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12 Windermere Real Estate Services Company

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 BENNION & DEVILLE FINE
16 HOMES, INC., a California
corporation, BENNION & DEVILLE
17 FINE HOMES SOCAL, INC., a
California corporation, WINDERMERE
18 SERVICES SOUTHERN
CALIFORNIA, INC., a California
19 corporation,

20 Plaintiffs,

21 v.

22 WINDERMERE REAL ESTATE
SERVICES COMPANY, a Washington
23 corporation; and DOES 1-10

24 Defendant.

27 **AND RELATED COUNTERCLAIMS**
28

Case No. 5:15-CV-01921 R (KKx)

Hon. Manuel L. Real

**DECLARATION OF
CHRISTOPHER W. ROWLETT IN
SUPPORT OF
COUNTERCLAIMANT'S MOTION
IN LIMINE TO EXCLUDE
PORTIONS OF THE PLAINTIFFS'
REBUTTAL REPORT**

[Motion *In Limine* No. 2 of 4]

Date: May 15, 2017

Time: 10:00 a.m.

Courtroom: 880

1 I, Christopher W. Rowlett, declare:

2 1. I am an attorney at law, duly licensed to practice law in the State of
3 California, and am one of the attorneys for defendant Windermere Real Estate
4 Services Company (“WSC”) in the above-captioned matter. I have personal
5 knowledge of the facts set forth in this declaration, and if called upon to testify
6 thereto, would do so competently.

7 2. As one of the attorneys for WSC, I am intimately familiar with the
8 discovery that has taken place in this case, including the production of documents by
9 all parties and documents received from third parties pursuant to subpoenas. These
10 documents are maintained in my office.

11 3. The parties exchanged their initial expert disclosures on September 16,
12 2016. Attached as Exhibit A to this declaration is a true and correct copy of WSC’s
13 Expert Witness Disclosure Pursuant to Federal Rule of Civil Procedure 26.

14 4. Attached as Exhibit B to this declaration is a true and correct copy of
15 Plaintiffs and Counter-Defendants’ Expert Witness Disclosure Pursuant to Rule 26
16 of the Federal Rules of Civil Procedure.

17 5. Attached as Exhibit C to this declaration is a true and correct copy of
18 Plaintiffs and Counter-Defendants Rebuttal Report Pursuant to Rule 26 of the
19 Federal Rules of Civil Procedure.

20 I declare under penalty of perjury under the laws of the State California that
21 the foregoing is true and correct, and that this declaration was executed on April 17,
22 2017.

23
24
25 /s/ Christopher W. Rowlett
26 Christopher W. Rowlett
27
28

EXHIBIT A

1 John D. Vaughn, State Bar No. 171801
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Windermere Real Estate Services Company
12

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 BENNION & DEVILLE FINE
HOMES, INC., a California
16 corporation, BENNION & DEVILLE
FINE HOMES SOCAL, INC., a
17 California corporation, WINDERMERE
SERVICES SOUTHERN
18 CALIFORNIA, INC., a California
corporation,
19

20 Plaintiffs,

21 v.

22 WINDERMERE REAL ESTATE
SERVICES COMPANY, a Washington
corporation; and DOES 1-10
23

24 Defendant.
25

26 AND RELATED COUNTERCLAIMS
27
28

Case No. 5:15-CV-01921 R (KKx)

Hon. Manuel L. Real

**WINDERMERE REAL ESTATE
SERVICES COMPANY'S EXPERT
WITNESS DISCLOSURE
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 26**

Courtroom 8

Trial Date: October 18, 2016

Complaint Filed: September 17, 2015

1 Pursuant to Federal Rule of Civil Procedure 26(a) and the agreement of the
2 parties, defendant and counterclaimant Windermere Real Estate Services Company
3 (“WSC”) hereby provides the following Expert Witness Disclosures:

4 1. WSC has retained Neil J. Beaton, CPA/ABV/CFF, CFA, ASA, and his
5 company Alvarez & Marsal Valuation Services, LLC, as persons who may be used
6 at trial to present evidence under Federal Rules of Evidence 702, 703, or 705. A
7 written report and supporting materials prepared by Mr. Beaton and Alvarez &
8 Marsal Valuation Services, LLC, pursuant to Federal Rule of Civil Procedure Rule
9 26(a)(2)(B), is attached hereto as Exhibit 1 and incorporated by this reference.

10 2. WSC has retained David E. Holmes, Esq., and his company Franchise
11 Expert Witness Services, as persons who may be used at trial to present evidence
12 under Federal Rules of Evidence 702, 703, or 705. A written report and supporting
13 materials prepared by Mr. Holmes and Franchise Expert Witness Services, pursuant
14 to Federal Rule of Civil Procedure Rule 26(a)(2)(B), is attached hereto as Exhibit 2
15 and incorporated by this reference

16 3. WSC also reserves the right to utilize the testimony of any expert
17 retained by plaintiffs and counter-defendants in this matter.

18 4. WSC expressly reserves the right to identify other experts as a
19 supplement to these disclosures if discovery continues and/or as additional
20 individuals, documents, or information are identified or obtained which are likely to
21 lead to, possess, or contain discoverable information, or as parties identify other
22 experts. WSC further reserves the right to identify any rebuttal experts and/or
23 reports as it deems necessary based upon the expert disclosure of plaintiffs and
24 counter-defendants in this matter.

25 5. These disclosures are based upon information and facts no available
26 from WSC’s understating of the issues, contentions, and arguments WSC intends to
27 assert at the time of trial in this matter. These disclosures are without prejudice to
28 experts, facts, issues, and contentions subsequently learned or discovered.

1 6. WSC shall supplement these disclosures when and as required under
2 the Federal Rules of Civil Procedure or any other applicable rules.

3

4 DATED: September 16, 2016 PEREZ WILSON VAUGHN & FEASBY

5

6

By: /s/ Jeffrey A. Feasby

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John D. Vaughn

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Jeffrey A. Feasby

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Attorneys for

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Windermere Real Estate Services Company

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EXHIBIT 1

**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,**

vs.

**WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation, and
DOES 1-10,
Defendant.**

Case No: 5:15-cv-01921-R-KK

**Report of
Neil J. Beaton, CPA/ABV/CFF, CFA, ASA
September 16, 2016**

**ALVAREZ & MARSAL VALUATION SERVICES, LLC
1201 Third Avenue, Suite 800
Seattle, WA 98101**

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Attachments:

Exhibit 1 – Curriculum Vitae – Neil J. Beaton

Exhibit 2 – Testimony List – Neil J. Beaton

Exhibit 3 – Presentations and Publications – Neil J. Beaton

Exhibit 4 – Documents Reviewed and/or Considered

Schedule 1 – WSSC - Comparison of Original and Recast Income

Schedule 2 – Summary of Franchise, Technology, and Other Fees

Schedule 3 – Bennion & Deville Discretionary Expenses

Schedule 4 – Damages Analysis Summary

QUALIFICATIONS

1. I, Neil J. Beaton, am a Managing Director at Alvarez & Marsal Valuation Services, LLC (“A&M”). I specialize in business valuations, mergers and acquisition support, litigation consulting, and economic analysis. Prior to joining A&M, I was the Global Lead of Complex Valuation at Grant Thornton LLP, and before joining Grant Thornton LLP, I was a shareholder in a boutique business valuation and economic consulting firm headquartered in Seattle, WA. Additionally, I was previously employed by the Dun & Bradstreet Corporation, an international financial services conglomerate with interests in credit reporting, securities analysis and financial management.
2. I am a Certified Public Accountant and have achieved the designations of Accredited in Business Valuation (“ABV”) and Certified in Financial Forensics (“CFF”), sponsored by the American Institute of Certified Public Accountants (“AICPA”). I am also a Chartered Financial Analyst (“CFA”) under the auspices of the CFA Institute (“CFAI”) and an Accredited Senior Appraiser (“ASA”) under the auspices of the American Society of Appraisers. I am a member of the AICPA, the Washington Society of CPAs, and the CFAI. I am a past president and trustee of the Seattle Society of Financial Analysts, a former Co-Chair of the AICPA’s Valuation of Private Equity Securities Task Force, a former member of the AICPA’s ABV Exam Committee, a former member of the AICPA’s Mergers & Acquisitions Disputes Task Force, and a former chair of the AICPA’s FAS 141/142 Task Force. I am a member of the *Business Valuation Update* Editorial Advisory Board, on the Panel of Experts for the publication, *Financial Valuation and Litigation Expert*, and on the Editorial Board of the National Association of Certified Valuation Analysts, *Value Examiner*. I am a past member of the Financial Accounting Standards Board’s (“FASB”) Valuation Resource Group and the AICPA’s National Accreditation Committee for Business Valuation. A Curriculum

Vitae is attached as Exhibit 1, along with a testimony list covering the last four years as Exhibit 2, and a list of my presentations and publications in the last 10 years as Exhibit 3.

ASSIGNMENT

3. At the request of counsel to Windermere Real Estate Services Company (“WSC” or the “Company”), we have formed a preliminary opinion of the economic damages that may have been incurred by WSC as a result of alleged violations of various partnership agreements between WSC and Bennion & Deville Fine Homes, Inc. (“B&D Fine Homes”), Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”), and Windermere Services Southern California, Inc. (“WSSC”), collectively referred to as the “Bennion & Deville Entities”. WSC alleges that it has incurred a variety of economic damages resulting from alleged acts of Robert Bennion and Joseph Deville (“Bennion & Deville”) to reduce and/or eliminate the amounts owed to WSC based on the agreements between the parties dating back to August of 2001.
4. I have also been asked to assess whether WSSC collected the proper amount of fees from B&D Fine Homes and B&D SoCal as set forth in the Area Representation Agreement between WSSC and WSC and to assess possible inaccuracies in the financial statements prepared on behalf of the Bennion & Deville Entities based on their inconsistent preparation.
5. Finally, I have been asked to analyze the financial statements and other documents provided to me to determine whether WSSC possessed the characteristics of an operating company or if it operated more like a vehicle for Bennion & Deville to extract personal financial benefit to the detriment of WSC.

MATERIALS REVIEWED

6. When used hereinafter, “we” and/or “our” means me and/or persons working under my supervision and control. For this assignment, we reviewed and/or considered various documents provided to us, as listed on Exhibit 4. I reserve the right to update my opinions should additional relevant documents or information be provided.

SUMMARY OF OPINIONS

7. Based on the information provided as of the date of this report, I have estimated WSC’s economic damages related to unpaid franchise fees at \$1,328,000.
8. It is my opinion that WSSC did not make its best efforts to collect fees from B&D Fine Homes and B&D SoCal as required under the Area Representation Agreement.
9. It is my opinion that the various financial statements provided for the Bennion & Deville Entities are inconsistent, which suggests they are inaccurate and may have been prepared for special needs and purposes.
10. It is my opinion that Bennion & Deville used WSSC as a vehicle through which Bennion & Deville extracted funds for their personal benefit rather than paying the fees owed to WSC.
11. Since we recently have been provided with the restated financial statements for WSSC, it is my understanding that additional discovery and deposition testimony is likely to occur. I may supplement this report with additional opinions or observations should it become necessary to do so.

WORK PERFORMED AND BASIS FOR OPINIONS**Background**¹

12. Windermere Real Estate Services Company, founded over 40 years ago in the Seattle area, is the franchisor of the Windermere System of franchisees that provide real estate brokerage services to customers. The Company began with a single office and eight real estate agents, but has grown to over 300 offices and over 7,000 real estate agents throughout the Western United States.
13. WSC and Bennion & Deville began a series of partnerships and business relationships starting in August of 2001. Robert Bennion and Joseph Deville, who had been real estate agents in Seattle with Windermere prior to opening their California offices, saw an opportunity to expand Windermere's real estate brokerage business into California. On August 1, 2001, WSC and B&D Fine Homes, Inc. entered into a Windermere real estate license agreement for Coachella Valley in California (the "Coachella Agreement"). This agreement allowed Bennion & Deville to open new franchise locations in southern California, something that had not previously been done with the Windermere trademark. According to the Coachella Agreement, B&D Fine Homes, Inc. was required to pay the following fees:
 - a. An initial fee of \$15,000;
 - b. Monthly license fees of either five percent (5%) of gross commission revenue or \$200 per sales agent;
 - c. Monthly combined technology and administrative fee of \$35 per sales agent; and
 - d. A late fee of ten percent (10%) the delinquent amount, plus compounding interest of 10 percent.
14. Three years later, in 2004, Bennion & Deville entered into another agreement to become area representatives for the southern California region (the "Area Representation Agreement"),

¹ Portions of the background information were obtained from the Plaintiff's First Amended Complaint, dated September 17, 2015, as well as the First Amended Counterclaim, dated October 14, 2015.

effectively creating the entity Windermere Services Southern California, Inc. This agreement conferred upon Bennion & Deville the role and responsibility of providing support and auxiliary services to incoming and existing Windermere franchises in southern California, as well as the non-exclusive right to offer Windermere real estate licenses to real estate brokerages in their target area. Bennion & Deville also had the responsibility to collect franchise and technology fees from licensees in their area of responsibility. A list of specific duties is outlined in the Area Representation Agreement.²

15. Based on the documents reviewed, WSC began to forgive B&D Fine Home's franchise fees, decrease or freeze their technology fees, and/or defer other fees related to the franchise relationship in or around 2007. As example, on August 10, 2007, WSC waived all franchise fees owed by B&D Fine Homes for 2006, which fees at the time amounted to approximately \$501,000, due to financial difficulties experienced by B&D Fine Homes.³
16. WSC was approached by B&D Fine Homes again in August 2007, asking for additional financial assistance due to their continuing financial difficulty. WSC obliged, and on August 30, 2007, WSC agreed to defer all of B&D Fine Homes' franchise fees for 2007 for a period of time, with final payment guaranteed by May 2013.⁴
17. Despite WSC's agreement to forgive and defer franchise fees, B&D Fine Homes continued to struggle financially. Bennion & Deville again approached WSC seeking financial assistance, stating that they were on the brink of losing B&D Fine Homes.⁵ On January 13, 2009, WSC, through a related entity, provided a \$500,000 loan to Bennion & Deville.⁶ The loan was to be paid in full by March 1, 2014, but the two sides later agreed to extend that date an additional

² Exhibit_36_JosephRDeville.

³ Exhibit_22_JosephRDeville.

⁴ Exhibit_24_JosephRDeville.

⁵ First Amended Counterclaim, dated October 14, 2015, including Exhibit I.

⁶ Exhibit_39_JosephRDeville.

three years as an accommodation at the request of Bennion & Deville. Based on the documents reviewed, the loan balance is currently outstanding.

18. Two years after the first loan was provided to Bennion & Deville by WSC, Bennion & Deville approached WSC seeking additional financial assistance, this time with the intent of obtaining start-up capital in order to open new Windermere franchises in the San Diego area. WSC, through a related entity, agreed to loan Bennion & Deville another \$500,000 on February 16, 2011, with the principal of the loan to be paid in full by March 1, 2016.⁷ The full loan balance was taken through multiple installments.
19. Bennion & Deville expanded their real estate brokerage business into the San Diego area in the spring of 2011. On March 29, 2011, WSC and Bennion & Deville entered into another Windermere real estate license agreement (the “SoCal Agreement”), effectively creating another Bennion & Deville entity known as Bennion & Deville Fine Homes SoCal, Inc.⁸ Similar to the Coachella Agreement, the SoCal Agreement required franchisees to pay a monthly license fee as well as a monthly technology fee. However, unlike the Coachella Agreement, the SoCal Agreement did not require an initial franchise fee. Initially, the SoCal Agreement provided for the opening of four franchised locations in the San Diego area.
20. Only two months after signing the SoCal Agreement, Bennion & Deville again approached WSC for financial assistance, still under the guise of compensating for start-up costs related to the SoCal Agreement franchisees. Once again, WSC, through a related entity, obliged and provided Bennion & Deville with an additional \$250,000 loan on June 6, 2011⁹, with the balance to be repaid in full on May 1, 2014. Between 2008 and 2011, WSC made multiple loans to Bennion & Deville and their related entities totaling over \$1.25 million to assist Bennion & Deville and their business operations in southern California.

⁷ Exhibit_43_JosephRDeville.

⁸ Exhibit_37_JosephRDeville.

⁹ First Amended Counterclaim, dated October 14, 2015, Exhibit K.

21. Even in light of all of the financial support supplied by WSC, in 2012, Bennion & Deville complained about various problems that they alleged were negatively impacting their franchises. Bennion & Deville referenced an anti-marketing campaign known as “Windermere Watch”; they claimed that the campaign was affecting sales and the reputation of their brokerages across the southern California region, and that WSC was not doing enough to combat this problem. Bennion & Deville threatened to leave the Windermere system all together, and negotiations ensued. Eventually, the two sides came to terms by agreeing to modify the original franchise agreements (the “Modification Agreement”) on December 18, 2012.¹⁰ The Modification Agreement contained several provisions, including an agreement by WSC to address the Windermere Watch issue. Of the several provisions contained in the Modification Agreement, many were established to relieve Bennion & Deville of various obligations or provide relief from future obligations, including the following:
- a. WSC agreed to waive a total of \$1,151,000, which comprised \$399,960 in a promissory note, \$191,025 in technology and franchise fees for B&D SoCal, and \$560,075 in technology and franchise fees for B&D Fine Homes;
 - b. WSC agreed to give discounts to B&D Fine Homes and B&D SoCal franchisees for licensing fees, retroactive to April of 2012;
 - c. WSC agreed to cap technology fees for B&D Fine Homes and B&D SoCal franchisees for the following five years; and
 - d. WSC agreed to release Bennion & Deville from all personal liability in regard to the specific forgiven fees. However, there was no release of fees or their personal guarantee for any accrued fees on or after April 1, 2012.
22. As part of the Modification Agreement, Bennion & Deville agreed to:
- a. Remain in the Windermere system for the following five years;

¹⁰ Exhibit_51_Joseph R Deville, Vol , II.

- b. To pay WSC a pro rata portion of waived fees if Bennion & Deville left Windermere within the following five years; and
 - c. To pay WSC \$181,000 of past due fees by December 31, 2012.
- 23. While the foregoing provisions in the Modification Agreement were meant to relieve Bennion and Deville from past obligations, it was not intended to relieve them of their duties under the Area Representation Agreement or other specified obligations.¹¹
- 24. Beginning in January 2014, Bennion & Deville continued to voice discontent regarding the financial concessions made by WSC, stating that the anti-marketing campaign “Windermere Watch” was still putting a damper on their business. Bennion & Deville claimed to have spent \$85,000 on search engine optimization costs to combat “Windermere Watch”, which were ultimately reimbursed through the write off of fees by WSC.
- 25. Finally in early 2015, WSC and Bennion & Deville terminated their respective agreements, with the termination effective September 30, 2015.
- 26. WSC is claiming it has incurred economic damages as a result of B&D Fine Homes and B&D SoCal’s failure to pay contractually obligated fees as well as WSSC’s failure to engage in reasonable good faith efforts to collect those fees¹²:
 - a. Coachella Agreement: WSC is claiming damages of \$586,550, plus interest of \$81,700 and late fees of \$58,700 through September 2015.
 - b. Modification Agreement: WSC is claiming damages of \$386,000.
 - c. SoCal Agreement: WSC is claiming damages of \$180,900, plus interest of \$24,800 and \$18,100 in late fees through September 2015.

¹¹ “While the Modification Agreement references both the Coachella Valley Franchise Agreement and the SoCal Franchise Agreement and states that it is intended to modify both agreements, the Modification Agreement did not modify the Area Representation Agreement, nor did it modify or in any way affect the various loans and notes entered into by WSC and Bennion and Deville during and throughout their business relationship.” First Amended Counterclaim, dated October 14, 2015, pg. 16.

¹² We also understand that WSC will be seeking attorney’s fees as part of the provisions in the Agreements.

- d. Other: Damages relating to failure to surrender domain names and applicable agreements.

Alvarez & Marsal's Damages Analysis

27. We were asked to evaluate the damages that may have been incurred by WSC as a result of Bennion & Deville's violation of various agreements between WSC and Bennion & Deville Fine Homes Inc., Bennion & Deville Fine Homes SoCal, Inc., and Windermere Services Southern California, Inc. For the purpose of this analysis, we are assessing the economic damages incurred by WSC assuming: 1) B&D Fine Homes and B&D SoCal's breaches of the Coachella Agreement and the SoCal Agreement by failure to pay fees; 2) WSSC's breach of the Area Representation Agreement by failure to engage in reasonable efforts to collect fees; and 3) B&D Fine Homes and B&D SoCal's breaches of the Modification Agreement by failing to remain as franchisees.
28. According to the Area Representation Agreement between WSC and WSSC, dated May 1, 2004, it was WSSC's responsibility to "receive, collect, account for all license fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the region, and to remit to WSC its share of such fees."¹³ We have been provided with various financial documents that indicate inconsistent accounting that ultimately resulted in insufficient payments to WSC from the Bennion and Deville Entities based on the agreements in place at the time the payments were due.
29. We have been provided with audited financial statements for WSSC for the years ended December 31, 2011 through 2013, which also included historical profit and loss information for the years 2009 and 2010, and balance sheet detail as of December 31, 2010.¹⁴ We have also been provided with compiled financial statements for B&D Fine Homes for the years 2012 through 2014. We have also been provided with the compiled financial statements for

¹³ Deposition of Joseph R. Deville, dated July 28, 2016, Exhibit 36.

¹⁴ Deposition of Joseph R. Deville, dated July 27, 2016. Exhibit 59-61.

B&D SoCal for the 2012 and internally prepared financial statements for 2013 and 2014.

30. According to the American Institute of Certified Public Accountants (“AICPA”), financial statements for a company are prepared to a level of assurance based on the evidence obtained and analytical procedures performed by the entity’s Certified Public Accountant (“CPA”). No assurance is required for the preparation of compiled financial statements. The CPA simply states that the financial statements appear to be free from obvious material misstatements. Reviewed financial statements require the CPA to perform analytical procedures, inquiries, and other procedures necessary to obtain “limited assurance” on the accuracy of the financial statements. A review engagement includes a formal report that includes a conclusion as to whether any material changes need to be made to the financial statements. A review is substantially narrower in scope than an audit. An audit is the highest level of assurance services that a CPA performs. For an audit, the CPA performs procedures necessary to obtain “reasonable assurance” that the financial statements are free from material misstatements. As mentioned previously, we have received compiled and audited financial statements for the Bennion & Deville Entities in this case, as well as internally prepared financial documents. In addition, we recently received “recast” financial statements for the years 2011 through 2013 for WSSC.
31. As shown on Schedule 1, according to the audited financial statements, WSSC had negative net income of \$335,450 in 2011, negative \$165,423 in 2012, and negative \$1,049,395 in 2013. It should be noted that the original audited financial statements for 2011 indicated net income of \$41,815¹⁵, which is a difference of \$377,265. However, based on recast financial information provided to us, the recast income was negative \$20,450 in 2011, positive \$224,577 in 2012, and positive \$292,372 in 2013. These recast financial statements appear to have incorporated franchise fees that were not included for the purpose of determining the

¹⁵ WSC1707

contractual payments due to WSC, but appear to be included now for an alternative purpose as part of this litigation.

32. As shown on Schedule 1, the recast income statements indicate a total change in stated revenue of \$1,095,000 from 2011 through 2013. WSSC's unaccounted revenue, which was due to failing to report franchise fee revenues from southern California Windermere franchises, altered the assessment of WSSC's financial stability during that period of time. Excluding the franchise fee revenue on WSSC's financial statements created an onerous financial picture that may have formed the basis for Bennion & Deville making continuous requests of WSC to reduce or eliminate amounts owed by Bennion & Deville's Entities to WSC.
33. In addition to the understated revenue, there is an overstated expense of \$967,000 that was included in the 2013 audited financial statements that was excluded from the recast financial statements.
34. In total, the recast financial statements that were provided during this litigation show an increase in operating income of over \$2.0 million for the years 2011 through 2013 compared to the audited financial statements that were created in the ordinary course of business.
35. As shown on Schedule 2, the franchise fees per the compiled financial statements for B&D Fine Homes and B&D SoCal were different in all years than the franchise fee revenue indicated on WSSC's audited financial statements. In addition, internal monthly calculations related to license fees due from B&D Fine Homes and B&D SoCal provide yet another indication of the inconsistency in license fees due over each year reviewed. The inconsistency in these financial documents indicates an overall inaccuracy in the underlying financial information and perhaps preparation of various financial documents for special purposes.
36. As stated previously, WSC waived franchise fees owed, provided personal loans, and renegotiated terms of loans and future fees for Bennion & Deville's Entities in multiple

instances between 2006 and 2015. Although Bennion & Deville insisted that B&D Fine Homes and B&D SoCal were struggling financially, and therefore requested various reductions, waivers, delays, and forgiveness of franchise fees in addition to requesting multiple personal loans from WSC, Bennion & Deville Entities were paying millions of dollars of personal, non-business expenditures.

37. As shown on Schedule 3, during 2012 (the same year in which WSC waived over \$1.15 million in franchise and technology fees), Bennion & Deville paid themselves total wages of \$371,000 in addition to discretionary expenses in the amount of \$173,000. Among the discretionary expense was \$28,000 for an auto lease on a Land Rover as well as a \$47,000 lease on a motor home.
38. These personal expenditures continued during 2013 and 2014. As shown on Schedule 3, in 2014 (the same year in which B&D Fine Homes and B&D SoCal decided to stop paying franchise fees to WSC), Bennion & Deville paid themselves \$695,000 in wages and charged \$397,000 worth of discretionary expense to the Bennion & Deville Entities' income statements. The discretionary expenses in 2014 include a \$123,000 lease for a motor home, a \$46,000 auto lease for a Bentley, a \$29,000 lease for a private airplane, and a \$96,000 charge for a condo. Such expenditures do not support the contention that WSSC was struggling financially. As shown on Schedule 3, from 2012 to through 2014, Bennion & Deville paid themselves wages and used B&D Fine Homes and B&D SoCal revenue for personal expenses in the amount of \$2,610,000.
39. In my opinion, Bennion & Deville failed to create a viable real estate services company because they failed to collect the appropriate amount of franchise and other fees from the underlying real estate entities. Furthermore, the discretionary expenses noted in the preceding paragraphs siphoned off a significant amount of funding that could have been used to build a viable real estate services company.

40. Based on our analysis of the financial information provided, it is my opinion that Bennion & Deville either provided false financial information to its auditors for the inclusion in their audited financial statements or the recast financial statements are not an accurate picture of WSSC's financial condition. In addition, Bennion & Deville took excess compensation and discretionary expenses during years when they requested that WSC forgive franchise fees and make loans and failed to pay franchise and other fees owed to WSC.

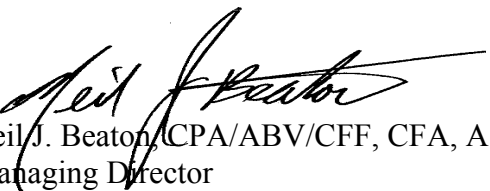
CONCLUSIONS

41. Based on the information provided as of the date of this report, we have estimated WSC's economic damages related to unpaid franchise fees at \$1,328,000, as shown on Schedule 4.
42. Since discovery is ongoing in this case, I may supplement this report with additional opinions or observations should it become necessary to do so.

FEES

43. Alvarez & Marsal Valuation Services, LLC ("A&M Valuation") is compensated for my time on this matter at a rate of \$500 per hour. In addition to my time, I directed other A&M Valuation professionals who performed supporting work and analyses in connection with my preparation of this report at hourly rates ranging from \$175 to \$450.
44. I completed this report on September 16, 2016.

SIGNATURE



Neil J. Beaton, CPA/ABV/CFF, CFA, ASA
Managing Director

CURRICULUM VITAE

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

PROFESSIONAL EMPHASIS

Managing Director at Alvarez & Marsal Valuation Services, LLC, specializing in the valuation of businesses, business interests and intangible assets for purposes of financial reporting, incentive stock options, litigation support (marriage dissolutions, lost profits claims), mergers and acquisitions, buy-sell agreements, and estate planning and taxation. Also performs economic analysis for personal injury claims and wrongful death actions.

PROFESSIONAL QUALIFICATIONS AND ASSOCIATIONS

Certified Public Accountant (CPA): Washington, 1990

American Institute of CPAs and Washington Society of CPAs

Former Co-Chair of the AICPA Valuation of Private Equity Securities Task Force

Former Member of the AICPA ABV Exam Committee

Former Committee Member of AICPA Business Valuation Subcommittee

Former Chair of the AICPA FAS 141/142 Task Force

Former Member of the AICPA National Accreditation Commission for Business Valuation

Former Member of the AICPA Merger & Acquisition Disputes Task Force

Accredited in Business Valuation (ABV)

Certified in Financial Forensics (CFF)

Chartered Financial Analyst (CFA), 1992

Past President and Trustee of Seattle Society of Financial Analysts

Member of the CFA Institute

Accredited Senior Appraiser (ASA), 1994

American Society of Appraisers

Member of the *Business Valuation Update* Editorial Advisory Board

Panel of Experts, *Financial Valuation and Litigation Expert*

Editorial Board of the National Association of Certified Valuation Analysts, *Value Examiner*

Former Member of the FASB Valuation Resource Group

EDUCATION

Master of Business Administration, Finance, National University, 1983

Bachelor of Arts Degree, Economics, Stanford University, 1980

Numerous continuing education classes in the areas of accounting, taxation and business valuation

PROFESSIONAL EXPERIENCE

Alvarez & Marsal Valuation Services, LLC (2012–Present)

Grant Thornton LLP (2003–2012)

Brueggeman and Johnson, P.C. and predecessor entity (1989–2002)

Dun & Bradstreet Corporation. National Business Analyst (1981–1989) — Responsible for analyzing large, publicly traded corporations and assisting in large-scale credit decisions. Specialized in banking, insurance and financial services industries.

TESTIMONY SUMMARY – LAST 4 YEARS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA****DEPOSITION TESTIMONY**

Date	Case Name	Type of Business	Jurisdiction
1/12	Pisheyar v. Snyder and Hannah	Auto Dealerships	King County Superior Court
1/12	City and County of San Francisco v. Cobra Solutions, Inc.	IT Consulting Services	Superior Court of California
2/12	Frost v. Fireman's Fund Insurance Co.	Stock Options	King County Superior Court
2/12	Dawson, et al. v. Robinson Helicopter Company	Korean Wholesale Lumber Company	King County Superior Court
2/12	REM Market and Martin Properties v. Argonaut Great Central Insurance	Retail Grocery Stores	Chelan County Superior Court
4/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
5/12	Welch, et al. v. Pettersson, et al.	Auto Dealership	King County Superior Court
5/12	Fouts v. State Farm Insurance	Health Care	U.S. District Court, Western District of WA
5/12	Dawes v. Certainteed Corporation, et al.	Pipe Supply	Pierce County Superior Court
5/12	Marketquest Group, Inc. v. BIC Corporation, et al.	Manufacturer of Promotional Products	U.S. District Court, Southern District of California
7/12	Massey v. Harvard Drug Group, et al.	College Education	King County Superior Court
7/12	Estate of Vanna Francis v. Clallam County, et al.	College Education	U.S. District Court, Western District of WA
8/12	Univar, Inc. et al. v. Xenon Arc, et al.	Chemical Distributor	U.S. District Court, Western District of WA
8/12	Kellogg Capital Markets LLC and Eric Rosenfeld v. Troy Group, Inc., et al.	Printer and Toner Manufacturer	Court of Chancery, Delaware
8/12	Estate of Charles Cravens v. Kadlec Medical Center, et al.	Software Design	Benton County Superior Court
9/12	Johnston v. Samaniego, et al.	Neurologist	Kitsap County Superior Court
10/12	The Bristol at Southport, LLC v. Starline Windows, Inc.	Manufacturer of Windows	King County Superior Court
11/12	Waltrip v. City of Kent	Firefighter	King County Superior Court
11/12	Barrett v. Bill the Butcher, Inc., et al.	Retail Meat Sales	King County Superior Court
12/12	Wendell Brown v. Viant Capital, LLC, et al.	Renewable Energy	Superior Court of California
4/13	Taylor v. Intuitive Surgical, Inc.	Robotic Surgery Equipment	Kitsap County Superior Court
4/13	Noble v. Noble	Real Estate Management	King County Superior Court
5/13	Willard v. City of Everett	Auto Body Mechanic	U.S. District Court, Western District of WA
5/13	Noble v. Noble	Real Estate Management	King County Superior Court
5/13	Arthur "Bill" Barnum, et al. v. State of Washington, et al.	High School Education	Pierce County Superior Court
7/13	EagleView Technologies, Inc. v. Xactware Solutions, Inc.	Custom Computer Software	U.S. District Court Western District of Washington

TESTIMONY SUMMARY – LAST 4 YEARS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

7/13	Hollywood Media Corp., et al. v. AMC Entertainment Inc.	Internet Movie Ticketing	Circuit Court, 15 th Judicial District, Palm Beach, FL
7/13	Casino Marketing Alliance, LLC v. Pinnacle Entertainment	Software Analytics	American Arbitration Association, Commercial
8/13	Syrdal, Daniel v. Chalmers	Attorney	King County Superior Court
8/13	Trianon, LLC v. Carpenters Tower, et al.	Office Building	King County Superior Court
8/13	Mod Pizza v. Pieology/Chang	Restaurant Operations	U.S. District Court Western District of Washington
8/13	Bonanza Fuel v. Delta Western	Wholesale Oil Distribution	U.S. District Court for the District of Alaska
8/13	Noble v. Tallman Building, LLC	Property Management	King County Superior Court
9/13	KDC Foods, Inc., v. Gray, Plant, Mooty, et al.	Food Preparation	U.S. District Court Western District of Wisconsin
10/13	Strong v. Rudin, et al.	Engineer	King County Superior Court
11/13	Mitchell, et al. v. Price, et al.	Real Estate Investment Fund	Pierce County Superior Court
11/13	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
12/13	Intelio Technologies, Inc., v. Ryko Solutions, Inc.	Car Wash Equipment Manufacturing	American Arbitration Association, Chicago, IL
1/14	In re: Plant Insulation Company – Bayside Insulation & Construction, Inc.	Insulation Contractor	U.S. Bankruptcy Court, Northern District of California
1/14	Rachel Rozman Cooley v. State of Washington, et al.	High School Education	Pierce County Superior Court
1/14	Pikover v. EagleView Technologies, Inc.	Aerial Measurement Services	Snohomish County Superior Court
3/14	Howard Oppenheimer, et al. v. Carl Bianco, et al.	Real Estate Investment	King County Superior Court
4/14	Baylor Medical Center at Frisco v. Bledsoe and Willis	Health Care System	U.S. District Court, Eastern District of Texas
4/14	Maytown Sand and Gravel, LLC v. Thurston County, et al.	Gravel Mine	Lewis County Superior Court
5/14	Global Enterprises, LLC v. Montgomery Purdue Blankinship & Austin PLLC	Boat Charter	U.S. District Court Western District of Washington
6/14	The Shaw Group, Inc., et al. v. Zurich American Insurance Company, et al.	Pipe Fabricator	U.S. District Court Middle District of Louisiana
7/14	Wilson v. Wilson	Professional Athlete	King County Superior Court
7/14	Dennis Moran, et al. v. Monitor Liability Managers, LLC, et al	Attorney	King County Superior Court
8/14	Sheard and Martin v. Robert Polakoff	Pharmacologist	King County Superior Court
9/14	Farmers Insurance Company of Washington, et al. v. Damian J. Greene Insurance Agency, Inc.	Insurance Brokerage	King County Superior Court
9/14	Anderson News, LLC, et al. v. American Media, Inc., et al.	Wholesale Magazine Distribution	U.S. District Court Southern District of New York
10/14	Sinner, et al. v. Conner, et al.	Winery Real Estate	Snohomish County Superior Court

TESTIMONY SUMMARY – LAST 4 YEARS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

10/14	CampusPoint Corporation v. Granlund	Staffing Company	King County Superior Court
10/14	Milette v. Magnetic & Penetrant Services Co., Inc.	Metal Coating & Finishing	Arbitration – Seattle, WA
11/14	Kawasaki Heavy Industries, Ltd. v. Bombardier Recreational Products, Inc., et al.	Personal Watercraft Manufacturing	Private Arbitration – Chicago, IL
11/14	AccessData Group, LLC v. Thompson, et al.	Cyber Security Software	Arbitration – Salt Lake City, UT
11/14	Chong Sun Kyong v. Sung Ho Kim	Financial Executive	King County Superior Court
12/14	Western Mortgage v. Key Bank	Financial Instruments	U.S. District Court - Idaho
1/15	Brian Wurts v. City of Lakewood, et al.	Police Officer	U.S. District Court Western District of Washington
1/15	Hansen v. Hansen	Bail Bond Agency	King County Superior Court
1/15	Hoffman v. Integrale Investments, LLC, Keith Knutsson, and PCGL, LLC	Real Estate Development	Circuit Court, 13 th Judicial District, Tampa, FL
2/15	Vasudeva Mahavisno v. Compendia Biosciences, Inc. and Life Technologies Corporation	Drug Discovery Software	U.S. District Court, Eastern District of Michigan, Southern Division
3/15	Susan Camicia v. City of Mercer Island, et al.	Legal Secretary	King County Superior Court
5/15	DeRosa v. Aggressive Transport, Ltd.	College Education	Pierce County Superior Court
5/15	Philippe Charriol International Limited v. A'Lor International Limited	Jewelry Manufacturing	U.S. District Court, Southern District of California
7/15	The Patriot Group, LLC v. Hilco Enterprise Valuation Services, LLC	Valuation Services	Cook County Circuit Court, Illinois County Department
9/15	Alpha Pro Tech, Inc. v. VWR International LLC	Clean Room Apparel Manufacturer	U. S. District Court, Eastern District of Pennsylvania
10/15	Thomson v. HMC Group and Torrance Memorial Medical Center, et al.	Hospital Design/Billing	U.S. District Court, Central District of California
10/15	Moe, et al. v. Radiant Global Logistics, Inc.	Transportation Logistics	King County Superior Court
11/15	CH2O, Inc. v. Meras Engineering, Inc.	Specialty Chemical Manufacturing	Thurston County Superior Court
12/15	Nautilus, Inc. v. Gary D. Piaget d/b/a Piaget Associates	Exercise Equipment	Arbitration – Vancouver, WA
12/15	Spokane Rock I, LLC, v. Doty, Beardsley, Rosengren & Co., P.S.	Property Development/Management	Pierce County Superior Court
1/16	Sandra S. Noreen v. Michael W. Bugni, et al.	Book Royalties	King County Superior Court
1/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court
2/16	McLean, et al. v. Coleman-Davies Pearson, P.C.	Freight Trucking	King County Superior Court
2/16	Wood v. Wood	Start-up Companies	Jefferson County Circuit Court, Kentucky
3/16	Lysa Catlin v. RPM Mortgage, Inc.	Mortgage Broker	Arbitration – Bellevue, WA
3/16	In re: Capitol Lakes, Inc.	Retirement Community	U.S. Bankruptcy Court, W. D. of Wisconsin
5/16	Larry Richards v. Thermal Hydra Plastics, LLC, d/b/a Clearwater Spas, et al.	Spa Manufacturer	King County Superior Court
5/16	DeWitt v. DeWitt	HVAC Control Systems	Benton County Superior Court

TESTIMONY SUMMARY – LAST 4 YEARS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

5/16	SmartMed, Inc. v. FirstChoice Medical Group, Inc.	Healthcare Consulting	Judicial Arbitration and Mediation Services
5/16	Education Logistics, Inc., et al. v. Datsopoulos, MacDonald & Lind, PLLP, et al.	Transportation Logistics Software	4 th Judicial Court of Montana, Missoula County
6/16	In re: Aeropostale, Inc.	Specialty Clothing Retailer	U.S. Bankruptcy Court, S. D. of New York
6/16	Telecom Transport Management, Inc. v. AT&T Corp.	Telecommunications Services	Judicial Arbitration and Mediation Services
6/16	Ryan M. Pszonka, et al. v. Snohomish County, et al.	Natural Disaster/Oso Landslide	King County Superior Court
7/16	BP West Coast Products LLC v. Keith Willnauer, Whatcom County Assessor	Oil & Gas Refinery	Washington State Board of Tax Appeals
7/16	Kevin Wilson v. Eurofins Environment Testing US Holdings, Inc., et al.	Testing Laboratories	King County Superior Court
7/16	Estate of Jacob A. Steinle v. Munchbar, et al.	Search Engine Optimization	King County Superior Court
8/16	Monster Energy Company v. Olympic Eagle Distributing	Beverage Distributor	Judicial Arbitration and Mediation Services
9/16	Ronald Fitz Reed LLC v. Alan S. Wischnesky LLC	Network Hardware and Equipment Retailer	King County Superior Court

ARBITRATION/MEDIATION TESTIMONY

Date	Case Name	Type of Business	Jurisdiction
4/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
5/12	Welch, et al. v. Pettersson, et al.	Auto Dealership	King County Superior Court
6/12	Moore v. Safeco	Online Marketing	King County Superior Court
12/12	Estate of Vanna Francis v. Clallam County	College Education	King County Superior Court
1/13	Hazemann v. Hazemann	Trial Consulting Services	King County Superior Court
1/13	Armintrout v. Armintrout	Tracing; Spec Homes	King County Superior Court
4/13	Hill v. Nickerson	Economic Consulting	King County Superior Court
6/13	Harris v. State Farm Insurance	Bio-Feedback Consulting	King County Superior Court
7/13	Edmonds Hardware, LLC v. Grace Architects PLLC	Retail Ace Hardware Store	King County Superior Court
9/13	Casino Marketing Alliance v. Pinnacle Entertainment, Inc.	Software Analytics	American Arbitration Association – San Francisco
11/13	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
12/13	Chapman v. Chapman	Real Estate Advisory	King County Superior Court
12/13	Wilcox v. Wilcox	Attorney	King County Superior Court
1/14	EnerSys Delaware Inc. v. Allergy Systems	Fuel Cell Manufacturing	American Arbitration Association – San Francisco
2/14	Intelio Technologies, Inc., v. Ryko Solutions, Inc.	Car Wash Equipment Manufacturing	American Arbitration Association – Chicago, IL
7/14	Wilson v. Wilson	Professional Athlete	King County Superior Court
8/14	Brandt, et al. v. Brandt	Integrated Fruit Farms	Alternative Dispute Resolution

TESTIMONY SUMMARY – LAST 4 YEARS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

8/14	Murray v. Murray	Building Material Manufacturing	King County Superior Court
9/14	Wong v. Skoczowski	Mobile Software Solutions	Toronto, Ontario, Canada
9/14	Dye v. Dye	Wine Distribution	Arbitration – Oakland, CA
10/14	Sinner, et al. v. Conner, et al.	Winery Real Estate	Arbitration – Seattle, WA
10/14	Miles Resources, LLC, v. Summerwood Park Holdings, LLC	Real Estate Development	Arbitration – Seattle, WA
10/14	Milette v. Magnetic & Penetrant Services Co., Inc.	Metal Coating & Finishing	Arbitration – Seattle, WA
11/14	Strawn v. Strawn	Scanning and Imaging	King County Superior Court
11/14	Software Forensics, Inc. v. Eric Thompson, et al.	eDiscovery, Security Software	Arbitration – Salt Lake City, UT
12/14	Hansen v. Hansen	Bail Bond Agency	Judicial Dispute Resolution
2/15	Kawasaki Heavy Industries, Ltd. v. Bombardier Recreational Products, Inc., et al.	Personal Watercraft Manufacturing	Private Arbitration – Chicago, IL
5/15	Leslie v. Leslie	CPA Firm	King County Superior Court
9/15	van Loben Sels v. van Loben Sels	Tax Consulting Firm	Superior Court of California, San Mateo County
1/16	Nielsen v. Nielsen	General Contractor	King County Superior Court
4/16	Doyle v. Doyle	Weight Loss Clinics	King County Superior Court
4/16	McCleskey v. McCleskey	Commercial and Institutional Construction	King County Superior Court
8/16	SmartMed, Inc. v. FirstChoice Medical Group, Inc.	Healthcare Consulting	Judicial Arbitration and Mediation Services
9/16	Monster Energy Company v. Olympic Eagle Distributing	Beverage Distributor	Judicial Arbitration and Mediation Services

COURT TESTIMONY

Date	Case Name	Type of Business	Jurisdiction
1/12	Horne v. World Publications, et al.	Internet Boat Sales	6 th Judicial Circuit Court, Pinellas County, FL
2/12	City and County of San Francisco v. Cobra Solutions, Inc.	IT Consulting Services	Superior Court of California
2/12	Easly v. Fresco Shipping SA	Tug Boat Operator	U.S. District Court, Western District of WA
2/12	Westgate Communications v. Chelan County	Telephone Communications	U.S. District Court, Eastern District of WA
3/12	Sound Infiniti v. Pisheyyar	Infiniti Dealership	King County Superior Court
6/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
10/12	Hanna v. Davison	Pharmaceutical Sales	King County Superior Court
11/12	Education Logistics v. Laidlaw	Bus Routing Software	U.S. District Court of Montana, Missoula Division
11/12	Barrett v. Bill the Butcher, Inc., et al.	Retail Meat Sales	King County Superior Court

TESTIMONY SUMMARY – LAST 4 YEARS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

11/12	Renee Rose de Levi v. Republic of Peru	Banking	International Center for Settlement of Investment Disputes
11/12	JR Marketing, et al. v. Hartford Casualty Insurance Company, Inc.	Computer Lock Sales	Superior Court of the State of California
12/12	Petra Franklin v. David Lahaie	Industrial Recycling	King County Superior Court
1/13	James v. James	Wholesale Software	King County Superior Court
1/13	Armintrout v. Armintrout	Tracing; Spec Homes	King County Superior Court
4/13	Wadhwa v. Wadhwa	Solar Power Plant	Superior Court of California, Contra Costa County
6/13	Milling v. Hummel	Wholesale Biologic Supplies	13 th Judicial Circuit Court, Hillsborough County, FL
10/13	Noble v. Noble	Real Estate Management	King County Superior Court
10/13	Arthur “Bill” Barnum, et al. v. State of Washington, et al.	High School Education	Pierce County Superior Court
12/13	Dean Wilcox v. Bartlett Services, Inc., et al.	Millwright	Benton County District Court
1/14	In re: Plant Insulation Company – Bayside Insulation & Construction, Inc.	Insulation Contractor	U.S. Bankruptcy Court, N. D. of California
2/14	Robert R. Mitchell, et al. v. Michael A. Price	Mortgage Originator	Pierce County Superior Court
3/14	Malcolm v. Malcolm	Consumer Electronics Manufacturer	Pitkin County District Court of Colorado
4/14	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
6/14	Pikover v. EagleView Technologies, Inc.	Aerial Measurement Services	Snohomish County Superior Court
7/14	Maytown Sand and Gravel, LLC v. Thurston County, et al.	Gravel Mine	Lewis County Superior Court
9/14	Recreational Data Services, LLC v. Trimble Navigation Limited, et al.	Software Development Services	Superior Court of AK, 3 rd District at Anchorage
10/14	Estate of Sheard v. Robert Polakoff	Pharmacologist	King County Superior Court
11/14	Virshbo v. Virshbo	Intelligent Transportation Systems	Multnomah County Circuit Court, Oregon
12/14	Wong v. Skoczkowski	Mobile Software Solutions	Toronto, Ontario, Canada
2/15	Hoffman v. Integrale Investments, LLC, Keith Knutsson, and PCGL, LLC	Real Estate Development	Circuit Court, 13 th Judicial District, Tampa, FL
3/15	Hansen v. Hansen	Bail Bond Agency	King County Superior Court
3/15	Hobbs v. Hobbs	Authentication Software	King County Superior Court
4/15	Moran v. Moran	Restaurant Franchise	Boulder County District Court
8/15	Donatelli v. D.R. Strong Consulting Engineers	Real Estate Development	King County Superior Court
12/15	vonAllmen v. vonAllmen	Stock Options	King County Superior Court
1/16	Moe, et al. v. Radiant Global Logistics, Inc.	Transportation Logistics	King County Superior Court
3/16	John J. Mutchler v. State of Washington, Department of Labor & Industries	State Employee	Thurston County District Court

TESTIMONY SUMMARY – LAST 4 YEARS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

4/16	In re: Capitol Lakes, Inc.	Retirement Community	U.S. Bankruptcy Court, W. D. of Wisconsin
6/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court
6/16	Farmers Insurance Company of Washington, et al. v. Damian J. Greene Insurance Agency, Inc.	Insurance Brokerage	King County Superior Court
7/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court

PRESENTATIONS AND PUBLICATIONS**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
2016 Advanced Business Valuation Conference - Boca Raton, FL	ASA	Sep 2016	Valuing Foreign Acquisitions
2016 Forensic Accounting and Business Valuation Conference - Louisville, KY	KyCPA	Aug 2016	Economic Damages for Start-Up and Emerging Businesses; Valuing Emerging Businesses
2016 NAAATS Conference	AICPA	Jul 2016	Fair Value Issues: New Developments
BVR Web Seminar	BVR	Jun 2016	Current Trends in 409A Valuations
AICPA/AAML National Conference on Divorce - New Orleans	AICPA	May 2016	Valuation of Stock Options, Appreciation Rights and Other Equity Compensation
2016 New York International Family Law Symposium	IAFL New York Chapter	Apr 2016	Discovery of International Financial Documentation
2016 Complex Family Law: As Experts See It	AAML Washington State Chapter	Mar 2016	How Attorneys Can Work With a Financial Expert
2015 AICPA Forensic & Valuation Services Conference	AICPA	Nov 2015	Reconciliation and Asset Approach; Report Writing
ABA Section of Family Law - 2015 Fall CLE Conference - Portland, OR	American Bar Association	Oct 2015	Valuation Essentials
AICPA Expert Witness Skills Workshop - Chicago, IL	AICPA	Oct 2015	Expert Witness Training
Complex and High Asset Divorce: A Focus on the Money	The Seminar Group	Sep 2015	Interpreting Tax Returns & International Valuation Issues
AICPA Expert Witness Workshop - Webcast	AICPA	Sep 2015	Business Valuations in Litigation: The Basics
AICPA Forensic & Valuation Services Webcast	AICPA	Jul 2015	Navigating Mergers & Acquisitions: Understanding Mergers & Acquisitions Disputes
Colorado CLE	Colorado Bar Association	Jun 2015	Lost Profits and Economic Damages: A Case Study Approach
BVR Web Seminar	BVR	May 2015	Divorce & IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?
2015 AICPA/AAML Family Law Conference - Las Vegas	AICPA	May 2015	Family Law Overview and Overcoming the Catch 22; Bolstering your Testimony through Demonstratives in the Courtroom
YPO-WPO - Webinar	Deal Global Business Network	Apr 2015	The Ever Changing Value of Valuation
NYS CLE Board - New York Chapter Meeting	AAML New York Chapter	Mar 2015	Secondary Stock Markets are the New Primary Issue
2014 AICPA Forensic & Valuation Services Conference	AICPA	Nov 2014	Growing Your Practice & Balancing it All; Reconciliation and Asset Approach Discussion; Complex Capital Valuations
2014 ASA/CICBV Joint Business Valuation Conference - Toronto, ON	ASA/CICBV	Oct 2014	Secondary Transactions Considerations and Implications
6th Annual Wechsler Family Law Symposium	AAML Washington State Chapter	Oct 2014	Analyzing Tax Returns to Determine Income and Identify Assets
The Value Examiner	NACVA	Sep 2014	Are You Ready for Some Football? Insights into NFL Team Valuations
AICPA Expert Witness Skills Webcast	AICPA	Jul 2014	Business Valuation in Litigation - Useful Tips

PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
International Academy of Matrimonial Lawyers, US Chapter - New York	IAML US Chapter	May 2014	International Business Valuation: Everything You Always Wanted To Know But Were Afraid To Ask
AICPA/AAML National Conference on Divorce - Las Vegas	AICPA	Apr 2014	Intellectual Property: Identification, Classification/Characterization, Valuation and Distribution
Wealth Blog	Wealthfront, Inc.	Apr 2014	The Reason Offer Letters Don't Include a Strike Price
AICPA Forensic & Valuation Services Conference - Las Vegas	AICPA	Nov 2013	Top Commercial Litigation Engagements; Valuation of Privately-Held Company Equity Securities
2013 Business Valuation and Services Conference - Houston	Texas Society of CPAs	Oct 2013	Overview of the AICPA's M&A Disputes Practice Aid
WSBA CLE - Seattle	AAML Washington State Chapter	Oct 2013	Strategies for Valuing Businesses or Assets that have Limited Cash Flow
BVR Web Seminar	BVR	Oct 2013	Calculating Lost Profits for Early Stage Companies
Egyptian Private Equity Association - Cairo	Financial Services Volunteer Corps	Jun 2013	Egyptian Equity Valuation and Modeling
NACVA National Consultants' Conference	NACVA	Jun 2013	Top Five Commercial Litigation Assignments You're Missing Out On
AICPA Web Seminar	AICPA	May 2013	Overview of the Newly-Released AICPA Cheap Stock Practice Aid
2nd Annual Million Dollar Divorce	The Seminar Group	Apr 2013	Overview of Business Valuation
BVR Web Seminar	BVR	Apr 2013	Lost Profits v. Lost Business Value
<i>Standards of Value</i>	John Wiley & Sons, Inc.	Mar 2013	<i>Chapter 6: Fair Value in Financial Reporting: What Is It?</i>
19th Annual Family Law Conference	AAML Washington State Chapter	Mar 2013	Top Tips Related to Income Adjustments and Property Splits
<i>Forensic & Valuation Services Practice Aid</i>	AICPA	2013	<i>Mergers and Acquisitions Dispute</i> , co-author
AICPA National BV Conference	AICPA	Nov 2012	Fair Value Issues; Valuation of Business with International Operations
Advanced Business Valuation Conference	American Society of Appraisers	Oct 2012	Valuation Using Advanced Option-based Methods
13 th Annual VSCPA BV, Fraud & Lit Conference	Virginia Society of CPAs	Sep 2012	Valuing Early Stage Companies in General and in Litigation
Annual New Jersey State NACVA Conference	New Jersey State NACVA	Sep 2012	Lost Profits v. Lost Business Value
AICPA Web Seminar	AICPA/AAML	Jun 2012	Tips, Tricks, Traps and Emerging Issues for the Expert Witness
BVR Web Seminar	BVR	May 2012	Divorce and IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?
National Conference on Divorce	AICPA/AAML	May 2012	Divorce and IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?; Valuing Assets Outside the U.S.: Why Doesn't Everyone Play by Our Rules?
2011 Fair Value Congress	NACVA	Feb 2012	AICPA Cheap Stock Practice Aid Update

PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
FVS Web Seminar	AICPA	Jan 2012	Valuations for Dissenting Stockholder & Minority Oppression Actions
<i>AICPA Accounting and Valuation Guide</i>	AICPA	2012	<i>Valuation of Privately-Held-Company Equity Securities Issued as Compensation</i> , co-author
BVR Web Seminar	BVR	Dec 2011	Delaware Chancery Roundtable: Views from the Bench, Counsel & Witness Stand
AICPA National BV Conference	AICPA	Nov 2011	Betting on the Future: The Outlook for the Business Valuation Profession; Cost of Capital: Practical Solutions in an Impractical World; Caught in the Crossfire: The Expert Witness for Valuation; Update of Final Comments on Cheap Stock Practice Aid; Marketing & Management of a Valuation Practice
AICPA National Forensic Conf.	AICPA	Sep 2011	Damages for Newly Formed Entities
Business Valuation & Family Law Sections Joint Meeting	California Society of CPAs, Family Law Litigation Section	May 2011	Challenges of Valuing Early Stage Companies in General and for Litigation
FEI Portland	Financial Executives International	May 2011	The Front Lines of Business Valuation
<i>Financial Valuation Application and Models, Third Edition</i>	John Wiley & Sons, Inc.	2011	<i>Chapter 24: Other Valuation Services Areas</i> , co-author
<i>The Comprehensive Guide to Lost Profits Damages for Experts and Attorneys, 2011 Edition</i>	Business Valuation Resources	2011	<i>Chapter 11: Calculating Damages for Early-Stage Companies</i> , co-author
BVR Web Seminar	BVR	Dec 2010	409A Valuation Issues
AICPA National BV Conference	AICPA	Nov 2010	Review of the Updated AICPA Cheap Stock Practice Aid
The Knowledge Congress Live Webcast Series	The Knowledge Group, LLC	Oct 2010	Commercial Damages: Overview and Cross Examination - Bullet Proof or Bullet Holes
BVR Web Seminar	BVR	Oct 2010	Reasonable Certainty and Lost Profits in Early Stage Cos.
World Financial Symposium	Davis Wright Tremaine	Oct 2010	Factors that Increase Private Company Valuations
AICPA National Forensic Conference	AICPA	Oct 2010	Shareholder Oppression and Dissenter Suits; Lost Profits v. Valuation in Litigation
Forensic & Valuation Services Web Seminar	AICPA	Sep 2010	Practical Implementation Issues Regarding FV Issues in Business Combinations
The Value Examiner	NACVA	Jun 2010	Discounts for Early-Stage Companies
ACG InterGrowth 2010 Conference	Assn. for Corporate Growth	May 2010	Do Financial Sellers Get a Better Deal?
<i>Valuing Early Stage and Venture-Backed Companies</i>	John Wiley & Sons, Inc.	Apr 2010	Advanced Valuation Techniques for Early Stage Companies
3rd Annual Summit on Fair Value for Financial Reporting	Business Valuation Resources	Feb 2010	Advanced Workshop on Financial Reporting for Stock Options Under 409A/123R

PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFE, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
Minnesota Business Valuation Conference	American Society of Appraisers - Minneapolis	Jan 2010	Valuation of Intellectual Property
TMA Meeting Series	Turnaround Management Association	Jan 2010	Business Value in Uncertain Markets
BVR Practice Guide Series	Business Valuation Resources	Jan 2010	Valuations for IRC 409A Compliance
<i>Valuation Strategies Magazine</i>	Thomson Reuters	Nov 2009	Volatility in the Option Pricing Model
Business Valuation Committee	ASA	Nov 2009	Update on Practice Aid: Valuation of Early Stage Companies
2009 Fair Value Summit	AICPA	Jun 2009	Private Equity Issues under FAS 157
Fair Value Measurement Conference	NACVA and the IBA	May 2009	IFRS v. U.S. GAAP: What You Need to Know
2009 Annual Consultants' Conference			
2009 Business Valuation Conference	Illinois CPA Society	May 2009	Uses and Abuses of Management Projections
Valcon 09: Risks, Restructurings, Real Estate and Retail	American Bankruptcy Institute	Feb 2009	The Impact of Globalization on Valuation of Distressed Debt and Businesses
2009 ACG West Coast Mergers & Acquisitions Conference	ACG of San Francisco	Feb 2009	Price v. Value: Bridging the Gap in a Down Economy
2nd Annual Summit on Fair Value for Financial Reporting	Business Valuation Resources	Feb 2009	Current Issues in 123R/409A and Mock Audit Review for FAS 141 and 142
Annual Private Equity COOs and CFOs Forum	Private Equity International	Jan 2009	Panel: International Accounting and Valuation Standards – Convergence or Divergence?
Accountants' Handbook - Eleventh Edition 2009 Supplement	John Wiley & Sons, Inc.	Jan 2009	Valuation of Assets, Liabilities, and Non Public Companies (revised)
Knowledge of Business Valuation - LIVE Webinar	Business Valuation Resources	Dec 2008	The Uses and Abuses of Management Projections
2008 AICPA/ASA Joint Business Valuation Conference	AICPA/ASA	Nov 2008	"Sticky Wickets" Related to 409A Valuations; Discount Techniques for Early Stage Companies
Business Valuation Basics	WSCP/AICPA	Nov 2008	Business Valuation: A Real Life Case Study
ABV Examination Review	AICPA	Oct 2008	The Body of Business Valuation Knowledge
IRC Section 409A: Deadline Looming - Are You Prepared? LIVE Webinar	The Knowledge Congress	Oct 2008	409A Stock Option Valuations: Does Current Valuation Practice Match the Regulations
BVR Thought Leadership Series	Business Valuation Resources	Aug 2008	The Uses & Abuses of Management Projections - Creating a Solid Framework for Financial Performance Analysis
2008 PNW Growth Financing Conf.	Association for Corporate Growth	Aug 2008	Price versus Value: Bridging the Gap
VPS FCG Webinar Series	Financial Consulting Group	May 2008	DLOM: Quantitative vs. Qualitative Models
Business Valuation Standards across the Association Landscape	Strafford Publications	May 2008	Business Valuation: Mastering Changes in Key Standards
The Birth, Life, and Death of Law Practices	Washington State Bar Association	Mar 2008	The Valuation of Law Practices

PRESENTATIONS AND PUBLICATIONS**NEIL J. BEATON, CPA/ABV/CFE, CFA, ASA**

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
Monthly Litigation Department Meeting	Latham & Watkins, LLP	Mar 2008	Valuation of Intellectual Property in Litigation and the Financial Reporting Environment
ACG Capital Connection Conference	ACG of Utah	Feb 2008	Lessons Learned From My Worst Deal
Fair Value Summit - New York	BVR and ASA	Feb 2008	Overview of IRC 409A and SFAS 123R
King County Bar Association Continuing Legal Education	Washington State Bar Association	Dec 2007	Expert Witness and Forensic Accounting Issues in Probate Litigation
AICPA National Business Valuation Conference	AICPA	Dec 2007	IRC 409A and SFAS 123R Valuations; Risks Along the Technology Life Cycle
Seattle Chapter of the Appraisal Institute Fall Conference	Appraisal Institute	Nov 2007	Practical Applications of Fair Value In a Business Combination
ASA Advanced BV Conference	ASA	Oct 2007	Current and Perplexing Issues in Implementing 409A and 123R
Teleconference on Understanding the AICPA's SSVS 1	Strafford Publications	Sep 2007	Understanding SSVS1 and Related Implementation Tips
Section 409A Teleconference	The Knowledge Congress	Sep 2007	Equity-Based Compensation Arrangements and Valuation Issues
2007 Intellectual Property Institute	WSCP	Jul 2007	Valuing Intellectual Property
Intangible Valuation Seminar	Gerson Lehrman Group	Jun 2007	Valuing Intellectual Property for Merger & Acquisition Purposes
Global Business Symposium	Asinta	May 2007	IFRS/US GAAP Comparison
ACG Capital Connection Conference	ACG of Utah	May 2007	Train Wreck: Lessons Learned From My Worst Deal
Business & Intellectual Property Valuations, Economic Damage and Expert Witness Skills Program	Law Education Institute	Jan 2007	Intellectual Property Valuation and Damages Methodologies
National Business Valuation Conference	AICPA	Dec 2006	Fair Value Valuations under Delaware Law; High Technology Company Valuation Seminar
Valuation Roundtable of San Francisco	ASA	Jun 2006	Valuing Complex Equity Instruments
National Webcast for BVR Subscribers	BV Resources	May 2006	Early Stage Company Valuations
ACG Utah 2006 Capital Connection	ACG of Utah	Apr 2006	Valuations in Mergers & Acquisitions

Documents Reviewed and/or Considered

Description

- First Amended Complaint and Exhibits A through V, dated September 17, 2015
- First Amended Counterclaim with Exhibits A through R, dated October 14, 2015
- Robert Bennion Deposition Vol I with Exhibit 64, dated July 27, 2016
- Robert Bennion Deposition Vol II with Exhibits 65 through 74, dated July 28, 2016
- Joseph Deville Deposition Vol I with Exhibits 1 through 46, dated July 26, 2016
- Joseph Deville Deposition Vol II with Exhibits 47 through 63, dated July 27, 2016
- Eric Forsberg Deposition with Exhibit 78, dated July 29, 2016
- Kirk Gregor Deposition with Exhibits 75 through 77, dated July 28, 2016
- Patrick Robinson Deposition with Exhibits 79 through 80, dated July 29, 2016
- Mark Oster Deposition with Exhibits 2, 4, 5, 25, 127, and 137 through 143, dated August 30, 2016
- Bennion & Deville Fine Homes, Inc.'s Responses To Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Bennion And Deville Fine Homes, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Plaintiff Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Counterdefendant Bennion And Deville Fine Homes Socal, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Plaintiff Bennion & Deville Fine Homes Socal, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Counterdefendant Bennion & Deville Fine Homes Socal, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Plaintiff Windermere Services Southern California, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Plaintiffs' Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents
- Plaintiffs' Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents
- Counter-Defendant Robert L. Bennion's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Robert L. Bennion's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Counter-Defendant Joseph R. Deville's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Joseph R. Deville's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes Inc.'s First Set Of Requests For Admission
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Windermere Services Southern California, Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes, Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes, Inc.'s First Set Of Requests For Admission
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production

Documents Reviewed and/or Considered

Description

- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Windermere Services Southern California, Inc.'s First Set Of Interrogatories	
- Defendant Windermere Real Estate Services Company, Inc.'s Second Supplemental Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production	
- Counterdefendant Windermere Services Southern California, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One	
- Counterdefendant Windermere Services Southern California, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One	
- Plaintiffs' Windermere Services Southern California, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents	
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes Second Set Of Requests For Production	
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Windermere Services Southern California, Inc.'s Second Set Of Interrogatories	
- Bennion & Deville Fine Homes, Inc. and Fine Homes SoCal Profit & Loss Forecast 2015	WSC055178-055188
- Bennion & Deville Fine Homes, Inc. Compiled Financial Statements (2012-2014)	WSC055189-055437
- Bennion & Deville Fine Homes, Inc. RFP Responses	WSC055460-055440
- Bennion & Deville Fine Homes SoCal Compiled Financial Statements (2012-2014)	WSC055463-055562
- Bennion & Deville Fine Homes SoCal RFP Responses	WSC055563-055581
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. Miscellaneous Financial Documents	WSC0055582-058545
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. MSR Reports	WSC0055582-0056458
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. Statements of Fees	WSC0056459-0057261
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., and Windermere Services Company Miscellaneous Emails and Communications	WSC0057262-0057357
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., Miscellaneous Financial Documents	WSC0057358-057469
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., Lease Agreements and Records of Operating Expenses	WSC0057470-058545
- B&D0069200-0069205	
- B&D0069206-0069220	
- B&D0069221-0069284	
- B&D0069285-0069367	
- B&D0069368-0069381	
- B&D0069382-0069393	
- B&D0069394-0069403	
- B&D0069404-0069413	
- B&D0069414-0069529	
- B&D0069530-0069537	
- B&D0069538-0069545	
- B&D0069546-0069648	

Documents Reviewed and/or Considered

Description

- B&D0069649-0069706
- B&D0069707-0069710
- B&D0069711-0069718
- B&D0069719-0069726
- B&D0069727-0069798

Bennion & Deville, et al. v. Windermere, et al. **Schedule 1**
Windermere Services Southern California Inc. - Comparison of Original and Recast Income
US\$

	Dec 31, '11			Dec 31, '12			Dec 31, '13			2011-2013 Total Change
	Recast Profit & Loss	Original Profit & Loss	Change	Recast Profit & Loss	Original Profit & Loss	Change	Recast Profit & Loss	Original Profit & Loss	Change	
Net Revenue	\$ 421,594	\$ 106,594	\$ 315,000	\$ 489,377	\$ 99,377	\$ 390,000	\$ 495,260	\$ 105,260	\$ 390,000	\$ 1,095,000
Total Operating Expenses	403,027	403,027	-	196,009	196,009	-	103,803	88,850	14,953	\$ 14,953
Operating Income (Loss)	18,567	(296,433)	315,000	293,368	(96,632)	390,000	391,457	16,410	375,047	\$ 1,080,047
Total Other Income (Expense)	(39,017)	(39,017)	-	(68,791)	(68,791)	-	(99,085)	(1,065,805)	966,720	\$ 966,720
Net Income (Loss)	\$ (20,450)	\$ (335,450)	\$ 315,000	\$ 224,577	\$ (165,423)	\$ 390,000	\$ 292,372	\$ (1,049,395)	\$ 1,341,767	\$ 2,046,767

Note:

* Restated profit and loss data obtained from document B&D0069838



Bennion & Deville, et al. v. Windermere, et al.				Schedule
Summary of Franchise, Technology, and Other Fees				
\$				

	2012	2013	2014

Summary of Franchise Fees, Technology Fees, and Other Fees

B&D Fine Homes, Inc. (Coachella Valley)

Compiled Financial Statements (1)	\$	520,525	\$	485,800	\$	417,000
WSE Office Report (2)	\$	540,000	\$	540,000	\$	540,000

B&D Fine Homes SoCal, Inc. (SoCal)

Compiled and Internal Financial Statements (3)	\$	33,875	\$	194,175	\$	120,625
WSE Office Report (2)	\$	240,000	\$	240,000	\$	190,000

Total Compiled Franchise Fees (Coachella Valley & SoCal)

	\$	554,400	\$	679,975	\$	537,625
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Windermere Services Southern California (WSSC)

Audited Financial Statements - Total Revenue (4)	\$	99,377	\$	105,260	NA
Recast Financial Statements: Revenue from Franchise Fees (5)	\$	390,000	\$	390,000	\$ 365,000
Recast Financial Statements: Total Revenue (5)	\$	489,377	\$	495,260	\$ 478,213

Total Cash Receipts (6)	\$	580,378	\$	1,090,081	\$	699,376
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Footnotes:

- 1) CONFIDENTIAL WSC055363, CONFIDENTIAL WSC055283, CONFIDENTIAL WSC055189
- 2) WSC0055606-56458
- 3) Compiled financial statements for 2012 and internal financial statements for 2013 and 2014. CONFIDENTIAL WSC055531, CONFIDENTIAL WSC055503, CONFIDENTIAL WSC055463
- 4) Exhibit_59_Joseph R Deville, Vol , II, Exhibit_60_Joseph R Deville, Vol , II, Exhibit_61_Joseph R Deville, Vol , II.
- 5) B&D0069838
- 6) B&D0069727



Bennion & Deville, et al. v. Windermere, et al.		Schedule 3
Bennion & Deville Discretionary Expenses		
US\$		

2012		2013		2014	
	Total	Total		Total	
Owner Wages (1)					
Deville	\$ 251,809	\$	344,141	\$	347,467
Bennion	\$ 248,281	\$	328,552	\$	347,467
Total Wages	500,090		672,693		694,934
From Income Statement (1)					
Auto Lease - Land Rover	\$ 28,296	\$	2,233	\$	-
Desert Rental (Motor Home)	\$ 46,797	\$	39,262	\$	123,064
Auto Lease - Bentley	\$ -	\$	15,235	\$	46,869
Auto Lease - Cadillac	\$ -	\$	12,752	\$	13,911
Arena2Mare (Airplane)	\$ -	\$	-	\$	29,276
50% Auto and Maintenance	\$ 64,464	\$	67,009	\$	46,240
Landscaping Maintenance	\$ -	\$	-	\$	2,300
Laguna Condo	\$ -	\$	-	\$	96,000
50% Meals and Entertainment	\$ 34,186	\$	35,638	\$	35,810
Cell Phone	\$ -	\$	-	\$	3,360
Total Expenses	173,742		172,129		396,830
Total Wages and Expenses					
	\$ 673,832	\$	844,822	\$	1,091,764
		2012-2014 Total		\$	2,610,418

Footnotes:

(1) CONFIDENTIAL WSC055570, CONFIDENTIAL WSC055438, B&D0069838

(2) CONFIDENTIAL WSC057456



Bennion & Deville, et al. v. Windermere, et al.

Damages Analysis Summary

US\$

Schedule 4

WSSC, Inc. Breach of Modification Agreement	
Total WSC Share Forgiven	\$ 863,560
Per Diem	471
Days Elapsed (12/21/2012 - 9/30/2015)	1,013
Total Forgiven	477,503
Subtotal:	386,057 (1)
B&D Fine Homes, Inc. (Coachella Valley) Outstanding Fees	
License Fees	\$ 330,000
Technology Fees	256,550
Late Fees	58,655
Accrued Interest	81,718
Subtotal:	726,923
B&D Fine Homes SoCal, Inc. (SoCal) Outstanding Fees	
License Fees	\$ 112,500
Technology Fees	68,425
Late Fees	18,093
Accrued Interest	24,845
Subtotal:	223,862
Total Franchise and Other Fees Due	\$ 1,336,842
Less: Kirksey & King Payments	(8,501)
Net Franchise and Other Fees Due	\$ 1,328,341

Footnotes:

(1) Damage calculation based on breach of contract for Modification Agreement, source document Exhibit_51_Joseph R Deville, Vol , II



EXHIBIT 2

David E. Holmes, Esq.
Franchise Expert Witness Services
2225 Exposition Drive, Unit 21
San Luis Obispo, California 93405

davidholmes@macservices.net

805-550-9323

September 16, 2016

John D. Vaughn, Esq.

Jeffrey A. Feasby, Esq.

Perez Wilson Vaughn & Feasby

Sent by Email: vaughn@perezwilson.com

Re: Report – ***Bennion & Deville Fine Homes, Inc. et al. v. Windermere Real Estate Services Company*** – United States District Court, Central District of California – Case No. 5:15-CV-01921 R (KKx)

Dear Messrs. Vaughn and Feasby:

This letter is in response to your request for a report relative to the above-referenced case.

I was asked to provide my opinion(s) with respect to various franchising-related matters as they may have arisen in this matter.

Specifically, I've been asked to provide my opinions with respect to the:

(a) business and strategic rationales, and related standards and practices, supporting a franchisor's decision to utilize an area representative model for territorial expansion, including the appropriateness of a decision to appoint an area representative in the business situation presented and whether, in that business situation, other franchisors might have followed the same strategy.

(b) respective roles, and industry standards and practices, for area representatives and franchisors, possibly including (but not limited to) those related to real estate-related franchises; and

(c) standards of care and practices regarding an area representative with respect to the sale of franchises and support of local franchisees, including considerations where an area representative is itself a franchisee of the franchisor.

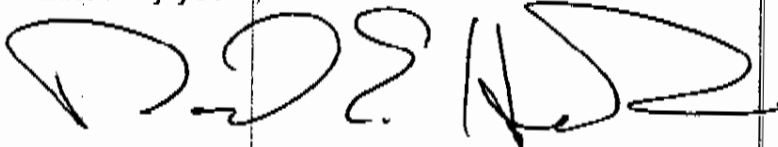
My opinions relating thereto are set forth in the attached Report.

In forming my opinions I have reviewed the documents set forth in the attached List of Materials Received and/or Reviewed, as forwarded to me by your firm or otherwise, as well as having drawn on my general experience in the domestic and international franchising field since 1975.

My biography, setting forth my qualifications, is attached. My compensation for expert witness services in this matter is at a rate of \$500 per hour and is not dependent on the outcome of this or any other legal action or otherwise, on the amount or terms of any judgment or settlement of any underlying legal action, nor on any contractual or other arrangements between your firm and any other person or party, including your clients.

I respectfully reserve the right to revise, supplement and/or amend the attached Report, including my conclusions and opinions, as additional documentation, deposition transcripts, opinions by other experts or otherwise become available.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. E. Holmes', with a stylized, flowing script.

David E. Holmes

Report

1. Business and strategic rationales, and related standards and practices, supporting a franchisor's decision to utilize an area representative model for territorial expansion.

- a. Before discussing the business and strategic rationales supporting a decision to use the area representative model for territorial expansion, it's helpful to understand the structure of the area representative model in franchising and how it differs from other franchise business models. Note that the core business elements of the area representative model will generally remain constant irrespective of the specific business model for unit (or retail) level franchised businesses.
- b. The classic franchise business model, and the simplest in structure, involves a franchisor and one or more franchisees, each of whom will be operating retail or other businesses under the franchisor's brand.

In this classic (and often typical) model, the franchisor and the franchisee have a direct contractual and business relationship, generally not involving third parties, and usually embodied in a franchise agreement (and possibly other agreements, such as leases of real estate or equipment), with the franchisor licensing the franchisee to use the franchisor's brand, trademarks and system(s) of operation, marketing, administration, etc. and with the franchisee paying an initial franchise fee to the franchisor for such rights and, usually, a periodic royalty, generally based on sales by the franchisee to its customers. Often, the franchisor will also provide after-sales service and support directly to the franchisee.

- c. In the area representation model, a third party is introduced into the relationship between the franchisor and the franchisee and that third party is typically referred to as the "area representative" or, sometimes, the "region."
- d. In the area representation model, the operating franchisee still has a direct contractual arrangement with the franchisor, signing the franchise agreement directly with the franchisor. However, in this model, the franchisor will have also entered into an agreement (typically called an area representation – or area representative – agreement) with the area representative.

- e. Under the area representation agreement, the area representative will assume the obligation to perform various obligations or functions normally performed by the franchisor and typically limited to unit franchisees within a specified geographic area. Those obligations can include (among others) the marketing of franchises to prospective franchisees, the delivery to prospective franchisees of a Franchise Disclosure Document and other pre-sale/sale documents, initial and/or ongoing training of new franchisees, assistance (under some business models) to the new franchisee in finding a location, lease negotiations, pre-opening and opening assistance, assistance in the selection and training of the franchisee's employees, assistance in build-out of the franchisee's premises, ongoing inspection and audit of the franchisee's franchised business, ensuring compliance with the franchisor's standards including (among other things) operations and other manuals, answering inquiries and addressing complaints/concerns of franchisees, operational, marketing and other ongoing support of the franchisee and the franchised business, and other functions otherwise normally performed by the franchisor. The area representative can also serve as a conduit for communication (in both directions) between the franchisor and the franchisee, as well as serving a "business coaching" function with respect to franchisees.
- f. The area representative may also work with the franchisor and the franchisee in situations where the franchisee may be in default of its financial or other obligations.
- g. In some cases, the area representative will have an obligation to assist in soliciting the sale (and possibly assuring the opening) of a specified number of franchises in the territory over a defined period of time, such an obligation often being called a development schedule.
- h. In some cases, the area representative will also be allowed to own and operate one or more retail-level franchised businesses under the franchisor's brand. Such unit(s) may be used for training of new franchisees and their employees and/or for development and testing of new retail products and services.

- i. In many cases, the franchisor will provide services to the area representative related to its functions. These can include training the area representative's trainers and other personnel with respect to franchising principles and practices and (sometimes) with respect to the operation of the franchised businesses, providing and updating manuals, providing and placing retail advertising and marketing materials / programs, providing and placing advertising and marketing materials related to the offer and sale of franchises, development of new items for sale by franchisees to their customers, updating of retail-level facility standards, guidelines re location selection and build-out, and certain types of administrative support.
- j. The area representative may pay the franchisor an initial fee for its rights under the area representation agreement and will generally receive a portion of the royalty (and perhaps other) fees paid by the franchisee, in compensation for area representative's services. Those fees paid by the retail-level franchisee may be either paid directly to the franchisor, with some portion then remitted by the franchisor to the area representative, or may be paid by the franchisee to the area representative, which retains a portion of those amounts and remits the balance to the franchisor.
- k. Given the basic structure of the franchisor - area representative - franchisee relationship, the business and strategic rationales for a franchisor to enter into a franchisor - area representative relationship can include the following, noting that not all of these elements will necessarily be present in every franchisor - area representative relationship:
 - i. Reduced operating costs at the franchisor level: Since the area representative provides local support and services to the franchisees in its territory, which might otherwise be provided by the franchisor, the franchisor generally does not need to maintain such personnel and facilities at the local level, thereby possibly lowering operating costs and increasing its profitability.
 - ii. Where the area representative pays the franchisor an initial franchise fee for his rights, or is perceived to bring other significant sources of value to the relationship (such as franchise- or industry-specific skills and/or relationships,

including local knowledge and contacts), the franchisor may benefit accordingly.

- iii. More rapid system growth: If nation-wide (or even international) expansion is contemplated, multiple area representatives throughout the country can potentially result in faster sales of franchises than would be the case where the franchisor was only able to support marketing efforts in a few areas at a time, due to financial, human resources or other limitations. This can not only generate more income for the franchisor more quickly than with other models, but can have related benefits, including greater visibility and top-of-mind consumer awareness in the relevant markets, access to favorable sites for the franchised business, more beneficial relationships with vendors and expanded funds available for national and regional advertising.
- iv. In addition, the use of area representatives who are already (hopefully successfully) operating a franchised outlet in the general market area of potential franchisees can be a more effective franchise marketing strategy as opposed to use of franchise brokers (who have never operated such a unit themselves) or attempts by the franchisor to sell franchises where there are no currently operating stores in the market to validate the concept. A prospective franchisee, who may ask what a distant franchisor really knows about local market conditions and practices or even the potential for a new business model in the relevant industry, may feel more secure where a respected local individual or firm will be the area representative and where a franchised outlet is seen to be already successfully operating.
- v. Adjustments to local markets, business practices and regulations: To the extent that markets differ, or business practices vary by area, adaptation and adjustment of the business model may be more effective where a local area representative is aware of the need for such variations, whether as related to real-estate matters, cultural issues, customer preferences, retail or other marketing matters, competitive challenges, suppliers of goods or services, local regulations or otherwise.
- vi. Development and implementation of best practices via a bottom-up model: Where the area representative facilitates positive interchanges and communications among franchisees and with the franchisor, innovations and

responses to developments, opportunities or challenges in the relevant market(s) can be implemented more quickly and effectively, possibly even leading to development of superior best practices throughout the national franchise system, both as to operational matters and marketing tactics and strategy. Where the franchisees have developed a relationship with the area representative characterized by mutual respect and trust, operational, marketing and other suggestions and/or directives from the franchisor, when transmitted and supported by the area representative, may be more readily accepted by the local franchisees.

- vii. Incentivization: One of the benefits of a franchised business model can be that the franchisee, as the owner on his or her business, is highly incentivized to have it succeed, perhaps even more so than an employee with no ownership interest. That same dynamic can apply to the area representative in the operation of his or her area representation business (as compared to an individual who is either a broker or an employee of the franchisor), possibly increasing the chances of its success and the resulting success of the unit-level franchisees. This can be particularly true where the area representative (generally unlike a broker or franchise marketing or service employee of the franchisor) can participate in a royalty stream from the unit franchisees.
- viii. Similarly, use of a broker to market franchises may entail the disadvantage that the broker will be (generally) marketing a wide range of franchised opportunities, perhaps even competing ones, and will not be concentrated on marketing only one particular franchisor's franchises. Those issues are normally not present where an area representative is used.
- ix. Franchisor / Area Representative / Franchisee dynamics: Where the area representative is perceived by the unit-level franchisees as a positive source of support and assistance (both in the daily operation of their businesses and in terms of long-term strategic planning and results), and with the success of the unit-level franchisees being a paramount concern of the area representative, and where the area representative acts as an advocate to the franchisor on behalf of the unit-level franchisees in his or her territory, communications and accommodation between those franchisees and a geographically distant franchisor may be more effective. As a practical matter, suggestions by an

area representative with multiple unit-level franchisees in his or her territory may be more readily accepted by the franchisor than if those same suggestions had come from a single franchisee with only one or two operating units.

- I. Aside from the generally positive elements discussed above, area representative franchising can also present potential negatives, at least as viewed by a franchisor considering use of the area representative model for expansion.
 - i. If initial franchise fee, royalty and other payments flow from the unit level franchisee to the area representative (rather than directly from the unit level franchisee to the franchisor) and the area representative fails to promptly and fully remit those amounts to the franchisor, or fails to make appropriate efforts to collect and remit such fees, the franchisor may experience significant negative cash flow and profitability effects.
 - ii. Where the area representative receives or retains a portion of the initial franchise fee, royalty or other payments by unit-level franchisees, the franchisor's revenues may be reduced accordingly.
 - iii. If the area representative fails to collect and remit portions of initial franchise fees, royalties or other payments by unit-level franchisees, which portions are due the franchisor, the franchisor's revenues may be reduced accordingly.
 - iv. Similarly, if an area representative or group of area representatives in effect controls a substantial proportion of the franchisor's cash flow, their power within the franchise system can expand relative to the power and control of the franchisor.
 - v. If the area representative fails to provide proper support to unit level franchisees, or fails to enforce important system standards, the franchisor may face complaints from franchisees and/or retail level customers and possible loss of market share and/or diminishment of the value of its brand.
 - vi. When franchise marketing or support services are provided by someone other than the franchisor, the possibility exists that they will not be as well presented or performed as if they

had been the sole responsibility of the franchisor and its in-house staff. Inevitably, some area representatives will perform these functions less well than others, so the sometimes difficult issue of how to address any such shortcomings will necessarily arise. The possibility of such issues arising may be increased where the area representative has little or no prior experience performing franchisor-type functions or understanding the need for different management techniques than those often used in non-franchising business models. Substantive knowledge of the details of the underlying business model being franchised may not, by itself, be adequate where the area representative lacks an understanding of franchising principles and requirements.

- vii. If the area representative owns and operates more than one unit level franchised business (it's not unusual for an area representative to maintain a single unit level franchised business for franchise marketing, training and product/service development purposes), the area representative's human and financial resources may become more focused on the operation and success of its own operating units, with attention and human and other resources being directed away from the area representative's core mission: The support and success of all the franchisees in the territory.
- viii. Similarly, if the area representative owns and operates more than one unit level franchised business, those area representative-owned business may be perceived by potential or existing franchisees as having secured access to favorable locations/markets (thereby possibly precluding the opening of other franchisees' units in those potentially prime markets or areas), receiving special treatment and/or benefits or even being in actual or potential competition with the other franchisees. Note that, in such a case, perceptions may be critical to the relationship.
- m. In this case, if the franchisor had determined that the potential advantages of appointing an area representative (improved servicing of local franchisees, knowledge of the relevant market, a more effective franchise sales strategy, etc.) outweighed the

potential disadvantages of appointing an area representative (diversion of one-half of the revenue stream from local franchisees to the area representative, risks of failure by the area representative to properly service and support local franchisees, any failure to give best efforts to collection and remission of fees, any failure to direct appropriate levels of resources to the long-term success of local franchisees, etc.), then the decision to appoint an area representative would have been appropriate and would not be inconsistent with franchise industry standards as applied to forming area representative relationships. Also germane to any such decision might have been various considerations specifically related to the underlying franchised business model and the industry involved, as well as the stage of development of franchising as a distribution model in that industry. In my experience with Century 21, similar (although not identical) relationships seemed to have been generally successful. I would not be surprised if other franchisors in the same industry made a decision, after balancing positive and negative considerations, to appoint one or more area representatives.

2. Respective roles, and industry standards and practices, for area representatives and franchisors, possibly including (but not limited to) those related to real estate-related franchises.

- a. In the classical direct franchising model (franchisor – franchisee, with no area representative or similar entity involved), the franchisor will generally provide ongoing service and support to the unit-level (retail) franchisee. This ongoing service and support function will often be expected by the franchisee and can be vital to the success of both the franchisor and the franchisee.

Financially and operationally successful franchisees are more likely to be: able to pay royalties, advertising contributions and other amounts; potential purchasers and operators of additional franchised units; and positively inclined to validate the franchise system in response to inquiries from potential new franchisees considering the purchase of a franchise, than where franchisees do not experience such success. Therefore, the operational and financial success of the unit-level franchisees is a prime concern and focus of good franchisors (and area representatives) and is consistent with franchise industry standards and practices.

That financial and operational success can be enhanced by ongoing advice and assistance from the franchisor or area representative, including (among many other things) correction of operational and marketing issues at the franchisee level, sharing of best practices developed and/or used by the franchisor and other successful franchisees in the system, ongoing training (including on new products or services to be offered to the public), proactive responses to changing market conditions and competitive or other challenges, assuring consistency and appropriate levels of quality in dealing with customers, services and products delivered, and protection of the brand. All of these may involve ongoing training and support on a regular, and sometimes frequent, basis. In some franchise systems, this is referred to as “field support” and may be provided by persons called, among other things, “field service representatives.”

For most franchised business models, both franchisees and franchisors consider such support to be a vital ingredient in the possible success of both the franchisor and its franchisees.

As noted in Franchising for Dummies (written primarily for prospective franchisees), 2nd Edition; Seid and Thomas, © 2005, page 144:

“Operating a franchise in today’s economic climate means staying on your toes all the time. You can’t do that by yourself. As a franchisee you should expect the franchisor to provide you with more than initial training. After your franchise is open, expect the franchisor’s field staff to show up armed with operational, marketing, and organizational support. You should also expect the company’s help with the rollout of innovations, such as the preparation of new products or the operation of new equipment. The hallmarks of great franchisors are offering new products, updating research, implementing new-product development, installing state-of-the-art technology, introducing better methods of customer service, and repositioning franchises in the market. These services keep a company more than one step ahead of the competition . . .” [Emphasis added.]

In the franchisor – area representative – unit franchisee model, the area representative assumes primary responsibility for much of the role of the franchisor in providing ongoing, day-to-day support and assistance to the unit franchisee, as described above, and the factors discussed above generally apply to the area representative in performing his or her functions.

From a strategic and structural standpoint, that function of providing ongoing direct support to local franchisees from a locally-based area representative is precisely why the franchisor has appointed the area representative rather than simply hiring a franchise broker: to do more than merely solicit the purchase of a franchise by prospective franchisees (which a broker, or in-house sales staff, may be able to do very well and at lower cost to the franchisor) but also to take the burden from the franchisor of providing needed support services on a local level. In the absence of the area representative competently performing those functions, it's doubtful that an area representative model would have been used or that ongoing compensation to the area representative (and a resulting reduced share of royalties going to the franchisor) would have been core elements in the franchisor / area representative business arrangement.

- b. I note that Section 2 of the Windermere Real Estate Services Company Area Representation Agreement for the State of California (the "Area Representation Agreement") provides, in part, that "Area Representative agrees that during the entire term of this Agreement, including the period of notice of expiration of the term, Licensee will in good faith actively and with Area Representative's best efforts engage in the business described herein using the Trademark . . . "
- c. I note from Section 3 of the Area Representation Agreement that such agreement provides for the area representative to perform a number of such functions, including: "responsibility for the administration and supervision of the use and display of the Trademark . . . the provision of support and auxiliary services to Windermere licensees in the Region . . . marketing Windermere licenses in the Region . . . establishing and operating a training, educational and professional development program for licensees . . . implementing the intra-system referral program . . . offering Windermere marketing programs . . . making available samples of Windermere forms and listing and marketing materials . . . administering, collecting and remitting contributions to the Windermere Foundation . . . coordination of advertising and public relations . . . the responsibility to receive, collect, account for all license fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the Region, and to remit to WSC its share of such fees . . . monitor and see that its licensees in the Region comply with and conform to the policies and guidelines

enunciated by WSC, including those pertaining to the use of the Trademark . . . and the nature, type and quality of the services offered by licensees.”

Section 3 of the Area Representation Agreement goes on to provide that:

“Area Representative agrees to give prompt, courteous and efficient service and to be governed by the highest ethical standards of fair dealing and honesty when dealing with the public and all members of the Windermere System in order to preserve and enhance the identity, reputation, quality image and good will built by WSC and the value of the trademark . . . Area Representative agrees at its expense to have and maintain during the term of this Agreement adequate personnel and resources available to market and service the Trademarks and services and administer the Windermere System in the Region in accordance with the terms and provisions of this Agreement.”

Section 12 of the Area Representation Agreement goes on to provide that:

“Area Representative will implement the Windermere Foundation program with the licensees under this Agreement and their respective sales agents, in accordance with the written guidelines established by WSC or the Windermere Foundation from time to time and applicable and applied consistently to all WSC licensees and their respective licensed sales agents.”

Allowing for elements specific to the business model being franchised and the related industry, as well as elements related to the specific circumstances of the parties to the Area Representation Agreement, such provisions are consistent with standards and practices in area representative franchising. (Note that an arrangement whereby fees are paid by Franchisees to the Area Representative, rather than to the Franchisor directly, may not be typical in area representative franchising.) A failure to comply or perform the Area Representative’s obligations undertaken under such provisions (including but not limited to those involving collection and remission of fees) would not be consistent with standards and practices in area representative franchising.

- d. Both in the case of the classical direct franchising model (franchisor – franchisee, with no area representative involved) and the

franchisor – area representative – unit franchisee model, a paramount concern is the success of unit level franchisees, for the reasons described above. A franchise system where franchisees feel that their short- and long-term financial and other interests are subordinated to the financial success of the franchisor or the area representative can face significant negative internal stress, potentially damaging the brand and having a negative effect on future franchise sales, among other things.

If franchisees perceive the franchisor or the area representative as not being committed to the success of the franchisees or, worse, being in active and damaging competition with the franchisees, those negative effects will be increased, franchisees may even decide to leave the system and will almost surely fail to provide positive validation when contacted by prospective franchisees inquiring about how existing franchisees are treated.

- e. There is, in the area representative/franchisee relationship, a need for a high level of concern for, and commitment to, the success of unit level franchisees. This commitment, and its implementation, are related to the development of franchising-specific management skillsets by the area representative, which may significantly differ from management methodologies used in non-franchising business models, even in the same industry. By definition, franchising involves the franchisee financing, owning and operating his or her own individual unit, in which franchisees generally take great pride. Franchisees cannot be ordered about like employees and almost always cannot be “fired” without cause, so other management tools must be used. Therefore, many of the management skills needed at the franchisor level should also be present at the area representative level.

So, the area representative must develop, if he or she does not already have them, the skills necessary to convince franchisees not only of the area representative’s sincere interest in the unit franchisee’s success, and the area representative placing that interest in a paramount position above any competitive or other scenarios between the area representative and the franchisee, but also to convince the franchisee to take operational, marketing or other steps in that franchisee’s long-term best interest even though there may be short-term costs, inertia or other challenges for the franchisee.

In this sense the area representative is fundamentally a business “coach,” skilled in both the details of the franchised business model

and the distinct elements of a franchise relationship, firmly committed to the franchisee's business success, and neither a "boss" nor a largely disinterested, uninvolved and generally absent observer, and not a competitor or someone operating to exclude franchisees from prime locations or markets.

- f. Certain elements present in the real estate profession can raise issues of possible competition between an area representative operating its own office(s) and the offices of the franchisees to be supported by the area representative. Where the area representative's brokerage office(s) is/are in the same general market area serviced by one or more of the offices of the franchisees, there is at least the potential for competition between such offices, whether for listings, representation of potential buyers and/or the services of particularly productive agents. Therefore, the area representative would, under applicable industry standards and when possible, take appropriate steps to minimize such competition and, if he or she fails to do so, it may negatively impact the relationship between the area representative and those franchisees, making it more difficult for the area representative to effectively support those same franchisees. Similar to situations where a franchisor is operating a number of company-owned units in markets where franchisees also have units, serious consideration would normally be given by the area representative as to any potential negative impact of intra-brand competition from the area representative and its effect on existing and future franchisees.
- g. Where a franchisor is seeking to enter a new market, or a market where it has relatively little existing presence or brand recognition, a core objective for the franchisor and its franchisees will normally be to build the value of the brand in the eyes of potential franchisees, existing franchisees and customers. This is sometimes referred to by business people as "brand equity." Actions by the area representative that might diminish brand equity, whether by failure to appropriately support existing franchisees or by engaging in competition with them, could diminish brand equity and, among other things, damage new sales of franchises and the profitability of existing franchisees, all of which would be inconsistent with franchise industry standards.

3. Standards of care and practices regarding an area representative with respect to the sale of franchises and support of local franchisees, including considerations where an area representative is itself a franchisee of the franchisor.

- a. In general, see the information presented above, many elements of which it would be redundant to repeat here and which reflect franchise industry standards. The principles laid out above will, in most instances, inform and support the standards of care and daily business practices of an area representative.
- b. An effective and ethical area representative will realize that, with time, the total investment in their franchised businesses by franchisees may exceed the investment by the area representative in its business, simply because there may be more unit franchisees. A failure to adequately support, or (worse) to negatively impact, unit-level franchisees would be considered unacceptable in successful franchise systems and inconsistent with industry standards. Such actions or omissions by an area representative, if they took place, could potentially damage the value of the franchised brand, restrict future growth of the franchised system through sales of franchises or existing franchisees opening additional units, harm the profitability of franchised units, and result in increased discord and loss of trust, with franchisees leaving the system and even possible litigation.
- c. Similarly, such actions or omissions by an area representative, if they took place, could potentially negatively impact franchise sales (thereby potentially reducing short-term revenue in the form of initial franchise fees and long-term revenue in the form of royalties or otherwise), whether within the area representative's region and/or elsewhere in the system, since prospective franchisees may contact existing franchisees prior to making their purchase decision, could receive negative validation regarding the possible purchase (due to perceived or actual issues regarding the area representative) and then decide to purchase a competing franchise offering or not to purchase any franchise at all. The risk of the later outcome is greater where, as is generally true in real estate franchising, the prospective franchisee is already licensed to and is doing business in the industry and the local market, a franchising model known as "conversion franchising."
- d. Given those possible negative effects, responsible area representatives devote maximum efforts to fully supporting franchised units, proactively reaching out to unit franchises, both on an individual and group basis, and seeing how the area representative can assist the franchisees. As noted above, the area representative's proper role is that of an active "coach," never undermining franchisees' opportunities for success. Simply waiting

for franchisees to call for help, or only inspecting units for possible violations of system standards, does not meet the industry standard for proper performance of an area representative's functions. On the other hand, pro-active support of unit-level franchisees would be consistent with industry standards and can increase the franchisees' opportunities for success and support of the brand, and to minimize potential discord, franchisees leaving the system or not validating it to potential purchasers, and even possible litigation.

- e. In sum, for the ethical and effective area representative following franchise industry standards, the success of the franchisees he or she is responsible for supporting is the over-riding objective of that area representative and would be an even higher priority than the success of any units owned and operated by the area representative or its affiliates.

Findings

In my review of various materials in this matter (see the attached List of Materials Received and/or Reviewed), I made the following observations and/or findings:

1. Section 3 of the Windermere Real Estate Services Company Area Representation Agreement for the State of California (the "Area Representation Agreement" or "Area Representative Agreement") provides, in Section 3, for various duties and obligations of the Area Representative, including those with respect to the "licensees" (franchisees) in the "Region."
2. Those duties and obligations of the area representative with respect to franchisees are, in broad measure, substantially similar to such duties and obligations of area representatives in franchising generally, putting to one side duties and obligations particular to the real estate industry and its related business models.
3. A substantial failure by an area representative to properly perform such duties and obligations would not be consistent with standard practices in franchising, as applied to area representatives.

4. Such a failure by an area representative could: operate to damage the relationships between the franchisor and its franchisees; affect the ability of the franchisor to award future franchises (or additional franchises to existing franchisees); result in existing franchisees leaving the franchised system; and/or possibly negatively impact the value of the franchised brand, to the potential detriment of both the franchisor and its franchisees.
5. The First Amended Counterclaim by Defendant and Counterclaimant Windermere Real Estate Services Company for Damages and Injunctive Relief (the "Counterclaim") alleges [references are to page and line numbers of the Counterclaim] that the area representative: a) "did not provide prompt, courteous and efficient service to franchisees" (page 11; line 7); b) "did not deal fairly and honestly" with franchisees (page 11; line 8); c) did not offer the same support to other franchisees as they provided to offices owned by the area representative or an affiliated company (page 11; lines 9-10); competed against other franchisees (page 11; line 16); attempted to solicit agents who worked for other franchises to leave their current employment and work for the area representative of an affiliated company (page 11; lines 18 – 22); and failed to collect and remit various fees from franchisees to the franchisor (page 11; lines 25-27).
6. If proven, such acts or omissions by an area representative would not be consistent with standard practices in franchising, as applied to area representatives.
7. In the deposition of Mr. Deville (Vol. I; page 31; line 12), after being asked what he considered to be the obligations of the area representative in providing services to franchisees in Southern California, and responding that they were to "grow the region and to act as a conduit between the owners and Seattle, collect fees," and then being asked if he could think of anything else, he responded "No."
8. As detailed above, standard franchising practices for area representatives include more than simply marketing franchises, acting as a "conduit" between the franchisor and the unit franchisees and collecting fees. Those practices include, among other things discussed in more detail above, assuring general system compliance by franchisees (not only trademark compliance), establishing and operating a training, education and professional development program for franchisees and

their employees, and a proactive “coaching” model to assist franchisees in becoming financially and operationally successful.

9. In the deposition of Mr. Deville (Vol. II; page 414; lines 1 - 15), Mr. Deville states that certain franchise owners were “disgruntled” as a result of the area representative (or an affiliate) opening an office in Encinitas.
10. The type of reaction by franchisees discussed by Mr. Deville would not be unusual, nor unanticipated, in franchising where the franchisees affected believed that the location or market was a favorable one and that they could successfully operate a franchised unit at that location or in that market.
11. In the deposition of Mr. Gregor (page 85; line 20), Mr. Gregor states, after being asked “And if there was an issue in your mind about whether or not these owners could pay the fees they were required to pay under the Franchise Agreement, would you speak up and make that known to Mr. Deville?”, Mr. Gregor responded “That was beyond my grade at that time.”
12. Standard franchising practices for area representatives would not include franchise sales staff who might have issues with respect to a prospective franchisee’s possible inability to pay required fees failing to alert the area representative’s management to such concerns. On the contrary, the payment of required fees is a prime concern for all responsible franchisors or area representatives.
13. In the deposition of Mr. Robinson, at a number of points the deponent addresses questions relating to the area representative’s (or its affiliate’s) alleged failure to pay (or being delinquent in paying) franchise fees. [See page 33; lines 20 – 24; page 35; lines 6 – 9; page 40; lines 4 – 9.]
14. A franchisor would reasonably expect that an area representative would not show favoritism regarding payment of fees by offices owned and operated by it or an affiliated company, as compared to offices owned and operated by other franchisees. Standard franchise industry

practice is for area representatives to pay fees on units owned and operated by them according to their legal obligations.

15. In the deposition of Mr. Gooding, he expresses concern or dissatisfaction with respect to what he perceived as (among other things): the area representative not collaborating with him with respect to closure of a Windermere office and possible opportunities to retain agents from that office within the Windermere system (page 132, line 12 - page 136, line 13); a lack of willingness on the part of the area representative to collaborate on "double truck" or similar joint advertising (page 153, line 9 – page 154, line 15); a lack of "collaboration" and "help" from the area representative (page 157, lines 1 – 3; page 158, lines 14 – 17); a lack of support or collaboration re various training or other functions (page 162, line 16 through page 163, line 19; page 164, line 19 through page 166, line 25; page 206, lines 15 – 22; page 207, lines 8 - 13); the relationship with the area representative having become a competitive one rather than collaborative (page 185, line 19 – 22; page 187, line 17 through page 190, line 19; page 192, lines 2 – 12; page 247, lines 3 - 7).
16. In general, conduct by an area representative as testified to by Mr. Gooding, if such testimony accurately reflects the facts, would not be consistent with applicable standards in area representative franchising.
17. In the deposition of Mr. Johnson, he expresses concern or dissatisfaction with respect to what he perceived as (among other things): feeling that his franchise was "instead of having a mutually beneficial relationship, that we were, in fact, competing against SoCal, and that was causing some challenges between our relationship" and apparently relating that perception to issues regarding "advertising and the competition about recruiting agents" (page 175, line 9 – Page 176 3; page 176, line 6 – page 4; page 192, lines 15 – 21; page 233, lines 4 - 13); possibly disparaging comments by the area representative re the franchisee (page 178, lines 2 – 19; page 180, lines 4 - 18; page 186, lines 5 – 7); issues regarding communication and/or collaboration (page 191, line 22, page 192, lines 9 – 12; page 193, lines 9 – 16; page 230, lines 1 - 6).
18. In general, conduct by an area representative as testified to by Mr. Johnson, if such testimony accurately reflects the facts, would not be consistent with applicable standards in area representative franchising.

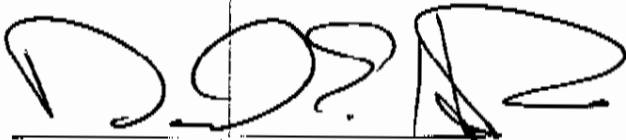
19. In the deposition of Mr. Fanning, he testified that: the area representative told him what he could and could not speak to franchisees about (page 30, line 22 through page 31, line 25.)
20. Such a limitation or direction by an area representative would not, in general, be typical in franchising or consistent with standard franchise industry standards and practices.
21. In the deposition of Mr. Fanning, he testified that: he did not have an opportunity to teach agents in the region because he was asked to stop coming.
22. Such a limitation or direction by an area representative would not, in general, be typical in franchising or consistent with standard franchise industry standards and practices.
23. In the deposition of Mr. Fanning, he testified that: at least one franchisee in the region was not aware that various software tools were available to them, nor did they have ample training on how to use them.
24. Such a situation would not be typical in franchising or consistent with standard franchise industry standards and practices.
25. In the deposition of Mr. Fanning, he testified that: other regions were “more than happy to have us come into their region and help [educate those agents.]”
26. The approach of such other regions is typical in franchising, would normally be expected and is consistent with standard franchise industry standards and practices.

27. In the deposition of Ms. Bortfeld, she testified that: she had concerns regarding use, by agents working for Bennion and Deville, of the Windermere logo, business cards (including use of a non-approved vendor) (page 21, line 1 through Page 29, line 9.)
28. Inappropriate use of a logo, or of non-approved suppliers, would not be consistent with franchise industry standards.
29. In the deposition of Ms. Bortfeld, she testified that: Messrs. Gooding and Johnson “were unaware of a lot of the marketing materials that are branded for us . . . They were just completely unaware of who we were - - the programs that we have . . . They just - - they were clearly clueless about the services that my department provides. . . . they were just so shocked at what they found on the worksite. They said we had no idea all this stuff was available. . . . It was almost like bringing on a new franchise, bringing through an orientation. And they’re, like, This is great, wish we knew about this.” (Page 82, line 22 through Page 83, line 8; Page 86, line 11 through line 17.)
30. Franchisees being unaware of the materials or services available from a franchisor is not consistent with franchise industry standards.
31. In the deposition of Ms. Bortfeld, she testified that: “We weren’t allowed to talk to anybody in Southern California. I wasn’t allowed to talk to any be (*sic*) in Southern California . . . Mr. Deville requested that we do not discuss - - we do not have conversations with his owners. . . . I respected his wishes. “ (Page 86, line 23 through Page 87, line 6)
32. A franchisor being asked to not communicate with its franchisees is not typical in franchising or consistent with franchise industry standards.
33. In the deposition of Ms. Bortfeld, she testified that: There were instances of Mr. Deville involving “unpleasant encounters” and which resulted in employees coming into “my office in tears or visibly shaken after an interaction” and an employee telling her that Mr. Deville “was yelling at me, and I felt attacked” . . . “every interaction I’ve ever had has been extremely unpleasant. So you just don’t go to the hornet’s

nest too often." (Page 90, lines 5 – 10; lines 20-21; Page 95, lines 5 – 7.)

34. Such encounters as those described are not consistent with franchise industry standards.
35. In the deposition of Ms. Bortfeld with respect to the topic of the region possibly failing to support franchisees in Southern California, she testified with respect to: non-disbursal of leads supplied by the franchisor, (Page 107, line 21 through Page 127, line 4); matters relating to customization of marketing materials and franchisee's lack of knowledge re materials (Page 116, line 16 through Page 118, Line 5); franchisee's lack of "access to radio spots, print ad templates, TV spots, billboard, any of the advertising . . ." (Page 118, line 11 through Page 120, line 14.)
36. Not providing unit franchisees with materials and resources generally available from the franchisor is not consistent with standard franchise industry practice.

David E. Holmes

A handwritten signature in black ink, appearing to read 'D. E. Holmes', written over a horizontal line.

Date: September 16, 2016

List of Materials Received and/or Reviewed

1. Windermere Real Estate Services Company Area Representation Agreement for the State of California (with exhibits)
2. First Amended Counterclaim by Defendant and Counterclaimant – Bennion & Deville Fine Homes, Inc., et al. v. Windermere Real Estate Services Company, et al.; USDCt Central District of California Case. No. 5:15-CV-01921 R (KKx) [hereinafter referred to as the “Bennion case.”]
3. First Amended Complaint - Bennion case. (with exhibits)
4. August 13, 2016, Cover Letter from Atty. Feasby re transmission of depositions and discovery documents.
5. Defendant (WRESC) Responses to Plaintiff’s (Bennion) First Set of Requests for Production - Bennion case.
6. Defendant’s (WRESC) Responses to Plaintiff’s (Bennion) First Set of Interrogatories - Bennion case.
7. Defendant’s (WRESC) Responses to Plaintiff’s (WSSC) First Set of Interrogatories - Bennion case.
8. Defendant’s (WRESC) Responses to Plaintiff’s (Bennion) First Set of Requests for Admission - Bennion case.
9. Defendant’s (WRESC) First Supplemental Responses to Plaintiff’s (Bennion) First Set of Requests for Production - Bennion case.
10. Defendant’s (WRESC) First Supplemental Responses to Plaintiff’s (Bennion) First Set of Interrogatories - Bennion case.
11. Defendant’s (WRESC) First Supplemental Responses to Plaintiff’s (Bennion) First Set of Requests for Admission - Bennion case.
12. Defendant’s (WRESC) Second Supplemental Responses to Plaintiff’s (Bennion) First Set of Requests for Production - Bennion case.
13. Defendant (WRESC) Responses to Plaintiff’s (Bennion) Second Set of Requests for Production – Bennion Case.
14. Defendant’s (WRESC) Responses to Plaintiff’s (WSSC) Second Set of Interrogatories – Bennion Case.
15. Counterdefendant Robert L. Bennion’s Responses to WRESC’s Request for Admission, Set One - Bennion case.
16. Counterdefendant Robert L. Bennion’s Responses to WRESC’s Interrogatories, Set One - Bennion case.
17. Counterdefendant Joseph R. Deville’s Responses to WRESC’s Request for Admission, Set One - Bennion case.
18. Counterdefendant Joseph R. Deville’s Responses to WRESC’s Interrogatories, Set One - Bennion case.
19. Plaintiffs’ (Bennion) Responses to Defendant’s Request for Production of Documents - Bennion case.
20. Bennion & Deville Fine Homes Responses to WRESC Interrogatories, Set One- Bennion case.
21. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Requests for Admission, Set One- Bennion case.

22. Plaintiffs' (Bennion) Responses to WRESC Request for Production [Set Two] - Bennion case.
23. Plaintiffs' (Bennion) Responses to WRESC Request for Production of Documents - Bennion case.
24. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Interrogatories, Set One - Bennion case.
25. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Requests for Admission, Set One - Bennion case.
26. Plaintiffs' (Bennion) Responses to WRESC Request for Production, Set Two - Bennion case.
27. Plaintiff's (WSSC) Responses to Defendant's (WRESC) Request for Production of Documents - Bennion case.
28. Counterdefendant's (WSSC) Responses to WRESC's Interrogatories, Set One - Bennion case.
29. Counterdefendant's (WSSC) Responses to WRESC's Requests for Admission, Set One - Bennion case.
30. Plaintiff's (WSSC) Responses to WRESC's Requests for Admission, Set Two - Bennion case.
31. Deposition of Robert L. Bennion; July 27, 2016 – Volume I
32. Deposition of Robert L. Bennion; July 28, 2016 – Volume II
33. Deposition of Joseph R. Deville; July 26, 2016 – Volume I
34. Deposition of Joseph R. Deville; July 27, 2016 – Volume II
35. Deposition of Eric Forsberg; July 29, 2016
36. Deposition of Kirk Gregor; July 28, 2016
37. WESC's First Amended Notice Deposition of Joseph R. Deville with Exhibits.
38. Franchising for Dummies; 2nd Edition; Seid and Thomas, © 2005
39. Deposition of Paul Drayna; Volumes I and II – Bennion Case.
40. Deposition of Brian Gooding; September 6, 2016. [Confidential portions omitted.]
41. Deposition of Richard Johnson; September 9, 2016.
42. Deposition of Michael Fanning; August 31, 2016.
43. Deposition of Noele Bortfeld; August 31, 2016 w/ separate emailed sheet listing various pages and line numbers.

David E. Holmes Curriculum Vitae

Executive Summary

- Practiced domestic and international franchise law from 1975 until his retirement in 2008.
- Associate General Counsel - International House of Pancakes.
- Vice President and Counsel - Century 21 Real Estate Corporation.
- Partner - Holmes Lofstrom, LLP, specializing exclusively in domestic and international franchise law. (Retired - 2008)
- Three Times Co-Chair, State Bar Franchise Law Committee - current Co-Chair of that committee.
- Past Member and Secretary, State Bar Business Law Section Executive Committee.
- Past Chair, State Bar Franchise and Distribution Law Advisory Commission.
- Past Chair, State Bar Board of Legal Specialization
- Certified Specialist Franchise and Distribution Law - The State Bar of California Board of Legal Specialization. (2009 - 2014)
- Executive Editor (all editions), CEB practice book: California Franchise Law and Practice.

Detailed CV

David E. Holmes practiced law in the domestic and international franchising area beginning in 1975, having graduated from the University of Southern California in 1966 and its Law School in 1969.

From 1969 to 1975, he was in-house counsel at Southern California Edison and Cordura Corporation, both in Los Angeles. His responsibilities in the legal departments of those companies involved public securities offerings and general business law matters.

From 1975 to 1980 David was Associate General Counsel for International House of Pancakes, where his responsibilities included legal aspects of multi-

brand franchise operations (including franchise matters), related training of marketing and operations personnel, real estate matters, and acquisitions/dispositions of various units.

From 1980 through 1983 David was Vice President and Counsel for Century 21 Real Estate Corporation, where his duties covered franchise and other legal compliance matters and related training, governmental relations, litigation supervision, acquisitions, and system-wide legal training programs.

David and a partner owned and operated a subfranchise company in Southern California, Fantastic Sam's, from approximately 1983 to 1984, and he was in private practice as a solo attorney from 1985 to 2001, specializing in franchise law.

From 2002 to 2008, David was a Partner with Holmes Lofstrom, LLP, which represented businesses in a wide range of industries and professions and with a concentration in franchising. During David's tenure, the firm's clients were located throughout North America and abroad and included mature franchise systems, as well as new and beginning franchise companies.

From 1985 to 2008, David was in private practice, specializing exclusively in franchising, including structuring and development of new and established franchise systems, system design, drafting of documents for registration and legal compliance, management of litigation, franchise system negotiations and legal aspects of system compliance, along with related training.

He has been involved in the structuring and negotiation of international expansion activities for American franchisors in a number of foreign markets, as well as entry by foreign-based franchise systems into North America.

David has actively contributed to the International Franchise Association (the "IFA", the primary trade group representing franchising in the United States) by serving on its Legal/Legislative and Franchise Relations committees, including as a senior liaison, has spoken and presented papers at IFA Annual Conventions, Legal Symposia and other events, has been a member of the IFA Legal Symposium Task Force (which determines the content and speakers for each year's Legal Symposium), and has authored various IFA publications (or portions of such publications), including being a co-author of the A Dispute Resolution Handbook for Franchisees and Franchisors. David moderated a panel discussion at the 2005 IFA Legal Symposium on Franchise Disclosure and was a member of the IFA Supplier Forum Advisory Board and in 2007 assisted the IFA's Franchise Relations Committee and its Best Practices Product Review Task Force in updating their materials.

Shortly after adoption of the revised FTC Franchise Rule, he presented, as part of an IFA panel, an educational program on the (then) most recent

revisions to the Federal Trade Commission Franchise Rule and its disclosure requirements. He has led various roundtables at IFA events, including at IFA Conventions and Legal Symposia. He was also a chapter Editor for an American Bar Association monograph on Earnings Claims and, at the request of the IFA, prepared revisions to the IFA's Handbooks on Best Practices in Transfers and Succession Planning.

David has presented papers and seminars at various IFA and other meetings and seminars, in the United States and abroad, as well as conducting franchise law training sessions for domestic and foreign franchise systems.

He has appeared at meetings with, and hearings before, legislative and administrative bodies in connection with franchising matters and has testified on the business and legal aspects of franchising and the possible effects of proposed legislation and regulations.

David has been a guest speaker on various shows relating to franchising, conducted numerous training sessions for franchisor personnel and franchisees, and has been a regular speaker at educational seminars for franchisors and franchise attorneys. In addition, David has often spoken on franchising and related matters at IFA quarterly regional meetings.

He has been designated, and testified, as an expert witness on franchising and franchise-related matters in both federal and state courts.

During 2003-2004, David served his second term as Co-Chair of the California State Bar Franchise Law Committee (the "FLC"), where he helped to draft (and oversaw the drafting of) the most extensive changes to the California Franchise Investment Law since its original enactment. During that time, David was the primary liaison between the Franchise Law Committee and senior staff of the Department of Corporations, including working with the Department on new legislation and revisions to the Department's policies and procedures with respect to franchise registration, disclosure, and enforcement matters, as well as negotiating the final form of the bill with state legislative staff.

In the Summer of 2010, David was invited to serve on the State Bar Franchise Law Committee once again. In that capacity, he primarily focused on regulatory and statutory matters.

For the 2013-2014 State Bar year, David was again appointed as Co-Chair of the State Bar Franchise Law Committee matters and, after completion of his term as Co-Chair, continues to sit on various subcommittees of the FLC in an advisory (non-voting) capacity.

David has been involved in other projects for the FLC, including the formulation of new legislation, the drafting of affirmative legislative and regulatory

proposals and related discussions with regulatory officials, including those involving the regulation of franchise area developers. He served on a subcommittee of the Franchise Law Committee in a proposed general re-writing and modernization of substantial portions of the California Franchise Investment Law, as well as possible revisions to the California Franchise Relations Act and the California Seller Assisted Marketing Plan law.

In October of 2004, David was selected to serve on the Executive Committee of the Business Law Section of the State Bar and served, among other duties, as the primary liaison between the Franchise Law Committee and the Executive Committee, and as Secretary of the Executive Committee.

In October of 2006, David was appointed to the newly formed State Bar Franchise and Distribution Law Advisory Commission as its Vice-Chair. That Commission was charged with developing and administering standards and procedures for certifying California lawyers as franchise and distribution law specialists, the first bar association in the country to do so. In 2007 he became that Commission's Chair and had overall responsibility for the accomplishment of its objectives, and into September of 2009 served that Commission as its former Chair. In those capacities, he participated in the preparation, grading and/or evaluation of examination questions for the franchise and distribution law specialty and has served as a pre-tester and evaluator of proposed exam questions in that area. He was also a member of the State Bar's Board of Legal Specialization, to which the Commission reports, and served on the New Specialties Subcommittee of the Board of Legal Specialization.

Effective in September of 2009, David was appointed to the State Bar's Board of Legal Specialization, which administers all certified legal specialties in California, including franchise and distribution law, and also served as Chair of its Examination Committee. He was the Chair of the Board of Legal Specialization for the 2012-2013 State Bar year, having previously been its Vice Chair, and in 2013-2014 served as Immediate Past Chair and Advisor to that body.

David was certified as a Franchise and Distribution Law Specialist by the State Bar of California's Board of Legal Specialization; since he is retired, his certification ended on December 31, 2014.

He is also the Executive Editor of the California Continuing Education of the Bar (CEB) publication: California Franchise Law and Practice, published in 2009, 2011, and 2013. CEB is a joint University of California - State Bar program, founded in 1947.

In addition, David has been a member of the State Bar-CEB Business & Intellectual Property Law Advisory Committee, which advised CEB with respect to publications, continuing legal education programs and other matters.

David was a member for many years of the American Bar Association's Franchising Forum, served on the American Association of Franchisees and

Dealers' (AAFD) Fair Franchising Standards Committee and assisted that committee in the drafting of portions of their Fair Franchising Standards.

He has also been a member of the American Arbitration Association's (AAA) Franchise Advisory Panel, which advised the AAA regarding arbitration policies and personnel and has taught upper division and graduate level classes on business law at The California State University, Long Beach.

David has been selected by his peers as a "legal eagle" in the franchising community, as part of Franchise Times' Annual Legal Eagle recognition program, and has also been listed in The International Who's Who of Franchise Lawyers.

David is a widower, has two adult sons, and resides in San Luis Obispo, California. He also serves as a volunteer at French Hospital Medical Center in San Luis Obispo, where he has been a team captain, and is a volunteer photographer for the Cal Poly San Luis Obispo women's basketball teams.

David E. Holmes

List of Publications (August 11, 2016)

1. California Franchise Law and Practice, 2009, 2011, and 2013 editions. Executive Editor and author of various chapters. – A CEB publication. Copies may be obtained at <http://www.ceb.com/CEBSite/product.asp?catalog%5Fname=CEB&menu%5Fcategory=Bookstore&main%5Fcategory=Practice+Books&sub%5Fcategory=Practice+Books+Business+Law&product%5Fid=BU33822&Page=1>
2. Co-author of the International Franchise Association (“IFA”) publication A Dispute Resolution Handbook for Franchisees and Franchisors. – An International Franchise Association publication. A copy may be obtained at <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
3. Author or co-author (as identified) of various papers posted on the website of the successor to Mr. Holmes’ former law firm (see <http://www.holmeslofstrom.com/res.htm>).
4. Chapter Editor for an American Bar Association monograph on Earnings Claims. – An ABA publication. Copies may be obtained at <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=215725>
5. Mr. Holmes also, at the request of the IFA, prepared revisions to the IFA’s Handbooks on Best Practices in Transfers and Succession Planning. This is an IFA publication. A copy may be available from them. See <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
6. Article: *California Plans Move to “Risk-Based Review” of Franchise Filings* published in *The Franchise Lawyer* Volume 6 Number 4, Spring 2003 a publication of the American Bar Association – Forum on Franchising.
7. 4th Annual Spring Meeting, Corporate Governance and Ethics, April 4, 2003 in Century City, California. *So Your Client Is Thinking of*

Becoming a Franchisee – A Business Overview and Some Practical Considerations presented on behalf of the Business Law Section of the California State Bar Association.

8. State Bar of California Education Institute, January 17, 2003 in Berkeley, California. *Is My Client's Business Really Franchiseable? or Business Considerations in Deciding Whether or Not to Franchise* presented on behalf of the Business Law Section of the State Bar of California.
9. Best Practices - A Seminar for Franchisors, Co-Sponsored by Singer Lewak Greenbaum & Goldstein, LLP and Legal Offices of David E. Holmes. January 29, 1998, in Orange, California. *Legal Techniques*. Co-authored with David Krajnowski, CPA.
10. State Bar of California Annual Meeting, September 12, 1997 in San Diego, California. Franchising: 1) *A Business Overview and Practice Considerations - An Introduction* and 2) *Representing Franchisors - Business and Legal Considerations*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
11. American Franchise Exhibition (put on by CII [Careers in Industry]), September 12-14, 1997 in Long Beach, California. *International Franchising Structure and Negotiations - A Practical Overview*.
12. International Franchise Association, International Franchise Exposition, April 26, 1996 in Washington, DC and September 5-7, 1997, in Long Beach, California. *How to Negotiate a Master Franchise Agreement*. Presented as a member of a panel.
13. International Franchise Association, 30th Annual Legal Symposium, May 5-6, 1997 in Washington, DC. *Advertising Issues in Franchise Relationships*. Co-authored with John Baer, Esq. and Wayne Mack, Esq.
14. State Bar of California Annual Meeting, October 11, 1996, in Long Beach, California. *Representing Franchisors - An Introduction*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
15. Small Business Development Center Program in partnership with the State of California and the U.S. Small Business Administration. Workshop presented on July 12, 1995, Los Angeles, California. *Is*

Your Business Franchiseable? Business Consideration in Deciding Whether or Not to Franchise.

16. International Franchise Association, Expofranchise Chile '95, June 22-23, 1995, in Santiago, Chile. *International Franchising & NAFTA, A Practical Overview*. Co-presented with Nancy Womack, Director of Affairs of the International Franchise Association.
 17. Business Law News, Vol. 16, No. 2, Spring 1994. (Official publications of the Business Law Section - State Bar of California.) *Crises Management in Franchising*. Co-authored with Charles E. Rumbaugh, Esq.
 18. International Franchise Association, 26th Annual Legal Symposium, May 24-25, 1993 in Washington, DC. *Master Franchising/Subfranchising*. Co-authored with David Beyer, Esq.
 19. International Franchise Association, 33rd Annual Franchise Convention, February 7-10, 1993 in San Francisco, California. *Basic Aspects of Negotiating International Agreements*.
 20. International Franchise Association, 25th Annual Legal Symposium, May 11-12, 1992 in Washington DC. *Registration and Disclosure Laws - Beyond the Basics*. Co-authored with Kim A. Lambert, Esq.
- California Franchise Law and Practice, 2009, 2011, and 2013 editions.
Executive Editor and author of various chapters. – A CEB publication. Copies may be obtained at
<http://www.ceb.com/CEBSite/product.asp?catalog%5Fname=CEB&menu%5Fcategory=Bookstore&main%5Fcategory=Practice+Books&sub%5Fcategory=Practice+Books+Business+Law&product%5Fid=BU33822&Page=1>
21. Co-author of the International Franchise Association (“IFA”) publication A Dispute Resolution Handbook for Franchisees and Franchisors. – An International Franchise Association publication. A copy may be obtained at <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
 22. Author or co-author (as identified) of various (but not necessarily all) papers posted on the website of the successor to Mr. Holmes’ former law firm (see <http://www.holmeslofstrom.com/res.htm>).
 23. Chapter Editor for an American Bar Association monograph on Earnings Claims. – An ABA publication. Copies may be obtained at <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=215725>

24. Mr. Holmes also, at the request of the IFA, prepared revisions to the IFA's Handbooks on Best Practices in Transfers and Succession Planning. This is an IFA publication. A copy may be available from them. See <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
25. Article: *California Plans Move to "Risk-Based Review" of Franchise Filings* published in *The Franchise Lawyer* Volume 6 Number 4, Spring 2003 a publication of the American Bar Association – Forum on Franchising.
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27. State Bar of California Education Institute, January 17, 2003 in Berkeley, California. *Is My Client's Business Really Franchiseable? or Business Considerations in Deciding Whether or Not to Franchise* presented on behalf of the Business Law Section of the State Bar of California.
28. Best Practices - A Seminar for Franchisors, Co-Sponsored by Singer Lewak Greenbaum & Goldstein, LLP and Legal Offices of David E. Holmes. January 29, 1998, in Orange, California. *Legal Techniques*. Co-authored with David Krajanowski, CPA.
29. State Bar of California Annual Meeting, September 12, 1997 in San Diego, California. Franchising: 1) *A Business Overview and Practice Considerations - An Introduction* and 2) *Representing Franchisors - Business and Legal Considerations*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
30. American Franchise Exhibition (put on by CII [Careers in Industry]), September 12-14, 1997 in Long Beach, California. *International Franchising Structure and Negotiations - A Practical Overview*.

31. International Franchise Association, International Franchise Exposition, April 26, 1996 in Washington, DC and September 5-7, 1997, in Long Beach, California. *How to Negotiate a Master Franchise Agreement*. Presented as a member of a panel.
32. International Franchise Association, 30th Annual Legal Symposium, May 5-6, 1997 in Washington, DC. *Advertising Issues in Franchise Relationships*. Co-authored with John Baer, Esq. and Wayne Mack, Esq.
33. State Bar of California Annual Meeting, October 11, 1996, in Long Beach, California. *Representing Franchisors - An Introduction*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
34. Small Business Development Center Program in partnership with the State of California and the U.S. Small Business Administration. Workshop presented on July 12, 1995, Los Angeles, California. *Is Your Business Franchiseable? Business Consideration in Deciding Whether or Not to Franchise*.
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36. Business Law News, Vol. 16, No. 2, Spring 1994. (Official publications of the Business Law Section - State Bar of California.) *Crises Management in Franchising*. Co-authored with Charles E. Rumbaugh, Esq.
37. International Franchise Association, 26th Annual Legal Symposium, May 24-25, 1993 in Washington, DC. *Master Franchising/Subfranchising*. Co-authored with David Beyer, Esq.
38. International Franchise Association, 33rd Annual Franchise Convention, February 7-10, 1993 in San Francisco, California. *Basic Aspects of Negotiating International Agreements*.
39. International Franchise Association, 25th Annual Legal Symposium, May 11-12, 1992 in Washington DC. *Registration and Disclosure Laws - Beyond the Basics*. Co-authored with Kim A. Lambert, Esq.

David E. Holmes, Esq.

Expert Witness Information

as of

August 25, 2016

“Report” = Report submitted.

“Deposition” = Deposition Taken.

“Trial” = Testimony given at trial.

2016

SuperShuttle International *et al.* v. Henning, *et al.*; Sacramento
Superior Court - Case No. 34-2014-80001841-CU-MC-GDS

Report not submitted and no deposition as of August 25, 2016.

Bennion & Deville Fine Homes *et al.* v. Windermere Real Estate Services Company; U. S. District Court – Central District of California; Case No. 5:15-CV-1921 R (KKx)

Report not submitted and no deposition as of July 23, 2016.

RPCHorizons adv. Penn Station

Pre-Litigation. Report not submitted and no deposition as of July 23, 2016.

Comey v. State Farm, *et al.*; Superior Court Orange County; Case No. 30-2014-00745930-CU-IC-CJC

Report not submitted. No deposition.

Case settled.

Ahmed v. SuperShuttle Los Angeles; Superior Court – County of Orange Case No. 30-2014-00756967 – CU-OE-CJC

Report not submitted. No deposition.

Client prevailed *via* Motion for Summary Judgment.

2014

Viking Associates, Inc. v. TD, Inc, et al., United States District Court –
Central District of California – Southern Division – Case No. 8:14-cv-
0472 AG (RNB)x)

Report not submitted as of May 22, 2014.

Case settled and file closed as of June 18, 2014.

Shaffie, et al. v. Cell Phone Repair, LLC, et al., American Arbitration
Association – San Francisco; Case No. 74 114 00275

Report submitted.

Case settled and file closed as of July 9, 2014.

Hahn v. Massage Envy Franchising, LLC, U. S. District Court,
Southern District of California,

Case No. 3:12-CV-00153-DMS-BGS

Report submitted.

2013

Pat & Oscar's Concepts, Inc. v. Tim Foley, et al. – Superior Court, San Diego County, Central Division, Case No.: 37-2012-00100956 CU-BC-CTL Consolidated with Case No. 37-2013-704703-CU-BT-CTL

Report. Depo. Trial.

Welch, et al. v. The American Insurance Company, et al. – King County Superior Court, Case Number 09-2-32462-0 SEA *aka* Sarah Gosney v. Fireman's Fund Insurance Company, et al., King County Superior Court Case No. 09-2-32462-0 SEA

Report. Depo. Trial.

2012

Meersand v. Duffy, et al. – Superior Court of New Jersey, Gloucester County Division, Docket No. GLO-1624-10

Report and depo.

Coalson v. Pellegrino, et al., Superior Court of New Jersey Law Division – Camden County Docket No. L-2019-11

Report.

2011

Newport v. Burger King Corporation
U.S. District Court – No. Dist. Of Calif.
No. CV 10-4511 WHA

Richard J. Stratton, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Report and depo.

2010

Chandran v. Simoneau, et al.
Santa Clara Superior Court Case No. 109CV143839

Frank Gooch III, Esq.
Gilchrist & Rutter
Wilshire Palisades Building
1299 Ocean Avenue

Suite 900
Santa Monica, California 90401-1000

Declaration submitted, deposition.

Robert R. Carlson, et al. v. Thumann Incorporated, San Joaquin
County Superior Court Case No. 39-2009-00229856-CU-FR-STK

Jeffrey B. Setness, Esq.
Mayall, Hurley, Knutsen, Smith & Green
2543 Grand Canal Boulevard
Stockton, California, 95207

To the best of my recollection, no report, depo. or trial.

2009

Stillwell, et al. v. Radioshack Corporation, USD Ct. So. District Calif. –
Case No. CV 0607 JM(CAB)

Jeffrey L. Fillerup, Esq.
Luce, Forward, Hamilton & Scripps LLP
Rincon Center II
121 Spear Street, Suite 200
San Francisco, CA 94105

Report and deposition.

2002-2004

R.D.R. Enterprises, Inc. v. Copy Club, Inc., et al

Case No. GIC 774596

Robert Brown, Esq.

Mulvaney, Kahan & Barry
Seventeenth Floor
401 West "A" Street

San Diego, California 92101

(619) 238-1010

I do not recall if a report was submitted in this matter or not.
Deposition and trial testimony was given.

2002-2003

Temen v. SIG 5, et al

Mark G. Simons, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151

To the best of my recollection, no report, depo. or trial testimony.

1999

American Arbitration Case Number 72Y1400460-99
Guess?, Inc. v. Pour le Bebe, Inc. and Pour La Maison, Inc.

David Steinberg, Esq.
Mitchell, Silberberg & Knupp, LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064-1683
(310) 312-3100

To the best of my recollection, no report, deposition or trial testimony.

1999

Foodmaker, Inc. (Franchisor of the Jack in the Box® system)
Foodmaker, Inc.. vs. Harris Food Products

Kevin R. Nowicki, Esq.
Gibson, Dunn & Crutcher
4 Park Plaza
Irvine, CA 92614
(949) 451-3800

To the best of my recollection, no report, deposition. or trial testimony.

1999

U.S. District Court Case No. 98-1086 JSL (RCx)

Jeanne Piaubert Cosmetics vs

G. Thomas MacIntosh; Mackall, Crounse & Moore, PLC

Gregory Yates, Esq.

Law Offices of Gregory A. Yates

9454 Wilshire Blvd., Suite 850

Beverly Hills, CA 90212

(310) 858-6944

I do not recall if a report was submitted in this matter or not.
Deposition and trial testimony was given.

EXHIBIT B

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

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 5:15-CV-01921 R (KKx)

Hon. Manual L. Real

**PLAINTIFFS AND COUNTER-
DEFENDANTS' EXPERT WITNESS
DISCLOSURE PURSUANT TO
RULE 26 OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

Courtroom: 8

Action Filed: September 17, 2015

Pretrial Conf.: September 19, 2016

Trial: October 18, 2016

1 TO DEFENDANT WINDERMERE REAL ESTATE SERVICES COMPANY
2 AND THEIR ATTORNEYS OF RECORD:

3 Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc.
4 ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D
5 SoCal"), Windermere Services Southern California, Inc. ("Services SoCal"),
6 (collectively, "Plaintiffs") and Counter-Defendants Robert L. Bennion and Joseph
7 R. Deville (all collectively referred to as the "B&D Parties" herein), by and
8 through its undersigned attorneys, and pursuant to Rule 26(a) of the Federal Rules
9 of Civil Procedure and stipulation of the parties, hereby provides the following
10 Expert Witness Disclosure:

11 1. The B&D Parties have retained Peter Wrobel ("Wrobel") and his
12 company, Berkeley Research Group, LLC, as persons who may be used a trial to
13 present evidence under Rules 702, 703 or 705 of the Federal Rules of Evidence. A
14 written report (and supporting materials) prepared by Wrobel and Berkeley
15 Research Group, LLC, pursuant to Federal Rules of Civil Procedure 26(a)(2)(B), is
16 attached hereto, marked as "Exhibit A," and incorporated herein by reference.

17 2. The B&D Parties also retain the right to utilize the testimony of any
18 expert retained by Defendant Windermere Real Estate Services Company.

19 3. The B&D Parties expressly reserves the right to identify other experts
20 as a supplement to these disclosures if discovery continues and/or as additional
21 individuals, documents or information are identified or obtained which are likely to
22 lead to possess or contain discoverable information, or as parties identify other
23 experts.

24 4. This disclosure is based upon information and facts now available
25 from The B&D Parties' understanding of the issues, contentions and arguments
26 The B&D Parties intend to assert at the time of trial of this matter. This disclosure
27 is without prejudice to experts, facts, issues, and contentions subsequently learned
28 or discovered.

1 5. The B&D Parties shall supplement these disclosures when and as
2 required under the Federal Rules of Civil Procedure.

3
4
5 DATED: September 16, 2016

MULCAHY LLP

6 By: /s/ James M. Mulcahy

7 James M. Mulcahy

8 Kevin A. Adams

9 *Attorneys for Plaintiffs/Counter-*
10 *Defendants Bennion & Deville Fine*
11 *Homes, Inc., Bennion & Deville Fine*
12 *Homes SoCal, Inc., Windermere*
13 *Services Southern California, Inc.,*
14 *and Counter-Defendants Robert L.*
15 *Bennion and Joseph R. Deville*

EXHIBIT A



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September 16, 2016

James M. Mulcahy, Esquire
Kevin A. Adams, Esquire
Mulcahy LLP
Four Park Plaza, Suite 1230
Irvine, California 92614

Re: **Bennion & Deville Fine Homes, Inc., et al. v. Windermere Real
Estate Services Company
United States District Court
Central District of California
Case 5:15-cv-0192-R-KK**

Dear Messrs. Mulcahy and Adams:

I was engaged on behalf of Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc. ("BD Fine"), Bennion & Deville Fine Homes SoCal, Inc. ("BD SoCal") and Windermere Services Southern California, Inc. ("WSSC") in the above-referenced matter. I have been asked to calculate the amount of out-of-pocket damages, if any, suffered by these entities as a result of the certain alleged activities at issue in this matter. All work was or will be performed by me or by other employees of BRG LLC working at my direction. I have been requested to provide expert testimony regarding my opinions and prepare this report in accordance with FRCP Rule 26.

I. EXPERT OPINIONS

WSSC and BD SoCal have or will suffer at least \$4,237,999 in damages. See Schedule 1.

Damages consist of the following:

1	Net Value of WSSC as of January 2015	\$2,592,526
2	Settlement Amounts Improperly Withheld from WSSC	66,037
3	Past Losses and Future Lease Obligations – BD SoCal	1,431,482
4	Net Unreimbursed Windermere Watch Expenses	146,954
	Total	<u>\$4,237,999</u>

Letter to Messrs. Mulcahy and Adams
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Net Value of WSSC as of January 2015

WSSC was an Area Representative of the Defendant Windermere Real Estate Services Company (“WSC”). BD SoCal and BD Fine were franchisees of WSC under the WSSC Area Representative umbrella. It is my understanding that WSC effectuated a constructive termination of the area representation relationship with WSSC by late summer 2014, and later provided WSSC a formal notice of termination in January 2015. In either event, it is my further understanding that the termination of the area representation relationship was without cause. This termination triggered a clause in the May 1, 2004 Agreement between WSC and WSSC which provided for the terminating party to pay the terminated party “an amount equal to the fair market value of the Terminated Party’s interest in the Agreement.” The value of WSSC, net of any subsequent earned income in 2015, was \$2,592,526. See Schedule 2A. This value was determined by discounting the future cash flows expected to be generated from WSSC for the years 2015 through 2019 and then capitalizing a terminal value for WSSC as of December 31, 2020.¹ This value was then adjusted for the cash flows earned by WSSC in 2015. The 2015 through 2019 cash flows were adjusted as a result of WSSC's inability to open three additional franchises in 2014 due to the failure of WSC to properly register its Southern California Franchise Disclosure Document with the California Department of Business Oversight. The operating cash flow generated by WSSC in 2014 was \$379,079. This amount was adjusted to \$413,486 to reflect the expected income to be generated by the additional franchisees.² These adjustments to WSSC’s profit and loss statements are shown on Schedule 2B.

The value of WSSC is also consistent with contemporaneous valuations and offers to purchase WSSC, BD SoCal and BD Fine that were performed or made in 2014 and 2015. For example, CPA Gregory Barton calculated a value for WSSC of approximately \$3,200,000 as of August 2015.³ In addition, WSC attempted to purchase WSSC, BD SoCal and BD Fine in July 2015 for approximately \$12,700,000. Also, the Mentor Group valued BD SoCal and BD Fine (excluding WSSC) for \$9,800,000 in September 2014. Separately, Vincent and Nicholas Gattuso made an \$11 million cash offer for BD SoCal and BD Fine (excluding WSSC) in August 2015. Subtracting these amounts from WSC’s offer of \$12,500,000 implies a value of WSSC of \$1,500,000 or \$2,700,000. See Schedule 2C.

¹ The discount rate used is 18% and the capitalization rate is 16%. These rates, as well as growth rates and the general methodology utilized are also consistent with a contemporaneous valuation of BD Fine and BD SoCal that was performed in September 2014 by the Mentor Group.

² In addition, the failure to open the three additional franchises resulted in the loss of half of the initial franchise fee, or \$37,500,

³ Mr. Barton’s analysis of WSSC excluded franchisee fee revenue for franchises owned by Bennion and Deville companies. Mr. Barton subsequently restated WSSC profit and loss statements to include this source of revenue. These recasted profit and loss statements are summarized on Schedule 2B and Mr. Barton’s recasted valuation conclusion (using the recast data) is summarized on Schedule 2D.

Letter to Messrs. Mulcahy and Adams
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Settlement Amounts Improperly Withheld from WSSC

It is my understanding that WSC has improperly withheld WSSC's interest in settlements related to three franchisees no longer in operation. The Browne settlement was obtained in Bankruptcy Court and WSSC's interest was \$8,469. King and Kirksey have been making payments to WSC. The present value of WSSC's interest in the King and Kirksey payments are \$16,690 and \$40,878, respectively. See Schedules 3 and 4.

Past Losses and Future Lease Obligations – BD SoCal

It is my understanding that WSC induced WSSC to open two offices in the San Diego area – Encinitas and Little Italy. These offices have never been profitable and are expected to continue to lose money in the future. Damages consist of lost income through 2016 and the present value of their lease obligations through the end of their lease period.⁴ See Schedules 5, 6 and 7.

Net Unreimbursed Windermere Watch Expenses

It is my understanding that WSC has not fully reimbursed WSSC for expenses associated with WSSC's efforts to remedy the Windermere brand damage occasioned by the "Windermere Watch" websites from 2013 through 2015. The net amount of unreimbursed Windermere Watch expenses are \$146,954 and are summarized on Schedule 8.

II. DOCUMENTS CONSIDERED

A list of the documents I have considered in this matter is attached as Exhibit A.

III. QUALIFICATIONS OF PETER D. WROBEL, CPA/ABV, CFE

I am a Managing Director with Berkeley Research Group. A current copy of my resume is attached as Exhibit B. I have not written any publications in the last ten years.

IV. COMPENSATION

My hourly billing rate for deposition testimony is \$595 per hour.

⁴ The two offices are expected to continue to lose money in the future. The amount of these losses (which are projected and shown on Schedule 6) are expected to exceed their lease obligations (shown on Schedule 7). Accordingly, BD SoCal could mitigate their losses by closing both offices and continuing to make payments to their landlords.

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V. **PRIOR EXPERT TESTIMONY**

A listing of all cases in which I have testified as an expert at trial or in deposition within the preceding four years is attached as Exhibit C.

This report presents my opinions. It is my understanding that I may receive additional information. The opinions in this report are subject to modification based on additional facts that may surface from now through trial. This report is prepared and issued to counsel for Plaintiffs and Counter-Defendants solely for use in the above-referenced matter in connection with the representation of the Plaintiffs and Counter-Defendants.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. Wrobel', with a stylized, flowing script.

Peter D. Wrobel, CPA/ABV, CFE
Managing Director

PDW:com

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Windermere Services Southern California ("WSSC")
Bennion & DeVille Fine Homes SoCal, Inc. ("BD SoCal")****Summary of Damages and Valuation of WSSC**

Net Value of WSSC as of January 2015		\$2,592,526
Settlement Amounts Improperly Withheld from WSSC		
King Settlement	\$16,690	
Kirksey Settlement	40,878	
Browne Settlement	8,469	
Subtotal		66,037
Past Losses and Future Lease Obligations - BD SoCal		
Encintas Office	724,375	
Little Italy Office	707,107	
Subtotal		1,431,482
Net Unreimbursed Windermere Watch Expenses		146,954
Total Damages and Value of WSSC		<u><u>\$4,236,999</u></u>

Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company

Windermere Services Southern California ("WSSC")

Discounted Operating Cash Flows
Valuation as of January 2015

Date	Annual Operating Cash Flow	Initial Franchise Fees	Annual Operating Cash Flow + Franchise Fees	Present Value of Annual Operating Cash Flow + Franchise Fees	Terminal Cash Flow	Present Value of Terminal Cash Flow	Value of WSSC
12/31/15	\$413,486	\$37,500	\$450,986	\$415,166			
12/31/16	434,160	0	434,160	338,709			
12/31/17	455,868	0	455,868	301,394			
12/31/18	478,661	0	478,661	268,189			
12/31/19	502,594	0	502,594	238,643			
12/31/20	527,724	0	527,724		\$3,298,275	\$1,327,198	
				<u>\$1,562,101</u>		<u>\$1,327,198</u>	
Value of WSSC							\$2,889,299
Less: Net Income 2015							<u>(296,773)</u>
Damages							<u>\$2,592,526</u>

Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company

Windermere Services Southern California ("WSSC")
Profit and Loss Statements (Recasted)
For the Years Ended December 31,

	2013		2014		2015	
Number of Branch Offices	30		33			
Revenue Growth			-3.4%		0.5%	
Revenue						
B&D Fine Homes CV & Coast Franchise Fee	\$390,000	78.7%	\$365,000	76.3%	\$270,000	56.2%
Third Party Revenue	105,260	21.3%	113,213	23.7%	210,756	43.8%
	<u>495,260</u>	100.0%	<u>478,213</u>	100.0%	<u>480,756</u>	100.0%
Expenses						
Advertising	2,289	0.5%	(115)	0.0%	(240)	0.0%
Bank Charges	351	0.1%	300	0.1%	300	0.1%
Business Taxes		0.0%	800	0.2%	1,161	0.2%
Dues and Subscriptions	260	0.1%	50	0.0%	50	0.0%
Legal and Professional Fees	14,533	2.9%	12,304	2.6%	88,211	18.3%
Meals and Entertainment		0.0%	370	0.1%	5,832	1.2%
Miscellaneous	597	0.1%	372	0.1%	43	0.0%
Office Salaries	52,650	10.6%	52,650	11.0%	52,650	11.0%
Office Expense		0.0%	123	0.0%	4	0.0%
Payroll Taxes	5,358	1.1%	5,358	1.1%	5,358	1.1%
Payroll Service Fees	2,634	0.5%	682	0.1%	682	0.1%
Postage	797	0.2%	947	0.2%	868	0.2%
Rent	14,953	3.0%	14,953	3.1%	14,953	3.1%
Telephone	4,512	0.9%	4,905	1.0%	3,184	0.7%
Travel	2,574	0.5%	5,462	1.1%	10,662	2.2%
Vehicle Expenses		0.0%	23	0.0%		0.0%
Subtotal	<u>101,508</u>	20.5%	<u>99,184</u>	20.7%	<u>183,718</u>	38.2%
Income from Operations	393,752	79.5%	379,029	79.3%	297,038	61.8%
Other Income (Expenses)						
Owners' salaries & payroll tax	(129,180)	-26.1%	(20,000)	-4.2%		0.0%
Depreciation & Amortization	(2,295)	-0.5%	(266)	-0.1%	(265)	-0.1%
Interest Income	30,095	6.1%		0.0%		0.0%
Interest Expense		0.0%		0.0%		0.0%
Subtotal	<u>(101,380)</u>	-20.5%	<u>(20,266)</u>	-4.2%	<u>(265)</u>	-0.1%
Net Income (Loss)	<u>\$292,372</u>	59.0%	<u>\$358,763</u>	75.0%	<u>\$296,773</u>	61.7%

Operating Cash Flow	\$379,029
Average Annual Operating Cash Flow per Branch Office	\$11,486
WSSC share of Initial Franchise Fee [(\$25,000 * 3) / 2]	\$37,500
Increase in Annual Operating Cash Flow with Three Additional Branch Offices	34,457
Adjusted Operating Cash Flow	<u>\$413,486</u>

WSSC Average Annual Net Revenue	
2014	478,213
January through July 2015	<u>280,441</u>
Total / Numerator	758,654
Denominator	1.58
WSSC Average Annual Net Revenue	<u>\$479,150</u>

Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company

Windermere Services Southern California ("WSSC")
Bennion & Deville Fine Homes, Inc. ("BD Fine")
Bennion & Deville Fine Homes SoCal, Inc. ("BD SoCal")
Alternative Contemporaneous Valuations and Purchase Offers
2014 and 2015

Value of WSSC**"Potential WSSC Franchise Fee Valuation" - Recasted Values (August 2015)**\$3,243,662**Value of WSSC, BD SoCal and BD Fine****"Letter of Intent" from Jill Jacobi Wood (July 2015)**

Cash				\$7,903,502	
Assumption of Liabilities					
Coast Note		\$230,530			
Coachella Valley Note		219,701			
Aggregate Franchise Fees		646,267			
				<u>1,096,498</u>	
Discounted Note Payable (discounted at 10%)					
8/15/2016	900,000	814,188			
8/15/2017	900,000	740,220			
8/15/2018	900,000	672,971			
8/15/2019	1,400,000	951,738			
				<u>3,179,117</u>	
Discounted Salaries (discounted at 10%)					
2016	100,000	91,534			
2017	100,000	83,218			
2018	100,000	75,658			
2019	100,000	68,784			
				<u>319,194</u>	
Value of WSSC, BD SoCal and BD Fine					<u><u>\$12,498,311</u></u> [A]

Value of BD Fine and BD SoCal

Mentor Group (September 2014)	9,800,000	[B]	
Implied Value of WSSC [A] - [B]			<u><u>\$2,698,311</u></u>
Gottuso Offer (August 2015)	11,000,000	[C]	
Implied Value of WSSC [A] - [C]			<u><u>\$1,498,311</u></u>

Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company**Windermere Services Southern California ("WSSC")
Alternative Contemporaneous Valuations****"Potential WSSC Franchise Fee Valuation"
Prepared by Greg Barton, CPA - September 2015
Adjusted to Reflect Recasted Profit and Loss Statements**

	Barton	Recasted
WSSC Avg Annual Net Revenue (2014 & 2015 through July)	\$137,319	\$479,150
Historical Growth Rate	7.32%	7.32%
Discount Rate	18.00%	18.00%
Total Future Earnings	1,926,020	6,720,366
Present Value of Today's Earnings	929,611	3,243,662
Potential Business Value based on Assumptions above:	\$929,611	\$3,243,662

Year	Barton Original		With Recasted Data	
	Future Earnings	Discounted Value	Future Earnings	Discounted Value
1	\$137,319	\$137,319	\$479,150	\$479,150
2	147,368	124,888	514,213	435,774
3	158,152	113,582	551,842	396,324
4	169,725	103,300	592,225	360,446
5	182,146	93,949	635,563	327,816
6	195,475	85,444	682,072	298,140
7	209,779	77,709	731,985	271,150
8	225,131	70,674	785,551	246,604
9	241,605	64,276	843,036	224,280
10	259,285	58,457	904,728	203,976
	\$1,925,985	\$929,599	\$6,720,366	\$3,243,662
<i>Rounding</i>	35	12		
	\$1,926,020	\$929,611	\$6,720,366	\$3,243,662

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Windermere Services Southern California ("WSSC")****Amounts Owed to WSSC From King Settlement
2015 - 2019**

Period Start	Period End	Payment	Present Value of Payment
11/15/15	08/31/16	\$4,332	\$4,332
09/01/16	09/30/16	1,083	1,083
10/01/16	10/31/16	1,083	1,083
11/01/16	11/30/16	1,083	1,083
12/01/16	12/31/16	1,083	1,083
01/01/17	01/31/17	1,083	1,075
02/01/17	02/28/17	1,083	1,059
03/01/17	03/31/17	1,083	1,044
04/01/17	04/30/17	1,083	1,028
05/01/17	05/31/17	1,083	1,012
06/01/17	06/30/17	1,083	997
07/01/17	07/31/17	1,083	982
08/01/17	08/31/17	1,083	967
09/01/17	09/30/17	1,083	952
10/01/17	10/31/17	1,083	938
11/01/17	11/30/17	1,083	924
12/01/17	12/31/17	1,083	910
01/01/18	01/31/18	1,083	896
02/01/18	02/28/18	1,083	883
03/01/18	03/31/18	1,083	870
04/01/18	04/30/18	1,083	857
05/01/18	05/31/18	1,083	844
06/01/18	06/30/18	1,083	831
07/01/18	07/31/18	1,083	818
08/01/18	08/31/18	1,083	806
09/01/18	09/30/18	1,083	794
10/01/18	10/31/18	1,083	782
11/01/18	11/30/18	1,083	770
12/01/18	12/31/18	1,083	758
01/01/19	01/31/19	1,083	747
02/01/19	02/28/19	1,083	736
03/01/19	03/31/19	1,083	725
04/01/19	04/30/19	1,083	714
		\$38,987	33,381

Percentage of Settlement Payments to WSSC: 50%

Amounts Owed to WSSC: \$16,690

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Windermere Services Southern California ("WSSC")****Amounts Owed to WSSC From Kirksey Settlement
2015 - 2020**

Period Start	Period End	Payment	Present Value of Payment
11/09/15	08/31/16	\$14,187	\$14,187
09/01/16	09/30/16	1,773	1,773
10/01/16	10/31/16	1,773	1,773
11/01/16	11/30/16	1,773	1,773
12/01/16	12/31/16	1,773	1,773
01/01/17	01/31/17	1,773	1,760
02/01/17	02/28/17	1,773	1,734
03/01/17	03/31/17	1,773	1,709
04/01/17	04/30/17	1,773	1,683
05/01/17	05/31/17	1,773	1,658
06/01/17	06/30/17	1,773	1,633
07/01/17	07/31/17	1,773	1,608
08/01/17	08/31/17	1,773	1,583
09/01/17	09/30/17	1,773	1,559
10/01/17	10/31/17	1,773	1,536
11/01/17	11/30/17	1,773	1,513
12/01/17	12/31/17	1,773	1,490
01/01/18	01/31/18	1,773	1,467
02/01/18	02/28/18	1,773	1,445
03/01/18	03/31/18	1,773	1,424
04/01/18	04/30/18	1,773	1,403
05/01/18	05/31/18	1,773	1,382
06/01/18	06/30/18	1,773	1,361
07/01/18	07/31/18	1,773	1,340
08/01/18	08/31/18	1,773	1,320
09/01/18	09/30/18	1,773	1,300
10/01/18	10/31/18	1,773	1,280
11/01/18	11/30/18	1,773	1,261
12/01/18	12/31/18	1,773	1,242
01/01/19	01/31/19	1,773	1,223
02/01/19	02/28/19	1,773	1,205
03/01/19	03/31/19	1,773	1,187
04/01/19	04/30/19	1,773	1,169
05/01/19	05/31/19	1,773	1,152
06/01/19	06/30/19	1,773	1,134
07/01/19	07/31/19	1,773	1,117
08/01/19	08/31/19	1,773	1,100
09/01/19	09/30/19	1,773	1,083
10/01/19	10/31/19	1,773	1,067
11/01/19	11/30/19	1,773	1,051
12/01/19	12/31/19	1,773	1,035
01/01/20	01/31/20	1,773	1,019
02/01/20	02/29/20	1,773	1,004
03/01/20	03/31/20	1,773	989
04/01/20	04/30/20	1,773	974
05/01/20	05/31/20	1,773	959
06/01/20	06/30/20	1,773	945
07/01/20	07/31/20	1,773	930
08/01/20	08/31/20	1,773	916
09/01/20	09/30/20	1,773	902
10/01/20	10/31/20	1,773	889
11/01/20	11/30/20	1,773	875
12/01/20	12/31/20	1,773	862
		\$106,400	\$81,757

Percentage of Settlement Payments to WSSC: 50%Amounts Owed to WSSC: \$40,878

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Bennion & Deville Fine Homes SoCal, Inc.**

**Past Losses and Future Lease Costs to be
Incurred by Encinitas and Little Italy Offices
2014-2019**

Period Start	Period End	Period	Period Loss/Lease Cost	Present Value of Period Loss/Lease Cost
<i>Encinitas [1]</i>				
12/01/14	12/31/14	0.08	\$28,129	\$28,129
01/01/15	12/31/15	1.00	174,688	174,688
01/01/16	12/31/16	1.00	159,062	159,062
01/01/17	12/31/17	1.00	127,760	126,505
01/01/18	12/31/18	1.00	127,760	124,027
01/01/19	11/30/19	0.92	117,539	111,963
		5.00	734,939	724,375
<i>Little Italy [2]</i>				
06/02/14	12/31/14	0.58	140,003	140,003
01/01/15	12/31/15	1.00	241,681	241,681
01/01/16	12/31/16	1.00	272,377	272,377
01/01/17	06/01/17	0.42	53,265	53,047
		3.00	707,325	707,107
			<u>\$1,442,264</u>	<u>\$1,431,482</u>

Note:

[1] The Encinitas lease is assumed to expire on December 1, 2019.

[2] The Little Italy lease is assumed to expire on June 1, 2017.

Future Lease costs shaded.

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Bennion & Deville Fine Homes SoCal, Inc.****Losses Incurred Related to the Little Italy and Encinitas Locations**

Year	Little Italy	Encinitas
2014	\$140,003	\$28,129
2015	241,681	174,688
2016 [1]	272,377	159,062
2017	114,398	159,062
2018		159,062
2019		146,337

Note:

[1] Annualized assuming that 60.2% of the losses were incurred in the first 8 months of 2016.

Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company

Bennion & Deville Fine Homes SoCal, Inc.

Profit and Loss Statements for Little Italy and Encinitas Locations
2014 - 2016

	Little Italy						Encinitas			
	2014	Jan - Aug 2015	% of Total	Sep - Dec 2015	% of Total	2015	1/1 - 8/31/16	2014	2015	1/1 - 8/31/16
Income										
Agent Commissions	\$52,002	\$120,070	62.2%	\$72,871	37.8%	\$192,941	\$133,217	\$0	\$97,304	\$95,547
E&O Income										1,350
Uncategorized Income										250
Total Income	52,002	120,070	62.2%	72,871	37.8%	192,941	133,217	0	97,304	97,147
Expense										
Advertising	16,202	13,549	66.0%	6,974	34.0%	20,523	8,911		1,383	(25)
Alarm/Security	649	324	75.0%	108	25.0%	432	362		737	324
Arena to Mare - Fuel/Maint	2,228									
Auto Lease	422	787	23.5%	2,557	76.5%	3,344	2,595		0	0
Auto Expense	126	244	90.5%	26	9.5%	270	292		0	0
Auto Fuel & Maint	2,104	2,032	75.9%	647	24.1%	2,679	1,196		3,174	331
Bank Service Charges	121	176	70.7%	73	29.3%	249	100	595	0	0
Consulting				833		833				
Continuing Education							40			
Contributions/Donations	270	660	55.5%	530	44.5%	1,190	583		190	310
Dues/Memberships/Subscriptions	528	466	57.8%	340	42.2%	807	1,705		231	0
Equipment Expense	3,097	2,814	55.4%	2,270	44.6%	5,084	1,692		6,846	3,447
Insurance	6,698	12,029	69.2%	5,365	30.8%	17,394	11,596		0	0
Interest	6,512	6,923	86.1%	1,116	13.9%	8,039	2,672	1,135	12,194	7,178
License/Permits	4	(262)	165.6%	104	-65.6%	(158)	711		0	36
Meals & Entertainment	721	245	25.8%	705	74.2%	950	959		270	10
Moving/Storage	40	479	63.2%	279	36.8%	758	430		1,152	0
Office Cleaning	2,304	1,758	64.2%	980	35.8%	2,738	1,880		2,250	1,800
Office Expenses	4,528	2,199	41.4%	3,119	58.6%	5,317	3,574	503	5,191	877
Office Supplies	2,873	1,257	71.7%	497	28.3%	1,754	1,445		3,058	973
Payroll	41,571	109,166	66.6%	54,845	33.4%	164,011	108,045	16,525	101,505	75,000
Postage/Shipping	932	1,463	68.3%	679	31.7%	2,142	1,814		1,074	1,493
Printing	6,008	5,948	67.8%	2,824	32.2%	8,772	7,975		1,599	1,286
Professional Fees	6,109	10,083	21.2%	37,562	78.8%	47,645	38,027		7,369	3,902
Promotion/Events	950	1,245	86.5%	194	13.5%	1,440	149		0	
Rent	70,103	76,062	66.8%	37,870	33.2%	113,932	84,667	8,850	107,873	85,294
Repairs & Maint.	136	382	67.6%	183	32.4%	565	22	190	935	35
Sales & Use Tax	61	63	66.7%	31	33.3%	94	8		0	
Signage	3,543	432	34.4%	823	65.6%	1,255	3,986		1,023	3,447
Taxes	0	985	67.1%	483	32.9%	1,468	1,017		0	
Telephone	5,804	5,799	66.5%	2,925	33.5%	8,724	5,840	330	7,827	5,060
Travel	2,214	1,418	51.9%	1,314	48.1%	2,732	2,818		1,395	
Utilities	2,849	2,496	62.2%	1,519	37.8%	4,014	2,059		2,993	2,117
Windermere Services SoCal	2,300	4,325	76.9%	1,300	23.1%	5,625	1,725			
Total Expense	192,004	265,548	61.1%	169,073	38.9%	434,621	297,172	28,129	271,992	192,894
Net Ordinary Income	(\$140,003)	(\$145,478)	60.2%	(\$96,202)	39.8%	(\$241,681)	(\$163,955)	(\$28,129)	(\$174,688)	(\$95,747)

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Windermere Services Southern California ("WSSC")****Unreimbursed Windermere Watch Expenses
2013 - 2015**

Year	Expenses	Credits	Net Expenses
2013	\$94,113	\$64,113	\$30,000
2014	85,999	21,167	64,832
2015	<u>52,122</u>	<u></u>	<u>52,122</u>
	<u>\$232,234</u>	<u>\$85,280</u>	<u>\$146,954</u>

Exhibit A

Documents and Information Considered

- WSC 1690 – 1727
- First Amended Complaint
- First Amended Counterclaim
- B&D0069221 – 0069393
- B&D0035688 – 0035689
- B&D0042551 – 0042552
- B&D0051403 – 0051466
- B&D0051468 – 0051485
- B&D0051487 – 0051577
- B&D0051581 – 0051584
- B&D0065246 – 0065248
- B&D0068516 – 0068518
- B&D0068539 – 0068889
- B&D0038816 – 0038817
- B&D0038957 – 0038958
- B&D0051578 – 0051580
- B&D0068896 – 0068897
- B&D0038795 – 0038796
- B&D0069414 – 0069529
- B&D0069546 – 0069710
- WSC055178 – 055440
- WSC055463 – 055562
- WSC0057265 – 0057266
- WSC0057269 – 0057270
- August 18, 2015 Purchase and Sale Agreement
- May 2015 Letter of Intent
- B&D0000906 – 0000907
- B&D0004639 – 0004656
- September 29, 2014 Appraisal prepared by the Mentor Group
- Windermere Services Southern California, Inc. recast financial statements
- May 1, 2014 email from Patrick Robinson to selinab@windermere.com
- Copy of Coast Tech Costs.xlsx
- Copy of CV Tech Costs.xlsx
- Summary of Windermere Watch Expenses
- WSC057572 – 057630
- WSC057658 – 057673
- Lease documents related to 265 W. Washington St.
- 2015 - August 2016 Profit and Loss Statements for Encinitas, Hillcrest and Little Italy locations
- WSC 1071 – 1075
- WSC 13816 – 13818
- WSC040949 – 040950
- Exhibit 137 (B&D Calculation of Total Owed)
- B&D0003410
- WSC044862 – 044863
- 2014 – 2015 Windermere Real Estate Franchise Disclosure Documents
- WSC025516 – 025534

Exhibit B

Peter D. Wrobel, CPA/ABV, CFE

Peter D. Wrobel is a Managing Director with Berkeley Research Group (“BRG”). With more than twenty years of forensic accounting and business valuation experience, Mr. Wrobel has testified as an expert in both Federal and State courts in cases involving business valuation, fraud, breach of contract, wrongful termination, and personal injury matters. He specializes in damage determination; statistical, economic and cost analysis; and mathematical modeling and database development. He has extensive experience in developing trial graphics and other exhibits.

Prior to BRG he was a Director of LECG LLC and Navigant Consulting, Inc. and a Managing Director of FTI Consulting, Inc. in Los Angeles. Prior to joining FTI Consulting, Mr. Wrobel was Senior Partner of Simpson LLP. Most of this work involved determining and analyzing damages. Prior to the formation of Simpson LLP, he was a Senior Manager in the Litigation Services practice in the Los Angeles office of Coopers & Lybrand (now known as PricewaterhouseCoopers LLP).

Mr. Wrobel holds an MBA with a concentration in Accounting from the University of Southern California and a BA and MA in History from UCLA. He is a Certified Public Accountant, and a Certified Fraud Examiner. Mr. Wrobel also holds the American Institute of Certified Public Accountants’ Accreditation in Business Valuation. Mr. Wrobel is a member of the American Institute of Certified Public Accountants and the Association of Certified Fraud Examiners.

Mr. Wrobel has participated in and taught various professional courses for the American Institute of Certified Public Accountants, the California Society of Certified Public Accountants and the Gould School of Law at the University of Southern California.

Exhibit C

Prior Expert Testimony of Peter D. Wrobel, CPA/ABV, CFE

09/12 *Jeffrey Nordella, MD v. Blue Cross of California*
04/13 [BC 444364] California Superior Court, Los Angeles County
(deposition and trial testimony)
10/12 *Richardson & Patel LLP v. David Coloris, Graham Phillips, et al. and related matters*
[BC 39259] California Superior Court, Los Angeles County
(deposition testimony)
10/12 *Artis Knox v. Goodwill Industries of Southern California, et al.*
[BC 450967] California Superior Court, Los Angeles County
(deposition testimony)
10/12 *Steven Rodriguez v. Hermosa Beach Chamber of Commerce, et al.*
[YC 064185] California Superior Court, Los Angeles County
(deposition testimony)
01/13 *Schlumberger Technology Corporation v. East Charleston, Inc., et al.*
[CV 11-02587 LHK] United States District Court, Northern District of California
(deposition testimony)
01/13 *Randy and Lisa Herman v. Shijin Kim*
[BC 462962] California Superior Court, Los Angeles County
(deposition testimony)
02/13 *Kathryn Johnston, et al. v. Pacific Hills Treatment Centers, Inc., et al.*
[30-2010-00429819] California Superior Court, Orange Country
(deposition testimony)
02/13 *Palm Springs Pump, Inc. v. Peerless Insurance Company, et al.*
04/13 [INC 1109263] California Superior Court, Riverside-Inyo County
(deposition and trial testimony)
03/13 *SME Consolidated, Ltd. v. Sweet People Apparel, Inc.*
[13 130 Y] American Arbitration Association
(arbitration testimony)
06/13 *Dylan Ridgel v. United States of America, et al.*
[SACV 12-00071 JVS (MLGx)] United States District Court, Central District of California
(deposition testimony)
07/13 *Ronald Nelson, Jr. v. BNSF Railway Company, et al.*
[RG12644175] California Superior Court, Alameda County
(deposition testimony)
08/13 *Delton R. Fair v. BNSF Railway Company*
[11 CECG04269] California Superior Court, Fresno County
(deposition testimony)
10/13 *Charles Henley v. Union Pacific Railroad Company*
[RG 12633325] California Superior Court, Alameda County
(deposition testimony)
10/13 *Jennifer Anderson v. City of Torrance, et al.*
[YC066843] California Superior Court, Los Angeles County
(deposition testimony)

12/13 *Martha Aboulafia, et al. v. GACN, Inc., et al.*
[BC 469940] California Superior Court, Los Angeles County
(trial testimony)

01/14 *Lorie Valero v. City of Placentia, et al.*
[00513403] California Superior Court, Orange County
(deposition testimony)

02/14 *Estella Butler and Phillip Fikes v. Elsinore Valley Municipal Water District, et al.*
[5:12-cv-01900-PSG-OP] United States District Court, Central District of California
(deposition testimony)

02/14 *Wang v. Eden Rock, et al.*
[72 115 00021 12 HIIB] American Arbitration Association
(arbitration testimony)

02/14 *Onolia Rodriguez v. Caliente Farms, et al.*
[] California Superior Court, Los Angeles County
(deposition testimony)

03/14 *Kyle Brown v. Du Puy Mitek, Inc., et al.*
[BC 494993] California Superior Court, Los Angeles County
(deposition testimony)

03/14 *Lexjet Corporation v. Breathing Color*
[8:11-cv-02828-JSM-TBM] United States District Court, Middle District of Florida, Tampa Division
(deposition testimony)

04/14 *Debra Votta v. Red Alinsod, MD, et al.*

05/14 [30-2009-00323060-CU-PL-CJC] California Superior Court, Orange County
(deposition and trial testimony)

04/14 *Jeremiah J. Kerneen v. Wham-O, Inc., Frank Smith, et al.*

05/14 [72 160 00762 13 JOG3] American Arbitration Association
(deposition and arbitration testimony)

05/14 *Bhikhubhai C. Patel v. Clocktower Inn, Inc., et al. and related actions*

07/14 [YC067782] California Superior Court, Los Angeles County
(deposition and arbitration testimony)

06/14 *Crystal Thomas v. Union Pacific Railroad Company*
[12CECG02012] California Superior Court, Fresno County
(deposition testimony)

06/14 *Prowess Inc. v. Siemens Medical Solutions USA, Inc.*
[1100072826] JAMS Arbitration, County of San Francisco
(deposition testimony)

06/14 *Estate of Arturo Cabrales, et al. v. County of Los Angeles*
[ED CV 12-01900 PSG (OPx)] United States District Court, Central District of California
(deposition testimony)

07/14 *Pirooze Khebreh v. Scottsdale Indemnity Company*
[BS 147860] California Superior Court, Los Angeles County
(deposition testimony)

08/14 *DAVRO LLC and David Weisman v. Kais Almarzouk, et al. and related actions*

09/14 [BC 481423] California Superior Court, Los Angeles County
(deposition and trial testimony)

08/14 *Jazmyne Gurrola, et al. v. Los Angeles Unified School District, et al.*
[BC 501416] California Superior Court, Los Angeles County
(deposition testimony)

08/14 *Telesys Communications Corporation v. Inn Room Video, Inc., et al.*
[C12-00109] California Superior Court, Contra Costa County
(deposition testimony)

08/14 *Property ID Corporation v. Geoassurance, Inc., et al.*

09/14 [NC056013] California Superior Court, Los Angeles County
(deposition and trial testimony)

09/14 *Charta Group, Inc. v. Tony Sara, et al.*
[YC 060343] California Superior Court, Los Angeles County
(deposition testimony)

09/14 *Detta Ruth Cavanagh v. Eric Pfeifer*
[30-2011 00531828] California Superior Court, Los Angeles County
(deposition testimony)

10/14 *Izek Shomof v. Naty Saidoff, et al.*

11/14 [BC 499518] California Superior Court, Los Angeles County

12/14 (deposition and trial testimony)

12/14 *Gladys Vallone v. Taco Bell Corp., et al.*
[30-2013-00691532] California Superior Court, Orange County
(deposition testimony)

12/14 *Perry Mack, Jr., v. Union Pacific Railroad Company*

01/15 [NC058492] California Superior Court, Los Angeles County
(deposition and trial testimony)

02/15 *Mike Johar, et al. v. Richard Kelly, et al.*

03/15 [30-2013-00626770] California Superior Court, Orange County
(deposition and trial testimony)

02/15 *Corbin Northridge LP v. HBC Solutions, Inc., The Harris Corporation, Inc.*
[2:14-CV-02714-RGK-JC] United States District Court, Central Division California, Western Division
(deposition testimony)

02/15 *Jeffrey Boxer v. Christyne Buteyn, et al.*

03/15 [BC 522433] California Superior Court, Los Angeles County
(deposition and trial testimony)

04/15 *Burley Tompkins v. Union Pacific Railroad Company*
[2:12-CV-01481-JAM-GGH] United States District Court, Eastern District of California – Sacramento
Division]
(deposition testimony)

05/15 *Joseph E. Blodgett v. Allstate Insurance Company*
[UIM Arbitration]
(deposition testimony)

05/15 *Brooke Harman v. Target Corporation, et al.*
[BC 489100] California Superior Court, Los Angeles County
(deposition testimony)

05/15 *Jeffrey Young v. Union Pacific Railroad Company*
[BC 54293] California Superior Court, Los Angeles County
(deposition testimony)

06/15 *Jose Sanguino v. George Benjamin, et al.*
[BC 509234] California Superior Court, Los Angeles County
(deposition testimony)

06/15 *Monarch Medical Group, Inc. v. Stacia Green*
[SC 122948] California Superior Court, Los Angeles County – West District
(deposition testimony)

07/15 *In the Matter of the Patton Family Lead Trust*
[P079997] California Superior Court, Ventura County
(deposition testimony)

08/15 *Cecilia Diego v. Pilgrim United Church of Christ*
[37-2011-00099381-CU-OE-CTL] California Superior Court, San Diego County
(deposition testimony)

09/15 *Silvia Gomez v. MagCo Drilling, Inc.*
[BC 534017] California Superior Court, Los Angeles County
(trial testimony)

09/15 *Jennifer Hendrickson v. Tracey Layana*
[BC514536] California Superior Court, Los Angeles County
(deposition testimony)

10/14 *Izek Shomof v. Naty Saidoff, et al.*

11/14 [BC 499518] California Superior Court, Los Angeles County

12/14 (deposition and trial testimony)

12/14 *Gladys Vallone v. Taco Bell Corp., et al.*
[30-2013-00691532] California Superior Court, Orange County
(deposition testimony)

12/14 *Perry Mack, Jr., v. Union Pacific Railroad Company*

01/15 [NC058492] California Superior Court, Los Angeles County
(deposition and trial testimony)

02/15 *Mike Johar, et al. v. Richard Kelly, et al.*

03/15 [30-2013-00626770] California Superior Court, Orange County
(deposition and trial testimony)

02/15 *Corbin Northridge LP v. HBC Solutions, Inc., The Harris Corporation, Inc.*
[2:14-CV-02714-RGK-JC] United States District Court, Central Division California, Western Division
(deposition testimony)

02/15 *Jeffrey Boxer v. Christyne Buteyn, et al.*

03/15 [BC 522433] California Superior Court, Los Angeles County
(deposition and trial testimony)

04/15 *Burley Tompkins v. Union Pacific Railroad Company*
[2:12-CV-01481-JAM-GGH] United States District Court, Eastern District of California – Sacramento
Division]
(deposition testimony)

05/15 *Joseph E. Blodgett v. Allstate Insurance Company*
[UIM Arbitration]
(deposition testimony)

05/15 *Brooke Harman v. Target Corporation, et al.*
[BC 489100] California Superior Court, Los Angeles County
(deposition testimony)

- 05/15 *Jeffrey Young v. Union Pacific Railroad Company*
[BC 54293] California Superior Court, Los Angeles County
(deposition testimony)
- 06/15 *Jose Sanguino v. George Benjamin, et al.*
[BC 509234] California Superior Court, Los Angeles County
(deposition testimony)
- 06/15 *Monarch Medical Group, Inc. v. Stacia Green*
[SC 122948] California Superior Court, Los Angeles County – West District
(deposition testimony)
- 07/15 *In the Matter of the Patton Family Lead Trust*
02/16 [P079997] California Superior Court, Ventura County
05/16 (deposition and trial testimony)
- 08/15 *Cecilia Diego v. Pilgrim United Church of Christ*
[37-2011-00099381-CU-OE-CTL] California Superior Court, San Diego County
(deposition testimony)
- 09/15 *Silvia Gomez v. MagCo Drilling, Inc.*
[BC 534017] California Superior Court, Los Angeles County
(trial testimony)
- 09/15 *Jennifer Hendrickson v. Tracey Layana*
02/16 [BC514536] California Superior Court, Los Angeles County
(deposition and trial testimony)
- 01/16 *Jose Figueroa v. United States of America*
[15-CV-00555JFW(ASx)] United States District Court, Central District of California
(deposition testimony)
- 03/16 *Ronald Farina v. Hilton Worldwide, et al.*
[BC 551918] California Superior Court, Los Angeles County
(deposition testimony)
- 04/16 *Kim Nguyen-Amour v. International Rectified Corporation, et al.*
[BC 565159] California Superior Court, Los Angeles County
(deposition testimony)
- 04/16 *Lani Gulmette, et al. v. City of Los Angeles, et al.*
[BC 523080] California Superior Court, Los Angeles County
(deposition and trial testimony)
- 05/16 *Charles and Karen Draper v. Loma Linda University Medical Center, et al.*
[CIVDS 1109299] California Superior Court, San Bernardino County
(deposition testimony)
- 05/16 *Planet Desert, Inc. v. Swajian & Swajian*
[INC 1107795] California Superior Court, Riverside County
(deposition testimony)
- 07/16 *HSV Realty Exchange LLC v. Construction Insurance Partners LLC, et al.*
[BC 530787] California Superior Court, Los Angeles County
(deposition testimony)

- 08/16 *Uisu Lai v. Sarah Seif*
 [30-2015-00779669] California Superior Court, Orange County
 (deposition testimony)
- 08/16 *Nancy Lynn v. Walmart Stores, Inc., et al.*
 [BC 539472] California Superior Court, Los Angeles County
 (deposition testimony)
- 08/16 *Shawn Bennett v. Rancho California Water District*
 [RIC 1218298] California Superior Court, Riverside County
 (deposition testimony)
- 09/16 *G.P.P., Inc. v. Guardian Protection Products, Inc.*
 [1:15-cv-00321 SKO] United States District Court, Eastern District of California
 (deposition testimony)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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

On September 16, 2016, I served document(s) described as **PLAINTIFFS AND COUNTER-DEFENDANTS' EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE** on the following person at the addresses and/or facsimile number below:

Pérez Wilson Vaughn & Feasby
John Vaughn
750 B. Street, 33rd Floor
San Diego, CA 92101
vaughn@perezwilson.com

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

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

☒ BY 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.

☐ 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.

☐ BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and processing correspondence for Federal Express. Under that practice it would be deposited

with Federal Express on that same day in the ordinary course of business for overnight delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

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

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

Executed on **September 16, 2016** at Irvine, California.

By: 
Barbara Calvert

EXHIBIT C

MULCAHY LLP

James M. Mulcahy (SBN 213547)

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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

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 5:15-CV-01921 R (KKx)

Hon. Manual L. Real

**PLAINTIFFS AND COUNTER-
DEFENDANTS' REBUTTAL
REPORT PURSUANT TO RULE 26
OF THE FEDERAL RULES OF
CIVIL PROCEDURE**

Courtroom: 8

Action Filed: September 17, 2015

Pretrial Conf.: October 3, 2016

Trial: October 18, 2016

1 TO DEFENDANT WINDERMERE REAL ESTATE SERVICES COMPANY
2 AND ITS ATTORNEYS OF RECORD:

3 Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc.
4 ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D
5 SoCal"), Windermere Services Southern California, Inc. ("Services SoCal"),
6 (collectively, "Plaintiffs") and Counter-Defendants Robert L. Bennion and Joseph
7 R. Deville (all collectively referred to as the "B&D Parties" herein), by and
8 through their undersigned attorneys, and pursuant to Rule 26 of the Federal Rules
9 of Civil Procedure and stipulation of the parties, hereby provides the following
10 Rebuttal Report:

11 1. The B&D Parties have retained Marvin Storm ("Storm") as a person
12 who may be used a trial to present evidence under Rules 702, 703 or 705 of the
13 Federal Rules of Evidence. A written rebuttal report (and supporting materials)
14 prepared by Marvin Staorm, pursuant to Federal Rules of Civil Procedure
15 26(a)(2)(B), is attached hereto, marked as "Exhibit A," and incorporated herein by
16 reference.

17 2. The B&D Parties also retain the right to utilize the testimony of any
18 expert retained by Defendant Windermere Real Estate Services Company.

19 ///

20 ///

21 ///

1 3. This disclosure is based upon information and facts now available
2 from The B&D Parties' understanding of the issues, contentions and arguments
3 The B&D Parties intend to assert at the time of trial of this matter. This disclosure
4 is without prejudice to experts, facts, issues, and contentions subsequently learned
5 or discovered.

6
7 DATED: September 30, 2016

MULCAHY LLP

8
9 By: /s/ Kevin A. Adams

Kevin A. Adams

10 *Attorneys for Plaintiffs/Counter-*
11 *Defendants Bennion & Deville Fine*
12 *Homes, Inc., Bennion & Deville Fine*
13 *Homes SoCal, Inc., Windermere*
14 *Services Southern California, Inc.,*
15 *and Counter-Defendants Robert L.*
16 *Bennion and Joseph R. Deville*
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EXHIBIT A

Bennion & Deville Fine Homes, Inc., et al. v. Windermere Real Estate Services Company, et al.
Case No. 5:15-CV-01921 R (KKx)

EXPERT WITNESS REPORT

Prepared by:
Marvin L. Storm

I have been retained by the firm of Mulcahy, LLP to provide expert testimony on behalf of Bennion & Deville Fine Homes, Inc. et al.

This report includes:

- a complete statement of all opinions I will express;
- the basis for those opinions; and
- the facts and data I considered in forming those opinions.

The following documents accompany this report and are incorporated by reference:

- My qualifications to testify as an expert, including a list of all publications I authored in the previous 10 years (Attachment 1).
- A list of all cases in which I testified as an expert by trial or deposition during the last 4 years (Attachment 2).
- A list of documents I reviewed or considered in preparing this report (Attachment 3).
- All exhibits I will use to summarize or support my testimony (Attachment 4).

I am providing services at the rate of \$425 per hour for my analysis, research, trial preparation, expert witness report preparation, and testimony.

INTRODUCTION

I have been asked by Mulcahy, LLP to express opinions related to the Expert Witness Report submitted David E. Holmes, Esq., in the case *Bennion & Deville Fine Homes, Inc., et al. v. Windermere Real Estate Services Company, et al.*, Case No. 5:15-CV-01921 R (KKx). Accordingly, this report will specifically address and respond to the following topics:

1. Provide an analysis of the customary franchise industry standards that apply to the structure of an area representative and franchisor relationship, the roles and responsibilities that are customarily delegated to an area representative, and the roles and responsibilities that are customarily maintained by the franchisor in an area representative structure;
2. Review the roles and responsibilities of a franchisor in the area representative relationship described in the Windermere Southern California Area Representative Agreement;
3. Review the roles and responsibilities of an Area Representative in the area representative relationship described in the Windermere Southern California Area Representative Agreement;
4. Determine whether Windermere Real Estate Services Company fulfilled its roles and responsibilities as a franchisor in the Windermere Southern California Area Representative Agreement for the time period September 17, 2011 to September 30, 2015;
5. Determine whether Windermere Services Southern California, Inc. fulfilled its roles and responsibilities as an area representative in the Windermere Southern California Area Representative Agreement for the time period September 17, 2011 to September 30, 2015; and
6. Directly respond to any other findings and opinions identified by Mr. Holmes.

OPINIONS

I expect to express the following expert opinions while testifying as a witness in the above-entitled case:

1. Certain opinions in David E. Holmes' report are supported only by disputed facts and are contradicted by other facts that, if found to be true, would invalidate Mr. Holmes' opinion. These are discussed in detail in the section of this report labeled "Review of David E. Holmes' Report."
2. Pursuant to industry customs and practices, the structure of an area representative agreement is a delegatory relationship between the area representative and franchisor in which the franchisor delegates certain responsibilities and the area representative undertakes these responsibilities in order to implement the franchisor's system in its territory. There are certain roles and responsibilities that the franchisor does not delegate but for which the franchisor retains direct responsibility.
 - a. Customary roles and responsibilities that are delegated by the franchisor to an area representation structure broadly include recruiting franchisees, assistance in finding and opening locations, and ongoing operational and marketing support.
 - b. Customary roles and responsibilities retained by the franchisor broadly include responsibility to maintain, develop and enhance the franchise system and operating model; collection of franchise license fees, advertising and other fees; developing marketing materials; providing technology; approving or disapproving franchisee candidates; registering the Franchise Disclosure Document; and brand and trademark defense and protection.
 - c. Although there are customary roles and responsibilities for franchisor and area representative relationships, each franchise system and situation is different and contracts are separately negotiated

between the parties. These negotiated contracts governs the relationships between the parties.

3. In this case, the franchisor delegated most of the customary roles and responsibilities to the Area Representative and retained certain customary roles and responsibilities.
 - a. The one exception to franchise industry norms, customs and standards is the function of collection and accounting for all initial and ongoing franchise license fees, administrative fees, advertising going to contributions and other amounts due under the franchise licensing agreements.
 - b. In the Area Representative Agreement Section 3, Paragraph 2, the franchisor delegated the additional duty and “responsibility to receive, collect, account for all licensing fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the Region, and to remit to WSC its share of such fees.”
4. In my opinion, the franchisor delegated substantially all of the customary industry norms and standards. The inclusion of fee collections provisions included in the duties delegated to the Area Representative, as stated in the Area Representative Agreement dated May 1, 2004, is perfectly acceptable and clearly outlined in the Agreement.
5. Pursuant to industry customs and practices, the franchisor in a franchisor - area representative relationship undertakes the following responsibilities in order to carry out its contractual duties to the area representative:
 - a. To provide a proven business model.

A proven, tested, established system together with well-conceived and standardized operating procedures are essential in providing guidance and clear guidelines, in essence a well-oiled machine, that can be deployed by the area representative to create a consistent brand experience for the customer.

b. Grow the system.

To create brand awareness by prudently recruiting new franchisees to extend the franchise brand within existing markets and into new markets. The franchisor is responsible for creating a new franchise recruiting system. In an area representative structure, the responsibility for implementing the recruiting system is delegated to the Area Representative.

c. Provide training, business advisory and an ongoing support services system.

In an area representative structure, the responsibility for implementing training, business advisory and an ongoing support services are delegated to the Area Representative.

The franchisor retains the role of troubleshooting any problems that may arise with the implementation of its system, technical difficulties with its technology or inherent functional problems or defects with its products or services.

d. Continual innovation.

A franchisor shoulders the responsibility of innovating and staying ahead of the competition by developing new and updated products, including technology, and monitoring competitors and industry trends.

e. Brand reputation management.

One of the most important roles of the franchisor is the protection of its brand and trademark. The franchisor is responsible for maintaining the overall brand reputation, awareness, and development. The primary benefit for a franchisee to join a franchise system is for the value that the brand will bring in terms of customer

awareness, brand loyalty and the ability to get, keep and grow a customer base.

6. The franchisor in this case failed to carry out all of the duties specified above. In particular, the franchisor:
 - a. Failed to provide a proven, tested and established business model when it introduced technology that didn't properly function in Southern California.
 - b. Failed in its troubleshooting role to resolve technical difficulties concerning its technology in a timely manner while assessing and continually increasing technology fees which were intended to fund the maintenance, enhancement, development and improvement of its technology.
 - c. Failed in trademark, brand and reputation management by not more aggressively pursuing a resolution to the Windermere Watch public relations crisis experienced by its franchisees.
7. Pursuant to industry customs and practices, the area representative in a franchisor - area representative relationship undertakes the following responsibilities in order to carry out its contractual duties to the franchisor and franchisee:
 - a. Recruit franchise candidates to extend the franchisor's brand.
 - b. Provide training to new franchisees.
 - c. Provide ongoing support to new and existing franchisees.
 - d. Implement the franchisor's system including technology.
 - e. Assist franchisees in advertising and marketing.
8. The Area Representative in this case either carried out or facilitated the implementation of all of the duties specified above.

FACTS AND DATA

To form the opinions listed above, I considered, among other things, the following facts and data and made the following observations. The documents from which these facts and observations are drawn are listed in Attachment 3. To the extent that I relied upon facts (such as deposition testimony) not listed below, I will identify those facts in the “Basis and Reasons for Opinions” section of this report below.

1. The Area Representative Agreement entered into by the parties includes the following relevant terms:
 - a. In the Windermere Area Representative Agreement, the parties to the agreement are Windermere Real Estate Services Company (hereafter “WSC”) and Windermere Services Southern California, Inc. (hereafter “SoCal”).
 - b. I noted that the Area Representative Agreement was dated May 1, 2004. The Area Representative Agreement is in the form of a franchise licensing agreement and in Section 2 of the agreement the franchisor, more specially the licensor WSC, “grants to Area Representative, and Area Representative here by accepts the non-exclusive right to offer Windermere licenses to real estate brokerage businesses to use the Trademark and the Windermere System in the Region in accordance with the terms of the Windermere License Agreement.”
 - c. The reference to the Windermere System in this report is defined in Section 1.7 – Windermere System. The agreement states that the Windermere System shall mean “the standards, methods, procedures, techniques, specifications and programs developed by WSC for the establishment, operation and promotion of independently owned real estate brokerage offices, as those standards, methods, procedures, techniques, specifications and

programs may be added to, changed, modified, withdrawn or otherwise revised by WSC.”

- d. In Section 3 of the Area Representative Agreement, “the Area Representative hereby assumes the responsibility for the administration and supervision of the use and display of the Trademark by licensee in the region, and of the use by them of the Windermere System in the Region and the provision of support and auxiliary services to Windermere licensees in the Region in accordance with this Agreement and the policies and guidelines enunciated from time to time by WSC. Area Representative’s responsibilities will include marketing Windermere licenses in the Region; establishing and operating a training, education and professional development program for licensees under the License Agreement and for their respective salesperson; implementing the intra-system referral program; offering Windermere marketing programs and Premier Properties Programs; making available samples of Windermere forms and listing and marketing materials; administering, collecting and remitting contributions to the Windermere Foundation; monitoring licensees’ compliance with the errors and omissions and general liability insurance requirements; and coordination of advertising and public relations.”
- e. Furthermore, the delegated responsibilities by WSC to the Area Representative include “the responsibility to receive, collect, account for all licensing fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the Region, and to remit to WSC its share of such fees. It will be Area Representative’s responsibility to monitor and see that its licensees in the Region comply with and conform to the policies and guidelines enunciated by WSC, including those pertaining to the use of the Trademark, the use and display of the Trademark in accordance with standard or authorized formats, the quality of the image projected by licensees and the nature, type and quality of the services offered by licensees.

Area Representative agrees to give prompt, courteous and efficient service, and to be governed by the highest ethical standards of fair dealing and honesty when dealing with the public and all members of the Windermere System in order to preserve and enhance the identity, reputation, quality image and goodwill built by WSC and the value of the Trademark. Area Representative will comply with all applicable and valid laws and regulations in the conduct of its business.

Area representative agrees at its expense to have and maintain during the term of this Agreement adequate personnel and resources available to market and service the Trademarks and services and administer The Windermere System in the Region in accordance with the terms and provisions of this Agreement.

WSC will provide to Area Representative initial training for its personnel and will provide servicing support in connection with the marketing, promotion and administration of the Trademark and Windermere System. Specifically, WSC will make available to Area Representative its key people to the extent necessary to assist Area Representative in carrying out its obligations as set forth in this Agreement. WSC will bear the salary costs for its personnel in connection therewith; however, travel and out of pocket expenses for WSC personnel will be reimbursed by Area Representative.”

2. I relied upon the following facts in concluding that the franchisor failed to provide a complete system to the franchisees and Area Representative for the time period September 17, 2011 to September 30, 2015. To the extent that the facts are drawn from deposition testimony, my opinion is conditioned on the accuracy of the facts that are stated in that testimony.
 - a. In Mr. Gregor’s deposition, he points out that the Windermere’s technology, which is a part of the Windermere System, didn’t work in Southern California. (Gregor, Page 37, line 23-24). I understand that the Windermere technology referenced by Mr. Gregor never worked in Southern California.

- b. In his deposition testimony, Mr. Baur outlines some of the intricacies of working with the various MLS listing services because new data sharing agreements (Baur, Page 215, line 4-6) had to be executed with each MLS listing service in order for a data service provider such as Windermere Solutions to access the various MLS databases. In order for this to happen an agreement had to be in place with each MLS. This is complicated by the fact that many MLS listing services overlapped geographical areas and each have their own peculiarities (Bauer, Page 215, Line 6). These circumstance created enormous practical and technical challenges. When new products were released, often these products or services did not work properly because of the data integration issues with the MLS listing services. Since access to the local MLS listing service is the life blood for real estate agents, when they couldn't get access to it, which happened frequently, they do become frustrated, upset and in some cases were financial impaired.
- c. Mr. Gregor further points out that the primary reason the technology products of Windermere were not working was the inability to access the California MLS listing directories. (Gregor, Page 38, line 2-4).
- d. The technology problems didn't only affect existing franchisees but also each new franchisee that opened a location which caused an immediate loss of creditability. (Gregor, Page 37, line 23-24; line 9-13). I understand this to be true prior to and throughout the September 17, 2017 to September 30, 2015 period.
- e. Mr. Lee, a Windermere franchisee, complained that the technology didn't work because the real estate listings didn't syndicate properly. (Gregor, Page 48, line 15; Page 2-5).
- f. The technology issue was an ongoing problem and a contributing cause for a number of franchisees leaving the Windermere franchise system, including but not limited to:

-Santa Barbara (Gregor, Page 67, line 23-24)

-Rancho Cucamonga/Ontario (Gregor, Page 68, line 5, 14-15, 23)

-Los Angeles (Gregor, Page 69, Line 14, 23)

-Lake Arrowhead (Gregor, Page 70, Line 14-15)

-Burbank (Gregor, Page 71, Line 7, 15)

- g. Even though its technology was having ongoing issues, the franchisor continued to increase the technology fees despite the fact that portions of the Windermere technology didn't work properly. This led to franchisees constantly complaining about the technology not working properly yet still being burdened with the requirement to pay technology fees that continued to increase over time. (Gregor, Page 45, line 19-22; Page 68, line 25; Page 68, line 1). I understand that these issues occurred prior to and during the September 17, 2011 to September 30, 2015 time period.
 - h. One of the reasons given in explaining to him why technology issues weren't being addressed by Windermere was the cost of making modifications for one (each) owner. (Gregor, Page 72, Line 17-20; Page 73, line 11-12).
 - i. The quality of the Windermere technology was an issue with the agents, agents' clients through their agent, office managers, and managing brokers. (Forsberg, Page 88, line 25; Page 89; Page 1-2).
 - j. "...over time -- over time we discovered -- as the tech fees continued to go up, that they did not speak to our market, or work in our market." (Dewille, Page 68, line 5-8). I understand this to be true prior to and throughout the September 17, 2017 to September 30, 2015 period.
3. I relied upon the following facts in concluding that the franchisor failed in its troubleshooting role to resolve technical difficulties concerning its technology in a timely manner while assessing and continually increasing technology fees which were intended to fund the maintenance,

enhancement, development and improvement of its technology. To the extent that the facts are drawn from deposition testimony, my opinion is conditioned on the accuracy of the facts that are stated in that testimony.

- a. Even though the earliest reported problems with the Windermere technology appeared as early as 2003 it continued through September 30, 2015.
(Bennion, Vo; II, Page 110, line 9)
 - b. Francine Finn, a franchisee in Southern California, complained to the franchisor about the “outlandish fees for corporate’s poorly constructed technology” (G. Wood, Page 224, line 2-3) and then she added, “Southern California is years ahead of the Northwest with programs and technology that is available for free or on an as needed basis.”
 - c. The corporate structure for Windermere Solutions is owned by the second generation Jacobi family and Long & Foster, an East Coast real estate brokerage company (Baur, Page 43, line 24-25; Page 44, line 1-3). They were the investors in the company. It is a privately funded company and as such has different corporate objectives than its sister company, Windermere Real Estate Services Company.
 - d. It is incumbent on Mr. Baur, as CEO, to produce a return on investment which requires that Windermere Solutions technology be sold widely and outside of the Windermere franchise system. (Baur, Page 120, line 24-25)
 - e. Mr. Baur reports to the board of director of Windermere Solutions.
(Baur, Page 134, line 8)
4. I relied upon the following facts in concluding that the franchisor failed in trademark, brand and reputation management by not more aggressively pursuing a resolution to the Windermere Watch public relations crisis experienced by its franchisees. To the extent that the facts are drawn from deposition testimony, my opinion is conditioned on the accuracy of the facts that are stated in that testimony.

- a. In his deposition, Mr. Wood, CEO of Windermere Real Estate Services Company, acknowledged that as CEO of a franchise, it is important to protect the brand name of Windermere. (G. Wood, Page 97, line 6-8)
- b. He also acknowledges that the Windermere Franchise Agreement in Section 4 states: "The parties recognize the importance of the protection and maintenance of the quality image reputation associated with the name Windermere Real Estate and more importantly the requirement to protect the brand." (G. Wood, Page 98, line 23-25)
- c. The issues with Mr. Kruger as eventually manifested in Windermere Watch resulted from a real estate transaction gone bad well over a decade ago. As early as 2004 postcard mailing campaigns were targeting Windermere franchisee residences in their areas. (Bennion, Page 132, 12-14)
- d. Mr. Baur, the Chief Technology Officer, was hired in September of 2012. When asked in his deposition he knew if anything about what was being done about the Windermere Watch problem, he admitted he didn't know a lot of what was going on with Windermere Watch and its website, which is understandable for someone just starting with a company, but it wasn't until late October of 2013 that a plan was submitted by Mr. Sutherland, an outside consultant, proposing a global SEO strategy to attack the Windermere Watch website's Google ranking. (Baur, Page 61, line 22-25; Page 201, line 16-17)
- e. The names and real estate numbers of all agents were taken from the California Department of Real Estate database and uploaded to the Windermere Watch website. Windermere franchisees were concerned about the public perception of their names being listed on the website. Ms. Peterson was very upset by having her name on the Windermere Watch website and sent an email to Mr. Fanning which in part reads, "As a largely unknown in our marketplace, we don't want the public's first impression to be that of Windermere Watch. Accordingly, we very much appreciate whatever you can do from

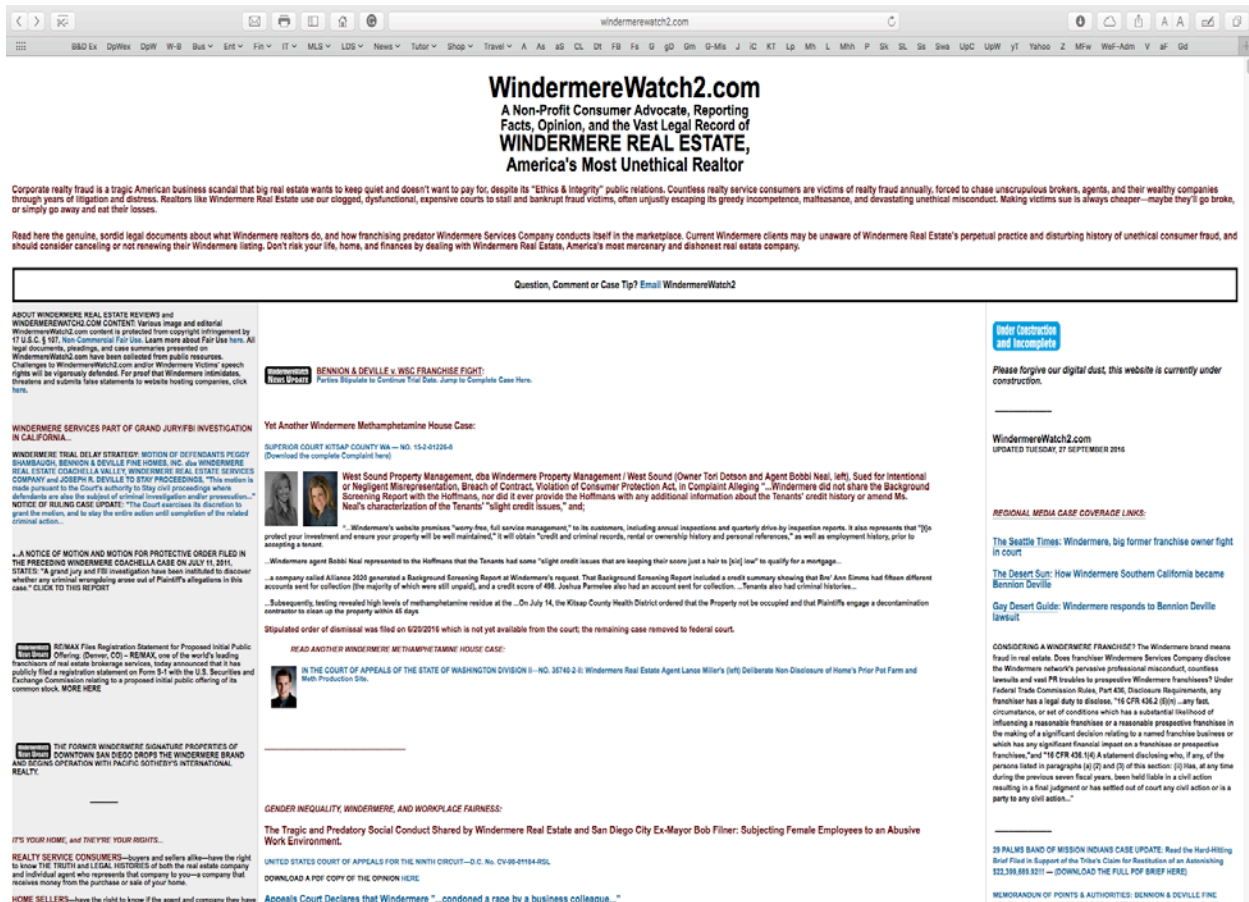
your end to mitigate the damage being caused.” (Fanning, Page 77, line 6-10)

- f. The attacks by Mr. Kruger became more personal over time. (Bennion, Page 144, line 17-10)
- g. The frustration was so intense that Bob Bennion began to consider filing his own lawsuit against Kruger because the continued constant nature of the attacks began to impact his ability to make a living. (Bennion, Page 144, line 19-21; Page 145, line 1-3)
- h. Not only was Windermere Watch causing public relations issues, but it caused the loss of agents and clients. (Bennion, Page 169, line 18-24)
- i. Listing were also lost as a result of Mr. Kruger’s Windermere Watch activities. (Bennion, Page 170, line 17)
- j. The constant distraction was impacting business because they were “continuing to have ongoing expenses....on the SEO, we were -- the problems persisted, continued, other events happened, things were
- k. getting worse instead of getting better. Mr. Kruger had escalated his attacks and figured out how to manipulate the SEO, he was being successful at it, he was doing a better job of pushing it out there and competitors were picking up on it, agents, clients, sellers, buyers. We were just being bombarded with issues on those fronts and our owners. Nothing had really changed. There was no viable plan. There didn't appear to be any commercially reasonable efforts being taken to stop this.” (Bennion, Page 187, line 10-25)The Windermere Watch website was published by Gary Kruger, who accessed publicly available court records, agent’s names and addresses and other publicly available records, and then positioning the website as a non-profit consumer advocate public service that reports “facts, opinion, and the vast legal record of Windermere Real Estate, America's most unethical realtor.”
- l. The Director of Services, Michael Teather, made the comment to Mr. Forsberg, the technology specialist for the Area Representative, “We

don't know what in the hell we are doing up here.” (Forsberg, Page 66, line 23-24).

m. Windermere Watch in 2011 began to list all of the Windermere offices, the agent's DRE or Cal BRE numbers, and their names. This created a situation in which a Google search for a Windermere agent in Southern California would return a result showing Windermere Watch. (Forsberg, Page 58, line 1-9)

n. Screen capture of the www.windermerewatch2.com website:



5 Mr. Teather attempted to recruit Mr. Forsberg to come to work for Windermere in Seattle. (Forsberg, Page 82, line 4-5).

6. The Windermere Watch campaign against Windermere and its franchisees caused franchisees to leave the system.

- a. Richard King left the system because of Windermere Watch and fees going up. (Gregor, Page 26, line 24-25; Page 27, line 6).
 - b. Ray and Francine Finn left the system because they were tired of dealing with the Windermere Watch issue and that it was impacting their ability to recruit agents. (Gregor, Page 26, line 20-21).
 - c. Joe Butler left the system in part because of Windermere Watch issues. (Gregor, Page 87, line 15).
 - d. The Windermere Watch website in 2011 began to list all of the Windermere offices, the agent's DRE or Cal BRE numbers their names. This created a situation when a Google search for a Windermere agent in Southern California would show Windermere Watch. (Forsberg, Page 58, line 1-9).
 - e. Regardless of the technological issues involved, the problem surfaced in real life when "a client would search for their own home when they're buying it and they would find Windermere Watch and they would vocalize their frustration to the agent." (Forsberg, Page 72, line 13-15).
 - f. Eric Forsberg was working on the issue of resolving the issues with the Windermere Watch. Michael Teather made the comment to Eric, "We don't know what in the hell we are doing up here." (Forsberg, Page 66, line 23-24). On another occasions this same sentiment of lack of technological savvy was repeated by Mr. Teather to Mr. Forsberg. (Forsberg, Page 70, line 19-23; Page 71, line 10-12).
 - g. The SEO efforts not only included attempts to out rank Windermere Watch but also was extended to the Windermere agents in Southern California because their names were listed on the website. (Forsberg, Page 74, line 1-3).
7. The overall quality of the technology was a concern for the agents, agents' clients through their agent, office managers, and managing brokers. (Forsberg, Page 88, line 25; Page 89; Page 1-2).

8. The marketing materials were not specific to California but had a Northwest look and feel. I understand that this issue began prior to the September 17, 2011 date and continued throughout the entire course of the parties' relationship.
 - a. The collateral material and online marketing venues were specific to the Pacific Northwest, where most or all of the materials were originated. This was an issue for franchisees in Southern California that marketing material was not more specific to regions in California. (Gregor, Page 40, line 19-22; Page 68, line 16-17).
 - b. The front of the website that we discussed earlier tended to feature pine trees and marketing materials that were centered around the Pacific Northwest. (Forsberg, Page 47, line 18-21)

BASIS AND REASONS FOR OPINIONS

I have reviewed the report of David E. Holmes. I disagree with some of the opinions he rendered, in part because some of the evidence upon which he relies in support of those opinions is taken out of context and because he disregards facts that are inconsistent with his opinions. Mr. Holmes bases his opinions on a selective view of the evidence that colors his conclusions, while looking at the evidence in context fails to support key opinions that he renders.

I formed my opinions by engaging in an analysis of the facts that are described above and reflected in the materials identified in Attachment 3 and applied those facts to the opinions express by Mr. Holmes. In forming my opinions, I applied my experience in franchising including being a franchisee, multi-unit franchise and area representative in multi-franchise concepts, and being a franchisor in two different franchise companies, serving on a board of directors and providing consulting services to franchisors.

To the extent that the opinions I provide in the Opinions section of this report are descriptive of how franchise - area representative relationships customarily work, my opinions are based on my experiences as described above. See, in particular, the opinions numbered 1, 4, and 6. To the extent that my opinions are based on

those factors as well as conclusions drawn from the evidence, my reasoning is set forth below.

1. Franchisor's Role in a franchisor - area representative relationship

Opinion 1 The franchisor's role in a franchisor - area representative relationship is defined both by the agreement and by customary practices in the industry. The relevant contract terms are quoted in Point 1 in the "Facts and Data" section of this report. The relevant practices that are customary in the industry include:

Pursuant to industry customs and practices, the structure of an area representative agreement is a delegatory relationship between the area representative and franchisor in which the franchisor delegates certain responsibilities and the area representative undertakes these responsibilities in order to implement the franchisor's system in its territory. There are certain roles and responsibilities that the franchisor does not delegate but retains direct responsibility.

- a. Customary roles and responsibilities that are delegated by the franchisor to an area representation structure.
 - i. Franchisee recruitment marketing;
 - ii. Interviewing, qualifying and presenting qualified franchise candidates to the franchisor for approval as franchisees;
 - iii. Franchisee location assistance;
 - iv. Opening, initial and ongoing training;
 - v. Ongoing franchisee support.
- b. Customary roles and responsibilities customarily retained by the franchisor are:
 - i. Responsibility to continue to maintain, develop and enhance the franchise system and operating model;

- ii. Collection and accounting for all initial and ongoing franchise license fees, administrative fees, advertising going to contributions and other amounts due under the franchise licensing agreements and remitting these to the franchisor;
- iii. Develop and provide marketing materials;
- iv. Approve or disapprove franchisee candidates.
- v. Provide and maintain technologies necessary in the franchisor's business to ensure that technology systems work and are enhanced over time;
- vi. Providing current and timely Franchise Disclosure Document registration;
- vii. Brand and trademark defense and protection.

Having identified the contractual and customary role of a franchisor in a franchisor - area representative relationship, I reviewed the evidence in this case to determine whether the franchisor in this case satisfied the responsibilities and obligations of that role. I then arrived at the following conclusions, supportive of the opinions stated in the Opinions section of this report.

- 2. The franchisor delegated most of the customary roles and responsibilities to the Area Representative and retained certain customary roles and responsibilities.

Opinion 2 in the Opinions section of this report is based on the following reasoning. I concluded, based on the facts mentioned above that the franchisor delegated the customary roles to the Area Representative.

- 3. Franchisor delegating royalty collection to the Area Representative.

Opinion 3 in the Opinions section of this report is based on the following reasoning. I concluded the franchisor's decision to delegate the collection of fees

by the Area Representative was included properly in the Windermere Real Estate Licensing Agreement.

4. The franchisor was deficient in discharging its obligations and responsibilities because it failed to provide a properly working technology platform.

Opinion 5 (a) in the Opinions section of this report is based on the following reasoning. I concluded, based on the facts mentioned above that the franchisor's failure to properly anticipate the intricacies in the real estate industry outside of Washington State lead to their inability to assess and anticipate the complexity of integrating their technology with the different MLS listing entities in California.

- a. The technology was not thoroughly tested and was released without properly taking into consideration the different MLS listing services that existed in California. (see point 2(c) in the "Facts and Data" section of this report)
- b. The franchisor failed to understand the intricacies working with the various MLS listing services because new data sharing agreements had to be executed with each MLS service in each community in order for a data service provider such as Windermere Solutions to access the MLS database and when the MLS listings would work properly franchise owner business was effected. (see point 2(b), 2(c), 2(d), 2(e) in the "Facts and Data" section of this report)
- c. The franchisor failed to provide franchisees with a competitive technological edge in the marketplace. In today's highly competitive marketplace, having proper technology tools that are up-to-date, that provide access to information that enable a franchisee to deliver a high level of service, and that reduce administrative time is essential for success both from a branding perspective and from a financial one. The financial burden of failed technology caused franchisees to leave the system. (see point 2(f) in the "Facts and Data" section of this report)

- d. The franchisor's continually increasing technology fees and the fact that the franchisor's lack of commitment to invest the money necessary to make each franchise location's technology compatible with local MLS directories led to financial difficulties for franchises and poor franchisor-franchise/area representative relationships. (see point 2(f), 2(g), 2(h), 2(i) in the "Facts and Data" section of this report)
- e. When asked about the reasons for not working to ensure that the MLS listing technology worked in California, the response given was that it cost too much. (see point 2 (g) in the fact and data section of this report) That was not an adequate or reasonable excuse, given the franchisor's responsibilities and obligations to area representatives and franchisees.

My conclusion and opinion is that the franchisor failed to deliver a proven, tested, well-oiled franchise system with respect to its technology platform to the Area Representative and its franchisees.

- 5. The franchisor failed in its troubleshooting role to resolve technical difficulties concerning its technology in a timely manner while assessing and continually increasing technology fees which were intended to fund the maintenance, enhancement, development and improvement of its technology.

Opinion 5 (b) in the Opinions section of this report is based on the following reasoning. I concluded, based on the facts mentioned above and my business experience as a CEO and board member of multiple franchise and technology companies, that the franchisor failed in its troubleshooting role to resolve technical difficulties experienced with its technology in a timely manner. I also concluded that this was caused in part by the board of directors' possible conflict of interest in maximizing the return on their investment in Windermere Solutions at the expense of Windermere franchisees.

The franchisor had little sense of urgency related to the technological problems they were facing in the Southern California market and had conflicting corporate goals for Windermere Solution.

- a. The problems with Windermere technology platform started as early as 2003 and continue to be an issue for over a decade and it is still a problem over ten years later. (see point 3 (a) in the fact and data section of this report).
- b. Mr. Baur arrived to assume his role of CEO of Windermere Solutions in September of 2012 and it wasn't until late October of 2013 that a plan was submitted for the technological strategy for attacking the SEO problems with the Windermere Watch. It appears there was little urgency with this issue internally with the franchisor. (see point 2 (b) in the fact and data section of this report).
- c. Windermere Solutions is owned by different shareholders, some of which are outside of the Jacobi family (see point 2 (d) in the fact and data section of this report).
- d. Mr. Baur is the CEO of Windermere Solutions and reports to the board of directors of the company. He is held responsible for financial performance, participates in setting strategy and goals, and has a duty to maximize revenue and profit for the company. Also, it is likely that his compensation ties to the revenue generation and profit of the company and he likely has a stock option plan. Stock option plans provides an incentive to create a path to the monetization of the company stock at some point in time. This monetization usually happens by positioning the company for a spinoff, merger, acquisition or going public. All of these goals are not bad or unexpected for the investors of Windermere Solutions. (see point 3 (e) in the fact and data section of this report).
- e. However, a monetization event might not be the best set of circumstances for the other stakeholder in the Windermere family of companies, the Windermere franchisees. Many of them have their livelihood tied up in their business. They are paying ever increasing technology fees, which in part is providing cash flow to develop technology products for competitors down the street. A new owner may not share the same value they have.

- f. It is hard to visualize that McDonald's, the premier franchise company that has set the gold standard for how a franchisor should act, would (for example) develop a priority French Fry cooking technology and sell it to Burger King and Wendy's to monetize the investment of second or third generation family shareholders. McDonald's is a purist franchisor. Everything it does is for the exclusive benefit of its primary stakeholder – the franchisee partners.
 - g. If and when Windermere Solutions is monetized, the shareholder of the company, the Jacobi family and Long and Foster, will monetize their investment and sell the company Windermere franchisees will not share equally in the company they helped build.
6. The Area Representative in this case either carried out or facilitated the implementation all the contractual to the franchisor and franchises which included recruiting of new franchisees, providing training and ongoing support to new franchisees, implement the franchisor's technology, and assisted franchise with their advertising and marketing.

Opinion 7 in the Opinions section of this report is based on the following reasoning. The Area Representative was able to recruit new franchisees and through its affiliate entity Bennion and Deville Fine Homes of Southern California acquire franchises to fulfill its contractual duty in recruiting new franchise and extend the franchisor brand in Southern California. The Area Representative was also able to provide training and ongoing support to new franchises, implement the franchise technology as well as provide technology of its own and finally, assist franchisees, primarily through its own franchises, with their marketing and advertising.

7. The franchisor failed to manage the franchise's trademark, brand and reputation.

Opinion 5 (c) in the Opinions section of this report is based on the following reasoning. The franchisor failed to defend the trademark and brand against the defamatory activities of people, entities, activities and events that damaged the integrity of the trademark, such as www.windermerewatch.com and

www.windermerewatch2.com, direct mail campaigns and other such negative and brand damaging activities. The value of a brand is paramount to companies, especially for franchise companies.

- a. Mr. Wood, CEO of Windermere Real Estate Services Company, acknowledges the importance of the franchise brand and how important it is to protect the brand but does little to create a strategy to effectively address the problem. (see point 4(a), 4(b) in the fact and data section of this report).
- b. Mr. Gary Kruger, an aggrieved former client of a Windermere office in Seattle, began to actively market the www.windermerewatch.com website, in the early 2000s and even though the website was creating an enormous amount of distress among franchisees, the franchisor did little. The negative marketing campaigns began to escalate, and still the franchisor did little. (see point 2 (a) in the fact and data section of this report).
- c. Michael Teather, a senior executive at the franchisor, after being hired, assessed the status of the competency at Windermere Solutions at the time, and concluded that they didn't know what they were doing with respect to being able to effectively and tactically implement an SEO campaign designed to push Windermere Watch Google ranking lower. (see point 3 (m) in the fact and data section of this report).
- d. The area representative had in its employ a competent technology director by the name of Eric Forsberg who had been recruited and hired by Mr. Deville to address some of the issues that franchisor was unable to accomplish. In a phone conversation, after assessing the sorry state of affairs at Windermere Solutions, Mr. Teather offered Mr. Forsberg a job. (see point 5 in the fact and data section of this report).
- e. Kruger began to escalate his tactics by not only publishing court records on the Windermere Watch website, but all of the relators' names from each Southern California franchise office, causing an enormous amount of frustration from franchise owners, their agents and clients. He also became more personal in his attacks. (see point 3 (e) in the fact and data section of this report).

- f. The franchisees' businesses were being seriously impacted by the constant negative campaign by Mr. Kruger and Windermere Watch. The issue was a distraction. Competitors were picking up on the issue and using it to get listings from Windermere agents. Listings were lost, clients were leaving, agents were leaving franchisees for other brokerage offices. (see point 3 (f), 3(g), 3(h), 3(i), 3(j), 3(k), 3(l) in the fact and data section of this report).
- g. Client search their own property and are redirected to the Windermere Watch website see point 5 (e), in the fact and data section of this report). Even when agents began leaving the system, the franchisor did little. (see point 5 in the "Facts and Data" section of this report)

8. Area Representative Support of Franchises.

- a. Mr. Holmes' opinion (Page 18, Section 7), references a portion of the deposition of Mr. Deville (Vol. I; page 31; line 12), where Mr. Deville, after being asked what he considered to be the obligations of an area representative in providing services to franchisees in Southern California, responded that an area representative was to "grow the region and to act as a conduit between the owners and Seattle, collect fees."

Mr. Holmes then asked Mr. Deville, is there "Anything else that you can think of now?"

Mr. Deville responded, "No."

- b. Mr. Holmes goes on to say (Page 18, Section 8) that "standard franchising practices for area representatives include more than simply marketing franchises, acting as a 'conduit' between the franchisor and the unit franchisees and collecting fees. Those practices include, among other things discussed in more detail above, assuring general system compliance by franchisees (not only trademark compliance), establishing and operating a training, education and professional development program for franchisees and their employees, and a proactive 'coaching' model to assist franchisees in becoming financially and operationally successful."

- c. Mr. Holmes fails to take into consideration in his analysis of the list of standard franchising practices for area representatives the additional testimony by Mr. Deville about the other support activities provided by himself and his staff to assist franchisees in becoming financially and operationally successful, such as establishing a training, education and professional development program for franchisees and their employees. This training, education and professional development program is detailed in the same deposition of Mr. Deville as follows:
 - i. How to get a listing or sale and how to make things happen (page 191; line 13-15);
 - ii. How to do an open house (page 191; line 19);
 - iii. How to get price reduction (page 191; line 19-20);
 - iv. How to hold firm on commissions (page 191; line 20);
 - v. If franchisees couldn't come to the classes held at their offices, he would send staff to their offices to hold classes for franchisees and their agents at their office or a nearby office (page 191; line 24-25);
 - vi. Had an attorney on retainer to teach classes/symposiums on risk management classes for franchisees in their areas (page 192; line 3-4; 9/10) at least twice a year (page 201; line 15);
 - vii. All classes were at no cost for franchisees (page 192; line 1-2).
- d. In the same deposition, Mr. Deville was asked to further detail the standard practices and activities provided to franchisees, Mr. Deville answered (Deville Deposition, Vol. I; page 189; line 22-23) "we would assist and give guidance for new offices" and "we would either go there and spend a week with them" or "they would come with us," which is a reference to the fact that franchisees would often visit Mr. Deville's offices and ride along with

him, the other agent/brokers or one of this employee support staff members (Deville Deposition, Vol. I; page 189; line 24-25).

- e. Again, in the same deposition, Mr. Deville enumerates other support services that were provided to franchisees in Southern California including:
 - i. Help with finance, accounting and office procedures (page 190; line 1-2);
 - ii. Help getting vendors (page 190; line 3);
 - iii. Get the best deals from these vendors because they knew where they (the vendors) were (page 190; line 1-2);
 - iv. Allow franchisees to use their contracts in order to get discounts from the vendors (page 190; line 6-7);
 - v. Discounts on advertising and newsprint allowing them to use their own ads but obtaining deeper discounts than they could get on their own (page 190; line 7-8);
 - vi. Allow franchisees to place a full-page advertisement in their quarterly real estate magazine (page 192; line 13-14) for no cost and if they wanted to purchase an additional page, they were allowed to purchase this additional page for \$400 which would cost at least \$1,000 retail (page 192; line 18-19) and shipped a bundle of these magazines to franchises for their use (page 192; line 14-16).
- f. In Mr. Gregor's deposition, he testified that he was a part of a team that supported franchises: "I was part of the team ... when there was a concern or need, we would check in with them on a regular basis as a team when there was a concern or need, we would discuss how to ... get the problem solved." (Gregor, Page 29, line 13-24)
- g. Mr. Gregor and members of the team "checked in monthly via email, phone and in person." (Gregor, Page 30, line 27) The team consisted of Page Kylie,

Patrick Robinson, Eric Forsberg, Todd banks and Joe Gemma. (Gregor, Page 31, Line 23-24)

- h. In his opinion, Mr. Holmes infers that Mr. Deville simply focused on marketing franchises, acting as a conduit between the franchise or and the unit franchisees and collecting fees. Based on the facts presented above, I disagree with Mr. Holmes' conclusions and opinions and conclude that, in fact, Mr. Deville met the standards in franchising for an area representative.

9. Area Representative Responsibilities Regarding Payment of Fees

- a. Mr. Holmes' report (Page 19, Section 11) references Mr. Gregor's deposition testimony and a statement Mr. Gregor made to the effect, "That was beyond my pay grade at that time." Based on his statement, Mr. Holmes concludes that "standard franchising practices for area representatives would not include franchise sales staff who might have issues with respect to a prospective franchisee's possible inability to pay required fees failing to alert the area representative's management to such concerns. On the contrary, the payment of required fees is a prime concern for all responsible franchisors or area representatives."
- b. If Mr. Gregor's statement had been made in the context of a general discussion, Mr. Holmes' conclusion would be reasonable, but given the context of the line of questioning, the facts do not support his opinion that standard franchise practices were not met by the area representative and his staff.
- c. The context of the topics that were being addressed when Mr. Gregor responded to the question was not a general discussion about the roles of an area representative field support person. Mr. Gregor's comment was made while Mr. Gregor was discussing accompanying Mr. Deville while they made sales presentations to prospective franchisees.
- d. To understand Mr. Gregor's testimony, in the context of his role as a field support representative, it is important to understand Mr. Gregor's role with

the area representative at the time this comment was made and the area representative's role in the area representative organization.

The roles and responsibilities in an area representative organization depends on the size and sophistication of the area representative entity. There are generally two main roles of an area representative:

- i. the recruiting of new franchisees, which includes finding potential franchisee candidates, the presentation, the interview and awarding process,
 - ii. the operational support role which includes training, ongoing operational, marketing, financial and other in field support functions
- These two roles are commonly referred to as the sales role and the support role, respectively.

e. Franchise organization vary in size and scope.

- i. In some smaller area representative entities, there may be only the area representative. In these types of organizations, the area representative will often fill both the sales and support roles.
- ii. In mid-level area representative entities, it is common that the principal owner(s) of the entity will fill one of the two roles (sales and support) and delegate the other role.
- iii. In larger, more established area representative entities, the duties of both the sales and support roles are delegated. The area representative fills the role of an executive manager of the organization, most often limiting its duties to the interviewing of potential franchisee candidates, meeting with existing franchisees on an as-needed basis, and attendance at company meetings as well as overseeing and managing the organization.

f. I conclude from the documents that I have been requested to review, Windermere Services of Southern California, Inc., the Area Representative, operated functionally as a mid-level area representative entity and as such

the sales role was filled by Bennion and Deville and the support role was delegated to a franchisee support team consisting of Kirk Gregor, Patrick Robinson, Eric Forsberg, Todd Banks, Joe Gemma and Paige Tyley (Gregor Deposition; Page 29, line 20-25), each of whom was responsible for various franchisee support functions.

- g. Mr. Gregor's duties were both in the area of sales and support. In sales, he was tasked with finding and recruiting franchisee candidates. He did this by networking with title and escrow companies and lenders (Gregor Deposition; Page 31, line 19-23). He would make initial contact with potential franchisee candidates and, upon vetting these people for experience, integrity (Gregor Deposition; Page 85, line 5) and being financially sound (Gregor Deposition; Page 29, line 9) with the ability to pay franchise related fees (Gregor Deposition; Page 29, line 9, 12), he set up a meeting with Mr. Deville (Gregor Deposition; Page 18, line 5-6, 9-10) to be interviewed, further qualified and for a sales presentation to view the Windermere system and tools including technology, marketing and advertising (Gregor Deposition; Page 19, line 9, 16, 22). Mr. Gregor would accompany Mr. Deville to these sales presentations (Gregor Deposition; Page 18; line 15).
- h. In this situation, and in his support role to the area representative, Mr. Gregor was the subordinate to Mr. Deville as he made the sales presentations to franchisee candidates (Gregor Deposition; Page 85, line 21-23). In his support role, it was not for Mr. Gregor to make the final determination of the financial qualifications of these candidates, having only provided candidates for Mr. Deville's review that Mr. Gregor had previously qualified as financially sound and able to pay franchise fees, as noted above. The final financial determination was Mr. Deville's role as area representative.
- i. In this context, Mr. Gregor was asked, "And if there was an issue in your mind about whether or not these owners could pay the fees they were required to pay under the Franchise Agreement, would you speak up and make that known to Mr. Deville?"

- j. In my opinion, Mr. Holmes' conclusion that standard franchising practices "would not include franchise support staff who might have issues with respect to a prospective franchisee's possible inability to pay required fees failing to alert the area representative's management to such concerns" is true in a general sense but does not apply to this specific situation because Mr. Gregor had already determined the financial ability of the franchisee candidate prior to arranging a meeting with Mr. Deville, the area representative, and he was only deferring to Mr. Deville to make the final determination as to the financial qualifications of the franchisee candidate, which was definitely beyond Mr. Gregor's pay grade at that time.

10. Favoritism Regarding Payment of Fees

- a. In Mr. Holmes' Expert Report (Findings, Sections 13 and 14), Mr. Holmes points out that the franchisee Bennion & Deville Fine Homes SoCal, Inc., a Windermere franchisee for multiple locations in Southern California, was delinquent in its royalties. Bennion and Deville, through their entity, Windermere Services Southern California, Inc., were also the area representative for Windermere in Southern California. Mr. Holmes infers that an area representative who also owns franchises, which in this case was the situation, should not show favoritism regarding payment of fees and that it is not standard franchise industry practice for area representatives to pay fees on units owned and operated by them according to their legal obligations.
- b. Mr. Robinson, who was the person in charge of monitoring monthly sales reports and collecting royalties for all franchisees, including franchises owned by Bennion and Deville, testified that he followed up with all franchisees, including franchises owned by Bennion and Deville, on a regular basis.
- c. The process for collection of royalties that Mr. Robinson followed was to compile the monthly statistical reports and log payments from franchisees. If franchises were delinquent, Mr. Robinson would reach out to the franchise owner by email or phone call about their delinquent payments (Robinson, Page 36, line 3-14). The same process was followed for franchises owned by Bennion and Deville with the exception that Mr.

Robinson would contact the controller for Bennion and Deville, Maria Wooten, and Thomas Lang about delinquent payments (Robinson, Page 37, line 7-24).

- d. There is no dispute that all franchisees are contractually obligated to pay their fees per their franchise agreement. The issue Mr. Holmes raises seems to imply that in their role as an area representative, they are taking advantage of their supervisory role by not paying royalties on the franchises that Bennion and Deville operated, purposely deferring or otherwise becoming delinquent in their royalty payments on the Bennion and Deville franchise operations, thereby to create an unfair advantage (favoritism) over the other franchisees in the region while providing no support for this inference.
- e. In fact, the documents I was asked to review imply that there was no favoritism as an area representative with regards to their own operations that Bennion and Deville operated and time and time again, in their role as an area representative they were strong advocates for their franchisees and made available their Bennion and Deville franchise operations for the benefit of the franchisees in the region. (See: REVIEW OF DAVID E. HOLMES' REPORT, Sections 2, 3, 5 above)

11. Gooding's Concerns about Support, Collaboration, and Competition

- a. In his report in Findings #15, Mr. Holmes cites situations in Mr. Gooding's testimony, that if proven true, he believes would be not be consistent with applicable standards in area representative franchising. Mr. Holmes points out a number of comments that Mr. Gooding made in his deposition alleging that the Area Representative was not collaborative, provided no support and became a competitor.
- b. In a situation where an area representative is both a franchisee and area representative, there is always an issue of self-interest of the area representative, whether real or perceived. Since there are no provisions in the Area Representative Agreement precluding the area representative from being a Windermere franchisee, Bennion and Deville were within their rights to apply for a franchise.

- c. For these reasons, the franchisor retains the control and responsibility of ensuring that franchise candidates who make an application for a franchise are qualified and that the location or area granted to the franchise is appropriate. Ultimately, if any franchise were to be granted in north San Diego County to either Messrs. Bennion and Deville's entity, Bennion & Deville Fine Homes SoCal, Inc., or to Gooding and Johnson, or to anyone else for that matter, the franchisor retained the authority to make that decision.
- d. In franchise systems where territories have specific geographical boundaries, territory lines generally restrict opening of offices or stores outside of the boundaries of a territory, which generally precludes encroachment on other franchise territory offices or the development of offices that are too close to other locations, thereby providing some protection against direct conflicts and competition from other franchisees in the area, or in the case of an area representative also being a franchisee, not directly competing, intentionally or unintentionally, with a neighboring franchisee.
- e. Most area representative structures, including Windermere, provide for an area representative to make recommendations on the qualifications, the suitability of a franchisee, and the territory being requested, to the franchisor. Since the franchisor is the final authority on granting a franchise, whereas the area representative is not, the franchisor needs to ensure that relevant key items such as the financial qualification and the location of the franchise fit predetermined criteria.
- f. In a franchise structure such as Windermere's, with no territorial boundaries, a franchisor must be especially aware of and concerned about these issues. The franchisor must exercise due care and conduct the necessary research before granting franchise rights and territory to ensure that other franchisees in the area are protected and that awarding a new franchise will not be a detriment or create conflict with other franchisees in the area.

- g. In the northern part of San Diego County where franchisees existed in close proximity with each other (less than a mile – Gooding, Page 130, line 9) for some time, a single incident appears to have been the first domino to fall that led to a failed relationship between Gooding and Johnson and the area representative, Mr. Deville.
- h. This incident occurred when Mr. Deville's office in Solano Beach was closed (Gooding, Page 129, line 25; Page 130, line 1-3). Gooding and Johnson were not notified of the closure and only learned of the closure later (Gooding, Page 130, line 4-5). The office closure resulted in agents calling Gooding and Johnson's nearby offices to inquire about joining their Windermere team.
- i. Since Gooding and Johnson weren't notified of the Solano Beach office being closed, they were caught unawares. This upset them and put them in an uncomfortable position (Gooding, Page 134, line 7). Although they ended up only hiring four or five agents (Gooding, Page 134, line 13-14), they were frustrated with the lack of communication surrounding the Solano Beach office closure and being caught unawares when agents from Solano Beach called their office.
- j. As a franchise, Mr. Deville had no contractual obligation to notify Messrs. Gooding and Johnson about the Solano Beach office closing, in fact there is no contractual obligation under their Area Representative Agreement to do so either. But as a businessman that has owned multiple businesses, large and small, it is my opinion that the timing of location closures, layoffs and other major changes in a business that impact the lives of people that have been loyal to the company, sometimes for years if not decades, involves a delicate balance between being compassionate and not having people fleeing the ship when it is announced that the business is moving, closing or downsizing.
- k. The franchise agreement requires a 6-month notice to terminate the franchise. If this notice was given too far in advance, any business that agents had in the pipeline would quickly dry up and agents would be leaving, costing the franchise owner thousands if not tens of thousands of dollars in lost revenue. It is my opinion that the non-notice by Bennion and

Deville's franchise in Solano Beach was a reasonable business judgment motivated by the balancing act discussed above. News of the closure was likely premature, a case of the cat getting out of bag before they had a chance to notify Gooding and Johnson.

- l. Mr. Holmes also references Gooding's concerns and dissatisfaction by pointing out that Mr. Deville refused to participate in a "double truck" (which is a pair of facing pages, usually in a newspaper or magazine, with content that stretches over both pages).
- m. As previously stated (See 5 (d), (e), (f) above), it was the practice of Bennion and Deville, as franchisees, to include other franchisees in the region in ads that they were running in local magazines and newspapers at no cost. Also, Bennion and Deville purchased large amounts of advertising and freely passed their volume advertising discounts onto franchises. This is a practice that Bennion and Deville successfully used over a period of years.
- n. Mr. Gooding acknowledges "we were allowed to go into that advertising if we wished." (Page 153, line 16-17) However, Gooding and Johnson were looking to implement a different advertising strategy in which they were seeking to brand their company as opposed to participating with Bennion and Deville. In my opinion, this is a case of two successful businessmen having a difference of opinion on advertising strategy rather than a case of non-support by an area representative.
- o. In fact, the Franchise Disclosure Documents filed with the State of California did not include a requirement for franchises or for the area representative to participate in a cooperative advertising, marketing or branding fund on a local or regional level. Since this provision did not exist, there is no contractual obligation for either franchisees to collaborate with other franchisees, and more specifically for the area representative to facilitate any such activities simply because there were no funds to make this possible. In fact, it is my opinion based on my participation in numerous other franchise systems, that without such a provision or requirement to contractually contribute to such a fund, it is virtually impossible for cooperative or collaborative advertising to take place.

- p. In fact, as franchisees, Bennion and Deville enable cooperative advertising to happen among franchises at little or nominal cost to them. Of course, it was Bennion and Deville acting as franchisees, not in their role as an area representative, that this advertising took place. Franchises got the benefit of lower cost advertising under the Windermere brand at the expense of not being able to promote their individual companies, which is what Gooding and Johnson wished to do. When another franchise elected not to participate with them in their strategy, they felt that their area representative was not being collaborative, when in fact the area representative had little to do with being able to facilitate cooperative advertising because there was no methodology or system for funding in place to make this happen. In this case, the area representative was a victim of the way in which regional advertising was mandated by the franchise agreement of the franchisor.
- q. When Gooding and Johnson first became Windermere franchisees, it appears they “were enthusiastic aboutworking with Bob Deville and Bob Bennion” (Gooding, Page 56, 9-11), but the relationship soured because of structural inadequacies concerning the franchise structure. As some of the issues cited above began to surface, the relationship between franchisees Gooding and Johnson, franchisees Bennion and Deville, and the Area Representative, Windermere Services Southern California, began to rapidly deteriorate. This is exemplified when Mr. Gooding sent an email to his partner Mr. Johnson and his CFO, Mr. Schuster, expressing his frustration by calling Mr. Deville a “prick.” (Gooding, Page 157, line 9).
- r. It has been my experience as franchisee, multi-unit franchisee, an area representative in multiple franchise concepts and a franchisor in two, that when emotions rise to this level, communication slows down and eventually stops altogether, escalating the probability for further misunderstanding and conflict.
- s. This is what appears to have happened when in another email Mr. Gooding sent to Mr. Johnson and Mr. Schuster, he continued to vent his frustration toward Mr. Deville, the franchisee, which seems to have risen to the level of fiery anger, when he writes, "Let's not ask anything else of them and proceed to kick their tails (Bennion and Deville, franchisees) in North

County." (Page 155, Line 1-2) and again, "I am over them. I mean it. I do not want to ask any of them anything of them (most likely referring to Windermere Services Southern California, Inc. – the Area Representative). It's pathetic." (Page 156, line 18-20). When either party gets to the point of "not having anything to do" with the other in a relationship, the ability for the parties to work together is minimal. In this case, Mr. Deville's role as a franchise, on issues such as cooperative advertising, i.e., the "double truck" ads, and as their Area Representative to perform support functions become difficult, if not impossible, to execute.

- t. Additional exchanges could be presented in Mr. Gooding's 315-page deposition that would illustrate how an event, such as the circumstances surrounding the closing of the Solano Beach office, had a domino effect that significantly reduces and then eventually completely cuts off civil communication, escalates feelings and causes real and/or perceived problems to become more pronounced.
- u. Without commenting on the validity of each of the issues that Mr. Holmes references in Section 15, which in most cases involve a large degree of subjectivity, it is my opinion that Mr. Holmes' findings on this issue overlook evidence that the conflict became a two-way street and not entirely a one-sided affair caused by Mr. Deville's alleged failure to provide support as an Area Representative.
- v. Evidence that Mr. Holmes overlooks supports the conclusion that it became impossible for Mr. Deville to provide support as an Area Representative because of the heightened emotions of Gooding and Johnson when they began to reduce and completely cut off communications with Mr. Deville as their Area Representative and Bennion and Gooding as a Windermere franchise.
- w. Based on my review of Mr. Gooding's testimony, I have concluded that Mr. Deville as an Area Representative did meet the standards consistent with area representative franchising as far as Gooding and Johnson allowed them to perform their role as an area representative.

12. Johnson's Concerns about the Area Representative

- a. Mr. Holmes addresses Mr. Johnson's concern at two levels, both of which are inconsistent with factual aspects of the relationship of the parties. In his report, Mr. Holmes states that Mr. Johnson has expressed concern or dissatisfaction with respect to what he perceived as (among other things): that his franchise was "instead of having a mutually beneficial relationship, that they were, in fact competing against 'SoCal', and that this was causing some challenges between our relationship" and apparently relating that perception to issues regarding "advertising and the competition about recruiting agents."
- b. Mr. Holmes failed to acknowledge or draw a distinction between the franchisee and the Area Representative. Mr. Johnson cannot compete against "SoCal" – the Area Representative. "SoCal" is not a franchise. It is the Area Representative and as such does not own a franchise. Bennion & Deville Fine Homes Southern California, Inc. is the Windermere franchisee.
- c. This case is about the Area Representative being in breach of its Agreement. Yet, time and time again, allegations are made in multiple depositions that the Area Representative "SoCal" is competing against Windermere franchisees by recruiting agents and non-collaboration on advertising, as referenced in Section 17 of Mr. Holmes' Findings where it appears that he doesn't understand that the franchisee is Bennion & Deville Fine Homes Southern California, Inc. and not "SoCal" or Windermere Services Southern California, Inc.
- d. It is my opinion, the Area Representative, Windermere Services Southern California, Inc., did not compete "against SoCal", refuse to cooperate on "advertising", or compete "for agents" with Windermere franchisees, and that Mr. Holmes erred in his characterizations by classifying "SoCal" as a franchisee vs. the Area Representative.
- e. The other items referenced in Section 17 of the report related to communications are the same issues as previously referenced in Section 38 and 40 above.

13. Limitation of Communication with Franchisees

- a. Mr. Holmes' report (Section 19, Page 21) characterizes Mr. Fanning's testimony as claiming "that the Area Representative told him what he could and could not speak to franchisee about." In fact, in his deposition testimony, when asked, "and what did he tell you could not talk about?," Mr. Fanning answers, "... I don't want you talking about something if you don't know if it's going to work." (Page 31, line 23-24)
- b. One of the big issues concerning Windermere's deployment of its technology was the complexity of the California MLS listing service. There is not one MLS for California, there are literally dozens of them, each with their intricacies, overlaps and ability to interact properly to allow data to flow from the MLS into the Windermere technology. Real estate agents are not generally technologists. What they expect is when you turn on a computer, laptop or iPad and log onto a program, the information will magically appear. When it didn't and not knowing what to do, they would begin calling their Area Representative who is also not a technologist.
- c. When this is multiplied by a several hundred agents in Southern California, it is a real headache for the Area Representative and his staff to deal with. This type of issue happened repeatedly. Mr. Deville always met with Mr. Fanning when he came to that area to introduce new technology. A prudent businessperson always wants to be proactive and anticipate problems and seek ways to minimize them, which was the reason for the meetings. If Mr. Fanning would indicate that there may be a problem, Mr. Deville did not want to deal with the fallout which was inevitable.
- d. Mr. Holmes is too hasty in concluding that simply because Mr. Deville wanted to know what was going to be introduced before authorizing Mr. Fanning to deploy technology that was going to generate calls, his instructions caused frustration and a feeling by the franchisees that Windermere didn't know what it was doing, which is not the case. The instructions merely delayed communication about this technology until it could be deployed in a manner that would increase franchisee satisfaction rather than causing the opposite result. This is no different than a parent telling their teenager that they can drive once they have passed Driver's Ed.

because experience has taught them to err on the side of caution vs. being too hasty because the consequences are unpredictable and problematic.

- e. I disagree with Mr. Holmes' conclusion that this limitation imposed by an Area Representative is not of a type that is typical or consistent with standard franchise industry practices. In fact, it is my opinion that the narrow limitation on this specific communication is just the opposite and shows prudence in anticipating problems that would be likely to damage the franchisor – franchisee relationship.
- f. In Section 21, Page 21 of his report, Mr. Holmes references Mr. Fanning's testimony that he did not have the opportunity to come and teach the agents in the region because he was asked to stop coming.
- g. However, in further testimony, Mr. Fanning discusses specific opportunities where he made trips in December of 2013 to Riverside where he "trained their offices on how to use the tools." (Fanning, Page 35, line 3-4). He was also in the office of Gooding and Johnson in 2014 (Fanning, Page 38, line 11-13) where there was a discussion about setting up future trainings for their offices. Several training sessions were set up at that time.
- h. Windermere also sent out bulletins via emails to all franchisees in the system notifying them of training events. (Fanning, Page 36, Line 19-23)
- i. I disagree with Mr. Holmes' conclusion that Mr. Fanning did not have the opportunity to teach agents in the region because he was asked to stop coming when he did make trips to the region and train franchisees. Also, franchisees received ongoing notifications of training classes via email where they were made aware of technology training classes.
- j. In Mr. Holmes' report (Section 31, Page 22), Mr. Holmes points out that Ms. Bortfeld and others said "we weren't allowed to talk to anyone in Southern California."
- k. In further testimony, Ms. Bortfeld when asked "Did Mr. Deville specifically tell you that you were not allowed to talk to franchisees in the Southern California region?" responded, "I was instructed by someone and I don't

recall who, to respect his wishes." Ms. Bortfeld was asked several times again if she could recall who had specifically told her to not talk to anyone in the Southern California region. (Bortfeld, Page 89, line 8-25)

- I. In my review of dozens of emails between Mr. Deville and Ms. Bortfeld, it is obvious that for whatever reasons, Ms. Bortfeld and Mr. Deville did not get along and that her choice to not talk to people in Southern California is because he had instructed her to go through him. In my opinion, this issue surrounding Ms. Bortfeld and Mr. Deville appears to relate more to personality issues and personal style rather than a systemic problem caused by policies or practices of the Area Representative. (Bortfeld, Page 89, 8-25)

14. Brand Compliance and Non-Approved Vendors

- a. In Section 27, Page 22 of Mr. Holmes' report, Mr. Holmes states that the use of non-approved vendors would not be consistent with franchise industry standards. The reason vendors are vetted by franchise companies is to control the consistency and quality of materials used, the presentation of the logo in various media, and pricing considerations where funneling purchases by franchises from specific vendors generally has the effect of reducing cost due to volume purchasing.
- b. In reviewing the deposition testimony of Ms. Bortfeld as well as reviewing email correspondence related to this issues (See Bates: WSC015242, attached hereto as Exhibit A), I noted that in an email sent by Mr. Bennion to Pat Grim, a Windermere franchisee, in which Ms. Bortfeld was copied, dated May 31, 2012, Mr. Bennion makes the following points:
 - i. "I am in charge of marketing and branding."
 - ii. "if you walk into one of our offices you will find every Windermere business card displayed in the front legal with them the brand constraints."
 - iii. "we are brand police ALL the time;
 - iv. "our marketing departments are constantly 'guiding and reigning in' our agents. It is a full-time job;"

- v. "Our ads, physical offices, signage in anything we do is with the pride of the Windermere brand"
 - vi. "we are proud of the brand and work extremely hard at all GREAT EXPENSE to maintain the brand both in California and here in Seattle;"
 - vii. "Pat for you to send an email ... with those kind of accusations based on ONE business card an agent brought you from the Desert is well I can't think of another word for it, but is just plain stupid;"
 - viii. "Thank you for The reference for the 'standards of Practice' addendum. I think I helped write them years ago."
- c. Any reader of this email can see the passion which Mr. Bennion expresses concerning the Windermere brand and the effort that is taken to enforce brand compliance.
- d. In another letter in this email chain, from Mr. Bennion to Ms. Bortfeld, dated June 1, 2012 (See Bates: WSC0156, attached hereto as Exhibit B), he points out that they spend between \$3,000 - \$4,000 a month just for business cards for agents and that Ptarmigan Press, which is their preferred vendor, has the specs and this is how they control the brand for the cards.
- e. The primary reason a franchisor wants to have approved vendors is to control the brand. Given the fact that Mr. Bennion has been a franchisee with Windermere for well over a decade and was involved in the actual drafting of the brand standards, I am confident in expressing an opinion that Mr. Bennion used his best efforts to conform to the brand standards of Windermere and that the likelihood of non-compliance to brand standard is minimal, and may even exceed system-wide compliance, and the only violation of Windermere's brand standards is a technical one as opposed to a blatant violation with any significant real world implications other than consolidating purchasing with an approved vendor.
- f. In Section 29, Page 22 of his report, Mr. Holmes states that Ms. Bortfeld testified that Messrs. Gooding and Johnson:

- i. “were unaware of a lot of the marketing materials that are branded for us;
 - ii. “They were just completely unaware of who we were --the programs that we have;
 - iii. “they were clearly clueless about the services that my department provides;”
 - iv. “they were just so shocked at what they found on the worksite. They said we had no idea all this stuff was available;”
 - v. “It was almost like bringing on a new franchise, bringing through an orientation. And they’re, like, this is great, wish we knew about this.” (Page 82, line 22 through Page 83, line 8; Page 86, line 11 through line 17.)
- g. In attempting to understand how a successful franchisee in the Windermere system could be so far out of the loop of what was going on in a franchise, based on my experience, these type of situations are generally a result of one of three things:
 - i. First, successful entrepreneurs often become so busy with managing their business they have little time for the details of the business and focus on bring in the bacon vs. managing the details, which often pile up;
 - ii. They are not detail oriented and ignore mail, email and other mundane administrative details of the business, often to their detriment;
 - iii. They have entrepreneurial A.D.D. and are always focusing on the big picture, making deals and creating something out of nothing.
- h. What I found was that Windermere has a good system of publishing events, activities and newsworthy happenings in the company to the franchise community. Whether the franchisees take the time to read the steady flow of information coming to them in emails, snail mail and other forms of announcements is another thing. In my experience, sometimes too much communication has the opposite effect of the important things getting buried amongst the trivial. Even when an appropriate amount of information is communicated, as was the case here, an Area Representative

cannot be held responsible for the failure of franchisees to acquaint themselves with that information.

- i. As I said, Windermere has an internal marketing department that is charged with the responsibility to inform franchisees of important events. When it comes to items related to training, technology and seminars available to franchises, the amount of information is almost overwhelming for a successful franchise owner who manages dozens, if not hundreds of agents. For example, here is just a small sample of the emails that were sent to all franchisee in the Windermere franchise system in 2013 and 2014. On top of these emails were others related to other sales, policy, changes, employee changes, etc.
 - i. Technology Summit Announcement (5 page, email announcement) – October 30, 2013; Exhibit 217, Gooding deposition
 - ii. Ninja Installation Seminar; November 19-21, 2013 (3 page, email announcement); December 3-6, 2013; Exhibit 218, Gooding deposition
 - iii. Ninja Installation – Business Plan, December 3-6, 2013, (3 page, email announcement, Exhibit 218, Gooding deposition
 - iv. Windermere Education Online Courses, (2 page, email announcement); Exhibit 220, Gooding deposition
 - v. Ninja Installation, January 21-24, 2014; (3 page, email announcement); Exhibit 221, Gooding deposition
 - vi. Employee Change Notification Ninja Installation, January 20, 2014; (2 page, email announcement); Exhibit 223, Gooding deposition
 - vii. Ninja Installation, March 11-14, 2014; (3 page, email announcement); Exhibit 224, Gooding deposition

- viii. Ninja Training for Staff and Assistants, May 12, 2014; (3 page, email announcement); Exhibit 231, Gooding deposition
 - ix. Ninja Installation, September 9/12, 2014, September 30 – October 4, 2014, October 28-21, 2014; (3 page, email announcement); Exhibit 221, Gooding deposition
 - x. Email Fred Schuster re: attending training, 5/12/14. Exhibit 282 Schuster deposition.
- j. In my opinion, franchisees Gooding and Johnson may have been unaware of the wide variety of services offered by Windermere and may have in fact been like “new franchisees.” If so, that was not the fault of Windermere the franchisor or the Area Representative. I believe the franchisees are the victims of their own success.

15. Forwarding Leads

- a. In Mr. Holmes’ report (Section 35, Page 23), it is alleged that leads were not forwarded on to franchisees by the Area Representative. I have reviewed the “Referral from Windermere Direct” spreadsheet and have noted that all of the leads that came through the wre.com website or directly from Seattle were disbursed to the offices in Southern California. There did not appear to be any leads that weren’t properly disbursed per this log sheet. If there were other records that tracked the lead flow, I am not aware of them and reserve the right to change my opinion.
- b. In my opinion, from the records of leads that I have reviewed, all leads sent by the wre.com website and Seattle appear to have been properly disbursed to franchisees in Southern California.

CONCLUSION

It is my summary opinion that the expert report of David E. Holmes attempts to shift blame to area representatives for problems that should have been addressed by (or were caused by) the franchisor. For the reasons stated more fully above, I believe the Holmes report also takes evidence out of context, ignores other

evidence, overinflates problems that he attributes to area representatives, and pays insufficient attention to the practical realities of the franchisor - area representative relationship in forming his opinions.

Review of the facts leads me to conclude that the franchisor in this matter failed to discharge its duties and responsibilities to area representatives and franchisees, most significantly by supplying technology that did not work in Southern California, by failing to provide the technical support that was needed to overcome the technology failure, and by failing to address the adverse publicity associated with Windermere Watch in a way that protected the trademark, brand and reputation of the franchise.

It is also my opinion that a reasonable franchisor abiding by industry customs would have taken proactive measures to assure that those problems would not have a significant negative impact on area representatives and franchises. The franchisor in this case failed to meet that standard. I conclude that the area representatives, on the other hand, met the obligations imposed upon them by the contract and industry standards.

The opinions described above are based on the evidence known to me as of the date of this report. I reserve the right to add opinions, to revise my opinions, or to clarify opinions if new or different information is made known to me prior to or during the trial of this matter. I hold the opinions stated above to a reasonable degree of certainty.

Marvin L. Storm

A handwritten signature in black ink, appearing to read "Marvin L. Storm", with a horizontal line underneath.

Date: September 30, 2106

Attachment 1

Marvin L. Storm CFE
Curriculum Vitae

Executive Summary:

- Founded Control Financial Group, an equipment leasing company in 1977.
- Became an Area Representative and franchisee of The Handle With Care Packaging Store in 1985.
- Founded Blackstone Hathaway Corporation, a franchise management and marketing company in 1989.
- Became an Area Representative and franchisee for Takeout Taxi in 1990.

Became an Area Representative and franchisee for Handyman Connection in 1995.

- Acquired The Packaging Store, a franchisor, in 1999.
- Founded Navis Pack and Ship Franchise Systems, a franchisor, in 2002.
- Became an Area Representative to ArcPoint Franchise Systems in 2008.
- Became an Area Representative and franchisee to 101 Mobility Franchise Systems in 2012.
- Founded Business Visa Solutions Group in 2015.

Detailed CV:

Marvin L. Storm founded Control Financial Group, an equipment leasing company in 1977, after graduating from Brigham Young University in 1975 and accepting a position with Touche Ross, a national accounting firm.

After leaving the accounting profession, Marv became franchisee of The Packaging Store in 1985 and later an Area Representative for this franchise. From 1985 to 1989 Marv acquire seven franchisees, opened seven franchise locations in the San Francisco Bay Area, and developed another 25 franchise locations as an area representative.

In 1989, after completing the franchise development schedule for The Packaging Store, Marv founded Blackstone Hathaway Corporation, a franchise management and marketing company and sought to secure franchise development rights for franchisors located in the central and eastern part of the US who had little experience and understanding of developing their franchise systems in the western states.

In 1990, Marv became an Area Representative and later a franchisee for Takeout Taxi, a restaurant delivery franchise located in Herndon, VA. During the next four years, through Blackstone Hathaway, Marv awarded 40 franchise agreements for Takeout Taxi in California. During this time, Blackstone Hathaway continued as an Area Representative for The Packaging Store and franchises while developing Takeout Taxi Area Representative territory and operating Takeout Taxi franchises.

In 1995, Blackstone Hathaway became an Area Representative and franchisee for Handyman Connection for California and Nevada and awarded 44 franchises, which included four franchise locations operated by Blackstone Hathaway. Blackstone Hathaway continue to operate the Handle With Care Packaging Store and Takeout Taxi Area Representative area and associated franchises.

In 1999, an opportunity presented itself to acquire The Packaging Store franchise company. Partnering with a mezzanine fund, Marv acquired The Packaging Store franchise. Over the next few years, the Area Representative franchise rights and related franchise operations were sold in order to focus on the development of The Packaging Store franchise system.

As a part of the franchise development strategy for the packaging, shipping and logistics market segment, Marv founded Navis Pack and Ship Franchise Systems, a business-to-business franchise company in 2002, as a part of a global strategy to capture both the retail and business market segments. This strategy proved to be successful and in 2004, The Packaging Store franchise system was sold. In 2006, as a part of an exit strategy, the Navis Pack and Ship franchise system was sold.

After a brief hiatus, Blackstone Hathaway became the area representative for the AccuDiagnostic Franchise Systems, later rebranded to ArcPoint Franchise Systems in 2008 for California and Nevada. In 2012, Blackstone Hathaway became an Area Representative and franchisee to 101 Mobility Franchise Systems in 2012. By 2015, both the ArcPoint and 101 Mobility franchise systems were reacquired by the franchisors.

In late 2015, founded Business Visa Solutions Group, a franchise and business consultancy focused visa business advisory services for an international clientele.

Marv is the author of the book *Transitioning From Employee to Entrepreneur – A Road Map for Aspiring Entrepreneurs*.

He has lectured at various International Franchise Association (IFA) conferences, taught continuing education classes for the CFE certification courses and has been a feature speaker at IFA regional events through the country.

He has served as a seminar facilitator for Management 2000, one of the premier international franchise consulting firms.

He holds the Certified Franchise Executive (CFE) certificate.

Articles & Publications

A Tale of Two Franchise Expansion Strategies - *There's More Growth in Area Representation Than Meets the Eye*

Issue I, 2008

Avoiding Rookie Mistakes - *Three Gaffes New Franchisors Can't Afford To Make With Area Representatives*

Issues II, 2008

The "Big Three" Stupid Mistakes - *Even Old Pros Can Be Guilty of These*

Issue III, 2008

Charged with Leadership - *Franchise Execs Rise to Ever-New Challenges*

Issue IV, 2008

The 7 Best-Kept Secrets of Area Representation - *"Sage ol' pros" offer advice born of experience*

Issue IV, 2008

Full Speed Ahead - *Now Is the Time to Rev Up Your Growth Engine*

Q1 2009

Crafting a Strategy for the Times - *Area Representation Delivers the Resources For Continued Growth*

Q1 2009

Funding Strategies for Area Representation - *Five Key Elements Are Essential To Success*

Q2 2009

Replicating Your DNA - *Area Reps: Your Best Bet For Development Success*

Q4 2009

Strength In Numbers-Leveraging AR Marketing Dollars

Q1 2010

Mythbusting - Separating AR Facts From AR Fictions
Q1 2011

Competitive Advantage-Deploy An AR Strategy For Market Dominance
Q2 2010

The Time 2 Transition Blog at <http://time2transition.com/blog>

Attachment 2

I have not testified in any trials in the last four years.

Attachment 3

List of Materials Received

1. First Amended Counterclaim by Defendant and Counterclaimant - Bennion & Deville Fine Homes, Inc. *et al.* v. Windermere Real Estate Services Company *et al.*; USDCt Central District of California Case. No. 5;15-CV-01921 R (KKx) [hereinafter "Windermere Case."]
2. Answer Of Defendant Windermere Real Estate Services Company To Plaintiffs' First Amended Complaint
3. First Amended Counterclaim By Defendant And Counterclaimant Windermere Real Estate Services Company For Damages And Injunctive Relief
4. Answer Of Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion And Deville Homes So Cal, Inc., Windermere Services Southern California, Inc., And Robert L. Bennion To First Amended Counterclaim
5. Declaration Of Joseph R. Deville In Support Of Plaintiffs' Opposition To Defendants Motion For Partial Summary Judgment

6. Plaintiffs' Opposition To Defendants Windermere Real Estate Services Company's Notice Of Motion And Motion For Partial Summary Judgment
7. Exhibits 1-22 to Deville Decl 60-2
8. Deposition of Robert L. Bennion; July 28, 2016 – Volume I
9. Deposition of Robert L. Bennion; July 28, 2016 – Volume II
10. Deposition of Joseph R. Deville; July 26, 2016 – Volume I
11. Deposition of Joseph R. Deville; July 27, 2016 – Volume II
12. Deposition of Kirk Gregor; July 28, 2016
13. Deposition of Eric Forsberg; July 29, 2016
14. Deposition of Paul Drayna; Volumes I, August 22, 2016
15. Deposition of Paul Drayna; Volumes II, August 23, 2016
16. Deposition of Michael Fanning; August 31, 2016.
17. Deposition of Noele Bortfeld; August 31, 2016
18. Deposition of Brian Gooding; September 6, 2016
19. Deposition of Richard Johnson; September 9, 2016.
20. Deposition of Fred Schuster, September 7, 2016
21. Deposition of Richard Johnson: September 9, 2016
22. Deposition of Brian Gooding, September 6, 2016
23. Deposition of Michael Teather Volume I, August 23, 2016
24. Deposition of Michael Teather Volume II, August 24, 2016

25. Deposition of Jill Wood, August 24, 2016
26. Deposition of Geoffery P. Wood, August 25, 2016
27. Deposition of Robert Sherrell, August 26, 2016
28. Deposition of Mark Oster, August 30, 2016
29. Deposition of John O'Brien Jacobi, August 30, 2016
30. Deposition of Patrick Robinson, August 29, 2016
31. Referrals From Windermere Direct (Lead Report)
32. Franchise Business Economic Outlook for 2016, International Franchise Association Educational Foundation, By: IHS Economics - January 2016
33. Coldwell Banker FDD
34. Sotheby FDD

Windermere Exhibits 1

2364301_Exhibit_1_PaulSDrayna
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Windermere Exhibits 2

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Separate Exhibits

(This space left intentionally Blank – See next Page Below for Exhibits)

Exhibit A

From: Bob Bennion <bbennion@windermere.com>
Date: Thu, 31 May 2012 23:28:03 -0400
To: patgrim@windermere.com<patgrim@windermere.com>; 'Bob Deville'<bdeville@windermereocal.com>; Jill Wood<jwood@windermere.com>
Cc: Noelle Bortfeld<noelle.bortfeld@windermere.com>; Paige Tyley<ptyley@windermereocal.com>
Subject: RE: RE: scan of Palm Springs business card

Ok I have to chime in here. I am in charge of our branding and marketing so you have rung my bell and I am as mad as hornet!

This is probably an email I shouldn't send today but I have had a bad day and I am looking for someone to fight with and sense you through the first punch here goes. Get ready.

Really? I mean really? Of COURSE we police the brand ALL the time! You really think we just sit back and let the agents do whatever they want? If you walk in one of our offices you will find every Windermere business card displayed in the front legal with in the brand constraints.

Our marketing departments is constantly "guiding and reining in" our agents. It is a full time job!

Our ads, physical offices, signage anything we do is with the pride of the Windermere brand. For you to insinuate we sit back and do nothing while the Windermere brand is "denigrated" (your word) under our watch is offensive and I take issue with it. We are very proud of the brand and work extremely hard at GREAT EXPENSE to maintain the brand both in California and here in Seattle. We have taken enormous risk and worked ourselves to death to plant the Windermere brand in Southern California over the past 11 years. I like to see you give it a shot. If you think we have done such a crummy job feel free to apply for my job.

For you to state in your email that we just "allow this to happen" as if we sit around on our ass all day and do nothing is irresponsible Pat.

Are agents trying to constantly step out of the box? Yes of course. That is what agents do. Do they have their own personal marketing cards they try to hide from us? Sure they do as agents do here in Seattle. Your naive if you think they don't including agents in your own office.

Bob D I commend you for your short response and restraint but this email has pushed my cheese off my cracker! As you can see I am not the bigger person today.

Pat for you to send us an email like with those kind of accusations based on ONE business card an agent brought you from the Desert is well I can't think another word for it, but is just plain stupid.

Thank you for the reference for the "Standards of Practice" addendum. I think I help write them years ago.

Noelle and Jill if you agree with Pat feel free to tell me so.

Best,

Bob B.

Exhibit B

From: Noelle Bortfeld
Sent: Thursday, May 31, 2012 9:42 PM
To: Bob Bennion; patgrimm@windermere.com; 'Bob Deville'; Jill Wood
Cc: 'Paige Tyley'
Subject: Re: RE: scan of Palm Springs business card

Omg. That is music to my ears!!! And thank you for alleviating the concern. And most of all, thank you for contributing to the "data driven" conversation. We appreciate that insight. We can look at this example as one of the others that happens in our area as well. (We all know it happens...just our job to rat each other out!). Thank you. Sleep well all.

Sent on the Sprint® Now Network from my BlackBerry®

From: Bob Bennion <bbennion@windermere.com>
Date: Fri, 1 Jun 2012 00:25:10 -0400
To: Noelle Bortfeld<noelle.bortfeld@windermere.com>; patgrimm@windermere.com<patgrimm@windermere.com>; 'Bob Deville'<bdeville@windermereocal.com>; Jill Wood<jwood@windermere.com>
Cc: 'Paige Tyley'<ptyley@windermereocal.com>
Subject: RE: RE: scan of Palm Springs business card

Thanks Noelle,

The data your probably not seeing is our business card orders are through Ptarmigan Press and run \$3000-\$4000 per month just for business cards for the our Company for our agents. The agents order them through us at Ptarmigan and we bill the agents back on their monthly statement. This is our preferred vendor for the our business cards for our agents. They have the specs and this is how we control the brand for the cards. We started with Ptarmigan as Windermere's preferred vendor and they have been good to us and we are loyalist.

Agents can use the E store if they wish but we promote and support Ptarmigan Press.

You don't need to be concerned we have it covered.

TX Bob

From: Noelle Bortfeld [mailto:noelle.bortfeld@windermere.com]
Sent: Thursday, May 31, 2012 9:11 PM
To: Bob Bennion; patgrim@windermere.com; 'Bob Deville'; Jill Wood
Cc: Paige Tyley
Subject: Re: RE: scan of Palm Springs business card

Bob. You know I love you and your support of Windermere. You are an amazing leader and advocate of our brand. Truly. And when you speak, we listen. And we execute because we respect your opinion immensely. And I speak for my entire team. We are blessed to have you as part of our organization.

But emotions and love are one thing. (I wish it were so in business. :)). The data speaks otherwise. I will forward the sales on Business cards for SO CAL so we can have a more data driven conversation. I think it will help you understand our concern.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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

On September 30, 2016, I served document(s) described as **PLAINTIFFS AND COUNTER-DEFENDANTS' REBUTTAL REPORT PURSUANT TO RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE** on the following person at the addresses and/or facsimile number below:

Pérez Wilson Vaughn & Feasby
John Vaughn
750 B. Street, 33rd Floor
San Diego, CA 92101
vaughn@perezwilson.com

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

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

☒ BY 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.

☐ 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.

☐ BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and processing correspondence for Federal Express. Under that practice it would be deposited

1 with Federal Express on that same day in the ordinary course of business for overnight
2 delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

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

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

9 Executed on **September 30, 2016** at Irvine, California.

10 By: /s/ Barbara Calvert
11 Barbara Calvert
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