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10
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12 Windermere Real Estate Services Company

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 Plaintiffs,

20 v.

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

23 Defendant.

24
25
26 **AND RELATED COUNTERCLAIMS**
27
28

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

Hon. Manual L. Real

**DECLARATION OF PAUL S.
DRAYNA IN SUPPORT OF REPLY
IN SUPPORT OF
COUNTERCLAIMANT
WINDERMERE REAL ESTATE
SERVICES COMPANY'S
APPLICATIONS FOR RIGHT TO
ATTACH ORDERS AND ORDERS
FOR ISSUANCE OF WRITS OF
ATTACHMENT**

Date: December 19, 2016

Time: 10:00 a.m.

Courtroom: 8

Complaint Filed: September 17, 2015

1 I, Paul S. Drayna, declare as follows:

2 1. I am an attorney admitted to practice in all Washington state courts, as
3 well as the United States District Court for the Western District of Washington. The
4 statements in this declaration are based upon my personal knowledge, and if called
5 as a witness, I could testify competently thereto.

6 2. I signed a previous declaration which was filed with our original
7 application for writs of attachment. Attached to that declaration as Exhibit K was a
8 true and correct copy of a June 3, 2014 email from me to plaintiffs' attorney, Robert
9 Sunderland, which attached a letter from Michael Teather to Mr. Sunderland, as
10 well as a proposed amendment to a promissory note. I personally typed that letter
11 for Mr. Teather. The first draft was written on May 30, 2014. I finalized the letter
12 and printed it on June 3, 2014, for Mr. Teather to sign. I personally scanned the
13 signed letter into a PDF file, which I then personally sent by email to
14 Mr. Sunderland along with the amendment to the promissory note.

15 3. Attached as Exhibit 1 hereto is a true and correct copy of a screen
16 capture that I took off my work computer of the folder containing the Microsoft
17 Word file of the June 3, 2014 letter. It shows the file was last modified on June 3,
18 2014, the same day it was finalized, printed, signed, scanned and sent to Mr.
19 Sunderland by email. I have not modified, or attempted to modify these file
20 properties, nor am I aware of any attempt by any other person to do so.

21 4. Attached as Exhibit 2 hereto is a true and correct copy of a screen
22 capture that I took off my work computer, showing the file properties for the
23 Microsoft Word file of the June 3, 2014 letter. It shows that the file was "created"
24 on May 30, 2014, the day that I wrote the first draft of this letter for Mr. Teather.
25 The file properties further show "last modified" and "last printed" dates of June 3,
26 2014 – the date that the letter was finalized, printed, signed, scanned and emailed to
27 Mr. Sunderland. I have not modified, or attempted to modify these file properties,
28 nor am I aware of any attempts by any other person to do so.

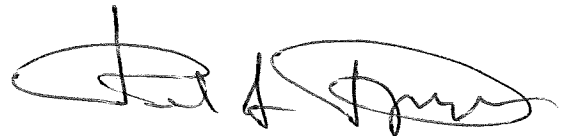
1 5. On June 10, 2014, I forwarded my June 3 email to Mr. Sunderland
2 following up regarding my June 3 email. Because I had forwarded the original June
3 3, 2014 email on June 10, it had the same attachments as the original June 3 email
4 (the letter from Mr. Teather, and the proposed amendment to the promissory note).
5 A true and correct copy of my June 10 email is attached hereto as Exhibit 3.

6 6. On June 24, 2014, Mr. Teather sent an email to Robert Sunderland on
7 which I was copied. A true and correct copy of that email is attached hereto as
8 Exhibit 4.

9 7. About 90 minutes later on June 24, 2014, Mr. Sunderland responded to
10 Mr. Teather by email, on which he also copied me. A true and correct copy of this
11 email is attached hereto as Exhibit 5.

12 8. The "paperwork" referenced in Mr. Sunderland's June 24th email is the
13 addendum extending the 2009 promissory note by three years. His email makes it
14 clear that he had the document in his possession at that time, but that it had not been
15 signed because his clients, Bob Bennion and Bob Deville, had been out of town.
16 The only way that Mr. Sunderland could have had that paperwork in his possession
17 on June 24th is if he had in fact received my emails of June 3rd and/or 10th. I
18 created the loan extension document in question, and I saved it to an access
19 restricted file folder on our company server. I did not ask or authorize anyone else
20 to send it to Mr. Sunderland on my behalf, and I am not aware of anyone else doing
21 so.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the forgoing is true and correct, executed this 5th day of December,
24 2016, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Paul S. Drayna", written over a horizontal line.

Paul S. Drayna

EXHIBIT 1









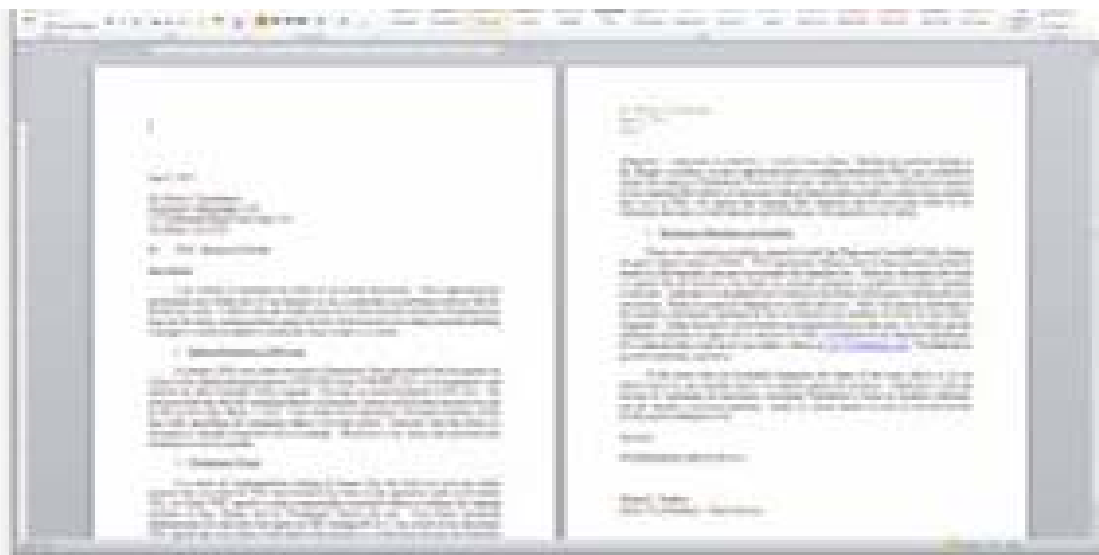
New		Open	Select	Search Bennion&DeVille	
PD_Hold_Area > Bennion&DeVille			▼	🔄	
Name		Date modified		Type	
 WSSC Termination Agreement v1 psd		8/27/2014 2:48 PM		Microsoft Word 9...	
 L053014 mjt to sunderland		6/3/2014 11:41 AM		Microsoft Word 9...	
 M051614 fees forgiven and loans advanced		5/16/2014 1:39 PM		Microsoft Word 9...	
 M041514 psd to mjt re seo		4/15/2014 3:00 PM		Microsoft Word 9...	
 Office Reconciliation and Past Due Fees Summary		3/28/2014 2:35 PM		Microsoft Excel W...	
 M032814 issues summary		3/28/2014 2:25 PM		Microsoft Word 9...	
 L030314 WSC to Bobs		3/4/2014 10:51 AM		Adobe Acrobat D...	
 L022414 draft letter to bobs		3/3/2014 9:54 AM		Microsoft Word 9...	

EXHIBIT 2



Properties ▾

Size	36.5KB
Pages	2
Words	716
Total Editing Time	78 Minutes
Title	September 26, 2001
Tags	Add a tag
Comments	Add comments

Related Dates

Last Modified	6/3/2014 11:41 AM
Created	5/30/2014 4:44 PM
Last Printed	6/3/2014 11:38 AM

Related People

Author	Paul S. Drayna Add an author
Last Modified By	Paul S. Drayna

EXHIBIT 3

From: Paul Drayna
Sent: Tuesday, June 10, 2014 4:52 PM
To: Robert Sunderland (rsunderland@sunmclaw.com)
Cc: Mike Teather
Subject: FW: Amendment to promissory note
Attachments: 20140603115916374.pdf; K053014 amend prom note.pdf

Robert - just checking to see if there are any questions or concerns about the paperwork I sent you last week. I saw a note from accounting that we received another payment from your clients on the 2009 note last Friday, but it was the old payment amount of \$5,838.23. That means that they should remit an additional \$4,404.62 along with the signed note extension by the end of this month. If there's any problem please contact me or Mike Teather ASAP. Thanks.

Paul S. Drayna, General Counsel
Windermere Services Co.
5424 Sand Point Way NE
Seattle, WA 98105
206.527.3801
pdrayna@windermere.com

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-----Original Message-----

From: Paul Drayna
Sent: Tuesday, June 03, 2014 12:14
To: Robert Sunderland (rsunderland@sunmclaw.com)
Cc: Mike Teather
Subject: Amendment to promissory note

Robert:

Mike Teather asked me to send you the amendment to the 2009 promissory note, along with the attached cover letter from Mike. If you have any questions of course don't hesitate to call.

Paul S. Drayna, General Counsel
Windermere Services Co.
5424 Sand Point Way NE
Seattle, WA 98105
206.527.3801
pdrayna@windermere.com

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EXHIBIT 4

From: Mike Teather
Sent: Tuesday, June 24, 2014 12:07 PM
To: rsunderland@sunmclaw.com
Cc: Paul Drayna
Subject: FW: Bobs payments: status and due dates

Robert,

I asked Paul to prepare a summary of when payments are due from Windermere Southern CA, he will send this to you by separate email. It occurred to me that this may make it easier for payments to be scheduled.

Paul tells me that he has not received the addendum that extends the 2009 loan by three years. Please let me know if there is a problem with this extension.

I would like to schedule a trip to San Diego for the middle of July. Could you let me know when you might be available.

Otherwise, I hope this email finds you well.

Michael J. Teather
WSC

EXHIBIT 5

Paul Drayna

From: Robert Sunderland <rsunderland@sunmclaw.com>
Sent: Tuesday, June 24, 2014 13:35
To: Mike Teather
Cc: Paul Drayna; Robert Sunderland
Subject: RE: Bobs payments: status and due dates

Thanks for following up Mike. Bob and Bob are out of town all week and not very reachable so I anticipate getting the paperwork back to you early next week.

I will be in San Diego between the 22nd and 31st so if you have a few dates that look better than any of the others, let me know and we'll plan to meet then.

Best regards,

Robert

Sent From:
Robert J. Sunderland, Esq.
SUNDERLAND | MCCUTCHAN, LLP
11770 Bernardo Plaza Court, Suite 310
San Diego, CA 92128
Tel: (858) 675-7800
Fax: (858) 675-7807
Web: www.sunmclaw.com

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From: Mike Teather [<mailto:mike.teather@windermere.com>]
Sent: Tuesday, June 24, 2014 12:07 PM
To: Robert Sunderland
Cc: Paul Drayna
Subject: FW: Bobs payments: status and due dates

Robert,

I asked Paul to prepare a summary of when payments are due from Windermere Southern CA, he will send this to you by separate email. It occurred to me that this may make it easier for payments to be scheduled.

Paul tells me that he has not received the addendum that extends the 2009 loan by three years. Please let me know if there is a problem with this extension.

I would like to schedule a trip to San Diego for the middle of July. Could you let me know when you might be available.

Otherwise, I hope this email finds you well.

Michael J. Teather
WSC