same time, however, Bennion and Deville paid themselves over  
\$1,000,000 in wages and discretionary expenses in 2014 alone.

16 (Oppo., at 2, 4.) The issue is whether WSC is entitled to the fees, not whether the B&D  
17 Franchisees paid salaries or expenses.

18 By pointing to the \$695,000 in wages and the expenses for a Bentley, Cadillac, and  
19 private plane, WSC will make the very appeal to status that the Supreme Court  
20 admonished. *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 239 ("appeals to  
21 class prejudice are highly improper and cannot be condoned and trial courts should ever  
22 be alert to prevent them."). WSC hopes to imply that the B&D Franchisees chose  
23 hundreds of thousands of dollars in salaries and a Bentley and private plane instead of  
24 paying WSC its fees. However, WSC was (and is) not entitled to the fees. Accordingly, all  
25 evidence of Bennion's and Deville's wealth, including evidence or comment on salaries  
26 and expenses paid by the B&D Franchisees, should be excluded as irrelevant and  
27 prejudicial.

1 **III. CONCLUSION**

2 For the Foregoing reasons, the B&D Parties respectfully ask that this Court grant  
3 its motion *in limine* and issue an order barring WSC from presenting all evidence of  
4 Bennion's and Deville's wealth, including evidence or comment on salaries and expenses  
5 paid by the B&D Franchisees.

6  
7 Dated: April 17, 2017

**MULCAHY LLP**

8  
9 By: /s/ Kevin A. Adams

10 Kevin A. Adams

11 *Attorneys for Plaintiffs/Counter-Defendants*  
12 *Bennion & Deville Fine Homes, Inc., Bennion &*  
13 *Deville Fine Homes SoCal, Inc., Windermere*  
14 *Services Southern California, Inc., and Counter-*  
15 *Defendants Robert L. Bennion and Joseph R.*  
16 *Deville*