

1 **MULCAHY LLP**

2 James M. Mulcahy (SBN 213547)

3 *jmulcahy@mulcahyllp.com*

4 Kevin A. Adams (SBN 239171)

5 *kadams@mulcahyllp.com*

6 Douglas R. Luther (SBN 280550)

7 *dluther@mulcahyllp.com*

8 Four Park Plaza, Suite 1230

9 Irvine, California 92614

10 Telephone: (949) 252-9377

11 Facsimile: (949) 252-0090

12 *Attorneys for Plaintiffs and Counter-Defendants*

13 John D. Vaughn, State Bar No. 171801

14 Jeffrey A. Feasby, State Bar No. 208759

15 PEREZ WILSON VAUGHN & FEASBY

16 750 B Street, Suite 3300

17 San Diego, California 92101

18 Telephone: 619.702-8044

19 Facsimile: 619-460-0437

20 E-Mail: *vaughn@perezwilson.com*

21 Attorneys for Defendant and Counterclaimant

22 Windermere Real Estate Services Company

23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 BENNION & DEVILLE FINE
26 HOMES, INC., a California
27 corporation, BENNION & DEVILLE
28 FINE HOMES SOCAL, INC., a
California corporation, WINDERMERE
SERVICES SOUTHERN
CALIFORNIA, INC., a California
corporation,

Plaintiffs,

v.

WINDERMERE REAL ESTATE
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

**JOINT STIPULATION FOR (i)
PLAINTIFFS TO FILE FIRST
AMENDED COMPLAINT; AND (ii)
COUNTERCLAIMANT
WINDERMERE REAL ESTATE
SERVICES COMPANY TO
VOLUNTARILY DISMISS COUNTS
FIVE, SIX, AND SEVEN OF FIRST
AMENDED COUNTERCLAIM**

Courtroom: 8

Complaint Filed: September 17, 2015

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 It is hereby stipulated and agreed by and between Plaintiffs/Counter-Defendants
3 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc.,
4 Windermere Services Southern California, Inc., (collectively, "Plaintiffs") Counter-
5 Defendant Robert L. Bennion, and Defendant/Counter-Claimant Windermere Real Estate
6 Services Company's ("WSC") that:

- 7 1. Plaintiffs will file a First Amended Complaint on or before November
8 16, 2015;
- 9 2. The First Amended Complaint will not include counts five (Breach of
10 Contract – Confidentiality Agreement), six (Intentional Interference
11 with Contractual Relations), or seven (Intentional Interference with
12 Prospective Economic Advantage) currently in the Complaint [D.E.
13 1], and that by filing the First Amended Complaint, Plaintiffs are
14 effectively dismissing these counts *without prejudice*;
- 15 3. WSC will have 21 days to respond to the First Amended Complaint,
16 whether by answer or pleading challenge as it deems proper and in its
17 sole discretion;
- 18 4. WSC will voluntarily dismiss, *without prejudice*, counts five
19 (Violation of the Anticybersquatting & Consumer Protection Act), six
20 (Federal Trademark Infringement), and seven (Unfair Business
21 Practices – Cal. Bus. Pro. Code §§ 17200 *et seq.*) of its First Amended
22 Counterclaim as to all Counter-Defendants [D.E. 16];
- 23 5. Plaintiffs will have 14 days from the date the Court enters the Order
24 on this Joint Stipulation to answer the First Amended Counterclaim;
- 25 6. Counter-Defendant Bennion will have 14 days from the date the Court
26 enters the Order on this Joint Stipulation to answer or otherwise
27 respond to the First Amended Counterclaim; and
- 28 7. To the extent the Court enters the requested Order, the parties

1 withdraw their pending and respective motions to dismiss. [D.E. 14,
2 26.]

3 Good cause exists for the Court to grant the requested order on the parties'
4 stipulation as both sets of parties have moved to dismiss the other's operative pleading.
5 [D.E. 14, 26.] The competing motions to dismiss and supporting papers have shed light
6 on potential deficiencies in the operative pleadings. The parties reasonably believe that
7 the potential deficiencies identified in the motions to dismiss may be corrected through
8 the proposed amendments to the Complaint and First Amended Counterclaim identified
9 in this Joint Stipulation. Accordingly, good cause exists for the Court to grant this Joint
10 Stipulation.

11 Further good cause exists to grant the parties' Joint Stipulation as doing so would
12 render moot the parties' motions to dismiss that are currently pending before the Court.
13 [D.E. 14, 26.] The hearing date on WSC's motion to dismiss, originally scheduled for
14 November 16, 2015, has recently been taken off-calendar by the Court. [D.E. 28.] The
15 hearing date on the Plaintiffs' motion to dismiss is currently scheduled for December 7,
16 2015. [D.E. 26.] By entering the Proposed Order submitted with this Joint Stipulation, the
17 Court will not have to unnecessarily waste time and its limited resources reviewing and
18 ruling on the competing motions to dismiss.

19 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, and the parties
20 respectfully request an Order, as follows:

- 21 1. Plaintiffs shall have up to and including November 16, 2015 to file a
22 First Amended Complaint;
- 23 2. Plaintiffs' counts five (Breach of Contract – Confidentiality
24 Agreement), six (Intentional Interference with Contractual Relations),
25 and seven (Intentional Interference with Prospective Economic
26 Advantage) of the Complaint [D.E. 1], are hereby dismissed *without*
27 *prejudice*;

- 1 3. WSC shall have 21 days from the date of the filing of the First Amended
2 Complaint in order to respond to that complaint as it deems proper;
- 3 4. WSC's counts five (Violation of the Anticybersquatting & Consumer
4 Protection Act), six (Federal Trademark Infringement), and seven
5 (Unfair Business Practices – Cal. Bus. Pro. Code §§ 17200 *et seq.*) of
6 the First Amended Counterclaim [D.E. 16] are hereby dismissed,
7 *without prejudice*, as to all Counter-Defendants;
- 8 5. Plaintiffs shall have 14 days from the date the Court enters the Order
9 on this Joint Stipulation to answer the First Amended Counterclaim;
- 10 6. Counter-Defendant Bennion shall have 14 days from the Date the
11 Court enters the Order on this Joint Stipulation to answer or otherwise
12 respond to the First Amended Counterclaim; and
- 13 7. Upon entry of the requested Order, WSC's motion to dismiss the Complaint
14 [D.E. 14], currently under submission by the Court, is withdrawn, and
15 Plaintiffs' motion to dismiss the First Amended Counterclaim [D.E. 26],
16 currently scheduled for hearing on December 7, 2015, is withdrawn.

17
18 DATED: November 11, 2015

MULCAHY LLP

19
20 By: /s/ James M. Mulcahy

James M. Mulcahy

Kevin A. Adams

Attorneys for Plaintiffs/Counter-Defendants

Bennion & Deville Fine Homes, Inc.,

Bennion & Deville Fine Homes SoCal, Inc.,

Windermere Services Southern California,

Inc., and Counter-Defendants Robert L.

Bennion and Joseph R. Deville

1 DATED: November 3, 2015

PEREZ WILSON VAUGHN & FEASBY

2
3 By: /s/ John D. Vaughn
4 John D. Vaughn
5 Attorneys for
6 Windermere Real Estate Services Company
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28