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5 Attorneys for Defendants, BENNION & DEVILLE FINE HOMES, INC. dba WINDERMERE
REAL ESTATE SOUTHERN CALIFORNIA (erroneously sued as "WINDERMERE REAL
6 ESTATE SERVICES COMPANY" and "WINDERMERE REAL ESTTE SOCAL, INC.") AND
JOHN PIRO
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF RIVERSIDE, PALM SPRINGS BRANCH**

10
11 NANETTE VAN WYK, an individual,

CASE NO.: PSC 1403783

12 Plaintiffs,

BENNION & DEVILLE FINE HOMES,
INC. DBA WINDERMERE REAL
ESTATE SOUTHERN CALIFORNIA AND
JOHN PIRO'S CROSS-COMPLAINT FOR
EQUITABLE INDEMNITY,
CONTRIBUTION, APPORTIONMENT
OF FAULT AND DECLARATORY
RELIEF

13 vs.

14 CESARE ROSSI, an individual, MARZIA
MANNINI ROSSI, an individual, JOHN
15 PIRO, an individual, WINDERMERE REAL
ESTATE SOCAL, a California Corporation,
16 WINDERMERE REAL ESTATE SERVICES
COMPANY, a Washington Corporation, Does
17 1-25, inclusive,

JUDGE: Hon. John G. Evans

DEPT.: PS1

Complaint Filed: 7/14/2014

Trial Date: Not Yet Assigned

18 Defendants.

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21 BENNION & DEVILLE FINE HOMES,
INC. dba WINDERMERE REAL ESTATE
22 SOUTHERN CALIFORNIA, and
JOHN PIRO,

23 Cross-Complainants,

24 vs.

25 MARC ROBINSON, AFUSION REAL
ESTATE, JIM YOUNG HOME
26 INSPECTION, and ROES, 1 through 50,

27 Cross-Defendants.
28

1 COME NOW Defendants/Cross-Complainants BENNION & DEVILLE FINE HOMES,
2 INC. DBA WINDERMERE REAL ESTATE SOUTHERN CALIFORNIA (erroneously sued as
3 "WINDERMERE REAL ESTATE SERVICES COMPANY" and "WINDERMERE REAL
4 ESTATE SOCAL, INC.") and JOHN PIRO (hereinafter collectively referred to as "Cross-
5 Complainants") and upon information and belief allege as follows:

6 **PRELIMINARY ALLEGATIONS**

7 1. Cross-Complainant BENNION & DEVILLE FINE HOMES, INC. DBA
8 WINDERMERE REAL ESTATE SOUTHERN CALIFORNIA ("BENNION & DEVILLE") is,
9 and at all times herein mentioned was, a real estate brokerage duly licensed under the laws of the
10 State of California, with its principal place of business in the County of Riverside, State of
11 California.

12 2. Cross-Complainant JOHN PIRO is an individual residing in the County of
13 Riverside, State of California.

14 3. At all times herein mentioned, Cross-Defendant MARC ROBINSON
15 ("ROBINSON") is, and at all relevant times was, an individual residing in the State of
16 California, licensed by the California Department of Real Estate to engage in real estate sales in
17 the State of California, and who, under his License ID #1864020, is affiliated with AFUSION
18 REAL ESTATE. ROBINSON, at all times relevant to this lawsuit, acted as agent for Plaintiff
19 NANETTE VAN WYK in the purchase of real property located at 2320 N. Sandra Road, Palm
20 Springs, California 92262 (hereinafter "Subject Property").

21 4. At all times herein mentioned, Cross-Defendant AFUSION REAL ESTATE
22 ("AFUSION") is, and at all relevant times was, a business entity of unknown form licensed to
23 engage in real estate sales in the State of California under its License Number ID: 01380454.

24 5. At all times herein mentioned, Cross-Defendant JIM YOUNG HOME
25 INSPECTION ("JIM YOUNG") was an entity of unknown form doing business as a "licensed
26 home inspector" in Riverside County, State of California. JIM YOUNG conducted an inspection
27 of the Subject Property in and around August 2, 2012, on behalf of Plaintiff VAN WYK.

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1 SERVICES COMPANY AND WILDERMERE REAL ESTATE SOCIETY, INC. /

2 Complaint is incorporated by reference herein for the sole purpose of setting forth the allegations
3 against Cross-Defendants.

4 11. In Plaintiff NANETTE VAN WYK's Complaint she alleges, among other things
5 that Cross-Complainants BENNION & DEVILLE and JOHN PIRO made material non-
6 disclosures and/or concealed certain defects, problems and conditions involving the Subject
7 Property.

8 12. Cross-Complainants generally and specifically deny that they are liable to
9 Plaintiff and expressly deny the allegations contained in Plaintiff's Complaint.

10 **FIRST CAUSE OF ACTION**

11 **(Indemnity Against all Cross-Defendants)**

12 13. Cross-Complainants incorporate herein by reference the allegations set forth in
13 Paragraphs 1 through 12, inclusive, as though fully set forth herein.

14 14. Cross-Complainants are informed and believe, and upon such basis allege, that
15 Cross-Defendants were aware, or should have been aware of, the alleged defects, problems, and
16 conditions involving the Subject Property and failed to disclose these defects, problems, and
17 conditions to Plaintiff and Cross-Complainants and/or failed to properly advise the Plaintiff as to
18 inspection and disclosure requirements all prior to close of escrow on the Subject Property.

19 15. Cross-Complainants are informed and believe, and upon such basis allege, that if
20 damages have been incurred by Plaintiff, those damages were caused in whole or in part by the
21 failure of Cross-Defendants to act appropriately and meet their standard of care in carrying out
22 their duties to Plaintiff and complying with the appropriate laws and standards of care
23 established in California, and the County of Riverside, pertaining to real estate broker/agents and
24 home inspectors.

25 16. As a result of Plaintiff's Complaint, Cross-Complainants have been required to
26 appear and defend themselves as Defendants pursuant to said underlying Complaint. Cross-
27 Complainants have filed an answer to the Complaint denying the allegations of the Complaint
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1 and setting forth numerous affirmative defenses thereto. Said Answer is incorporated herein by
2 reference.

3 17. If Cross-Complainants are held responsible to Plaintiff in the action for any of the
4 matters alleged in the Complaint, Cross-Complainants are entitled to complete, total, or partial
5 indemnity from Cross-Defendants, and each of them, for any and all sums which Cross-
6 Complainants may be compelled to pay as a result of any damages, judgments or other awards
7 recovered by Plaintiff; and for any and all losses Cross-Complainants may sustain in this matter
8 because of the conduct of Cross-Defendants, and each of them, which conduct was the proximate
9 and actual cause of the facts upon which the causes of action of the underlying Complaint filed
10 by Plaintiff is based.

11 18. The claims of Plaintiff arise out of the same occurrences and real estate
12 transaction for which Cross-Defendants were involved as Plaintiff's real estate agent/broker and
13 Plaintiff's home inspector, and a determination of all claims in one proceeding is necessary and
14 appropriate in order to avoid the multiplicity of actions that would result if Cross-Complainants
15 were required now to defend against the claims of Plaintiff and then bring a separate action
16 against Cross-Defendants for indemnification for any sum or sums which Cross-Complainants
17 may be compelled to pay as a result of any damages, judgment or other awards recovered by
18 Plaintiff as against Cross-Complainants.

19 SECOND CAUSE OF ACTION

20 (Equitable Contribution Against All Cross-Defendants)

21 19. Cross-Complainant incorporates herein by reference the allegations set forth in
22 Paragraphs 1 through 18, inclusive, as though fully set forth herein.

23 20. Cross-Complainants deny any liability or responsibility whatsoever with respect
24 to the damages allegedly sustained by Plaintiff. However, if it should be found that Cross-
25 Complainants were in some manner responsible for the damages allegedly sustained by Plaintiff,
26 then any such damages found to have been sustained by Plaintiff in this action were proximately
27 caused or contributed to by the conduct of Cross-Defendants, and each of them.

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1 21. Cross-Complainants are entitled to a determination of a proximate degree of
2 negligence and/or fault of Cross-Defendants so that these Cross-Complainants will not be
3 required to pay more than their pro rata share of any damages, judgment, or other award
4 recovered by Plaintiff. Cross-Complainants are entitled to equitable contribution from the Cross-
5 Defendants, and each of them, in an amount consistent with Cross-Defendants' pro rata degree of
6 negligence and/or fault.

7 THIRD CAUSE OF ACTION

8 (Apportionment of Fault Against all Cross-Defendants)

9 22. Cross-Complainant incorporates herein by reference the allegations set forth in
10 Paragraphs 1 through 21, inclusive, as though fully set forth herein.

11 23. Cross-Complainants are informed and believe that Cross-Defendants were
12 responsible, in whole or in part, for the injuries, if any, suffered by Plaintiff. If Cross-
13 Complainants are adjudged to be liable to Plaintiff, Cross-Defendants should be required to:

14 (a) Pay a share of Plaintiff's judgment which is in proportion to the comparative
15 negligence of the Cross-Defendants in causing Plaintiff's damages; and

16 (b) Reimburse Cross-Complainant for any payments it makes to Plaintiff in excess of
17 its proportional share of all Cross-Defendants' negligence.

18 FOURTH CAUSE OF ACTION

19 (Declaratory Relief Against All Cross-Defendants)

20 24. Cross-Complainant incorporates herein by reference the allegations set forth in
21 Paragraphs 1 through 23, inclusive, as though fully set forth herein.

22 25. An actual controversy has arisen and now exists between Cross-Complainants and
23 Cross-Defendants, and each of them, in that Cross-Complainants contend, and Cross-Defendants
24 deny the following:

25 (a) That, as between Cross-Complainants and Cross-Defendants, a responsibility, if
26 any, for the damages claimed by Plaintiff herein rests entirely or partially on Cross-Defendants;

27 (b) That as a result, Cross-Defendants, and each of them, are obligated to totally
28 indemnify or partially indemnify Cross-Complainants for any sum or sums that Cross-

1 Complainants may be compelled to pay as a result of any damages, judgment or other award
2 recovered by Plaintiffs in the underlying action.

3 26. Cross-Complainants desire a judicial determination of their rights and duties, and
4 the rights and duties of Cross-Defendants, and each of them, as to the damages complained of in
5 Plaintiff's Complaint.

6 27. Cross-Complainants in particular desire a declaration of the respective liabilities
7 of Cross-Complainants and Cross-Defendants, and each of them, for such damages, if any, and a
8 declaration of Cross-Defendants' responsibility to indemnify Cross-Complainants for the sum or
9 sums which Cross-Complainants may be compelled to pay and for which Cross-Defendants, and
10 each of them, have been determined responsible.

11 28. Such a declaration is necessary and appropriate at this time so that Cross-
12 Complainants may ascertain their rights and duties with respect to the claims made by Plaintiff in
13 the action. Additionally, the claims of all parties arise out of the same transaction and
14 occurrence, and a determination of all claims in one proceeding is necessary and appropriate in
15 order to avoid the multiplicity of actions that would otherwise result if Cross-Complainants was
16 required now to defend against the claims of Plaintiff and then bring a separate action against
17 Cross-Defendants for contribution and indemnification of any sum or sums which Cross-
18 Complainants may be compelled to pay as a result of any damages, judgment or other award
19 recovered by Plaintiff against Cross-Complainants.

20 **WHEREFORE**, Cross-Complainants pray for judgment against Cross-Defendants, and
21 each of them, as follows:

- 22 1. Compensatory damages according to proof;
- 23 2. Total and complete indemnity for any judgments rendered against Cross-
24 Complainants;
- 25 3. That judgment be rendered in favor of Cross-Complainants in the amount that Cross-
26 Complainants may be compelled to pay as a result of any damages, judgment or other
27 awards recovered by Plaintiff against Cross-Complainants;
- 28 4. That Cross-Defendants, and each of them, contribute their pro rata share according to

1 their respective degree of negligence and/or fault for any damages, judgment or other
2 awards recovered by Plaintiff, against Cross-Complainants;

3 5. A judicial determination of Cross-Complainants' and Cross-Defendants' respective
4 liabilities for the damages claimed by Plaintiff in the action, if any are found to exist;

5 6. For reasonable attorneys' fees and costs of suit incurred herein pursuant to contract,
6 principles of indemnity and other relevant legal bases; and

7 7. For all such other and further relief as the Court may deem proper.
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9 DATED: November 7, 2014

SUNDERLAND | McCUTCHAN, LLP

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12 By: 
13 Robert J. Sunderland, Esq.

Ann Marie Thompson, Esq.

14 Attorneys for Defendants, BENNION
15 & DEVILLE FINE HOMES, INC. dba
16 WINDERMERE REAL ESTATE SOUTHERN
17 CALIFORNIA (erroneously sued as
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19 COMPANY and "WINDERMERE REAL
20 ESTATE SOCAL, INC.") AND JOHN PIRO
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