MULCAHY LLP
James M. Mulcahy (SBN 213547)
jmulcahy@mulcahyllp.com
Kevin A. Adams (SBN 239171)
kadams@mulcahyllp.com
Douglas R. Luther (SBN 280550)
dluther@mulcahyllp.com
Four Park Plaza, Suite 1230
Irvine, California 92614
Telephone: (949) 252-9377
Facsimile: (949) 252-0090

Attorneys for Plaintiffs and Counter-Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, INC., a California corporation, BENNION & DEVILLE FINE HOMES SOCAL, INC., a California corporation, WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC., a California corporation, Plaintiffs, v. WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation; and DOES 1-10. Defendants. AND RELATED COUNTERCLAIMS	Case No. 5:15-cv-01921-R-KK *Hon. Manual L. Real* **PLAINTIFFS' <u>OPPOSITION</u> TO DEFENDANT'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION** Complaint filed: September 17, 2015

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Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc., Windermere Services Southern California, Inc., along with specially appearing Counter-Defendants Robert L. Bennion and Joseph R. Deville (all collectively, the "B&D Parties") hereby oppose Defendant/Counter-Claimant Windermere Real Estate Services Company's ("WSC") *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction (the "Emergency Motion") for the reasons set forth below:[1]

I. INTRODUCTION

WSC seeks extraordinary relief without showing an "emergency" or advancing a credible legal argument in support of the requested relief. As explained below, the Emergency Motion should be denied on each of the following independent grounds:

First, there is no "emergency" that requires *ex parte* relief. The purported domain infringement raised in WSC's Emergency Motion has been known by WSC and its attorneys since October 1, 2015 – nearly one month prior to their filing of the Emergency Motion. [*See* D.E. 21-3, p. 2; D.E. 21-4, p. 2; D.E. 21-5, pp. 2-14.] The delay shows that WSC could (and should) have filed its motion as a regularly noticed motion. Nonetheless, WSC now improperly seeks *ex parte* relief, thereby requiring opposing counsel to drop all other work to respond to the 175-page filing on 24-hour notice. This is an abuse of the *ex parte* process. *See Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. CA 1995).

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[1] WSC's Emergency Motion as to Counter-Defendants Robert L. Bennion and Joseph R. Deville should be summarily denied. WSC had added Messrs. Bennion and Deville to the litigation by way of the Counterclaim, but had failed to serve the Counterclaim on these new parties. The Counterclaim in this case was originally filed on October 13, 2015, and amended on October 14, 2015. [D.E. 11, 16.] Prior to filing the Emergency Motion, WSC made no effort to serve these new parties with the lawsuit. Seeking *ex parte* relief against parties before serving them with the lawsuit is a gross disregard for standard civil procedure. Because of this abuse of procedure, the undersigned attorneys are specially appearing on behalf of Messrs. Bennion and Deville in response to the Emergency Motion.

Second, WSC's request for injunctive relief is moot as the internet domains at issue were terminated (*i.e.,* cancelled) by the B&D Parties before the Emergency Motion was filed. (*See* Exhs. B and C to the Declaration of Eric Forsberg ("Forsberg Decl.").) *See C.F. v. Capistrano Unified Sch. Dist.*, 647 F. Supp. 2d 1187, 1194 (C.D. Cal. 2009).

Third, WSC cannot show a likelihood of success on its claim for violation of the Anti-Cybersquatting Consumer Protection Act ("ACPA"). This is not a cybersquatting case. Cybersquatting occurs when someone registers a well-known domain name in order to extract payment from the rightful owners of the mark or with the hope of selling the domain to the highest bidder. *See Garden of Life, Inc. v. Letzer*, 318 F. Supp. 2d 946, 960 (C.D. Cal. 2004). Here, the B&D Parties were franchisees of WSC from August 1, 2001 until September 30, 2015, during which time they were granted licenses to purchase and controll the domain registrations at issue. All of the domains at issue were acquired during the parties' franchise relationships. Following the termination of these relationships, the domains were cancelled. These facts simply do not support a cybersquatting claim.

Fourth, WSC cannot show irreparable harm. WSC contends that it will suffer irreparable harm in the form of future (1) lost business, and (2) retrieval of the domains once they are placed on the open market. These conclusory future losses are remote and speculative, at best, and do not satisfy the irreparable injury element needed for preliminary relief. Moreover, the "BackOrder list" identified in the declaration of Robert Sherrell guarantees that WSC will be able to acquire the domains once they are released, thereby negating any chance that WSC would be harmed by a third-party's acquisition of the domains. (Decl. Sherrell, ¶ 5.)

Fifth, WSC cannot show that the public interest favors the injunction. It is apparent from the Emergency Motion that this dispute concerns the private goals of WSC to force the B&D Parties to turn over the domains. This form of relief does not benefit the public interest.

For each of these reasons, set forth in detail below, WSC's Emergency Motion should be denied it its entirety.

II. RELEVANT FACTUAL BACKGROUND

Plaintiff/Counter-Defendant Bennion & Deville Fine Homes, Inc. ("B&D Fine Homes") is the registrant (and former owner) of each of the 306 domains at issue in the Emergency Motion. (Forsberg Decl., ¶ 4.) On August 1, 2001, B&D Fine Homes entered into the Coachella Valley Franchise Agreement with WSC. [D.E. 21-14.] The Coachella Valley Franchise Agreement granted B&D Fine Homes a license to use the Windermere marks in the operation of its real estate franchise. [*See* D.E. 21-14, § 2.] Additionally, Section 7 of the agreement obligated B&D Fine Homes to "*discontinue*" the use of the Windermere name upon termination of the parties' relationship.[2] [D.E. 21-14, § 7.]

It was during the parties' franchise relationship – *i.e.*, August 1, 2001 to September 30, 2015 – that B&D Fine Homes purchased, developed, and used the domain registrations at issue in the Emergency Motion. (Forsberg Decl., Ex. D.) On midnight September 30, 2015, the contractual relationships between WSC and the B&D Parties terminated. Since that time, the B&D Parties have made every effort to divest themselves (and their new business) from the Windermere name and marks. (Forsberg Decl., ¶¶ 3-8.)

As the parties have been associated for over 15 years, the disentangling process consumed significant time, labor and expense. (Forsberg Decl., ¶¶ 3-4, Ex. A.) Despite the enormous amount of work involved, all references to Windermere were removed from the B&D Parties' website, all B&D furnished agent websites, domain names, email addresses, letterhead, business cards, Linked-In profiles, Google Plus profiles, and Facebook pages. (*Id.* at ¶ 4.) Moreover, the B&D Parties cancelled – *i.e.*, terminated – all

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[2] Nowhere in the Coachella Valley Franchise Agreement (or any other agreement) is B&D Fine Homes obligated to *transfer* any of the domains to WSC upon the termination of the parties' relationship. Thus, WSC's repeated argument to the contrary in the Emergency Motion is misplaced. (*See* D.E. 21-1, pp. 1:13-15, 1:20.)

of the domains that they previously owned containing the Windermere name. (*Id.* at Ex. A.) This includes all of the domains identified by WSC's Emergency Motion.

The cancelling of domain names was a particularly time consuming task. (*Id.* at ¶¶ 4-5, Ex. A.) Led by their Director of Technology, Eric Forsberg, the B&D Parties worked with GoDaddy, a large domain registrar and web hosting company, to individually cancel each of the domains. (Id. at ¶¶ 4-5.) At the time the Emergency Motion was filed, the B&D Parties had already cancelled 355 domains that contained Windermere and related or associated names.[3] (*Id.* at ¶ 7, Exs. B, C.) Confirmation of the majority of the cancellations was provided to WSC's counsel on October 13, 2015. [D.E. 21-8, pp. 2-8.]

Now, WSC has filed the Emergency Motion on the flawed pretense that upon the termination of the parties' 15-year franchise relationship – *i.e.*, on midnight September 30, 2015 – B&D Fine Homes was immediately obligated to *transfer* to WSC the domains containing the term Windermere. WSC's argument is inconsistent with the terms of the Coachella Valley Franchise Agreement, as it does not impose a transfer obligation on B&D Fine Homes. [D.E. 21-14, § 7.]

Further, even though the express language of the Coachella Valley Franchise Agreement, on its face, states "discontinuance upon termination" – *i.e.*, midnight September 30th – this creates an impossible scenario that must reasonably be interpreted as providing B&D Fine Homes a reasonable time for compliance following the termination of the parties' relationship. (Forsberg Decl., ¶ 3.) B&D Fine Homes has complied with this obligation and cancelled all of the Windermere domains. (*Id.*, Ex. A.)

WSC's argument that the B&D Parties have not cancelled the domain names is also in error. WSC's declarant Robert Sherrell claims that the B&D Parties only cancelled the hosting portion of the GoDaddy services but not the registrations. (Forsberg Decl., at ¶ 10.) Beyond being hearsay and lacking foundation, the representation is

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[3] It is worth noting that the B&D Parties cancelled 355 Windermere-related domains, far exceeding the 306 identified by WSC. (Forsberg Decl., ¶ 8.) This was done to ensure that the B&D Parties' businesses were not in any way associated with WSC. (*Id.*)

simply false. (*Id.* at ¶¶ 5-8, Exs. B-D.) The B&D Parties never used GoDaddy to host their websites. (*Id.* at ¶ 10.) Instead, the B&D Parties used GoDaddy only for domain management. (*Id.*) Thus, the only thing that could be cancelled with GoDaddy was the registration. (*Id.*) WSC's other misconceptions are thoroughly addressed in the Forsberg declaration. (*Id.* at ¶¶ 9-15.)

III. WSC'S EMERGENCY MOTION ABUSES THE *EX PARTE* PROCESS

Ex parte applications are solely for extraordinary relief and should be filed with discretion. To obtain *ex parte* relief, the moving party must establish why it cannot proceed in the usual manner, *i.e.*, via a regularly noticed motion. *See Mission Power Engineering Co. v. Continental Cas. Co.,* 883 F. Supp. 488, 492 (C.D. CA 1995)(the moving party "must show why the moving party should be allowed to go to the head of the line in front of all other litigants and receive special treatment."). A moving party also must establish that it "is without fault in creating the crisis that requires *ex parte* relief, or that the crises occurred as a result of excusable neglect." *Id.* The facts surrounding WSC's Emergency Motion show that it can do neither.

The purported domain infringement raised in WSC's Emergency Motion has been known by WSC and its attorneys since at least October 1, 2015 – nearly one month prior to their filing of the Emergency Motion. [*See* D.E. 21-3, p. 2; D.E. 21-4, p. 2; D.E. 21-5, pp. 2-14.] This is reflected in the exhibits to the declaration of WSC's attorney Jeffrey Feasby, showing that on October 1st, 2nd, and 8th WSC engaged in correspondence with the B&D Parties concerning the very domain registration issues that are now the subject of the Emergency Motion. [*Id.*] Moreover, the record reveals that WSC's attorneys have been threatening the filing of an *ex parte* motion for some time without taking any action. [D.E. 21-4, p. 2 (***October 2, 2015*** – "If your clients refuse, we will immediately file the appropriate claims seeking injunctive relief."); D.E. 21-5, p. 2 (***October 8, 2015*** – "If this is not accomplished by noon tomorrow, October 9, 2015, we will be forced to address this issue to the Court on an *ex parte* basis through an application for a Temporary Restraining Order."); D.E. 21-7, p. 2 (***October 13, 2015*** – "[T]his will provide you notice

that we will be filing an *ex parte* application for a temporary restraining order and for entry of an order to show cause re: preliminary injunction due to your clients' continued infringement of WSC's trademarks and its violation of the Lanham Act's Anti-CyberSquatting provisions.").] Clearly, neither WSC nor its attorneys have considered (or treated) the allegations at issue in the Emergency Motion as those necessitating *ex parte* relief.

Further, based on the volume of WSC's 175-page filing – which included 3 declarations, 18 exhibits, and a 19-page memorandum of points and authorities – it is obvious that WSC has been preparing its Emergency Motion for some time. [*See* D.E. 21.] On the contrary, the B&D Parties have less than 24 hours to respond. The court in *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, addressed the inherent unfairness in situations like these as follows:

> The fact that opposing parties are usually given an opportunity to argue or file opposing papers does not mask the plain truth: these hybrid *ex parte* motions are inherently unfair, and they pose a threat to the administration of justice. They debilitate the adversary system. Though the adversary does have a chance to be heard, the parties' opportunities to prepare are grossly unbalanced. Often, the moving party's papers reflect days, even weeks, of investigation and preparation; the opposing party has perhaps a day or two. This is due primarily to gamesmanship. The opposing party is usually told by telephone when the moving party has completed all preparation of the papers and has a messenger on the way to court with them. The goal often appears to be to surprise opposing counsel or at least to force him or her to drop all other work to respond on short notice.

883 F. Supp. 488, 490 (C.D. Cal. 1995).

In short, there is no "emergency" here. WSC has waited more than a month to pursue *ex parte* relief. During that time, it could (and should) have pursued its requested relief through a regularly noticed motion. This use of the *ex parte* process is contrary to the intended purpose behind the emergency application and an abuse of the *ex parte* process. Accordingly, WSC's Emergency Motion should be denied.

IV. WSC'S REQUESTED RELIEF IS MOOT AS ALL OF THE DOMAINS HAVE ALREADY BEEN CANCELLED BY THE B&D PARTIES

"A federal court's Article III power to hear disputes extends only to live cases or controversies. A request for injunctive relief remains live only so long as there is some present harm left to enjoin." *C.F. v. Capistrano Unified Sch. Dist.*, 647 F. Supp. 2d 1187, 1194 (C.D. Cal. 2009)(*citing Taylor v. Resolution Trust Corp.*, 56 F.3d 1497, 1502, 312 U.S. App. D.C. 427 (D.C. Cir. 1995); *see also*, *Renne v. Geary*, 501 U.S. 312, 320-21, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief [...] if unaccompanied by any continuing, present adverse effects.")). Once the movant is no longer in harm's way, a motion for an injunction becomes moot." *C.F. v. Capistrano Unified Sch. Dist.*, 647 F. Supp. 2d at 1194.

As reflected in the concurrently filed declaration of Eric Forsberg, the Windermere domains at issue in this Emergency Motion have already been cancelled by the B&D Parties, rendering WSC's request for injunctive relief moot. (Forsberg Decl., ¶¶ 5-8, Exhs. B, C.) Since the termination of the parties' contractual relationship, the B&D Parties have cancelled approximately 355 domains – including all 306 addressed by WSC's Emergency Motion and any other domains that contained similar or associated names. (*Id.*, ¶¶ 7-8.) The cancellation of these domains is reflected in Exhibits B and C to Mr. Forsberg's declaration.

Moreover, because the B&D Parties no longer own or control the domains, the conduct alleged by WSC cannot be repeated. *C.F. v. Capistrano Unified Sch. Dist.*, 647 F. Supp. 2d at 1194 (*citing Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)).

Because the domains have already been cancelled, WSC's requested injunctive relief should be denied as moot.

V. WSC DOES NOT SATISFY THE LEGAL STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

Even if the relief sought by WSC was not moot (it is), and its basis for *ex parte* relief was proper (it's not), WSC's pursuit of injunctive relief should still be denied as it cannot satisfy the elements needed to support its claim for a preliminary injunction.

"A preliminary injunction is an extraordinary and drastic remedy [...]." *Munaf v. Geren*, 553 U.S. 674, 689, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) (citation and internal quotation marks omitted). In *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014), the Ninth Circuit identified the four-part test that must be satisfied by the moving party to obtain preliminary injunctive relief in this Circuit. According to the court, "the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest." *Id.* (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). Moreover, the Supreme Court has repeatedly affirmed that "the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies." *Weinberger v. Romero-Barcelona*, 456 U.S. 305, 312 (1982).

As reflected below, WSC cannot show that it is likely to succeed on the merits of its cybersquatting claim or that it will suffer irreparable harm absent a preliminary injunction. Accordingly, WSC's requested injunctive relief should be denied.

A. WSC Has Not Shown A Likelihood Of Success On The Merits

WSC has moved the Court for preliminary injunctive relief on the basis that it is likely to succeed on its claim for violation of the Anti-Cybersquatting Consumer Protection Act ("ACPA"). [D.E. 21-1, p. 10.] WSC's argument is misplaced.

The relationships between the B&D Parties and WSC do not give rise to a cybersquatting claim. As explained by this Court in *Garden of Life, Inc. v. Letzer*, 318 F. Supp. 2d 946, 960 (C.D. Cal. 2004), "[c]ybersquatting is the Internet version of a land grab. Cybersquatters register well-known brand names as Internet domain names in order

to force the rightful owners of the marks to pay for the right to engage in electronic commerce under their own name." *Id.* at 906 (internal citation omitted.). The Court also identified the Senate Report on ACPA, identifying cybersquatters as those who: (1) "register well-known domain names in order to extract payment from the rightful owners of the marks;" (2) "register well-known marks as domain names and warehouse those marks with the hope of selling them to the highest bidder;" (3) "register well-known marks to prey on customer confusion by misusing the domain name to divert customers from the mark owner's site to the cybersquatter's own site;" and (4) "target distinctive marks to defraud customers, including to engage in counterfeiting activities." *Id.* (quoting from S.Rep.No. 106-140 at 5-6.) None of this is at issue in this case.

As reflected above, the B&D Parties were franchisees of WSC from August 1, 2001 until September 30, 2015. [D.E. 21-14.] Pursuant to the parties' Franchise Agreements, the B&D Parties were granted several licenses to use the Windermere marks in the operation of their real estate businesses. [*See* D.E. 21-14, § 2; D.E. 21-15, § 2; D.E. 21-16, § 1.] It was during this time period – *i.e.*, August 1, 2001 until 2015 – that the B&D Parties lawfully purchased, developed, and, where applicable, used the domain registrations at issue in this case.[4] Since the termination of the parties' contractual relationships on midnight of September 30, 2015, the B&D Parties have made every effort to divest themselves (and their new business) from the Windermere name and marks. (Forsberg Decl., ¶¶ 2-8.) Including the cancellation of all of the domains that they previously owned containing the Windermere name. (*Id.*, Ex. A.) These are not the facts that give rise to a cybersquatting claim under ACPA.

Moreover, WSC does not introduce any facts (nor can it) to show that the B&D Parties (1) registered the Windermere domains in order to extract payment from WSC, (2) registered the Windermere domains with the hope of selling them to the highest bidder, (3) registered the Windermere domains in order to prey on customer confusion by

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[4] In fact, the B&D Parties were required to use the Windermere marks throughout the respective terms of the Franchise Agreements. [*See* D.E. 21-14, 21-15, 21-16.]

misusing the domains to divert customers from Windermere, or (4) targeted the Windermere mark to defraud customers and to engage in counterfeiting activities. *See* S.Rep.No. 106-140 at 5-6. Because the facts of this case do not give rise to a cybersquatter claim as intended by the legislature with the enactment of ACPA, not only does WSC fail to prove likelihood of success on the merits, but the claims should be dismissed from the lawsuit.[5]

Even if this case did involve cybersquatting, WSC still cannot satisfy the elements of the ACPA claim. A cybersquatter is liable under ACPA only if it "[(A)] has a bad faith intent to profit from that mark [...]; and [(B)] registers, traffics in, or uses a domain name that:

> (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;
>
> (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or
>
> (III) is a trademark, word, or name protected by reason of section 706 of Title 18 [the Red Cross] or section 22056 of Title 36 [the Olympics]."

Garden of Life, Inc. v. Letzer, 318 F. Supp. 2d 946, 960 (C.D. Cal. 2004)(citing 15 U.S.C. § 1125(d)(1)(A)). ACPA also contains a safe harbor which provides: "Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful." *Garden of Life, Inc. v. Letzer*, 318 F. Supp. 2d 946, 961 (citing 15 U.S.C. § 1125(d)(1)(B)(ii)).

Here, WSC <u>*cannot*</u> show that the B&D Parties had a "*bad faith intent*" to profit from the Windermere mark at the time of the domains were registered because the B&D

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[5] The B&D Parties intend to move to dismiss WSC's ACPA claim as part of their response to the Amended Counterclaim next week.

Parties registered the domains legally, consistent with their license under the Franchise Agreements. [*See* D.E. 21-14, § 2; D.E. 21-15, § 2; D.E. 21-16, § 1.] Absent the requisite bad faith at the time of registration, WSC's claim for violation of the ACPA fails.

Because WSC does not (and cannot) show a likelihood of success on the merits of its claim, the Emergency Motion should be denied.

B. WSC Has Not Shown Irreparable Harm

Unlike that of a trademark infringement case, the courts have not found irreparable injury to be presumed upon a showing of a likelihood of confusion from an ACPA violation. *Garden of Life, Inc. v. Letzer*, 318 F. Supp. 2d at 967-68. Instead, the party seeking preliminary relief must "demonstrate that irreparable injury is likely in the absence of an injunction." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008)(citing 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (2d ed. 1995)(applicant must demonstrate that in the absence of a preliminary injunction, "the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered"); *id.*, at 154-155 ("A preliminary injunction will not be issued simply to prevent the possibility of some remote future injury")). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the [moving party] is entitled to such relief." *Winter v. NRDC, Inc.*, 555 U.S. at 22 (*citing Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997) (per curiam)).

Here, without any factual support whatsoever, WSC contends that it will suffer irreparable harm in the form of future (1) lost business, and (2) retrieval of the domains once they are placed on the open market. These conclusory future losses are remote and speculative, at best, and would not satisfy the irreparable injury element needed for preliminary relief.

Moreover, the declaration of Robert Sherrell, WSC's Senior I.T. Administrator, acknowledges that WSC can (and has) placed the domains on a "BackOrder list" allowing WSC first shot of acquiring the domains once they become available to the general public. (Decl. Sherrell, ¶ 5.) This BackOrder list guarantees that WSC will be

able to acquire the domains once they are released by GoDaddy.com. Thus, WSC will not face any harm – irreparable or otherwise – because the Windermere domains now cannot be acquired by a third-party. The cost to WSC to be put on the BackOrder list was $1,329.83 – clearly, a non-irreparable amount. (Decl. Sherrell, ¶ 5.)

Because WSC has not (and cannot) show that it will be irreparably harmed absent the injunction, the Emergency Motion should be denied.

C. The Public Interest Does Not Favor The Requested Injunction

As reflected above, the facts of this case do not give rise to a cybersquatting claim. Instead, the B&D Parties lawfully obtained each of the domains at issue while licensed to do so as franchisees of WSC. Notwithstanding this undisputed fact, WSC still argues that public interest favors the preliminary injunction. As stated above, the requested relief must be in the public interest for the injunction to issue. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. at 20.

Review of WSC's argument quickly reveals that it has no relationship to the public whatsoever. In conclusory fashion, WSC argues that the public would benefit from the preliminary injunction because the B&D Parties "refused to turn over the Infringing Domains" despite WSC's "repeated demands." (D.E. 21-1, p. 14:3-17.) WSC's argument is baffling as it simply reiterates the private goals of WSC – to force the B&D Parties to turn over the domains. In light of the facts of this case, WSC's personal pursuit of the domains would not benefit the public interest. As a result, the Emergency Motion must be denied.

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VI. CONCLUSION

For the aforementioned reasons, the B&D Parties respectfully request that the Court deny WSC's Emergency Motion, including its request for an OSC, in its entirety.

DATED: October 29, 2015

MULCAHY LLP

By: /s/ James M. Mulcahy
James M. Mulcahy
Kevin A. Adams
Attorneys for Plaintiffs/Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc., Windermere Services Southern California, Inc., and Counter-Defendants Robert L. Bennion and Joseph R. Deville