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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  
26  
27  
28

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

Hon. Manuel L. Real

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

Date: October 17, 2016

Time: 10:00 a.m.

Courtroom: 8

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD: PLEASE  
2 TAKE NOTICE that on October 17, 2016, at 10:00 a.m., or as soon thereafter as the  
3 matter may be heard before the Honorable Manuel L. Real of United States District  
4 Court, Central District of California located at 312 North Spring Street, Los  
5 Angeles, California, Courtroom 8, Defendant and Counterclaimant Windermere  
6 Real Estate Services Company (“WSC”) will move the Court for partial summary  
7 judgment pursuant to Federal Rules of Civil Procedure, Rule 56(a) and (g) as to the  
8 First Amended Complaint’s First Cause of Action, the claims set for in paragraphs  
9 151(a) and (b), Second Cause of Action, the claims set forth in paragraphs 158(a)  
10 and (b), Third Cause of Action, the claims set forth in paragraphs 163(b), (c), (d),  
11 and (i), the Fourth Cause of Action, the claims set forth in paragraph 170(a), the  
12 Fifth Cause of Action, the claims set forth in paragraphs 175(a) and (b), the Sixth  
13 Cause of Action, the claims set forth in paragraphs 181(a) and (e), and the Seventh  
14 Cause of Action in its entirety.

15 This motion is made on the grounds that there is no genuine issue of material  
16 fact that the identified portions of the First, Second, Third, Fifth, and Sixth Causes  
17 of Action are barred by the applicable statute of limitations. This motion is made on  
18 the further grounds that there is no issue of material fact that there were no damages  
19 suffered as a result of the conduct alleged in the Fourth Cause of Action, the claims  
20 set forth in paragraph 170(a). This motion is made on the further grounds that there  
21 is no issue of material fact that the agreement at issue in the Seventh Cause of  
22 Action is not a franchise such that the agreement is not covered by Business and  
23 Profession Code section 20020.

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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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7 DATED: September 19, 2016 PEREZ WILSON VAUGHN & FEASBY

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

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