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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 03 2013

A. GARCIA



DEC 04 2013

5 Attorneys for Cross-Defendants, BENNION & DEVILLE FINE HOMES, INC., dba
6 WINDERMERE REAL ESTATE COACHELLA VALLEY, CHRIS ANDERSON and TONY
7 OTTEN

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE, PALM SPRINGS COURT**

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11 AMY COX,
12 Plaintiff,
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14 vs.

15 CAPITIS, INC., CAPITIS SOTHEBY'S
16 INTERNATIONAL REALTY, SOTHEBY'S
17 INTERNATIONAL REALTY AFFILIATES,
18 LLC, ERIC BENNETT, DEAN SIPE, KEVIN
19 BLESSING, AND DOES 1-100,
20 Defendants.

CASE NO.: INC 1205192
NOTICE OF DEMURRER AND
DEMURRER TO SECOND AMENDED
CROSS-COMPLAINT

DATE: January 13, 2014
TIME: 8:30 a.m.
JUDGE: Hon. David M. Chapman
DEPT.: PS2

Complaint Filed: 07/24/2012
Trial Date: Not Yet Assigned

21 AND RELATED CROSS-ACTIONS

By Fax

23 **TO THE COURT, TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**
24 **PLEASE TAKE NOTICE** that on January 13, 2014 at 8:30 a.m. or as soon thereafter
25 as the matter may be heard in Department PS2 of the Riverside County Superior Court-Palm
26 Springs Branch, located at 3255 E. Tahquitz Canyon Way, Palm Springs, California, Cross-
27 Defendants BENNION & DEVILLE FINE HOMES, INC., dba WINDERMERE REAL
28 ESTATE COACHELLA VALLEY, CHRIS ANDERSON and TONY OTTEN (hereafter

1 collectively referred to as the "WINDERMERE PARTIES") will move the Court to sustain their
2 general and special Demurer to the Second Amended Cross-Complaint ("SAXC") of
3 Defendants/Cross-Complainants CAPITIS, INC., CAPITIS SOTHEBY'S INTERNATIONAL
4 REALTY, SOTHEBY'S INTERNATIONAL REALTY AFFILIATES, INC., ERIC
5 BENNETT, DEAN SIPE and KEVIN BLESSING (hereafter collectively referred to as the
6 "SOTHEBY PARTIES") filed on or about October 30, 2013 in the above-entitled action.

7 This motion will be brought pursuant to California Code of Civil Procedure §§430.30,
8 430.10(e), 430.10(f) and 430.50, on the basis that the First and Second Causes of Action set
9 forth in the SAXC are uncertain and fail to state facts sufficient to constitute causes of action
10 against the WINDERMERE PARTIES.

11 This Demurrer is based upon this Notice of Demurrer and Demurrer to the SAXC, the
12 Memorandum of Points and Authorities in support thereof, the Request for Judicial Notice and the
13 papers and pleadings on file in this action, and upon such oral and documentary evidence and
14 argument which may be presented at the hearing if this matter.

15 The Court will make a tentative ruling on the merits of this matter by 3:00 p.m. on the
16 court day prior to the hearing. Tentative rulings will be available on the Internet. To view go to:
17 <http://www.riverside.courts.ca.gov> and click on the tentative ruling link. The tentative ruling
18 shall become the ruling of the Court unless, by 4:00 p.m. on the court day before the scheduled
19 hearing, a party gives notice of intent to appear to all parties and the court. The notice of intent
20 to appear must be given either in person or by telephone. Where notice of intent to appear has
21 been properly given, or upon direction of the Court, oral argument will be permitted

22 **DEMURRER TO SECOND AMENDED CROSS-COMPLAINT**

23 The WINDERMERE PARTIES hereby demur to the SOTHEBY PARTIES' Second
24 Amended Cross-Complaint filed in the above-entitled action on or about October 30, 2013 as
25 follows:

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Demurrer to First Cause of Action

1. Pursuant to California Code of Civil Procedure §430.10(e), the First Cause of Action for Comparative Indemnity and Apportionment of Fault fails to state facts sufficient to constitute a cause of action against the WINDERMERE PARTIES.

2. Pursuant to California Code of Civil Procedure §430.10(f), the First Cause of Action for Comparative Indemnity and Apportionment of Fault is uncertain as against the WINDERMERE PARTIES.

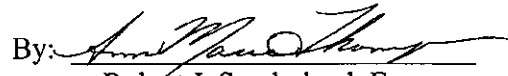
Demurrer to Second Cause of Action

3. Pursuant to California Code of Civil Procedure §430.10(e), the Second Cause of Action for Total Equitable Indemnity fails to state facts sufficient to constitute a cause of action against the WINDERMERE PARTIES.

4. Pursuant to California Code of Civil Procedure §430.10(f), the Second Cause of Action for Total Equitable Indemnity is uncertain as against the WINDERMERE PARTIES.

DATED: December 2, 2013

SUNDERLAND | McCUTCHAN, LLP

By: 

Robert J. Sunderland, Esq.
Ann Marie Thompson, Esq.

Attorneys for Cross-Defendants, BENNION &
DEVILLE FINE HOMES, INC., dba
WINDERMERE REAL ESTATE
COACHELLA VALLEY, CHRIS ANDERSON
and TONY OTTEN