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22  
23 **UNITED STATES DISTRICT COURT**  
24 **CENTRAL DISTRICT OF CALIFORNIA**  
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1	BENNION & DEVILLE FINE	)	Case No. 5:15-cv-01921-R-KK
2	HOMES, INC., a California	)	<i>Hon. Manual L. Real</i>
	corporation, BENNION & DEVILLE	)	
3	FINE HOMES SOCAL, INC., a	)	<b>JOINT STIPULATION RE:</b>
4	California corporation,	)	<b>PLAINTIFFS' MOTION TO</b>
5	WINDERMERE SERVICES	)	<b>COMPEL PRODUCTION OF</b>
6	SOUTHERN CALIFORNIA, INC., a	)	<b>DOCUMENTS AND RESPONSES</b>
	California corporation,	)	
7		)	Date: June 6, 2016
	Plaintiffs,	)	Time: 10:00 a.m.
8		)	Place: Courtroom No. 8
9	v.	)	
		)	Discovery Cutoff: August 29, 2016
10	WINDERMERE REAL ESTATE	)	Pretrial Conference: September 19, 2016
11	SERVICES COMPANY, a	)	Trial: October 18, 2016
12	Washington corporation; and DOES	)	
	1-10.	)	Complaint filed: September 17, 2015
13		)	First Amended Counterclaim filed:
14	Defendants.	)	October 14, 2015
15	AND RELATED COUNTERCLAIMS		)
16			)

Pursuant to Local Rule 37-2.1, Plaintiffs Bennion & Deville Fine Homes, Inc. (“B&D Fine Homes”), Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”), and Windermere Services Southern California, Inc. (“Services SoCal”) (collectively, “Plaintiffs”), on the one hand, and Defendant Windermere Real Estate Services Company (“WSC”), on the other hand, hereby submit the following Joint Stipulation Regarding Plaintiffs’ Motion to Compel Production of Documents and Responses.

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1 **I. INTRODUCTORY STATEMENTS**

2 **A. Plaintiffs' Introductory Statement**

3 Plaintiffs move the Court for an order compelling Defendant Windermere Real  
4 Estate Services Company ("WSC") to produce documents responsive to B&D Fine  
5 Homes' First and Second Set of Requests for Production 4, 6, 7, 10, 11, 12, 15, 18,  
6 19, 24, 26, 27, 28, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 51, 53,  
7 54, 55, 57, 59, 60, 65, 66, 67, 68, 71, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87  
8 and 88 and complete responses to B&D Fine Homes' First Set of Interrogatories  
9 Nos. 3, 4, 5, 6, 7, 10, 16, 17, 22, 23 and 25.

10 As to each of the aforementioned document requests, WSC has stated either in  
11 its initial responses or supplemental responses that it would produce all responsive  
12 documents. As to each of the aforementioned interrogatories, WSC has stated it  
13 would supplement its incomplete responses by detailing the bates range wherein  
14 responsive information could be found and by listing responsive witnesses. Despite  
15 WSC's agreement to produce documents and responsive information, and WSC  
16 having had 4 months of time, the documents and information have not been produced.

17 B&D Fine Homes issued its First Set of Requests for Production and  
18 Interrogatories, along with other discovery, on December 21, 2015. Declaration of  
19 Kevin Adams ("Adams Decl."), ¶ 3. WSC issued responses on January 20, 2016.  
20 Adams Decl., ¶ 4. Instead of being forthcoming with its answers, WSC's responses  
21 contained boilerplate objections as to all 152 requests and only limited substantive  
22 information. *Id.* In response to interrogatories Nos. 3, 4, 5, 6, 7, 16, 17 and 25, WSC  
23 stated that, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, it would  
24 produce documents reflecting the responsive information. *Id.* WSC left out any  
25 indication as to which documents it was referencing. *Id.*

26 Along with the improper objections and incomplete responses, WSC agreed to  
27 produce documents in response to most of the document requests. *Id.* However, no  
28

1 documents were included with the responses. Nor did WSC state when documents  
2 would be provided as required under Fed. R. Civ. P. 34(b)(2)(B). *Id.*

3         Thereafter, the parties began to meet and confer regarding the substance (or  
4 lack thereof) of WSC's responses as well as WSC's improper objections. In a January  
5 26, 2016 email, Plaintiffs immediately questioned WSC as to when the responsive  
6 documents would be produced. Adams Decl., ¶ 6, Ex. A. Plaintiffs generously noted  
7 to WSC that Plaintiffs were "amenable to working out a schedule" but that WSC  
8 would "need to work quickly in light of the fast-track that this case has been placed  
9 on". *Id.* Despite Plaintiffs' entreaties, no documents were provided.

10         Plaintiffs reached out to WSC again on February 17, 2016. Adams Decl., ¶ 8,  
11 Ex. B. In that email, WSC was questioned as to the eventual production date:

12             [W]hen can we expect to receive Windermere's responsive materials?  
13             During our last call we agreed that production would be sent in waves  
14             and completed by the end of February. With February quickly evading  
15             us, the production must start immediately [...]

16             *Id.*

17 Despite the fact that WSC had committed to producing all the documents by the end  
18 of February, only a small portion were in fact produced. Adams Decl., ¶ 8, Ex. C.

19         After meet and confer conversations between the sides and in response to a  
20 possible motion to compel, WSC produced Supplemental Responses to B&D Fine  
21 Homes' First Set of Interrogatories and Requests for Production on February 26,  
22 2016. Adams Decl., ¶ 16. However, as to Interrogatories Nos. 10, 22 and 23, WSC  
23 stated that it was compiling a list of witnesses responsive to the interrogatories and  
24 would be producing those lists soon. *Id.* Those lists have not been produced as of the  
25 date of sending this Stipulation. *Id.*

26         Plaintiffs' pushing as to WSC's document production continued as WSC made  
27 rolling productions through March and into April 2016. By April 1, 2016, WSC had  
28 produced 14,002 pages of documents. Adams Decl., ¶¶ 14, 17, 19, Exhs. E, F, G.  
WSC also produced Second Supplemental Responses to B&D Fine Homes' Requests

1 for Production. Adams Decl., ¶ 10. However, it was readily apparent that WSC has  
2 not complied with its discovery obligations. The production was woefully incomplete.

3 Plaintiffs reviewed WSC's documents as length to ascertain which documents  
4 were missing from WSC's productions. Declaration of James M. Mulcahy ("Mulcahy  
5 Decl."), ¶ 3. From this review, it became clear that WSC has not reached out to key  
6 custodians to obtain email correspondence. WSC also had not produced documents  
7 responsive to key requests that regarded claims, counterclaims and affirmative  
8 defenses. *Id.* WSC's production paled in comparison to Plaintiffs' productions, which  
9 encompassed over 70,000 pages of documents. Adams Decl., ¶ 19.

10 When confronted with the issue, WSC in an email dated April 1, 2016, simply  
11 noted that WSC would "continue to produce documents as they are reviewed".  
12 Adams Decl., ¶ 20 Ex. H. WSC's insistence on endless rolling productions with no  
13 end in sight violates its discovery obligations. WSC must obtain all responsive  
14 documents in a timely manner by distributing the discovery requests to all employees  
15 and agents potentially possessing responsive information. *See A. Farber & Ptners.,*  
16 *Inc. v. Garber*, 234 F.R.D. 186, 190 (C.D. Cal. 2006). Nor is WSC's last minute  
17 production of 25,000 pages of document sufficient as it still clear that WSC has not  
18 produced documents in response to many of the requests. *See* Mulcahy Decl., ¶¶ 5-6.

19 WSC's continuing delay in producing responsive documents, now lasting over  
20 4 months, is severely prejudicing Plaintiffs' ability to bring its case and dispute  
21 WSC's counterclaims. The Court has set this matter for jury trial on October 18,  
22 2016. Six months from this trial, Plaintiffs have not received documents from their  
23 first document requests. Any further delay will threaten Plaintiffs' ability to take  
24 depositions, issue any necessary follow-up discovery and prepare dispositive motions.  
25 Accordingly, Plaintiffs now move the Court to issue an order (1) compelling WSC to  
26 produce the responsive documents and information; (2) requiring WSC to describe in  
27 declarations how responsive documents were collected and produced; and (3)  
28 awarding Plaintiffs their fees and costs for having to bring this Motion.

1           **B. Defendant’s Introductory Statement**

2           Plaintiffs’ motion seeks an order from the Court compelling WSC to produce  
3 additional documents in response to various document requests and to further  
4 supplement its interrogatory responses as WSC has already committed to do.

5 Plaintiffs<sup>1</sup> bring this motion to compel despite their attorney’s candid admission that  
6 they have not reviewed any of the 40,000 pages of documents recently produced by  
7 WSC. Instead, Plaintiffs’ motion is based purely on counsel’s speculation that WSC  
8 has not made reasonable inquiry to obtain responsive documents and counsel’s claim  
9 that “[b]ased on WSC’s previous failure to produce all responsive documents it is  
10 likely ... not all responsive documents have been produced.” Mulcahy Decl. ¶¶ 5-6.  
11 However, even a cursory review of WSC’s document production reveals that  
12 Plaintiffs’ motion is a result of their failure to effectively review (or failure to review)  
13 the documents WSC has produced and their failure to meet and confer in good faith.  
14 WSC pointed this out to Plaintiffs’ attorneys in a meet and confer letter that Plaintiffs  
15 chose to ignore.

16           Specifically, on April 18, 2016, Plaintiffs sent WSC a meet and confer letter  
17 regarding WSC’s document production and outstanding supplemental interrogatory  
18 responses. Mulcahy Decl., ¶ 4, Ex. A. In that letter, Plaintiffs gave WSC 10 days to  
19 produce all responsive documents or give “assurances [ ] as to their immediate  
20 production.” Mulcahy Decl., ¶ 4, Ex. A, p. 1, ¶ 1. The next day, Plaintiffs served  
21 their “final” production of documents in response to WSC’s requests, which had been  
22 propounded at the end of December. Declaration of Jeffrey A. Feasby (“Feasby  
23 Decl.”), ¶ 4.

24           WSC responded to Plaintiffs’ letter on April 27, 2016, within Plaintiffs’ 10-day  
25 deadline. Mulcahy Decl., ¶ 5, Ex. B. In its response, WSC confirmed that it had  
26 produced over 25,000 additional pages of documents earlier in the week and that over  
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28 <sup>1</sup> For the sake of consistency, WSC uses the same defined terms as set forth by Plaintiffs.

1 15,000 additional pages of documents were being produced that day. Mulcahy Decl.,  
2 ¶ 5, Ex. B, p. 1, ¶ 2. WSC also outlined how it had previously produced documents  
3 in response to most of the requests set forth in Plaintiffs' letter, and that the 40,000  
4 pages of additional documents produced that week were in response to the remaining  
5 requests outlined by Plaintiffs. Mulcahy Decl., ¶ 4, Ex. B, p. 2, ¶¶ 1-2. Finally, WSC  
6 gave Plaintiffs their requested assurance that WSC's remaining documents and its  
7 supplemental discovery responses would be provided the next week. Mulcahy Decl.,  
8 ¶ 4, Ex. B, p. 2, ¶¶ 3-4. WSC also made it clear that it was willing to further meet and  
9 confer on any issues if Plaintiffs desired. Mulcahy Decl., ¶ 4, Ex. B, p. 2, ¶ 5.

10 On April 28, 2016, despite WSC's compliance with Plaintiffs' timeline for  
11 producing the outstanding documents and providing the requested assurances  
12 regarding the provision of the other discovery at issue, and without reviewing any of  
13 the 40,000 pages of document produced that week, Plaintiffs responded that they  
14 were terminating meet and confer efforts and that they would be filing this motion to  
15 compel based upon their *unsupported conjecture* that none of the 40,000 pages of  
16 documents WSC had produced that week were responsive to any of the requests at  
17 issue. Mulcahy Decl., ¶ 8, Ex. C. Plaintiffs' letter made it clear that they never  
18 intended to meet and confer on these issues in good faith, and that they were actually  
19 seeking to compel WSC to identify each of the documents produced in response to  
20 each of Plaintiffs' numerous discovery requests – a discovery obligation that  
21 Plaintiffs' counsel knows does not exist.

22 On April 29, 2016, WSC responded to Plaintiffs and outlined Plaintiffs' failure  
23 to meet and confer in good faith. Feasby Decl., ¶ 14, Ex. 1, p. 1, ¶ 1. WSC pointed  
24 out that it had complied with all of the demands in Plaintiffs' initial April 18 meet and  
25 confer letter. Feasby Decl., ¶ 14, Ex. 1, p. 1, ¶ 2. WSC confirmed that Plaintiffs were  
26 threatening to bring this motion to compel despite having admitted that they had not  
27 reviewed the 40,000 pages of documents that WSC just produced. Feasby Decl., ¶  
28 14, Ex. 1, p. 1, ¶ 3. WSC reiterated that it had produced documents in response to all

1 of the requests at issue, or that those documents and the supplemental discovery  
2 responses would be provided during the week of May 2. Feasby Decl., ¶ 14, Ex. 1, p.  
3 2, ¶ 1. By way of example, WSC set forth a few of the requests for which Plaintiffs  
4 contended no documents had been produced and cited the Bates Nos. where those  
5 documents had, in fact, been produced. Feasby Decl., ¶ 14, Ex. 1, p. 2, ¶ 2. Finally,  
6 WSC noted that Plaintiffs' proposed motion to compel was without substantial  
7 justification, and that if Plaintiffs went forward with this motion, WSC would seek to  
8 recover the attorneys' fees and costs WSC incurred in opposing the motion. Feasby  
9 Decl., ¶ 14, Ex. 1, p. 2, ¶ 3. Plaintiffs did not respond to WSC's further meet and  
10 confer efforts, choosing instead to file this motion without substantial justification.  
11 Feasby Decl., ¶ 14.

12 As set forth more fully below, WSC has complied with its discovery  
13 obligations. Plaintiffs' motion is wholly without merit and is brought without  
14 substantial justification. Plaintiffs' motion should be denied in its entirety, and WSC  
15 should be awarded its attorneys' fees and costs incurred in opposing this frivolous  
16 motion.

## 17 **II. DOCUMENT REQUESTS AT ISSUE**

18 Pursuant to Local Rule 37-2.1, below are WSC's Responses to B&D Fine  
19 Homes' First and Second Set of Requests for Production 4, 6, 7, 10, 11, 12, 15, 18,  
20 19, 24, 26, 27, 28, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 51, 53, 54,  
21 55, 57, 59, 60, 65, 66, 67, 68, 71, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 88.  
22 One section of points and authorities as to all document requests have been provided.

### 23 **REQUEST FOR PRODUCTION NO. 4:**

24 All Documents relating to Your document retention or destruction guidelines,  
25 policies, protocols or practices.

### 26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

27 WSC objects to this request on each of the grounds set forth in the General  
28 Objections set forth above, each of which is incorporated by this reference. WSC



1 further objects to this request to the extent it calls for the production of documents  
2 protected by the attorney-client privilege and/or the attorney work product doctrine.  
3 WSC further objects to this request to the extent it seeks confidential and  
4 proprietary/trade secret documents.

5 Subject to and without waiving the foregoing objections, WSC responds as  
6 follows: Upon the Court's entry of an appropriate protective order, WSC will produce  
7 all non-privileged documents that are responsive to this request and that are within its  
8 possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 All Documents Relating to Your Communications with representatives of the  
11 California Department of Business Oversight.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO.6:**

13 WSC objects to this request on each of the grounds set forth in the General  
14 Objections set forth above, each of which is incorporated by this reference. WSC  
15 further objects to this request to the extent it calls for the production of documents  
16 protected by the attorney-client privilege and/or the attorney work product doctrine.  
17 WSC further objects to this request on the grounds that it seeks documents that are  
18 neither relevant to the resolution of this action nor reasonably calculated to lead to the  
19 discovery of admissible evidence.

20 Subject to and without waiving the foregoing objections, WSC responds as  
21 follows: WSC will produce all non-privileged documents that are responsive to this  
22 request and that are within its possession, custody, or control.

23 **REQUEST FOR PRODUCTION NO. 7:**

24 A copy of all California FDDs submitted by You to the California Department  
25 of Business Oversight (or its predecessor the Department of Corporations).

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

27 WSC objects to this request on each of the grounds set forth in the General  
28 Objections set forth above, each of which is incorporated by this reference. WSC

1 further objects to this request on the grounds that it seeks documents that are neither  
2 relevant to the resolution of this action nor reasonably calculated to lead to the  
3 discovery of admissible evidence.

4 Subject to and without waiving the foregoing objections, WSC responds as  
5 follows: WSC will produce all responsive documents that are within its possession,  
6 custody, or control.

7 **REQUEST FOR PRODUCTION NO. 10:**

8 All Documents Relating to Your efforts "to prevent infringement of the  
9 Trademark or unfair competition against [Bennion, Deville, and B&D Fine Homes]"  
10 as provided for in Section 4 of the Coachella Valley Franchise Agreement.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

12 WSC objects to this request on each of the grounds set forth in the General  
13 Objections set forth above, each of which is incorporated by this reference. WSC  
14 further objects to this request to the extent it calls for the production of documents  
15 protected by the attorney-client privilege and/or the attorney work product doctrine.  
16 WSC further objects to this request on the ground that it is overbroad, burdensome,  
17 and merely intended to harass WSC and increase the time and cost incurred by WSC  
18 in responding to these requests. WSC further objects to this request on the grounds  
19 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
20 with reasonable particularity.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents that are within  
23 its possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 11:**

25 All Documents Relating to the Fees received by You from any and all current  
26 of former Franchisees in the Southern California Region.

27 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
28 **NO. 11:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the ground that it is overbroad, burdensome, and  
4 merely intended to harass WSC and increase the time and cost incurred by WSC in  
5 responding to these requests, especially in light of the fact that Plaintiff is already in  
6 possession of documents reflecting the information sought.

7 Subject to and without waiving the foregoing objections, WSC responds as  
8 follows: As a result of the parties' meet and confer efforts, Plaintiff has clarified that  
9 through this request, it is seeking documents reflecting payments made to WSC by  
10 franchisees in the Southern California Region that were made pursuant to an alternate  
11 agreement with WSC. In light of this clarification, WSC will produce all such  
12 requested alternate agreements with franchisees in the Southern California Region for  
13 the payment of fees.

14 **REQUEST FOR PRODUCTION NO. 12:**

15 All Documents Relating to the outstanding Fees owed to You by any and all  
16 current or former Franchisees in the Southern California Region.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks the private financial  
21 information of third parties and/or confidential and proprietary/trade secret  
22 information. WSC further objects to this request on the ground that it is overbroad,  
23 burdensome, and merely intended to harass WSC and increase the time and cost  
24 incurred by WSC in responding to these requests, especially in light of the fact that  
25 Plaintiff is already in possession of documents reflecting the information sought.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: Upon the Court's entry of an appropriate protective order, WSC will produce  
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1 documents sufficient to demonstrate the franchise fees owed and outstanding in the  
2 Southern California Region since September 1, 2015.

3 **REQUEST FOR PRODUCTION NO. 15:**

4 All Documents Relating to Your efforts to sell Windermere franchises in the  
5 Southern California Region.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

7 WSC objects to this request on each of the grounds set forth in the General  
8 Objections set forth above, each of which is incorporated by this reference. WSC  
9 further objects to this request to the extent it calls for the production of documents  
10 protected by the attorney-client privilege and/or the attorney work product doctrine.  
11 WSC further objects to this request on the grounds that it seeks the private financial  
12 information of third parties and/or confidential and proprietary/trade secret  
13 information. WSC further objects to this request on the ground that it is overbroad,  
14 burdensome, and merely intended to harass WSC and increase the time and cost  
15 incurred by WSC in responding to these requests. WSC further objects to this request  
16 on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the  
17 documents sought with reasonable particularity.

18 Subject to and without waiving the foregoing objections, WSC responds as  
19 follows: Upon the Court's entry of an appropriate protective order, WSC will produce  
20 all non-privileged documents that are responsive to this request and that are within its  
21 possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 18:**

23 All Documents Relating to Your "preparation and filing of all Franchise  
24 registration statements, disclosure statements or applications required under the laws  
25 of the state of California and/or the United States of America" as stated in Section 7  
26 of the Area Representation Agreement.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the grounds that it seeks documents that are neither  
4 relevant to the resolution of this action nor reasonably calculated to lead to the  
5 discovery of admissible evidence. WSC further objects to this request to the extent it  
6 calls for the production of documents protected by the attorney-client privilege and/or  
7 the attorney work product doctrine.

8 Subject to and without waiving the foregoing objections, WSC responds as  
9 follows: WSC will produce all non-privileged documents that are responsive to this  
10 request and that are within its possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 19:**

12 All Documents Relating to any fees paid by You to the State of California, or  
13 any department or division thereof, for all filings with the Department of Business  
14 Oversight (or its predecessor the Department of Corporations).

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference. WSC  
18 further objects to this request on the ground that it is overbroad, burdensome, and  
19 merely intended to harass WSC and increase the time and cost incurred by WSC in  
20 responding to these requests. WSC further objects to this request on the grounds that  
21 it seeks documents that are neither relevant to the resolution of this action nor  
22 reasonably calculated to lead to the discovery of admissible evidence.

23 Subject to and without waiving the foregoing objections, WSC responds as  
24 follows: WSC will produce non-privileged documents sufficient to reflect the fees  
25 paid by WSC to the State of California.

26 **REQUEST FOR PRODUCTION NO. 24:**

1 All Documents Relating to Your efforts "to prevent infringement of the  
2 Trademark or unfair competition against [Bennion, Deville, and B&D Fine Homes]"  
3 as provided for in Section 6(e) of the SoCal Franchise Agreement.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request to the extent it calls for the production of documents  
8 protected by the attorney-client privilege and/or the attorney work product doctrine.  
9 WSC further objects to this request on the ground that it is overbroad, burdensome,  
10 and merely intended to harass WSC and increase the time and cost incurred by WSC  
11 in responding to these requests. WSC further objects to this request on the grounds  
12 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
13 with reasonable particularity.

14 Subject to and without waiving the foregoing objections, WSC responds as  
15 follows: WSC will produce all non-privileged responsive documents that are within  
16 its possession, custody, or control.

17 **REQUEST FOR PRODUCTION NO. 26:**

18 All Documents Relating to communication by or between any person  
19 employed by, or otherwise associated with, Windermere Relating to the registration  
20 of the California FDD with the State of California.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

22 WSC objects to this request on each of the grounds set forth in the General  
23 Objections set forth above, each of which is incorporated by this reference. WSC  
24 further objects to this request on the grounds that it is vague and ambiguous as to the  
25 phrase "otherwise associated with." WSC further objects to this request to the extent  
26 it calls for the production of documents protected by the attorney-client privilege  
27 and/or the attorney work product doctrine. WSC further objects to this request on the  
28

1 grounds that it seeks documents that are neither relevant to the resolution of this  
2 action nor reasonably calculated to lead to the discovery of admissible evidence.  
3 Subject to and without waiving the foregoing objections, and within the probable  
4 intent of this request, WSC responds as follows: WSC will produce all non-privileged  
5 responsive document within its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 27:**

7 All Documents Relating to communications between You and any other person  
8 Relating to the registration of the California FDD with the State of California.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request to the extent it calls for the production of documents  
13 protected by the attorney-client privilege and/or the attorney work product doctrine.  
14 WSC further objects to this request on the grounds that it seeks documents that are  
15 neither relevant to the resolution of this action nor reasonably calculated to lead to the  
16 discovery of admissible evidence.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all non-privileged responsive document within its  
19 possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 28:**

21 All Documents Relating to communication by or between any person  
22 employed by, or otherwise associated with, Windermere Relating to Windermere  
23 Watch.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request on the grounds that it is vague and ambiguous as to the  
28 phrase "otherwise associated with." WSC further objects to this request on the ground

1 that it is overbroad, burdensome, and merely intended to harass WSC and increase the  
2 time and cost incurred by WSC in responding to these requests. WSC further objects  
3 to this request to the extent it calls for the production of documents protected by the  
4 attorney-client privilege and/or the attorney work product doctrine.

5 Subject to and without waiving the foregoing objections, and within the  
6 probable intent of this request, WSC responds as follows: WSC will produce all non-  
7 privileged responsive document within its possession, custody, or control.

8 **REQUEST FOR PRODUCTION NO. 30:**

9 All Documents Relating to communications between You and persons  
10 affiliated in any way with Windermere Watch, including but not limited to Gary  
11 Kruger and his associates.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

13 WSC objects to this request on each of the grounds set forth in the General  
14 Objections set forth above, each of which is incorporated by this reference. WSC  
15 further objects to this request to the extent it calls for the production of documents  
16 protected by the attorney-client privilege and/or the attorney work product doctrine.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all non-privileged responsive document within its  
19 possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 32:**

21 All Documents Relating to the communication between You and Franchisees  
22 Relating to Windermere Watch.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference. WSC  
26 further objects to this request to the extent it calls for the production of documents  
27 protected by the attorney-client privilege and/or the attorney work product doctrine.  
28 WSC further objects to this request on the ground that it is overbroad, burdensome,



1 and merely intended to harass WSC and increase the time and cost incurred by WSC  
2 in responding to these requests. WSC further objects to this request on the grounds  
3 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
4 with reasonable particularity.

5 Subject to and without waiving the foregoing objections, WSC responds as  
6 follows: Upon the Court's entry of an appropriate protective order, WSC will produce  
7 all non-privileged responsive document within its possession, custody, or control.

8 **REQUEST FOR PRODUCTION NO. 34:**

9 All Documents Relating to the "commercially reasonable efforts" You  
10 undertook in an effort "to curtail the anti-marketing activities undertaken by Gary  
11 Kruger, his Associates, Windermere Watch and/or the agents of the foregoing  
12 persons" as provided for in Section 3(A) of the Modification Agreement.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

14 WSC objects to this request on each of the grounds set forth in the General  
15 Objections set forth above, each of which is incorporated by this reference. WSC  
16 further objects to this request to the extent it calls for the production of documents  
17 protected by the attorney-client privilege and/or the attorney work product doctrine.

18 Subject to and without waiving the foregoing objections, WSC responds as  
19 follows: WSC will produce all non-privileged responsive documents within its  
20 possession, custody, or control.

21 **REQUEST FOR PRODUCTION NO. 35:**

22 All Documents Relating to Your plan to offset the negative publicity generated  
23 by Windermere Watch.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request to the extent it calls for the production of documents  
28 protected by the attorney-client privilege and/or the attorney work product doctrine.

1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC will produce all non-privileged responsive documents within its  
3 possession, custody, or control.

4 **REQUEST FOR PRODUCTION NO. 36:**

5 All Documents Relating to any and all amounts expended by You to offset the  
6 negative publicity generated by Windermere Watch.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference.

10 Subject to and without waiving the foregoing objections, WSC responds as  
11 follows: WSC will produce documents sufficient to demonstrate the amounts  
12 expended.

13 **REQUEST FOR PRODUCTION NO. 37:**

14 All Documents reflecting any negotiated changes to the Franchise Agreements  
15 of any Franchisee in California.

16 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
17 **NO. 37:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks documents that are neither  
21 relevant to the resolution of this action nor reasonably calculated to lead to the  
22 discovery of admissible evidence. WSC further objects to this request to the extent it  
23 seeks third party, and/or confidential and proprietary/trade secret documents.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: Subject to the protective order entered by the Court, WSC will produce  
26 copies of all such agreements with franchisees from California from January 1, 2012  
27 through September 30, 2015.

28 **REQUEST FOR PRODUCTION NO. 38:**

1 A copy of the "renewal packet" reflected in Paul Drayna's email dated June 14,  
2 2013 attached as Exhibit N to the FAC.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

4 WSC objects to this request on each of the grounds set forth in the General  
5 Objections set forth above, each of which is incorporated by this reference. WSC  
6 further objects to this request on the grounds that it seeks documents that are neither  
7 relevant to the resolution of this action nor reasonably calculated to lead to the  
8 discovery of admissible evidence.

9 Subject to and without waiving the foregoing objections, WSC responds as  
10 follows: WSC will produce all responsive documents that are within its possession,  
11 custody, or control.

12 **REQUEST FOR PRODUCTION NO. 39:**

13 A copy of all Communications between Michael Teather and the Franchisees in  
14 the Southern California Region.

15 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
16 **NO. 39:**

17 WSC further objects to this request on the ground that it is overbroad,  
18 burdensome, and merely intended to harass WSC and cause it to spend unnecessary  
19 time and expense responding to this request. WSC further objects to this request on  
20 the grounds that it seeks documents that are neither relevant to the resolution of this  
21 action nor reasonably calculated to lead to the discovery of admissible evidence.  
22 WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in  
23 that it does not describe the documents sought with reasonable particularity. WSC  
24 further objects to this request to the extent it seeks confidential and proprietary/trade  
25 secret documents.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: As a result of the parties' meet and confer efforts, Plaintiff has agreed to limit  
28

1 the time period for this request to from January 1, 2014 through September 30, 2015.  
2 In light of this limitation, WSC will produce all responsive documents.

3 **REQUEST FOR PRODUCTION NO. 40:**

4 A copy of all Communications between Paul Drayna and the Franchisees in the  
5 Southern California Region.

6 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
7 **NO. 40:**

8 WSC further objects to this request on the ground that it is overbroad,  
9 burdensome, and merely intended to harass WSC and cause it to spend unnecessary  
10 time and expense responding to this request. WSC further objects to this request on  
11 the grounds that it seeks documents that are neither relevant to the resolution of this  
12 action nor reasonably calculated to lead to the discovery of admissible evidence.  
13 WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in  
14 that it does not describe the documents sought with reasonable particularity. WSC  
15 further objects to this request to the extent it seeks confidential and proprietary/trade  
16 secret documents.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: As a result of the parties' meet and confer efforts, Plaintiff has agreed to limit  
19 the time period for this request to from January 1, 2014 through September 30, 2015.  
20 In light of this limitation, WSC will produce all responsive documents.

21 **REQUEST FOR PRODUCTION NO. 41:**

22 A copy of all Communications between Geoff Wood and the Franchisees in the  
23 Southern California Region.

24 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
25 **NO. 41:**

26 WSC further objects to this request on the ground that it is overbroad,  
27 burdensome, and merely intended to harass WSC and cause it to spend unnecessary  
28 time and expense responding to this request. WSC further objects to this request on

1 the grounds that it seeks documents that are neither relevant to the resolution of this  
2 action nor reasonably calculated to lead to the discovery of admissible evidence.  
3 WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in  
4 that it does not describe the documents sought with reasonable particularity. SC  
5 further objects to this request to the extent it seeks confidential and proprietary/trade  
6 secret documents.

7 Subject to and without waiving the foregoing objections, WSC responds as  
8 follows: As a result of the parties' meet and confer efforts, Plaintiff has agreed to limit  
9 the time period for this request to from January 1, 2014 through September 30, 2015.  
10 In light of this limitation, WSC will produce all responsive documents.

11 **REQUEST FOR PRODUCTION NO. 42:**

12 A copy of the Documents Paul Drayna sent "via UPS overnight delivery to the  
13 State of CA" as reflected in his October 31, 2014 email attached as Exhibit G to the  
14 FAC.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference. WSC  
18 further objects to this request on the grounds that it seeks documents that are neither  
19 relevant to the resolution of this action nor reasonably calculated to lead to the  
20 discovery of admissible evidence.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all responsive documents within its possession, custody,  
23 or control.

24 **REQUEST FOR PRODUCTION NO. 43:**

25 A copy of the Communications between Paul Drayna and Michael Teather that  
26 are reflected in Michael Teather's October 29, 2014 email to Deville attached as  
27 Exhibit T to the FAC.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request to the extent it calls for the production of documents  
4 protected by the attorney-client privilege.

5 Subject to and without waiving the foregoing objections, WSC responds as  
6 follows: WSC will produce all non-privileged documents that are responsive to this  
7 request and that are within its possession, custody, or control.

8 **REQUEST FOR PRODUCTION NO. 44:**

9 All Documents Relating to Your interest in acquiring the area representative  
10 rights for the Southern California Region.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

12 WSC objects to this request on each of the grounds set forth in the General  
13 Objections set forth above, each of which is incorporated by this reference. WSC  
14 further objects to this request to the extent it calls for the production of documents  
15 protected by the attorney-client privilege and/or the attorney work product doctrine.  
16 WSC further objects to this request on the ground that it is overbroad, burdensome,  
17 and merely intended to harass WSC and increase the time and cost incurred by WSC  
18 in responding to these requests when Plaintiff has these same documents. WSC  
19 further objects to this request on the grounds that it seeks confidential and  
20 proprietary/trade secret information.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive document within its  
23 possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 47:**

25 A copy of all Communications between You and Franchisees Relating to the  
26 B&D Parties.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the ground that it is overbroad, burdensome, and  
4 merely intended to harass WSC and cause it to spend unnecessary time and expense  
5 responding to this request. WSC further objects to this request on the grounds that it  
6 seeks documents that are neither relevant to the resolution of this action nor  
7 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
8 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
9 not describe the documents sought with reasonable particularity.

10 Subject to and without waiving the foregoing objections, WSC responds as  
11 follows: WSC will produce all documents that are responsive to this request and that  
12 are within its possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 48:**

14 All Documents Relating to the damages asserted by You in the FACC.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference. WSC  
18 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it  
19 does not describe the documents sought with reasonable particularity.

20 Subject to and without waiving the foregoing objections, WSC responds as  
21 follows: WSC will produce documents sufficient to show the amounts owed by the  
22 B&D Parties for unpaid franchise fees, technology fees, and the liquidated damages  
23 owing under the Modification Agreement.

24 **REQUEST FOR PRODUCTION NO. 51:**

25 All Documents Relating to the investment of "more than \$11 million into the  
26 Windermere technology system" since 2010 as stated in paragraph 6 of the FACC.

27 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
28 **NO. 51:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the ground that it is overbroad, burdensome, and  
4 merely intended to harass WSC and cause it to spend unnecessary time and expense  
5 responding to this request. WSC further objects to this request to the extent it seeks  
6 third party financial information and/or confidential and proprietary/trade secret  
7 documents.

8 Subject to and without waiving the foregoing objections, WSC responds as  
9 follows: Subject to the protective order entered by the Court, WSC will produce  
10 documents evidencing the investments that WSC and its principals have made in  
11 technology system as stated in paragraph 6 of the FACC.

12 **REQUEST FOR PRODUCTION NO. 53:**

13 Copies of all agreements with "other real estate brokerage businesses in other  
14 areas of the United States" that You sell your "technology package" to as represented  
15 in paragraph 6 of the FACC.

16 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
17 **NO. 53:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks confidential documents that  
21 are neither relevant to the resolution of this action nor reasonably calculated to lead to  
22 the discovery of admissible evidence. WSC further objects to this request to the  
23 extent it seeks third party, confidential, and proprietary/trade secret documents.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: Subject to the protective order entered by the Court, WSC will produce  
26 copies of all such agreements from January 1, 2012 through September 30, 2015.

27 **REQUEST FOR PRODUCTION NO. 54:**  
28



1 All Documents Relating to Bennion and Deville's exercise of "poor business  
2 judgment in growing faster than their cash flow could support" as stated in paragraph  
3 9 of the FACC.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference.

7 Subject to and without waiving the foregoing objections, WSC responds as  
8 follows: WSC will produce all responsive documents within its possession, custody,  
9 or control.

10 **REQUEST FOR PRODUCTION NO. 55:**

11 All Documents that support Your contention that Bennion and Deville were a  
12 "struggling franchisee" prior to 2007 as represented in paragraph 9 of the FACC.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

14 WSC objects to this request on each of the grounds set forth in the General  
15 Objections set forth above, each of which is incorporated by this reference.

16 Subject to and without waiving the foregoing objections, WSC responds as  
17 follows: WSC will produce all responsive documents within its possession, custody,  
18 or control.

19 **REQUEST FOR PRODUCTION NO. 57:**

20 All Documents Relating to Your contention in paragraph 9 of the FACC that  
21 Bennion and Deville's "company would soon be insolvent."

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

23 WSC objects to this request on each of the grounds set forth in the General  
24 Objections set forth above, each of which is incorporated by this reference.

25 Subject to and without waiving the foregoing objections, WSC responds as  
26 follows: WSC will produce all responsive documents within its possession, custody,  
27 or control.

28 **REQUEST FOR PRODUCTION NO. 59:**

1 All Documents Relating to the emails You contend were sent by Bennion and  
2 Deville "attempting to recruit agents to leave Windermere Homes & Estates and work  
3 for Bennion and Deville instead" as stated in paragraph 53 of the FACC.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference.

7 Subject to and without waiving the foregoing objections, WSC responds as  
8 follows: WSC will produce all responsive documents within its possession, custody,  
9 or control.

10 **REQUEST FOR PRODUCTION NO. 60:**

11 All Documents that support your contention that Services SoCal failed and  
12 refused to collect and remit fees from licensees as represented in paragraph 57 of the  
13 FACC.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

15 WSC objects to this request on each of the grounds set forth in the General  
16 Objections set forth above, each of which is incorporated by this reference.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all responsive documents within its possession, custody,  
19 or control.

20 **REQUEST FOR PRODUCTION NO. 65:**

21 A copy of the Settlement Agreement between You and Rich King.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 65:**

23 WSC objects to this request on each of the grounds set forth in the General  
24 Objections set forth above, each of which is incorporated by this reference. WSC  
25 further objects to this request on the grounds that it seeks confidential documents that  
26 are neither relevant to the resolution of this action nor reasonably calculated to lead to  
27 the discovery of admissible evidence. WSC further objects to this request on the  
28 grounds that it is vague and ambiguous as to the phrase "Settlement Agreement."

1 WSC further objects to this request on the grounds that it seeks the private financial  
2 information of third parties.

3 Subject to and without waiving the foregoing objections, and within the  
4 probable intent of this request, WSC responds as follows: Upon the Court's entry of  
5 an appropriate protective order, WSC will produce the Mutual Termination of  
6 Windermere Real Estate Franchise License Agreement between WSC and Rich King.

7 **REQUEST FOR PRODUCTION NO. 66:**

8 All Documents that Identify any agreement between You and a current or  
9 former Franchisee to discount the Fees paid to You by the Franchisee.

10 **SECOND SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
11 **NO. 66:**

12 WSC objects to this request on each of the grounds set forth in the General  
13 Objections set forth above, each of which is incorporated by this reference. WSC  
14 further objects to this request on the grounds that it seeks documents that are neither  
15 relevant to the resolution of this action nor reasonably calculated to lead to the  
16 discovery of admissible evidence. WSC further objects to this request on the grounds  
17 that it seeks the private financial information of third parties and confidential and  
18 proprietary/trade secret information.

19 Subject to and without waiving the foregoing objections, WSC responds as  
20 follows: Subject to the protective order entered by the Court, WSC will produce  
21 copies of all such agreements with franchisees from California from January 1, 2012  
22 through September 30, 2015.

23 **REQUEST FOR PRODUCTION NO. 67:**

24 All Documents Relating to any Fee forgiveness or discount offered by You to  
25 any Franchisee in the Southern California Region.

26 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
27 **NO. 67:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the grounds that it seeks documents that are neither  
4 relevant to the resolution of this action nor reasonably calculated to lead to the  
5 discovery of admissible evidence to the extent it seeks documents after September 1,  
6 2015. WSC further objects to this request on the grounds that it seeks the private  
7 financial information of third parties and confidential and proprietary/trade secret  
8 information.

9 Subject to and without waiving the foregoing objections, WSC responds as  
10 follows: Subject to the protective order entered by the Court, WSC will produce  
11 copies of all such agreements with franchisees from the Southern California Region  
12 from January 1, 2012 through September 30, 2015.

13 **REQUEST FOR PRODUCTION NO. 68:**

14 A copy of the settlement agreement between You and Windermere West Valley  
15 Partners, LLC as reflected in the 2011 California FDD.

16 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
17 **NO. 68:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks confidential documents that  
21 are neither relevant to the resolution of this action nor reasonably calculated to lead to  
22 the discovery of admissible evidence. WSC further objects to this request on the  
23 grounds that it seeks the private financial information of third parties and confidential  
24 and proprietary/trade secret information.

25 Subject to and without waiving the foregoing objections, WSC responds as  
26 follows: Subject to the protective order entered by the Court, WSC will produce the  
27 responsive document.

28 **REQUEST FOR PRODUCTION NO. 71:**

1 All Documents, Communications and correspondence that describe and/or  
2 support each category and each claim for damages claimed in the FACC.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 71:**

4 WSC objects to this request on each of the grounds set forth in the General  
5 Objections set forth above, each of which is incorporated by this reference. WSC  
6 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it  
7 does not describe the documents sought with reasonable particularity.

8 Subject to and without waiving the foregoing objections, WSC responds as  
9 follows: WSC will produce documents sufficient to show the amounts owed by the  
10 B&D Parties for unpaid franchise fees, technology fees, and the liquidated damages  
11 owing under the Modification Agreement.

12 **REQUEST FOR PRODUCTION NO. 76:**

13 All Documents Relating to your Fifth Affirmative Defense for "Intervening or  
14 Superseding Acts of Third Parties."

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 76:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference. WSC  
18 further objects to this request on the ground that it is overbroad, burdensome, and  
19 merely intended to harass WSC and cause it to spend unnecessary time and expense  
20 responding to this request. WSC further objects to this request on the grounds that it  
21 seeks documents that are neither relevant to the resolution of this action nor  
22 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
23 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
24 not describe the documents sought with reasonable particularity. WSC further objects  
25 to this request to the extent it calls for the production of documents protected by the  
26 attorney-client privilege and/or the attorney work product doctrine.

1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC will produce all non-privileged responsive documents that were within  
3 its possession, custody, or control.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 77:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the ground that it is overbroad, burdensome, and  
8 merely intended to harass WSC and cause it to spend unnecessary time and expense  
9 responding to this request. WSC further objects to this request on the grounds that it  
10 seeks documents that are neither relevant to the resolution of this action nor  
11 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
12 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
13 not describe the documents sought with reasonable particularity. WSC further objects  
14 to this request to the extent it calls for the production of documents protected by the  
15 attorney-client privilege and/or the attorney work product doctrine.

16 Subject to and without waiving the foregoing objections, WSC responds as  
17 follows: WSC will produce all non-privileged responsive documents that were within  
18 its possession, custody, or control.

19 **REQUEST FOR PRODUCTION NO. 78:**

20 All Documents Relating to your Ninth Affirmative Defense for "Detrimental  
21 Reliance."

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 78:**

23 WSC objects to this request on each of the grounds set forth in the General  
24 Objections set forth above, each of which is incorporated by this reference. WSC  
25 further objects to this request on the ground that it is overbroad, burdensome, and  
26 merely intended to harass WSC and cause it to spend unnecessary time and expense  
27 responding to this request. WSC further objects to this request on the grounds that it  
28 seeks documents that are neither relevant to the resolution of this action nor

1 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
2 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
3 not describe the documents sought with reasonable particularity. WSC further objects  
4 to this request to the extent it calls for the production of documents protected by the  
5 attorney-client privilege and/or the attorney work product doctrine.

6 Subject to and without waiving the foregoing objections, WSC responds as  
7 follows: WSC will produce all non-privileged responsive documents that were within  
8 its possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 79:**

10 All Documents Relating to your Tenth Affirmative Defense for "Unclean  
11 Hands."

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 79:**

13 WSC objects to this request on each of the grounds set forth in the General  
14 Objections set forth above, each of which is incorporated by this reference. WSC  
15 further objects to this request on the ground that it is overbroad, burdensome, and  
16 merely intended to harass WSC and cause it to spend unnecessary time and expense  
17 responding to this request. WSC further objects to this request on the grounds that it  
18 seeks documents that are neither relevant to the resolution of this action nor  
19 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
20 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
21 not describe the documents sought with reasonable particularity. WSC further  
22 objects to this request to the extent it calls for the production of documents protected  
23 by the attorney-client privilege and/or the attorney work product doctrine.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: WSC will produce all non-privileged responsive documents that were within  
26 its possession, custody, or control.

27 **REQUEST FOR PRODUCTION NO. 80:**

28 All Documents Relating to your Eleventh Affirmative Defense for "Estoppel."

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 80:**

2 WSC objects to this request on each of the grounds set forth in the General  
3 Objections set forth above, each of which is incorporated by this reference. WSC  
4 further objects to this request on the ground that it is overbroad, burdensome, and  
5 merely intended to harass WSC and cause it to spend unnecessary time and expense  
6 responding to this request. WSC further objects to this request on the grounds that it  
7 seeks documents that are neither relevant to the resolution of this action nor  
8 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
9 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
10 not describe the documents sought with reasonable particularity. WSC further objects  
11 to this request to the extent it calls for the production of documents protected by the  
12 attorney-client privilege and/or the attorney work product doctrine.

13 Subject to and without waiving the foregoing objections, WSC responds as  
14 follows: WSC will produce all non-privileged responsive documents that were within  
15 its possession, custody, or control.

16 **REQUEST FOR PRODUCTION NO. 81:**

17 All Documents Relating to your Twelfth Affirmative Defense for “Compliance  
18 with Applicable Laws.”

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 81:**

20 WSC objects to this request on each of the grounds set forth in the General  
21 Objections set forth above, each of which is incorporated by this reference. WSC  
22 further objects to this request on the ground that it is overbroad, burdensome, and  
23 merely intended to harass WSC and cause it to spend unnecessary time and expense  
24 responding to this request. WSC further objects to this request on the grounds that it  
25 seeks documents that are neither relevant to the resolution of this action nor  
26 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
27 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
28 not describe the documents sought with reasonable particularity. WSC further objects



1 to this request to the extent it calls for the production of documents protected by the  
2 attorney-client privilege and/or the attorney work product doctrine.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC will produce all non-privileged responsive documents that were within  
5 its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 82:**

7 All Documents Relating to your Thirteenth Affirmative defense for "Valid  
8 Business Purpose."

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 82:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the ground that it is overbroad, burdensome, and  
13 merely intended to harass WSC and cause it to spend unnecessary time and expense  
14 responding to this request. WSC further objects to this request on the grounds that it  
15 seeks documents that are neither relevant to the resolution of this action nor  
16 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
17 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
18 not describe the documents sought with reasonable particularity. WSC further  
19 objects to this request to the extent it calls for the production of documents protected  
20 by the attorney-client privilege and/or the attorney work product doctrine.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents that were within  
23 its possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 83:**

25 All Documents Relating to your Fifteenth Affirmative Defense for "Damages  
26 Not Ascertainable."

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 83:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the ground that it is overbroad, burdensome, and  
4 merely intended to harass WSC and cause it to spend unnecessary time and expense  
5 responding to this request. WSC further objects to this request on the grounds that it  
6 seeks documents that are neither relevant to the resolution of this action nor  
7 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
8 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
9 not describe the documents sought with reasonable particularity. WSC further objects  
10 to this request to the extent it calls for the production of documents protected by the  
11 attorney-client privilege and/or the attorney work product doctrine.

12 Subject to and without waiving the foregoing objections, WSC responds as  
13 follows: WSC will produce all non-privileged responsive documents that were within  
14 its possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 84:**

16 All Documents Relating to your Sixteenth Affirmative Defense for "Full  
17 Performance."

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 84:**

19 WSC objects to this request on each of the grounds set forth in the General  
20 Objections set forth above, each of which is incorporated by this reference. WSC  
21 further objects to this request on the ground that it is overbroad, burdensome, and  
22 merely intended to harass WSC and cause it to spend unnecessary time and expense  
23 responding to this request. WSC further objects to this request on the grounds that it  
24 seeks documents that are neither relevant to the resolution of this action nor  
25 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
26 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
27 not describe the documents sought with reasonable particularity. WSC further objects  
28

1 to this request to the extent it calls for the production of documents protected by the  
2 attorney-client privilege and/or the attorney work product doctrine.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC will produce all non-privileged responsive documents that were within  
5 its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 85:**

7 All Documents Relating to your Twenty-First Affirmative Defense for "Good  
8 Faith."

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 85:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the ground that it is overbroad, burdensome, and  
13 merely intended to harass WSC and cause it to spend unnecessary time and expense  
14 responding to this request. WSC further objects to this request on the grounds that it  
15 seeks documents that are neither relevant to the resolution of this action nor  
16 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
17 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
18 not describe the documents sought with reasonable particularity. WSC further  
19 objects to this request to the extent it calls for the production of documents protected  
20 by the attorney-client privilege and/or the attorney work product doctrine.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents that were within  
23 its possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 86:**

25 All Documents Relating to your Twenty-Fourth Affirmative Defense for  
26 "Conduct Justified."

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 86:**

1 WSC objects to this request on each of the grounds set forth in the General  
2 Objections set forth above, each of which is incorporated by this reference. WSC  
3 further objects to this request on the ground that it is overbroad, burdensome, and  
4 merely intended to harass WSC and cause it to spend unnecessary time and expense  
5 responding to this request. WSC further objects to this request on the grounds that it  
6 seeks documents that are neither relevant to the resolution of this action nor  
7 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
8 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
9 not describe the documents sought with reasonable particularity. WSC further objects  
10 to this request to the extent it calls for the production of documents protected by the  
11 attorney-client privilege and/or the attorney work product doctrine.

12 Subject to and without waiving the foregoing objections, WSC responds as  
13 follows: WSC will produce all non-privileged responsive documents that were within  
14 its possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 87:**

16 All Communications with the "professional PR and Crisis Management firm"  
17 referenced in Your response to B&D Fine Homes' Interrogatory No. 1 Relating to  
18 Windermere Watch.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 87:**

20 WSC objects to this request on each of the grounds set forth in the General  
21 Objections set forth above, each of which is incorporated by this reference. WSC  
22 further objects to this request on the ground that it is overbroad, burdensome, and  
23 merely intended to harass WSC and increase the time and cost incurred by WSC in  
24 responding to these requests. WSC further objects to this request to the extent it seeks  
25 confidential and proprietary/trade secret information.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: WSC will produce all documents responsive to this request.

28 **REQUEST FOR PRODUCTION NO. 88:**

1 All Documents Relating to WSC's agreement to modify any of the fees owed by  
2 California Franchisees to WSC under their respective Franchise Agreement.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 88:**

4 WSC objects to this request on each of the grounds set forth in the General  
5 Objections set forth above, each of which is incorporated by this reference. WSC  
6 further objects to this request on the ground that it is overbroad, burdensome, and  
7 merely intended to harass WSC and cause it to spend unnecessary time and expense  
8 responding to this request, especially in light of the fact that it is duplicative of a  
9 number of Plaintiff's other discovery requests. WSC further objects to this request on  
10 the grounds that it seeks documents that are neither relevant to the resolution of this  
11 action nor reasonably calculated to lead to the discovery of admissible evidence.  
12 WSC further objects to this request to the extent it seeks confidential and  
13 proprietary/trade secret documents.

14 Subject to and without waiving the foregoing objections, WSC responds as  
15 follows: Pursuant to Plaintiff's prior requests, WSC has already agreed to produce  
16 documents that would be responsive to this request. Nevertheless, WSC will produce  
17 all responsive documents for the period January 1, 2012 through September 30, 20.

18 **III. PLAINTIFFS' CONTENTIONS WITH RESPECT TO THESE REQUEST**

19 WSC's responses to the aforementioned requests each contain the following phrase  
20 "WSC will produce all non-privileged documents that are responsive to this request and  
21 that are within its possession, custody or control" or indicate that some part of the request  
22 will be responded to with all responsive documents. As the issue with all the responses is  
23 the same, the delay and/or refusal to produce responsive documents, one section of points  
24 and authorities as to all requests have been provided.

25 As the above responses show, WSC has agreed to produce all documents  
26 responsive to these requests. Nonetheless, WSC continues to delay making a production  
27 of responsive documents. WSC's inability to produce responsive documents within 4  
28 months of receiving the requests justifies Court intervention. The Court must compel

1 WSC to produce the responsive documents. Otherwise, Plaintiffs will be prejudiced in  
2 their ability to bring their case, take depositions and file dispositive motions.

3 **A. Plaintiffs Have Satisfied The Meet And Confer Requirements Prior To Filing**  
4 **This Motion**

5 Fed. R. Civ. P. 37(a)(1) permits a party to move for an order compelling discovery,  
6 upon certification that the movant has in good faith conferred or attempted to confer with  
7 the opposing party in an effort to obtain the requested discovery without court action.  
8 Plaintiffs have spent over 4 months attempting to work with WSC to obtain the  
9 production of responsive documents. *See generally* Adams Decl., Mulcahy Decl.  
10 Pursuant to Local Rule 37-1, Plaintiffs sent WSC a letter on April 18, 2016, detailing the  
11 inadequacies of its productions. Mulcahy Decl., ¶ 4, Ex. A. The letter set forth the  
12 requests for which WSC had both agreed to produce documents yet had not produced  
13 documents. *Id.* Plaintiffs outlined how nearly 4 months had passed since the document  
14 requests had been issued and asked that WSC produce the documents in the next 10 days.  
15 *Id.* Even after being given additional time, WSC has still not produced documents in  
16 response to many of the requests. *See* Mulcahy Decl., ¶¶ 5-6.

17 Despite Plaintiffs' best efforts of working amiably with WSC and giving it time to  
18 make its document productions, time has run out. With six months remaining to trial,  
19 Plaintiffs were left with no choice but to demand the production of the documents and to  
20 move this Court for an order ensuring that production is made as soon as possible.  
21 Further, based on the inadequacies of the previous productions, WSC should be made to  
22 testify as to its efforts in finding all responsive documents and demonstrating that it has  
23 made a reasonable inquiry and exercised due diligence.

24 **B. WSC's Delay Justifies An Order Compelling Production And Requiring WSC**  
25 **To Provide Declarations Establishing It Made A Reasonable Inquiry For**  
26 **Responsive Documents**

27 Under Fed. R. Civ. P. 37(a)(3)(B), the discovering party may move for an order  
28 compelling production of documents. Where, as here, the responding party, agrees to

1 produce responsive documents, “a proper response to a request for production requires  
2 the responding party – within the specified time – to actually produce the responsive  
3 documents for inspection or copying.” *Novelty, Inc. v. Mt. View Mktg.*, 265 F.R.D. 370,  
4 375 (S.D. Ind. 2009)

5 Plaintiffs have attempted to work in good faith with WSC for 4 months to obtain  
6 responsive documents. Despite these consistent efforts WSC has not produced the  
7 documents it stated would be produced. Most notably, WSC’s production does not  
8 include emails from key custodians such as Senior Vice President of Client Services  
9 Michael Teather and WSC’s General Counsel, Paul Drayna. Mulcahy Decl., ¶ 3. Both  
10 individuals are prominently featured throughout the Amended Complaint and possess  
11 responsive documents that are not privileged. WSC’s production is also missing, at the  
12 very least, the following categories of documents:

- 13 • documents regarding WSC’s document retention policy;
- 14 • communications with the California Department of Business Oversight;
- 15 • California Franchise Disclosure Documents, Franchise registration  
16 statements, disclosure statements;
- 17 • documents showing payment of fees by franchisees;
- 18 • documents regarding efforts to sell Windermere franchises;
- 19 • communications regarding Windermere Watch (a website attacking  
20 Windermere and its’ franchisees);
- 21 • documents regarding efforts to offset the negative publicity generated by  
22 Windermere Watch;
- 23 • communications between Windermere and its franchisees in California;
- 24 • documents showing Windermere’s investment in its technology system;
- 25 • documents supporting WSC’s affirmative defenses; and
- 26 • documents supporting multiple contentions in WSC’s First Amended  
27 Counterclaim.

28 Mulcahy Decl., ¶ 3.

1 The above documents are all critical and go to central issues in this franchise case. WSC  
2 is the franchisor of the Windermere franchise system; B&D Fine Homes and B&D SoCal  
3 were formerly Windermere franchisees; and Services SoCal was formerly the  
4 Windermere “Area Representative” for the Southern California region. Both the claims  
5 and counterclaims concern payment of fees, solicitations of franchisees, WSC’s  
6 technology system and marketing efforts regarding Windermere Watch. As the requested  
7 and unproduced documents concern these claims, it is imperative that the documents be  
8 produced as soon as possible.

9 WSC “has a duty to make a reasonable inquiry to locate responsive documents and  
10 then to provide a complete, explicit response.” *Advanced Visual Image Design, LLC v.*  
11 *Exist, Inc.*, 2015 U.S. Dist. LEXIS 109140 \*14 (C.D. Cal. Aug. 18, 2015). “[A]  
12 reasonable inquiry into the factual basis of [a party's] discovery responses . . . require[s],  
13 at a minimum, a reasonable procedure to distribute discovery requests to all employees  
14 and agents of the [party] potentially possessing responsive information, and to account  
15 for the collection and subsequent production of the information to [the opposing party].”  
16 *A. Farber & Ptners., Inc. v. Garber*, 234 F.R.D. 186, 190 (C.D. Cal. 2006) (*citing to*  
17 *Nat’l Ass’n of Radiation Survivors v. Turnage*, 115 F.R.D 543, 554-556 (N.D. Cal.  
18 1987)).

19 WSC has failed to produce all responsive documents and review the requests with  
20 the appropriate custodians. Most visibly, WSC has not provided emails from a number of  
21 its custodians. *See* Mulcahy Decl., ¶ 3. “When the response is minimal and clearly omits  
22 materials from readily identifiable repositories likely to include some or all of the  
23 requested materials or information, the obvious conclusion is that the responding party  
24 has neither conducted a reasonable inquiry nor produced all documents within its  
25 possession, custody or control.” *Meeks v. Parsons*, 2009 U.S. Dist. LEXIS 90283 (E.D.  
26 Cal. Sept. 18, 2009). Here, as WSC’s productions are missing documents from key  
27 categories and custodians it is clear that WSC has not conducted a reasonable inquiry into  
28 finding responsive documents



1 Nor does WSC's agreement to merely conduct some sort of a rolling production  
2 suffice to mitigate the problem. *See e.g. Novelty*, 265 F.R.D. at 376 ("Unilaterally  
3 deciding to conduct a cursory initial search to be followed by 'rolling' productions from  
4 subsequent, more thorough, searches is not an acceptable option"). This case is on a tight  
5 schedule and with trial set for October there is no time to waste. By the time this Motion  
6 will be decided WSC will have had almost 6 months to prepare documents. This is more  
7 than enough time. Plaintiffs have been able to produce over 70000 pages of documents in  
8 half that time. *Adams Decl.*, ¶ 19.

9 The continued delay in producing responsive documents has prejudiced Plaintiffs'  
10 and threatens to cause even greater harm going forward. WSC should be ordered to  
11 immediately consult all the proper custodians and prepare a production of all responsive  
12 documents. WSC's dilatory tactics must be brought to an end. *See Anderson v. Cryovac,*  
13 *Inc.*, 862 F.2d 910, 929 (1st Cir. 1988) ("Once a proper discovery request has been  
14 seasonably propounded, we will not allow a party sentiently to avoid its obligations by  
15 filing misleading or evasive responses, or by failing to examine records within its  
16 control.")

17 The Court should also require that WSC provide Plaintiffs with declarations or  
18 affidavits detailing the nature of its "reasonable inquiry" to locate responsive documents  
19 on a request-by-request basis. *See A. Farber*, 234 F.R.D. at 190; *see also Rogers v.*  
20 *Giurbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012) ("A party must make a reasonable  
21 inquiry to determine whether responsive documents exist, and if they do not, the "party  
22 should so state with sufficient specificity to allow the Court to determine whether the  
23 party made a reasonable inquiry and exercised due diligence.") As WSC is a large  
24 company it "should be able to demonstrate a procedure for systematic compliance with  
25 the document request[s]." *Meeks v. Parsons*, 2009 U.S. Dist. LEXIS at \*12.

26 For these reasons, Plaintiffs respectfully request that the Court grant its Motion,  
27 ordering the immediate production of responsive documents and requiring WSC to  
28 prepare declarations describing its process for obtaining responsive documents.

1       **C. Plaintiffs Should Be Entitled To Their Fees For Having To Bring This Motion**

2       A failure to conduct a reasonable inquiry to obtain all responsive documents  
3 justifies rewarding the prevailing party with its fees and costs. *See Nat'l Ass'n of*  
4 *Radiation Survivors v. Turnage*, 115 F.R.D 543, 558 (N.D. Cal. 1987) (the responding  
5 party's "failure to produce clearly responsive documents and information" among other  
6 items, made fees and costs recoverable); *see also Advanced Visual Image Design*, 2015  
7 U.S. Dist. LEXIS at \*23 (awarding fees due, in part, to the responding party's  
8 "unjustified delay in producing documents").

9       Here, Plaintiffs have been forced to bring this Motion despite 4 months of meet  
10 and confer efforts. WSC has not only prejudiced Plaintiffs but has forced Plaintiffs to  
11 bring what should have been an unnecessary Motion. For these reasons, Plaintiffs  
12 respectfully request that they be awarded fees and costs.

13       **IV. WSC'S CONTENTIONS WITH RESPECT TO THESE REQUESTS**

14       **A. Plaintiffs Failed to Meet and Confer in Good Faith**

15       Pursuant to Federal Rule of Civil Procedure 37(a)(1), a motion to compel "must  
16 include a certification that the movant has in good faith conferred or attempted to confer  
17 with the person or party failing to make disclosure or discovery in an effort to obtain it  
18 without court action." Although Plaintiffs' attorney has submitted a declaration on this  
19 issue, the record reflects that Plaintiffs did not meet and confer in good faith prior to  
20 bringing this motion.

21       Plaintiffs' initial meet and confer letter gave WSC 10 days in which to produce  
22 responsive documents and supplemental discovery responses or to provide assurances as  
23 to their immediate production. Mulcahy Decl., ¶ 4, Ex. A, p. 1, ¶ 1. WSC met Plaintiffs'  
24 deadline, produced 40,000 pages of additional documents, and promised the production  
25 of any additional responsive document and its supplemental discovery responses by the  
26 end of the following week. *See* Mulcahy Decl., ¶ 5, Ex. B. Plaintiffs responded that  
27 WSC's letter – sent within Plaintiffs' deadline – was an inadequate and insufficient "last  
28 minute" attempt to comply. Mulcahy Decl., ¶ 8, Ex. C, p. 1, ¶ 1. Plaintiffs admitted that

1 they had not reviewed any of the 40,000 pages produced by WSC in order to determine  
2 whether those documents were responsive to any of the requests at issue and have refused  
3 to further meet and confer on any of these issues. Mulcahy Decl., ¶ 8, Ex. C, p. 1, ¶ 3.  
4 Instead, Plaintiffs brought this motion. This approach of “shoot first and find out later”  
5 lacks good faith. *See Navaint Marketing Solutions, Inc. v. Larry Tucker, Inc.*, 339 F.3d  
6 180, 186-187 (3d Cir. 2003). Plaintiffs’ lack of a good faith effort to meet and confer is  
7 further evidenced by the fact that it went ahead and prepared this joint stipulation and  
8 supporting declarations prior to the expiration of the 10-day deadline they had given  
9 WSC to respond to their April 18, 2016 letter. *See Feasby Decl.*, ¶ 14.

10 Plaintiffs failed to meet and confer in good faith. Accordingly, Plaintiffs’ motion  
11 should be denied.

12 **B. WSC Has Met its Discovery Obligations**

13 “[A] party has an obligation to conduct a reasonable inquiry into the factual basis  
14 of his responses to discovery, and, based on that inquiry, [a] party responding to a Rule  
15 34 production request ... is under an affirmative duty to seek that information reasonably  
16 available to [it] from [its] employees, agents, or others subject to [its] control.” *A. Farber*  
17 *and Partners, Inc. v. Garber*, 234 F.R.D. 186, 189 (C.D. Cal. 2006) (internal citations  
18 and quotations omitted). In producing documents in response to document requests, a  
19 responding party can produce its documents “as they are kept in their usual course of  
20 business.” Fed. Rule Civ. Proc. 34(b)(2)(E)(i). WSC has met these obligations.

21 The extensive efforts undertaken by WSC to locate, review, and produce  
22 responsive documents are set forth in the declarations of Paul Drayna, Josh Christiansen,  
23 and Jeffrey A. Feasby filed concurrently herewith. These included:

- 24 • WSC’s in-house attorney, Paul Drayna, reviewed Plaintiffs’ document  
25 requests at the outset and immediately began locating and pulling responsive  
26 documents. Declaration of Paul Drayna (“Drayna Decl.”), ¶ 3.

- 1 • WSC’s attorneys flew to Seattle to meet with a number of WSC’s employees  
2 who might have relevant information or documents. Feasby Decl., ¶ 2;  
3 Drayna Decl., ¶ 4.
- 4 • WSC set up a VPN site onto which its employees could upload potentially  
5 responsive emails, which WSC’s attorneys could access and review in  
6 San Diego. Feasby Decl., ¶ 3; Drayna Decl., ¶ 4; Declaration of Josh  
7 Christenson (“Christenson Decl.”), ¶ 3.
- 8 • Mr. Drayna sent WSC’s attorney, Jeff Feasby, two boxes of potentially  
9 responsive documents and uploaded hundreds of additional documents –  
10 consisting of thousands of pages of documents – onto the VPN site. Drayna  
11 Decl., ¶ 5.
- 12 • Mr. Drayna reached out to other WSC officers and employees and asked  
13 them to search for any potentially responsive documents. He also retrieved  
14 additional responsive documents from storage. Hard copy documents were  
15 scanned and uploaded to the VPN site or emailed directly to WSC’s  
16 attorneys. Electronic documents were uploaded to the VPN site. Drayna  
17 Decl., ¶ 6.
- 18 • WSC’s outside attorneys worked with WSC’s IT personnel and in-house  
19 counsel to identify custodians of potentially responsive emails and to  
20 formulate search terms to effectively locate these documents. Feasby Decl.,  
21 ¶ 4; Drayna Decl., ¶ 7; Christenson Decl., ¶¶ 3-4.
- 22 • WSC’s search for potential responsive emails resulted in 166 computer files,  
23 some of which contained thousands of potentially responsive emails.  
24 Christenson Decl., ¶¶ 5-8.
- 25 • WSC ran into problems with its attorneys’ ability to access the emails that  
26 had been put on the VPN site. This required WSC to work extensively with  
27 Microsoft to resolve the issue. While the issue was resolved with regard to  
28 the majority of the email files, others remained inaccessible. Christenson

1 Decl., ¶ 9. WSC has since found a workaround such that all of the emails  
2 can be reviewed and produced if responsive. Feasby Decl., ¶ 8.

- 3 • WSC's attorneys and consultants have spent well over 250 hours on WSC's  
4 document production. Feasby Decl., ¶ 16; Drayna Decl., ¶ 9; Christenson  
5 Decl., ¶ 10.
- 6 • WSC has done everything it can to make reasonable inquiry regarding the  
7 existence of potentially responsive document. Drayna Decl., ¶ 9.
- 8 • WSC has produced documents in response to all of the requests at issue  
9 except for two, for which responsive documents will be produced on May 6  
10 as promised. Feasby Decl., ¶ 17.<sup>2</sup> All further outstanding responsive  
11 documents will be produced on May 6, 2016. Feasby Decl., ¶¶ 11, 17.

12 Based on the foregoing, it is clear that WSC has made a reasonable inquiry  
13 regarding the existence of potentially responsive documents. All but a handful of those  
14 documents have been reviewed and produced. Feasby Decl., ¶ 17. The remaining  
15 documents will be produced on May 6, 2016, as WSC promised in response to Plaintiffs'  
16 initial meet and confer letter. Therefore, there are no outstanding documents for the  
17 Court to order WSC to produce. Plaintiffs' motion is completely unnecessary and  
18 amounts to an abuse of discovery procedures and is a needless waste of both this Court's  
19 and WSC's resources. The motion should be denied.

20 **C. WSC is Entitled to An Award of its Attorneys' Fees Incurred in Opposing**  
21 **This Motion**

22 The prevailing party on a motion to compel is entitled to its expenses, including  
23 reasonable attorney fees unless the losing party was substantially justified in making or  
24 opposing the motion or other circumstances make such an award unjust. Fed. Rule Civ.

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25  
26 <sup>2</sup> WSC's attorneys have gone through the exercise of identifying which documents were  
27 produced in response to each of Plaintiffs' requests. However, this is counsel's protected  
28 work product. Plaintiffs' attorneys have the ability to conduct the same exercise.  
Nevertheless, upon the Court's request, WSC's attorneys are willing to produce their  
work product to the Court for an *in camera* review to the extent the Court has any  
concerns about whether WSC has produced documents in response to a specific request.

1 Proc. 37(a)(5). The burden is on the losing party affirmatively to demonstrate that its  
2 position was substantially justified. *See* Adv. Comm. Notes to 1970 Amendment to  
3 former FRCP 37(a)(4); *see also Lorillard Tobacco Co. v. Elston Self Service Wholesale*  
4 *Groceries, Inc.*, 259 FRD 323, 327 (N.D. Il. 2009). “(A)n individual’s discovery conduct  
5 should be found ‘substantially justified’ under Rule 37 if it is a response to a genuine  
6 dispute, or if reasonable people could differ as to the appropriateness of the contested  
7 action.” *Devaney v. Continental American Ins. Co.*, 989 F.2d 1154, 1163 (11th Cir.  
8 1993).

9 Here, Plaintiffs cannot establish that they brought this motion with substantial  
10 justification. As established above, WSC complied with Plaintiffs’ demands as set forth  
11 in their first meet and confer letter – WSC produced 40,000 additional pages of  
12 documents, pointed out that it had produced documents in response to the great majority  
13 of the requests at issue, and that it would produce additional documents and its  
14 supplemental responses the next week. Mulcahy Decl., ¶ 5, Ex. B. Plaintiffs refused to  
15 meet and confer further on these issues and brought this motion. However, Plaintiffs  
16 have not reviewed any of the 40,000 pages of documents recently produced by WSC, and  
17 they have not waited to receive and review the additional discovery as promised by WSC  
18 in accordance with Plaintiffs’ demands. Under these circumstances, there is no genuine  
19 dispute. Reasonable people could not differ on the appropriateness of Plaintiffs’ decision  
20 to bring this motion. Plaintiffs brought the motion without substantial justification in,  
21 apparently, an effort to harass WSC.

22 Accordingly, the Court should award WSC its attorneys’ fees and costs incurred in  
23 opposing this motion.

24 **V. INTERROGATORIES NOS. 3, 4, 5, 6, 7, 16, 17 AND 25**

25 Pursuant to Local Rule 37-2.1, WSC’s Responses to B&D Fine Homes’ First Set  
26 of Interrogatories Nos. 3, 4, 5, 6, 7, 16, 17 and 25 are included below.

27 **INTERROGATORY NO. 3:**

28

1 Identify by name, date and contracting parties, all Windermere “Franchise  
2 Agreements” in which Services SoCal is a party.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 WSC objects to this interrogatory on each of the grounds set forth in the  
5 Preliminary Statement and General Objections set forth above, and each of those  
6 objections is incorporated by this reference as if set forth fully herein. WSC further  
7 objects to this interrogatory on the grounds that it is overbroad, burdensome and merely  
8 intended to harass WSC in that Plaintiff has the same access to the documents that  
9 contain this information as WSC does. WSC further objects to this interrogatory on the  
10 grounds that it is vague and ambiguous as to the phrase “Franchise Agreement.”

11 Subject to and without waiving the foregoing objections, and within the probably  
12 intend of the interrogatory, WSC responds as follows: Pursuant to Rule 33(d) of the  
13 Federal Rules of Civil Procedure, WSC will produce documents reflecting this  
14 information.

15 **INTERROGATORY NO. 4:**

16 Identify by all dates the California FDD was registered and/or renewed with the  
17 Department of Business Oversight since January 1, 2012.

18 **RESPONSE TO INTERROGATORY NO. 4:**

19 WSC objects to this interrogatory on each of the grounds set forth in the  
20 Preliminary Statement and General Objections set forth above, and each of those  
21 objections is incorporated by this reference as if set forth fully herein. WSC further  
22 objects to this interrogatory on the ground that it seeks information that is not relevant to  
23 the issues in this litigation nor reasonably calculated to lead to the discovery of  
24 admissible evidence. WSC further objects to this interrogatory on the grounds that it is  
25 vague and ambiguous as to the phrase “the California FDD.”

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, WSC will  
28 produce documents reflecting this information.

1 **INTERROGATORY NO. 5:**

2 Identify by name and contact information all Franchisee that received a California  
3 FDD from Windermere since January 1, 2013.

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 WSC objects to this interrogatory on each of the grounds set forth in the  
6 Preliminary Statement and General Objections set forth above, and each of those  
7 objections is incorporated by this reference as if set forth fully herein. WSC further  
8 objects to this interrogatory on the ground that it seeks information that is not relevant to  
9 the issues in this litigation nor reasonably calculated to lead to the discovery of  
10 admissible evidence.

11 Subject to and without waiving the foregoing objections, WSC responds as  
12 follows: Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, WSC will  
13 produce documents reflecting this information.

14 **INTERROGATORY NO. 6:**

15 Identify by name and contact information all Prospective Franchisees that received  
16 a California FDD from Windermere since January 1, 2013.

17 **RESPONSE TO INTERROGATORY NO. 6:**

18 WSC objects to this interrogatory on each of the grounds set forth in the  
19 Preliminary Statement and General Objections set forth above, and each of those  
20 objections is incorporated by this reference as if set forth fully herein. WSC further  
21 objects to this interrogatory on the ground that it seeks information that is not relevant to  
22 the issues in this litigation nor reasonably calculated to lead to the discovery of  
23 admissible evidence.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, WSC will  
26 produce documents reflecting this information.

27 **INTERROGATORY NO. 7:**

28



1 Identify by date and name of Franchisee all settlements Relating to the payment of  
2 any franchise fees, initial fees, or ongoing license fees between YOU and any Franchisee  
3 operating in the Southern California Region since January 1, 2012.

4 **RESPONSE TO INTERROGATORY NO. 7:**

5 WSC objects to this interrogatory on each of the grounds set forth in the  
6 Preliminary Statement and General Objections set forth above, and each of those  
7 objections is incorporated by this reference as if set forth fully herein. WSC further  
8 objects to this interrogatory on the ground that it seeks information that is irrelevant,  
9 burdensome and infringes on the privacy rights of third parties. WSC further objects to  
10 this request on the grounds that it is vague and ambiguous as to the term “settlements.”

11 Subject to and without waiving the foregoing objections, WSC responds as  
12 follows: Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, and upon the  
13 Court’s entry of an appropriate protective order, WSC will produce documents reflecting  
14 this information.

15 **INTERROGATORY NO. 16:**

16 Identify by amount and date all of the “personal loans” You provided to Bennion  
17 and Deville as the term is used in paragraphs 9, 10, 39, 41, 58, 60 and 77 of the FACC.

18 **RESPONSE TO INTERROGATORY NO. 16:**

19 WSC objects to this interrogatory on each of the grounds set forth in the  
20 Preliminary Statement and General Objections set forth above, and each of those  
21 objections is incorporated by this reference as if set forth fully herein. WSC further  
22 objects to this interrogatory on the grounds that it is overbroad, burdensome, and merely  
23 intended to harass WSC in that Plaintiff has the same access to the documents that  
24 contain this information as WSC does.

25 Subject to and without waiving the foregoing objections, WSC responds as  
26 follows: WSC will produce documents reflecting this information.

27 **INTERROGATORY NO. 17:**

28

1 Identify by title, date, and amount, the “personal loan” that “remains outstanding”  
2 as reflected in paragraph 10 of the FACC.

3 **RESPONSE TO INTERROGATORY NO. 17:**

4 WSC objects to this interrogatory on each of the grounds set forth in the  
5 Preliminary Statement and General Objections set forth above, and each of those  
6 objections is incorporated by this reference as if set forth fully herein. WSC further  
7 objects to this interrogatory on the grounds that it is overbroad, burdensome, and merely  
8 intended to harass WSC in that Plaintiff has the same access to the documents that  
9 contain this information as WSC does.

10 Subject to and without waiving the foregoing objections, WSC responds as  
11 follows: WSC will produce documents reflecting this information.

12 **INTERROGATORY NO. 25:**

13 Identify by title, date, and Bates number, where applicable, all Documents produced  
14 by You in response to B&D Fine Homes' Document Request No. 60.

15 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 25:**

16 WSC objects to this interrogatory on each of the grounds set forth in the  
17 Preliminary Statement and General Objections set forth above, and each of those  
18 objections is incorporated by this reference as if set forth fully herein. WSC further  
19 objects to this interrogatory on the grounds that it is overbroad, burdensome, and  
20 merely intended to harass WSC and cause it spend undue time and expense in  
21 preparing a response when these documents will all be produced to Plaintiff subject to  
22 WSC's objections to Document Request No. 60.

23 Subject to and without waiving the foregoing objections, WSC responds as  
24 follows: Documents produced so far include Bates Stamp Nos. 7-10, 327-329, and  
25 338.

26 **VI. PLAINTIFFS' CONTENTIONS WITH RESPECT TO**  
27 **INTERROGATORIES NOS. 3, 4, 5, 6, 7, 16, 17 AND 25**

1       **A. WSC Must Specifically Identify Responsive Bates Numbers In Its**  
2       **Interrogatory Responses**

3       In each of WSC's responses to Interrogatories Nos. 3-7, 16-17, WSC states that it  
4 will "produce documents reflecting this information." In response to No. 25 WSC  
5 provides an incomplete listing of bates numbers. In support of its position as to many of  
6 the responses, WSC cites to Rule 33(d) of the Federal Rules of Civil Procedure.  
7 However, WSC's responses are incomplete and contravene Rule 33(d).

8       Ninth Circuit law is clear; if a party elects to avail itself of the option under Rule  
9 33(d), it must "specify where in the records the answers [can] be found." *Rainbow*  
10 *Pioneer # 44-18-04A v. Hawaii-Nevada Inv. Corp.*, 711 F.2d 902, 906 (9th Cir. 1983);  
11 *see also Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 284 (C.D.Cal.1996) (specification  
12 of records must be in sufficient detail to allow party to locate and identify documents  
13 from which the interrogatory answer may be ascertained, as readily as the party served).  
14 Nowhere in WSC's responses does it indicate which documents contain the responsive  
15 information. Instead, WSC is asking Plaintiffs to look through 14,000 pages of  
16 documents to find the answers.

17       When confronted with the above authority, WSC agreed to supplement its response  
18 to Interrogatory Request Nos. 3, 4, 5, 6, 7, 16, 17 and 25 to include the bates numbers for  
19 the responsive documents. Adams Decl., ¶ 13. WSC agreed to do this on February 17,  
20 2016. *Id.* Unfortunately, now, two months later, WSC has still not done so. Thus, because  
21 the clear weight of authority supports it and WSC has agreed to it, WSC's responses to  
22 Interrogatory Request Nos. 3, 4, 5, 6, 7, 16, 17 and 25 must include the bates numbers for  
23 all documents containing responsive information. The Court should compel WSC to  
24 consult its custodians, search its records and identify the responsive bates numbers.

25       **B. Plaintiffs Should Be Entitled To Their Fees For Having To Bring This Motion**

26       A failure to conduct a reasonable inquiry to obtain all responsive information  
27 justifies rewarding the prevailing party with its fees and costs. *See Nat'l Ass'n of*  
28 *Radiation Survivors v. Turnage*, 115 F.R.D 543, 558 (N.D. Cal. 1987) (the responding

1 party's "failure to produce clearly responsive documents and information" among other  
2 items, made fees and costs recoverable); *see also Advanced Visual Image Design*, 2015  
3 U.S. Dist. LEXIS at \*23 (awarding fees due in part, to "the failure to provide complete,  
4 explicit responses without boilerplate, conclusory objections").

5 Here, Plaintiffs have been forced to bring this Motion despite 4 months of meet  
6 and confer efforts and despite WSC agreeing to provide the requested relief. WSC has  
7 not only prejudiced Plaintiffs by this delay, but has forced Plaintiffs to bring what should  
8 have been an unnecessary Motion. For these reasons, Plaintiffs respectfully request that  
9 they be awarded fees and costs for bringing the Motion.

10 **VII. WSC'S CONTENTIONS WITH RESPECT TO INTERROGATORIES NOS.**  
11 **3, 4, 5, 6, 7, 16, 17 AND 25**

12 Initially, Plaintiffs failed to meet and confer regarding WSC's response to  
13 Interrogatory No. 25. As a part of the parties prior meet and confer efforts regarding  
14 WSC's interrogatory responses, WSC agreed to supplement its response to that  
15 interrogatory. That supplemental response was served on February 26, 2016. None of  
16 Plaintiffs' subsequent meet and confer efforts referenced that interrogatory. *See* Mulchay  
17 Decl. ¶4, 8, Exs. A, C.

18 As a part of its attempt to meet and confer with Plaintiffs, and consistent with  
19 Plaintiffs' request for assurances, WSC agreed to provide its supplemental discovery  
20 responses during the week of May 2, 2016. Mulcahy Decl., ¶ 5, Ex. B. As promised,  
21 those supplemental responses will be served on May 6. Feasby Decl., ¶ 17. WSC will  
22 even provide a second supplemental response to Interrogatory No. 25. Feasby Decl.,  
23 ¶ 17. Therefore, Plaintiffs' motion is completely unnecessary and without substantial  
24 justification. As a result, the Court should award WSC its attorneys' fees incurred in  
25 having to oppose this motion.

26 **VIII. INTERROGATORIES NOS. 10, 22 AND 23**

27 Pursuant to Local Rule 37-2.1, WSC's Responses to B&D Fine Homes' First and  
28 Second Set of Interrogatories Nos. 10, 22 and 23 are included below.

1 **INTERROGATORY NO. 10:**

2 Identify by name and contact information all employees, agents, and independent  
3 contractors comprising Your IT department since January 1, 2012.

4 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

5 WSC objects to this interrogatory on each of the grounds set forth in the  
6 Preliminary Statement and General Objections set forth above, and each of those  
7 objections is incorporated by this reference as if set forth fully herein. WSC further  
8 objects to this interrogatory on the grounds that it is vague as to "Your IT department."  
9 WSC further objects to this interrogatory on the grounds that it seeks information that is  
10 not relevant to the resolution of this action nor reasonably calculated to lead to the  
11 discovery of admissible evidence. WSC further objects to this interrogatory on the  
12 grounds that it seeks information protected by the individual rights of privacy of third  
13 parties as guaranteed by the Constitution of the United States of America and/or the  
14 California Constitution.

15 Subject to and without waiving the foregoing objections, and within the probable  
16 intent of this request, WSC responds as follows: As of January 1, 2012, WSC did not  
17 have its own IT Department. However, WSC contracted with Windermere  
18 Solutions/Moxi Works to provide its IT services. WSC is compiling a list of the  
19 employees that would be responsive to this interrogatory and will produce that list  
20 forthwith.

21 **INTERROGATORY NO. 22:**

22 Identify by date and description each instance in which You contend that Services  
23 SoCal failed to provide Franchisees with "prompt, courteous and efficient service" as  
24 represented in paragraph 130 of the FACC.

25 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 22:**

26 WSC objects to this interrogatory on each of the grounds set forth in the  
27 Preliminary Statement and General Objections set forth above, and each of those  
28 objections is incorporated by this reference as if set forth fully herein. WSC further

1 objects to this interrogatory on the grounds that it is overbroad, burdensome, and merely  
2 intended to harass WSC.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC received numerous complaints over the years from other franchise owners  
5 in Southern California indicating that Bob Deville was rude, difficult to work with, and  
6 failed to provide them with the level of service they had expected to receive. Some  
7 franchisees expressed the belief that Mr. Deville was only interested in growing his own  
8 companies, rather than supporting other franchises in his region. Some felt that they were  
9 treated as competitors, not customers. Most of these complaints were made in person or  
10 by phone, but WSC is searching its emails to see if documentation of any such  
11 conversations can be located. One or more former franchise owners from Southern  
12 California may be called to provide testimony supporting these allegations. The identity  
13 of such potential witnesses will be provided as soon as possible.

14 The foregoing is not intended to be an exhaustive recitation of the pertinent facts.  
15 Discovery continues.

16 **INTERROGATORY NO. 23:**

17 Identify by date and description each instance in which You contend that Services  
18 SoCal failed to "deal 'fairly and honestly' with members of the Windermere System" as  
19 represented in paragraph 130 of the FACC.

20 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 23:**

21 WSC objects to this interrogatory on each of the grounds set forth in the  
22 Preliminary Statement and General Objections set forth above, and each of those  
23 objections is incorporated by this reference as if set forth fully herein. WSC further  
24 objects to this interrogatory on the grounds that it is overbroad, burdensome, and merely  
25 intended to harass WSC.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: The B&D Parties competed against other Windermere franchisees by sending  
28 recruiting emails to the agents for other franchisees, refusing to invite the agents for other

1 franchisees to events, and refusing to allow other franchisees to open other locations in  
2 Southern California so that they could open their own offices in those locations.

3 In addition, WSC received numerous complaints over the years from other  
4 franchise owners in Southern California indicating that Bob Deville was rude, difficult to  
5 work with, and failed to provide them with the level of service they had expected to  
6 receive. Some franchisees expressed the belief that Mr. Deville was only interested in  
7 growing his own companies, rather than supporting other franchises in his region. Some  
8 felt that they were treated as competitors, not customers. Most of these complaints were  
9 made in person or by phone, but WSC is searching its emails to see if documentation of  
10 any such conversations can be located. One or more former franchise owners from  
11 Southern California may be called to provide testimony supporting these allegations. The  
12 identity of such potential witnesses will be provided as soon as possible.

13 **IX. PLAINTIFFS' CONTENTIONS WITH RESPECT TO**  
14 **INTERROGATORIES NOS. 10, 22 AND 23**

15 **A. WSC Must Specifically Identify Witnesses In Its Interrogatory Responses**

16 In each of the responses to Interrogatories Nos. 10, 22 and 23, WSC states that it  
17 will identify and provide a list of potential witnesses in the future. However, in the  
18 intervening months, WSC has failed to supplement its responses to provide the names of  
19 those potential witnesses that are responsive to the interrogatory.

20 "Answers to interrogatories must be complete, explicit and responsive." *Wilson v.*  
21 *Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 15640 (D. Nev. Feb. 9, 2016) (granting  
22 motion to compel interrogatory answers). WSC is obligated to consult with its custodians  
23 to ascertain the names of all potential witnesses in response to these interrogatories.  
24 Further, to the extent that WSC knows any names at any time, those names and their  
25 contact information must be disclosed. WSC has violated its discovery obligations by  
26 failing to provide the names of potential witnesses. This conduct directly prejudices  
27 Plaintiffs' ability to name witnesses for deposition and prepare subpoenas to third parties  
28 (if necessary). Just as with the document requests, this pattern of delay must be put to an

1 end. The Court should compel WSC to provide full and complete responses to  
2 Interrogatories Nos. 10, 22 and 23.

3 **B. Plaintiffs Should Be Entitled To Their Fees For Having To Bring This Motion**

4 A failure to conduct a reasonable inquiry to obtain all responsive information  
5 justifies rewarding the prevailing party with its fees and costs. *See Nat'l Ass'n of*  
6 *Radiation Survivors v. Turnage*, 115 F.R.D 543, 558 (N.D. Cal. 1987) (the responding  
7 party's "failure to produce clearly responsive documents and information" among other  
8 items, made fees and costs recoverable); *see also Advanced Visual Image Design*, 2015  
9 U.S. Dist. LEXIS at \*23 (awarding fees due in part, to "the failure to provide complete,  
10 explicit responses without boilerplate, conclusory objections").

11 Here, Plaintiffs have been forced to bring this Motion despite 4 months of meet  
12 and confer efforts. WSC has not only prejudiced Plaintiffs by its continued delay in  
13 providing responsive information but has forced Plaintiffs to bring what should have been  
14 an unnecessary Motion. For these reasons, Plaintiffs respectfully request that they be  
15 awarded fees and costs for bringing the Motion.

16 **X. WSC'S CONTENTIONS WITH RESPECT TO INTERROGATORIES NOS.**  
17 **10, 22 AND 23**

18 WSC had previously produced the list of employees in response to Interrogatory  
19 No. 10. As a part of its attempt to meet and confer with Plaintiffs, and consistent with  
20 Plaintiffs' request for assurances, WSC agreed to provide its supplemental responses to  
21 Interrogatory Nos. 10, 22, and 23 during the week of May 2, 2016. As promised, those  
22 supplemental responses will be served on May 6, 2016. Feasby Decl., ¶ 17. Therefore,  
23 Plaintiffs' motion is completely unnecessary and without substantial justification. As a  
24 result, the Court should award WSC its attorneys' fees incurred in having to oppose this  
25 motion.

26 **XI. CONCLUSION**

27 The parties respectfully request that the Court resolve this dispute regarding  
28 Plaintiffs' Motion to Compel Production of Documents.



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Respectfully submitted,

Dated: May 6, 2016

**MULCAHY LLP**

By: /s/ James M. Mulcahy

James M. Mulcahy

Kevin A. Adams

*Attorneys for Plaintiffs/Counter-Defendants*

Dated: May 6, 2016

**PEREZ WILSON VAUGHN & FEASBY**

By: /s/ Jeffrey A. Feasby

John D. Vaughn

Jeffrey A. Feasby

*Attorneys for Defendant/Counterclaimant*

**SIGNATURE CERTIFICATION**

Pursuant to L.R. 5-4.3.4(a)(2)(i), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

Dated: May 6, 2016

**MULCAHY LLP**

By: /s/ James M. Mulcahy

James M. Mulcahy

Kevin A. Adams

*Attorneys for Plaintiffs/Counter-Defendants*

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 and not  
4 a party to the within action; my business address 4 Park Plaza, Suite 1230, Irvine, CA 92614.

5 On May 6, 2016, I served document(s) described as **JOINT STIPULATION RE:  
6 PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND  
7 RESPONSES; DECLARATION OF JAMES M. MULCAHY; DECLARATION OF KEVIN  
8 A. ADAMS; DECLARATION OF JEFFREY A. FEASBY; DECLARATION OF PAUL  
9 DRAYNA AND DECLARATION OF JOSH CRISTENSON** on the following person at the  
10 addresses and/or facsimile number below:

11 Pérez Wilson Vaughn & Feasby  
12 John Vaughn  
13 750 B. Street, 33<sup>rd</sup> Floor  
14 San Diego, CA 92101  
15 vaughn@perezwilson.com

16 [ ] VIA FACSIMILE – Based on an agreement by the parties to accept service by fax  
17 transmission, I faxed the documents from a fax machine in Irvine, California, with the  
18 number 949-252-0090, to the parties and/or attorney for the parties at the facsimile  
19 transmission number(s) shown herein. The facsimile transmission was reported as complete  
20 without error by a transmission report, issued by the facsimile transmission upon which the  
21 transmission was made, a copy of which is attached hereto.

22 [ X ] BY ELECTRONIC SERVICE – Based on a court order or agreement of the parties to accept  
23 service by electronic transmission, I caused the documents to be sent to the persons at the  
24 electronic notification addresses listed herein on the above referenced date. I did not receive,  
25 within a reasonable time after the transmission, any electronic message or other indication  
26 that the transmission was unsuccessful.

27 [ ] BY MAIL - I am "readily familiar" with the firm's practice of collection and processing  
28 correspondence for mailing. Under that practice it would be deposited with the U.S. postal  
service on that same day, with postage thereon fully prepaid, at Irvine, California in the  
ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than one day after  
date of deposit for mailing in affidavit.

[ ] BY CERTIFIED MAIL - I am "readily familiar" with the firm's practice of collection and  
processing correspondence for mailing. Under that practice it would be deposited with the  
U.S. postal service on that same day, with postage thereon fully prepaid, at Irvine, California  
in the ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than one day after  
date of deposit for mailing in affidavit.

1 [ ] BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and  
2 processing correspondence for Federal Express. Under that practice it would be deposited  
3 with Federal Express on that same day in the ordinary course of business for overnight  
4 delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

5 [ ] BY MESSENGER SERVICE – I served the documents by placing them in an envelope or  
6 package addressed to the persons at the addresses listed herein and providing them to a  
7 professional messenger service for service. A declaration by the messenger service will be  
8 filed separately.

9 I declare under penalty of perjury under the laws of the State of California and the United  
10 States of America that the above is true and correct.

11 Executed on **May 6, 2016** at Irvine, California.

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By: /s/ Barbara Calvert  
Barbara Calvert