

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUN 21 2011

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8 Attorneys for Defendants, PEGGY SHAMBAUGH, an individual,  
9 BENNION & DEVILLE FINE HOMES, INC., doing business as WINDERMERE  
10 REAL ESTATE COACHELLA VALLEY, a corporation; WINDERMERE REAL  
11 ESTATE SERVICES COMPANY; and JOSEPH R. DEVILLE (erroneously sued  
12 as Bob Deville)

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF RIVERSIDE

15 FILED BY FAX  
16 CRC 2005

17 TWENTY-NINE PALMS BAND OF )  
18 MISSION INDIANS OF CALIFORNIA; )  
19 TWENTY-NINE PALMS ENTERPRISES )  
20 CORPORATION; and ECHO TRAIL )  
21 HOLDINGS, LLC, a limited )  
22 liability company,

23 Plaintiffs,

24 vs.

25 DAVID ALAN HESLOP, an )  
26 individual; DIVERSIFICATION )  
27 RESOURCES, LLC, a limited )  
28 liability company; NATIONAL )  
29 DEMOGRAPHICS, INC., a )  
30 corporation; PEGGY SHAMBAUGH, )  
31 an individual; BENNION & )  
32 DEVILLE FINE HOMES, INC., doing )  
33 business as WINDERMERE REAL )  
34 ESTATE COACHELLA VALLEY, a )  
35 corporation, and DOES 1 through )  
36 100, inclusive

37 Defendants.

38 CASE NO.: RIC 10006101

39 ANSWER OF PEGGY SHAMBAUGH,  
40 BENNION & DEVILLE FINE HOMES,  
41 INC., dba WINDERMERE REAL  
42 ESTATE COACHELLA VALLEY,  
43 WINDERMERE REAL ESTATE SERVICES  
44 COMPANY, and JOSEPH R. DEVILLE  
45 TO PLAINTIFFS' SECOND AMENDED  
46 COMPLAINT

47 JUDGE: Hon. Jacqueline C. Jackson  
48 DEPT.: 07  
49 L&M DEPT.: 02  
50 Complaint Filed: 10/07/09  
51 Trial Date: Not Yet Assigned

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JUN 22 2011  
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1 COMES NOW Defendants PEGGY SHAMBAUGH, BENNION & DEVILLE  
2 FINE HOMES, INC., dba WINDERMERE REAL ESTATE COACHELLA VALLEY,  
3 WINDERMERE REAL ESTATE SERVICES COMPANY, and JOSEPH R. DEVILLE  
4 ("Answering Defendants"), in answer to the unverified Second  
5 Amended Complaint filed by Plaintiffs TWENTY-NINE PALMS BAND OF  
6 MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES  
7 CORPORATION and ECHO TRAIL HOLDINGS, LLC ("Plaintiffs"), and  
8 allege as follows:

9 Pursuant to Section 431.30(d) of the Code of Civil  
10 Procedure these Answering Defendants deny generally and  
11 specifically each and every allegation contained in the  
12 unverified Second Amended Complaint, the whole thereof and each  
13 and every cause of action set forth therein. These Answering  
14 Defendants specifically deny that Plaintiffs have been damaged  
15 in the amounts alleged in the Complaint, or in any other  
16 amounts, or at all by reason of any act, breach or omission on  
17 the part of these Answering Defendants. As used herein, words  
18 including singular numbers shall include plural, words including  
19 the plural shall include the singular, and words importing the  
20 masculine gender shall include the feminine gender.

21 FIRST AFFIRMATIVE DEFENSE

22 (Failure to State a Cause of Action)

23 1. These Answering Defendants are informed, believe and  
24 thereon allege that each and every allegation contained in the  
25 Second Amended Complaint fails to state facts sufficient to  
26 constitute a cause of action against these Answering  
27 Defendants.

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1 himself to the risk of harm, thereby causing and/or contributing  
 2 to their own damages, if any. Plaintiffs' assumption of said  
 3 risk bars any recovery herein, or diminishes their recovery to  
 4 the extent the alleged damages are attributed to Plaintiffs'  
 5 assumption of the risk.

6 EIGHTH AFFIRMATIVE DEFENSE

7 (Estoppel)

8 8. These Answering Defendants are informed, believe and  
 9 thereon allege that Plaintiffs are estopped from seeking relief  
 10 requested in the Second Amended Complaint against these  
 11 Answering Defendants due to Plaintiffs' own acts or omissions  
 12 with reference to the subject matter of the Second Amended  
 13 Complaint.

14 NINTH AFFIRMATIVE DEFENSE

15 (Fault of Others)

16 9. These Answering Defendants are informed, believe and  
 17 thereon allege that at all times and places set forth in the  
 18 Second Amended Complaint, certain parties defendant(s)/co-  
 19 defendant(s), other than these Answering Defendants, named or  
 20 unnamed herein, whether served or unserved, failed to exercise  
 21 ordinary care, caution or circumspection on their behalf, which  
 22 negligence and carelessness was a proximate cause of some  
 23 portion, up to and including the whole thereof, of the injuries  
 24 and damages complained of by Plaintiffs in this action. The  
 25 fault, if any, of these Answering Defendants should be compared  
 26 with the fault or contributory negligence of other defendant(s),  
 27 and damages, if any, should be apportioned among the same in  
 28 direct relation to each such defendant(s)' comparative fault.

1 These Answering Defendants should be obligated to pay only such  
 2 damages, if any, that are directly attributable to their  
 3 percentage of comparative fault. To require these Answering  
 4 Defendants to pay any more than their percentage of comparative  
 5 fault violates the Equal Protection and Due Process Clauses of  
 6 the Constitution of the United States and the Constitution of  
 7 the State of California.

8 TENTH AFFIRMATIVE DEFENSE

9 (Not Responsible for Acts of Does)

10 10. These Answering Defendants are informed, believe and  
 11 thereon allege that these Answering Defendants are not legally  
 12 responsible for the acts and/or omissions of those defendant(s)  
 13 named herein as DOES 1 through 100, inclusive.

14 ELEVENTH AFFIRMATIVE DEFENSE

15 (Waiver)

16 11. These Answering Defendants are informed, believe and  
 17 thereon allege that Plaintiffs engaged in conduct and activities  
 18 sufficient to constitute a waiver of any alleged breach,  
 19 negligence, or any other conduct, if any, as set forth in the  
 20 Second Amended Complaint.

21 TWELFTH AFFIRMATIVE DEFENSE

22 (Several Liability)

23 12. These Answering Defendants are informed, believe and  
 24 thereon allege that its liability, if any, for non-economic  
 25 general damages is several only and not joint pursuant to  
 26 California Civil Code §1431.2.

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1                                    THIRTEENTH AFFIRMATIVE DEFENSE

2                                    (Improper Prosecution of Action)

3            13. These Answering Defendants are informed, believe and  
4 thereon allege that Plaintiffs are prosecuting this litigation  
5 in bad faith and for an improper purpose. The claims of  
6 Plaintiffs are frivolous, and therefore, entitle these Answering  
7 Defendants to an award of reasonable expenses and attorneys'  
8 fees pursuant to Code of Civil Procedure §1038.

9                                    FOURTEENTH AFFIRMATIVE DEFENSE

10                                  (Absence of Probable Cause/Presence of Malicious Intent)

11            14. These Answering Defendants are informed, believe and  
12 thereon allege that Plaintiffs are prosecuting this litigation  
13 without probable cause against these Answering Defendants and  
14 with malicious intent.

15                                  FIFTEENTH AFFIRMATIVE DEFENSE

16                                  (Absence of Actual/Proximate Causation)

17            15. These Answering Defendants are informed, believe and  
18 thereon allege that any and all damages or injuries alleged by  
19 Plaintiffs were not, and are not, the result of acts or  
20 omissions by these Answering Defendants.

21                                  SIXTEENTH AFFIRMATIVE DEFENSE

22                                  (Apportionment of Fault)

23            16. These Answering Defendants are informed, believe and  
24 thereon allege that all of the acts and/or omissions alleged in  
25 the Second Amended Complaint were solely, entirely, and fully  
26 those of defendant(s) and/or parties named or unnamed therein,  
27 other than these Answering Defendants; and, therefore, such  
28 parties are fully and solely liable to Plaintiffs. As a result,

1 these Answering Defendants are entitled to total indemnification  
2 from said parties including, but not limited to, any and all  
3 damages, costs, and attorneys' fees these Answering Defendants  
4 may sustain as a result of Plaintiffs' claims. In the  
5 alternative, if it should be found that these Answering  
6 Defendants are in some manner legally responsible for injuries  
7 or damages allegedly sustained by Plaintiffs, if any, and it  
8 should be found that Plaintiffs' injuries or damages were  
9 proximately caused or contributed to by other defendant(s) in  
10 this case, whether served or unserved, and/or other persons or  
11 entities not parties to this action, then these Answering  
12 Defendants are entitled to a finding that the negligence and  
13 fault of each of the aforesaid person and/or parties, whether  
14 parties to this action or not, shall be determined, apportioned  
15 and prorated, and that any judgment rendered against these  
16 Answering Defendants shall be reduced not only by the degree of  
17 comparative negligence of Plaintiffs, but also shall be reduced  
18 by the percentage of negligence and/or fault and/or unreasonable  
19 conduct attributed to the aforesaid other defendant(s) and/or  
20 third persons or entities, whether parties to this action or  
21 not. Under the doctrine of *Li v. Yellow Cab* (1975) 13 Cal. 3d  
22 804, Plaintiffs' contributory negligence and/or fault shall  
23 reduce any and all damages allegedly sustained by Plaintiffs.

24 SEVENTEENTH AFFIRMATIVE DEFENSE

25 (Ratification)

26 17. These Answering Defendants are informed, believe and  
27 thereon allege that Plaintiffs are barred from asserting each  
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1 and all of their causes of action by reason of Plaintiffs'  
2 ratification of the conduct of these Answering Defendants.

3 EIGHTEENTH AFFIRMATIVE DEFENSE

4 (Prevention)

5 18. These Answering Defendants are informed, believe and  
6 thereon allege that Plaintiffs and/or other parties prevented  
7 and precluded these Answering Defendants from performing their  
8 obligations, if any were unperformed at all.

9 NINETEENTH AFFIRMATIVE DEFENSE

10 (No Basis for Punitive Damages)

11 19. These Answering Defendants at all times acted in a  
12 proper, lawful, and legally permitted fashion without malice or  
13 oppression. They exercised and possessed that degree of skill,  
14 care, and knowledge required of a real estate licensee and  
15 employer; and, therefore, there is not a basis upon which to  
16 base an award of punitive or exemplary damages against these  
17 Answering Defendants.

18 TWENTIETH AFFIRMATIVE DEFENSE

19 (Statute of Limitations)

20 20. These Answering Defendants are informed, believe and  
21 thereon allege that the Second Amended Complaint, and each and  
22 every cause of action contained therein, is barred by the  
23 statute of limitation provisions contained in, but not limited  
24 to Code of Civil Procedure §§337, 338, 339, 340, 343 and/or  
25 Civil Code §2079.4.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Second Amended Complaint Presented for an Improper Purpose)

21. These Answering Defendants are informed, believe and thereon allege that Code of Civil Procedure §128.7 provides that an attorney or party who presents a document to the Court certifies, to the best of his/her knowledge, that after a reasonable inquiry, that certain conditions have been met. Those conditions are as follows:

"1. That the document/pleading is not being presented primarily for an *improper purpose*, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. 2. That the claim or other legal contention presented in the document/pleading is *warranted by existing law* or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law. 3. That the allegations or other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a *reasonable opportunity for further investigation or discovery*. 4. The denials of factual contentions are *warranted on the evidence* or, if specifically so identified, are *reasonably based on a lack of information or belief*."

As such, sanctions under §128.7 of the Code of Civil Procedure are appropriate in an amount sufficient to deter repetition, and further, the subject Court herein should award to these Answering Defendants, if they are prevailing parties,

1 the reasonable expenses and attorneys' fees incurred in  
2 presenting any such motion contemplated under said statute.

3 TWENTY-SECOND AFFIRMATIVE DEFENSE

4 (Lack of Jurisdiction)

5 22. These Answering Defendants are informed, believe and  
6 thereon allege that several of the real properties and/or  
7 property matters that are the subject of Plaintiffs' Second  
8 Amended Complaint are located outside the state of California.  
9 These Answering Defendants therefore asserts that this Court  
10 lacks jurisdiction to adjudicate matters as to these properties  
11 and/or matters.

12 TWENTY-THIRD AFFIRMATIVE DEFENSE

13 (Unasserted Defenses)

14 23. These Answering Defendants are informed, believe and  
15 thereon allege that they may have additional, as yet unasserted,  
16 defenses to the Second Amended Complaint or the purported causes  
17 of action contained therein. These Answering Defendants  
18 specifically reserve the right to assert additional affirmative  
19 defenses as deemed appropriate at a later time.

20 TWENTY-FOURTH AFFIRMATIVE DEFENSE

21 (Failure to Join Necessary/Indispensable Party)

22 24. These Answering Defendants are informed and believe  
23 and thereon allege that Plaintiffs have failed to join as  
24 parties to the action persons whose interests are such that  
25 complete relief cannot be accorded among the parties before the  
26 court and the absence of such persons will prejudice the  
27 abilities of the parties before the court to protect their  
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1 interests and will leave the parties before the court exposed to  
2 risk of additional liability or inconsistent obligations.

3 TWENTY-FIFTH AFFIRMATIVE DEFENSE

4 (Lack of Subject Matter for Constructive Trust)

5 25. These Answering Defendants are informed and believe  
6 and thereon allege that Plaintiffs have not paid any monies or  
7 other consideration to these Answering Defendants that could  
8 serve as a subject for a Constructive Trust.

9 TWENTY-SIXTH AFFIRMATIVE DEFENSE

10 (Not Entitled to Damages)

11 26. These Answering Defendants are informed and believe  
12 and thereon allege that Plaintiffs are not entitled to any  
13 actual damages, permanent injunctive relief or punitive damages  
14 pursuant to Unfair Trade Practices cause of action.

15 WHEREFORE, these Answering Defendants pray for judgment in  
16 their favor and against Plaintiffs as follows:

- 17 1. That Plaintiffs take nothing by way of their Second
- 18 Amended Complaint;
- 19 2. For all costs of suit herein;
- 20 3. For reasonable attorneys' fees; and

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4. For such other and further relief as the Court may deem just and proper.

DATED: June 21, 2011

SUNDERLAND | McCUTCHAN, LLP

By: Cheryl D. Davidson  
Robert J. Sunderland  
Cheryl D. Davidson  
Attorneys for Defendants, PEGGY SHAMBAUGH, BENNION & DEVILLE FINE HOMES, INC., dba WINDERMERE REAL ESTATE COACHELLA VALLEY, WINDERMERE REAL ESTATE SERVICES COMPANY, and JOSEPH R. DEVILLE