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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 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. Manuel L. Real

**DECLARATION OF JEFFREY A.  
FEASBY IN SUPPORT OF  
COUNTERCLAIMANT'S  
OPPOSITIONS TO COUNTER-  
DEFENDANTS' MOTIONS IN  
LIMINE AND MOTION TO  
EXCLUDE REBUTTAL REPORT**

Date: May 1, 2017

Time: 10:00 a.m.

Courtroom: 880

1 I, Jeffrey A. Feasby, 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. Attached as Exhibit A to this declaration is a true and correct copy of  
12 excerpts from the transcript of the Deposition of Michael Teather taken on August  
13 23 and 24, 2016 in this case.

14 4. Attached as Exhibit B to this declaration is a true and correct copy of  
15 excerpts from the transcript of the Deposition of Patrick Robinson taken on July 29,  
16 2016 in this case.

17 5. Attached as Exhibit C to this declaration is a true and correct copy of  
18 excerpts from the transcript of the Deposition of Robert L. Bennion taken on  
19 July 27 and 28, 2016 in this case.

20 6. Attached as Exhibit D to this declaration is a true and correct copy of  
21 the Report of Neil J. Beaton, DPA/ABV/CFF, CFA, ASA dated September 16,  
22 2016.

23 7. Attached as Exhibit E to this declaration is a true and correct copy of  
24 excerpts from the transcript of the Deposition of Joseph R. Deville taken on July 27,  
25 2016 in this case.

26 8. Attached as Exhibit F to this declaration is a true and correct copy of  
27 the Amendment to Promissory Note signed by Bennion, Deville and Geoffrey Wood  
28 as the Manager of JFF, LLC. Deville authenticated this document at pages 375-376

1 of his deposition, a true and correct copy of which is attached to this declaration as  
2 Exhibit E.

3 9. On August 29, 2016, the discovery cutoff, Counter-Defendants  
4 produced additional documents, including a “Recast Profit & Loss” for WSSC. This  
5 document was materially different than the audited financial statements for WSSC  
6 that had been previously produced by Counter-Defendants.

7 10. On August 31, 2016, I sent an email to Counter-Defendants’ attorney,  
8 Kevin Adams, demanding the identity of the author of the Recast Profit & Loss,  
9 copies of all documents relied upon by that individual in creating the Recast Profit  
10 & Loss, and requesting the deposition of the individual that created the Recast Profit  
11 & Loss. Mr. Adams responded to my email on September 2, 2016 that the Recast  
12 Profit & Loss was created by Counter-Defendants’ accountant, Greg Barton, and  
13 that they would make Barton available for deposition. I had previously served a  
14 document subpoena on Mr. Barton prior to the discovery cutoff. Mr. Adams  
15 confirmed that Mr. Barton would produce the relevant documents in response to that  
16 subpoena. During these and subsequent communications regarding Mr. Barton’s  
17 deposition, I made it clear that the deposition was necessary before WSC’s experts  
18 could finalize their reports.

19 11. On September 16, 2016, the parties exchanged their initial expert  
20 witness disclosures and reports. WSC retained Neil Beaton to assess the damages it  
21 sustained because of Counter-Defendants actions. Counter-Defendants retained  
22 Peter Wrobel to assess the damages they allegedly sustained in this matter. In his  
23 report, Mr. Wrobel relied upon the Recast Profit & Loss. The Recast Profit & Loss  
24 became even more important at that time given that Mr. Wrobel relied primarily  
25 upon it for purposes of his calculation of the alleged “net value” of WSSC for  
26 purposes of Counter-Defendants’ alleged damages.

27 ///

28 ///

1           12. Mr. Barton's deposition was initially scheduled for October 6, 2016.  
2 However, the documents produced in response to the subpoena to Mr. Barton were  
3 not produced until the night of October 4, which did not allow me sufficient time to  
4 review the documents prior to the deposition. As a result, Mr. Adams and I agreed  
5 to continue the deposition to October 19, 2016. It was my understanding based on  
6 my communications with Mr. Adams that he understood that Mr. Beaton's rebuttal  
7 report could not be completed until after Mr. Barton's deposition.

8           13. At or about this time, Mr. Adams and I began discussing the possibility  
9 of mediating the parties' disputes. On October 31, 2016, Mr. Adams confirmed that  
10 his clients were agreeable to a mediation. Over the next week, Mr. Adams and I  
11 discussed possible mediators and scheduling. Ultimately, the parties agreed to a  
12 mediator, with the mediation to take place on November 10, 2016. During my  
13 discussions with Mr. Adams regarding the mediation and scheduling, I made it clear  
14 that WSC was waiting until after the mediation to produce Mr. Beaton's rebuttal  
15 report in the event a settlement was reached.

16           14. On March 3, 2017, I produced Mr. Beaton's rebuttal report. In the  
17 email attaching the rebuttal report, I proposed deposition dates for WSC's experts  
18 during the weeks of March 13 and March 20, and requested the availability of  
19 Counter-Defendants' experts during the weeks of March 20 and 27. On March 21,  
20 having received no response regarding scheduling expert depositions, I sent a notice  
21 for Mr. Wrobel's deposition for April 5, 2017, and proposed Mr. Beaton's  
22 deposition on April 3.

23           15. On March 31, 2017, Mr. Adams and I discussed deposition scheduling  
24 and agreed that Mr. Wrobel's deposition would go forward on April 5 as noticed. I  
25 also agreed to provide alternative dates for Mr. Beaton's deposition. On April 3,  
26 2017, I sent Mr. Adams an email proposing dates for Mr. Beaton's deposition in  
27 early May. I proposed the dates in May because Mr. Adams had informed by during  
28 our call on March 31 that he was scheduled to be in trial in late-April.

1           16. As of the filing of this opposition, Mr. Adams has not responded to  
2 schedule Mr. Beaton's deposition.

3           I declare under penalty of perjury under the laws of the State California that  
4 the foregoing is true and correct, and that this declaration was executed on April 10,  
5 2017.

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8                               /s/ Jeffrey A. Feasby  
9                               Jeffrey A. Feasby  
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# EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 BENNION & DEVILLE FINE HOMES, )  
INC., a California corporation, )  
5 BENNION & DEVILLE FINE HOMES )  
SOCAL, INC., a California )  
6 corporation, WINDERMERE SERVICES )  
SOUTHERN CALIFORNIA, INC., a )  
7 California corporation, ) No.  
8 Plaintiffs, ) 5:15-cv-01921-R-KK  
9 vs. )  
10 WINDERMERE REAL ESTATE SERVICES )  
COMPANY, a Washington )  
11 corporation; and DOES 1-10, )  
12 Defendants, )  
\_\_\_\_\_)  
13 AND RELATED COUNTERCLAIMS )  
14 \_\_\_\_\_)

15  
16 VIDEOTAPED DEPOSITION EXAMINATION OF:  
17 MICHAEL TEATHER  
18 VOLUME I  
19 600 University Street, Suite 320  
20 Seattle, Washington  
21

22 DATE TAKEN: August 23, 2016  
23 REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005  
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25 PAGES 1 - 266

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APPEARANCES:

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VIDEOGRAPHER:            LUCAS CHEADLE

ALSO PRESENT:            JOSEPH DEVILLE  
ROBERT BENNION - Afternoon  
session only



1 Q. So before you got in touch with  
2 Mr. Sunderland, you reached out to Mr. Deville,  
3 correct?

4 A. I -- I don't know how the first one took  
5 place. It's possible.

6 Q. You got ahold or tried to get in contact  
7 with Mr. Deville because of complaints that had been  
8 lodged by Mr. Gooding and Mr. Johnson, correct?

9 MR. FEASBY: Objection.

10 THE WITNESS: That's the point. I don't  
11 recall how that happened.

12 MR. FEASBY: Hang on a second.  
13 Objection. Mischaracterizes his testimony.

14 THE WITNESS: Yeah. Would you repeat  
15 the question? I'm sorry, I got lost there.

16 (The reporter read back:  
17 "Q. You got ahold and tried  
18 to get in contact with  
19 Mr. Deville because of the  
20 complaints that had been  
21 lodged by Mr. Gooding and  
22 Mr. Johnson, correct?")

23 THE WITNESS: I think that -- the reason  
24 that I desired to talk to Mr. Deville is I wanted to  
25 work on multiple problems. One, the idea of who was

1 responsible for what in the area of services; the  
2 concern that had been raised by Mr. Gooding and  
3 Mr. Johnson that they were being competed with, rather  
4 than serviced; and, third, their ongoing failure to  
5 pay the service fees that were owed to Windermere  
6 Services Company.

7 So those are the three issues that I was  
8 working on in Southern California.

9 BY MR. ADAMS:

10 Q. And so you ultimately were put in contact  
11 with Mr. Sunderland, correct?

12 A. Yes.

13 Q. And you had discussions with Mr. Sunderland  
14 regarding those topics?

15 A. Yes.

16 Q. And then eventually you got in touch with  
17 Mr. Deville, correct?

18 A. Yes. I -- I believe Mr. Deville -- he may  
19 have been returning my calls, so I don't know who  
20 called who first. My first telephone conversation I  
21 remember was him calling me.

22 Q. Before we go any further in a chronology  
23 here, let me just do a couple housekeeping matters.

24 You understand that you have been designated  
25 to testify today as a corporate representative for

1 being sometime in 2012 or 2013.

2 What was the relationship like between --  
3 strike that.

4 How would you explain the relationship  
5 between Bennion & Deville and Windermere at that time?

6 MR. FEASBY: Objection. Form.

7 THE WITNESS: I was very new to it and  
8 knew very little about the relationship at that time.

9 I had heard reports from Don Riley that  
10 he got along very well with them but that they did not  
11 cooperate in sort of a trusting way with him, I guess  
12 if I were to paraphrase what I learned from him. Or  
13 my feelings from him was that he felt like it wasn't  
14 an open dialogue all of the time and that he wasn't  
15 being listened to all of the time to the extent that  
16 he might have hoped.

17 And I think that part of the reason why  
18 we tried again is we had some -- we had some worries  
19 that the whole, Windermere Services Seattle and  
20 Windermere Services Southern California, was less than  
21 some of its parts because there wasn't good work going  
22 back at forth between the two and that we weren't  
23 feeling welcome in that region.

24 BY MR. ADAMS:

25 Q. Isn't it true that at the time you commenced

1 communications with Mr. Deville, there were technology  
2 issues from the technology provided by Windermere to  
3 the Southern California region?

4 A. I think your question reflects one of -- a  
5 very good example of what the problems were. We --  
6 and I believe to this day, that Mr. Deville believes  
7 that his job as the area representative for Southern  
8 California was to take whatever the Windermere System  
9 was generated in Seattle and, in essence, hand it to  
10 other people.

11 And we believe that the reason we hired  
12 Mr. Deville to -- and Mr. Bennion to run a services  
13 company in Southern California was to help us develop  
14 a system or supplement our existing system so that it  
15 was applicable to doing business in Southern  
16 California, so franchises could be successful in  
17 Southern California, because they owned franchises in  
18 Southern California, and prior to that Mr. Deville had  
19 worked at a franchise in Southern California.

20 So when you say technology, it seemed to me  
21 from your question that you inferred that somehow we  
22 had committed a failure. "We" being Windermere  
23 Seattle. And to me, I viewed it as, to the degree  
24 there was a failure or something substandard or  
25 something to work on. It was a shared responsibility

1 between Windermere in Seattle and our area  
2 representative Bennion & Deville.

3 Q. At the time you first started these  
4 communications with Mr. Deville, did you understand  
5 there to be any technology shortcomings from the  
6 technology provided by Windermere to Southern  
7 California region?

8 A. No. At the time I first talked to  
9 Mr. Deville, I didn't know anything about what was  
10 going on in the region.

11 Q. Did you hear of any complaints from any  
12 region concerning the technology offered by  
13 Windermere?

14 MR. FEASBY: Objection. Form.

15 THE WITNESS: Yes. In the area of  
16 technology, in the area of -- in any area we operate,  
17 we have 300 franchises, and always somebody would like  
18 to talk to us about our system or something they would  
19 like to see improved.

20 So, yes, I mean, they're customers.  
21 There's always something somebody would like to see.  
22 And I think particularly in the area of technology,  
23 everybody has some idea of something they would like  
24 to see represented in our technology. So we do hear  
25 people giving us, I don't know if I would be

1 providing support in connection with web pages?

2 A. I don't know about that.

3 Q. Are you aware that he was providing support  
4 in connection with signage?

5 A. I don't know who did it, but I would assume  
6 that Mr. -- we always have vendors that you go through  
7 the service company to buy signage, so I assume that  
8 happened.

9 I assume they at least found a way to get  
10 affiliates signs.

11 Q. Okay. So you're aware that these types of  
12 services were being provided by Mr. Bennion and  
13 Mr. Deville to franchisees in the region, correct?

14 A. When you say "these types of services," what  
15 are you referring to?

16 Q. Creation of business cards.

17 A. Yes, I think that they provided their  
18 affiliates with business cards or the ability to  
19 purchase them.

20 Q. And you have no idea one way or other  
21 whether or not these affiliates were ever shown or  
22 displayed on the Bennion & Deville Windermere SoCal  
23 website?

24 MR. FEASBY: Objection.

25 THE WITNESS: Oh, I'm quite certain that

1 they were because that was one of the particular  
2 complaints I heard from affiliates.

3 BY MR. ADAMS:

4 Q. What complaint is that?

5 A. It's that Bennion/Deville website looked  
6 very much like a Bennion & Deville website.

7 So when you own a Windermere franchise and  
8 you want to have a separate and distinct identity,  
9 appearing on the Windermere -- Bennion & Deville  
10 website causes apprehension where people think, hey,  
11 this is a Bennion & Deville company, not a separate  
12 company.

13 Their website very much represented their  
14 real estate company. So it harmed, in my view, our  
15 other affiliates to appear on that because it made  
16 them sound like they were a part of Bennion & Deville,  
17 not a separate franchise.

18 Q. And so you insisted that they be taken off  
19 the website, correct?

20 A. No. I never had that discussion ever.

21 Q. So you believe that they were harmed, but  
22 you didn't say anything one way or another about that?

23 A. No. What I was saying is -- I didn't want  
24 to have those types of fights. What I was saying is,  
25 we have to go one of two directions. We need to pick.

1 Everyone should be on Windermere.com, including you  
2 guys, or everybody should be on Windermere SoCal, and  
3 we should find some way to make it work.

4 But I never could get anyone -- or I  
5 couldn't get Mr. Deville to get into that idea. He  
6 wanted to do it that way. I disagreed with that. I  
7 thought it was a flawed way to do it. And I still  
8 believe that.

9 Q. Are there any owners in the system right now  
10 have their own websites?

11 A. Yes. Many.

12 Q. Who?

13 A. I couldn't name to you. There's -- there's  
14 all kinds of owners on that website.

15 Q. What about Mr. Gooding and Mr. Johnson?

16 A. I believe they have a website, yes.

17 Q. They have their own website, and they have  
18 their information about the business on the website.

19 A. Yes.

20 Q. Correct?

21 A. Yes.

22 Q. And does Windermere believe that that is a  
23 violation of their franchise agreement with  
24 Windermere?

25 A. No, not at all.



1 Q. Why not?

2 A. Because a lot of our franchise owners choose  
3 to have a web presence exclusive of Windermere.com.

4 Q. And did you believe that Bennion & Deville  
5 Fine Homes, Inc., the franchisee for the Coachella  
6 Valley region, was violating its contract by having a  
7 website?

8 A. You asked me that question once before, and  
9 I'll answer it the same way. No, any franchise owner  
10 is entitled to have a website.

11 Q. Do your service providers for the other  
12 regions have their own websites?

13 A. No. They choose to work with  
14 Windermere.com.

15 Q. No service provider has their own website?

16 A. Not that I'm aware of.

17 Q. Okay. And so were Mr. Bennion and  
18 Mr. Deville obligated, as a services provider, to  
19 create a separate website?

20 A. They were obligated to be in sync. The  
21 problem they had is that as wearing their hat of a  
22 real estate brokerage, what they're doing is fine.  
23 They're building a great brokerage everybody knows  
24 about, well-represented on the web. But wearing their  
25 hat as a services provider, they're telling such

1 people as Johnson and Gooding, you use the Windermere  
2 tools from Windermere.com, we have this other site,  
3 and we don't support it.

4 And they were very in effect -- as a matter  
5 of fact, Mr. Forsberg was constantly critical of  
6 Windermere.com but not particularly helpful in doing  
7 improvements. So what happens is, a franchise owner  
8 who's not named Bennion & Deville could feel like  
9 they're getting less service than Bennion & Deville  
10 are, in fact, giving themselves, which doesn't make  
11 them feel good when they know that a percentage of  
12 their fees are going to Bennion & Deville.

13 Q. I'm going to ask the court reporter to read  
14 back my last question and ask that you answer that.

15 (The reporter read back:

16 "Q. Okay. And so were  
17 Mr. Bennion and Mr. Deville  
18 obligated, as a services  
19 provider, to create a separate  
20 website?")

21 MR. FEASBY: Asked and answered.

22 THE WITNESS: Do you want me to answer  
23 again?

24 BY MR. ADAMS:

25 Q. Were they obligated to have a separate

1 services rights; all of the issues Mr. Sunderland  
2 seemed to be involved in.

3 It seemed to me he was a lawyer hired for  
4 general purposes, not for any particular issue.

5 Q. And are you the one that reported to others  
6 at Windermere that Mr. Schuster, Johnson, and Gooding  
7 were unhappy with the service provided with by  
8 Mr. Bennion and Mr. Deville?

9 A. I know that I heard that from Mr. Johnson  
10 and Mr. Gooding, and I know that I spoke about it to  
11 others. Whether or not it was exclusive in that, I  
12 don't know.

13 I'm certain I relayed it to Mr. Deville.

14 Q. And you related it to Mr. Drayna?

15 A. I'm certain I would have, yeah.

16 Q. And in September of 2014, you were  
17 expressing concern over the San Diego owners to  
18 Mr. Deville.

19 Do you remember that?

20 A. No.

21 Q. Did you believe that Mr. Deville, as an  
22 owner in the Windermere System, was a competitor with  
23 Mr. Johnson and Gooding?

24 A. I believe that Johnson -- Mr. Johnson and  
25 Mr. Gooding viewed him as a competitor, and I believe

1 some of his practices could be construed that way.

2 Q. And what practices could be construed that  
3 way?

4 A. During that time period, there were a lot  
5 of -- the location you referenced earlier wasn't the  
6 only location. Mr. Johnson and Mr. Gooding were to  
7 ambitious open up further branches. It appeared as  
8 were Mr. -- as was Mr. Deville, and I could never  
9 understand why, if Mr. Deville had told me he had no  
10 interest in working in the San Diego area, and the  
11 only reason he ever opened an office there was to fill  
12 a hole, why he wants to keep opening these offices.

13 And it seemed to me that if he just put his  
14 services hat on for a moment, he might realize why  
15 this new franchise owner, who's growing rapidly,  
16 paying their bills, and doing well, shouldn't be given  
17 some opportunities to grow without feeling like the  
18 person who is their franchise or services provider is  
19 wearing their real estate hat and opening franchises  
20 in the same locations they would like to.

21 So, right or wrong I don't know, but it  
22 certainly was worth a discussion, and we had some of  
23 those discussions.

24 Q. And weren't you aware that there were agents  
25 that had been working for Mr. Bennion and Mr. Deville

1 Prior to that time, I didn't really have much  
2 knowledge as to what Mr. Gregor was doing.

3 Q. And didn't you tell Mr. Gregor that you  
4 believe that Mr. Bennion and Mr. Deville should be  
5 selling their offices in San Diego to other owners?

6 A. I don't believe I said that.

7 Q. Do you recall your discussion with  
8 Mr. Gregor?

9 A. Yes.

10 Q. What did you discuss?

11 A. At that point, I was really optimistic -- or  
12 I was hopeful that we could become more successful  
13 franchisers down there, and so he was purported to be  
14 the person who would be providing the services and  
15 doing things, so I talked about what we do in the  
16 franchising business generally, finding owners to own  
17 franchises, and these types of things.

18 Q. Did you believe Mr. Gregor was qualified to  
19 provide these types of services?

20 A. I didn't know him well enough at that time  
21 to make a decision on that. I knew he was a nice  
22 person though.

23 Q. And as you sit here today, do you have any  
24 knowledge as to Mr. Gregor's background?

25 A. Those are two separate questions. I think

1 he told me he had been a manager for Mr. Deville, and  
2 I think he told he had been an agent.

3 Q. And with that knowledge, do you believe  
4 Mr. Gregor had the experience necessary to provide  
5 services on behalf of the services entity to  
6 franchisees in the Southern California region?

7 A. I don't know.

8 Q. Do you have any reason to dispute  
9 Mr. Gregor's ability to provide those services?

10 A. No.

11 Q. And Mr. Gregor then took you to a location  
12 where you met with Mr. Bennion, Mr. Deville, and  
13 Mr. Sunderland, correct?

14 A. That's correct.

15 Q. And do you remember that meeting?

16 A. Not specifically, but I remember we had the  
17 meeting.

18 Q. And wasn't Geoff Wood supposed to be at that  
19 meeting?

20 A. I don't know that.

21 Q. And at that meeting, didn't you push  
22 Mr. Bennion and Mr. Deville to give up their franchise  
23 businesses and just focus on services?

24 A. I doubt that.

25 Q. What do you recall from that meeting, if

1 anything?

2 A. I don't recall -- it's funny. I recall our  
3 conversations, but which ones were had on that day is  
4 difficult for me. But as I got to know Mr. Bennion  
5 and Mr. Deville, I -- my opinion certainly was that  
6 they were wholly inadequate in their ability to  
7 provide services and that their -- from all  
8 appearances, their brokerage business struggled  
9 financially. So I thought they can't wear both these  
10 hats. It's not been successful for a decade, so maybe  
11 to be -- to do something different in the future.

12 Two of the things that could have been done  
13 are, one, concentrate as a services company, or, two,  
14 concentrate as a brokerage, or find a way to do both.  
15 And I -- I don't know which one I favored at that  
16 time.

17 Q. But as of this October 2nd, 2014, meeting,  
18 you were of the mindset that Mr. Bennion and  
19 Mr. Deville were totally inadequate to provide  
20 services, correct?

21 A. I don't know that that was my opinion on  
22 that day. I feel it wasn't -- we had complaints. We  
23 had other people saying it's not working well. So it  
24 seemed to me that they were very overextended, running  
25 a very large real estate operation and trying to run a

1 services operation. But I was open to the possibility  
2 they could do both. I didn't know enough about it.

3 Q. Do you have any specific recollection as to  
4 the contents of the meeting from October 2nd, 2014?

5 A. No.

6 Q. Isn't it true that you felt Mr. Schuster  
7 drove you -- drove you nuts?

8 MR. FEASBY: Objection. Form.

9 THE WITNESS: That would be an unfair  
10 characterization to Mr. Schuster. He's a very highly  
11 detailed person and was particularly interested in  
12 learning the business and so he had a lot of  
13 questions. I don't think he drove me nuts. I have a  
14 very high opinion of Mr. Schuster.

15 BY MR. ADAMS:

16 Q. Is that an opinion that you expressed to  
17 Mr. Bennion and Mr. Deville?

18 A. I doubt it.

19 Q. Didn't you also inform Mr. Bennion and  
20 Mr. Deville that you wanted them to sell all of their  
21 offices in San Diego and Orange County?

22 MR. FEASBY: Objection. Form.

23 THE WITNESS: I don't - it's hard for me  
24 because I don't recall the particular conversation.

25 But Mr. Deville represented to me that



1 listings are still not showing on Windermere.com.

2 A. Yes, I remember this problem.

3 Q. And was that an concern for you?

4 A. Yes.

5 Q. Why?

6 A. Because -- I guess to state the obvious,  
7 it's important to us that we have things that work  
8 properly. And at that time, we weren't properly -- or  
9 able to get all the listings swept. And I don't  
10 remember the specific problem, but it took some time  
11 to resolve.

12 Q. And Mr. Lindsey at  
13 TechSupport@Windermere.com responds, and he says, "We  
14 are still working on it."

15 Do you see that?

16 A. Yes.

17 Q. And because of this response, Ms. Charnay  
18 contacts Eric Forsberg at Windermere SoCal, correct?

19 A. Yes.

20 Q. And Mr. Forsberg explains that "We have a  
21 real issue with Seattle versus CDAR."

22 Do you know what that means?

23 A. No, but I think did at the time. I think I  
24 talked to Mr. Forsberg about this.

25 Q. He says "We are losing clients over this."

1 Charlie and Randy each have upset sellers over this.  
2 The properties show on our website just fine but not  
3 on Windermere.com and not on their syndication end  
4 points."

5 Do you see that?

6 A. Yes.

7 Q. And what that a concern for Windermere?

8 A. Yes.

9 Q. Why was there this syndication issue?

10 A. I don't know the details. One of the things  
11 that was relayed to me was that our site, which  
12 encompassed a larger area, was not -- we had some  
13 complexities that Windermere SoCal did not have, and I  
14 couldn't speak to those with expertise. I was  
15 disappointed, though, because this indicated to me  
16 that I hadn't been successful, and I felt when I was  
17 talking to Mr. Forsberg about this, he wasn't part of  
18 the problem. He was just pointing. And I was hoping  
19 that we were doing better than that and that we were  
20 helping each other.

21 And then I think that he indicated to me  
22 that he knew about sort of the genesis of what this  
23 problem was well before us. I think he had already  
24 worked on his site and not told us about this problem  
25 some period before. So I felt like he was almost

1 telling me sort of, ha-ha, look I'm doing well with my  
2 site but you guys can't do it with your site.

3 Q. Wasn't this, at least in part, due to an  
4 upgrade to the Windermere.com site?

5 A. I don't know.

6 Q. Okay. And Mr. Deville explained to you that  
7 this is a real problem, right?

8 A. Yes.

9 Q. And he says it's costing them clients.

10 A. Right.

11 Q. So what did Windermere do, other than try to  
12 get Mr. Forsberg to correct their problem, about this?

13 A. I don't know.

14 Q. What did you do about it?

15 A. I contacted our technology department. I  
16 wish my information -- or my memory was better. They  
17 explained to me generally what the problem was, and I  
18 understood it, and I understood why it was taking more  
19 time, and I believe they did their best and they got  
20 it solved when they could.

21 Q. And --

22 A. We're not in the business of trying to have  
23 people's listings not swept, right, so we certainly  
24 wouldn't say, oh, forget about it, that's okay.

25 Q. Okay. And this listing issue was also

1 attributed at some point in time to the MLS upgrade  
2 that had occurred.

3 Do you recall that?

4 A. No, I don't. I'm not disputing you. I  
5 don't know what the genesis of the problem was.

6 Q. And don't you believe that it is Windermere  
7 tech's job to be on the ball and take care of upgrades  
8 to the MLS?

9 A. That was my biggest disappointment in this  
10 particular instance. I thought, here's Mr. Forsberg,  
11 and he knows these things. The whole reason we've  
12 hired a services company in Southern California, the  
13 whole reason they get half the money is to help. And  
14 not only did they not help, I felt like what we got  
15 back was sort of a, see, we know something you don't.  
16 And I thought, we're not supposed to be two separate  
17 companies, why aren't we sharing better. I felt like  
18 I hadn't done a good job of solving that problem.

19 Q. Why didn't Windermere hire someone that  
20 could answer that question or resolve that issue?

21 A. We did. We hired Bennion and Deville and  
22 Mr. Forsberg, in essence.

23 Q. You did not. Are you aware that Mr. Bennion  
24 and Mr. Deville had to pay \$35,000 to become the area  
25 representatives?

# CERTIFICATE

[illegible]

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of MICHAEL TEATHER was taken stenographically before me on August 23, 2016, and thereafter transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor a relative or employee of any of the parties to the action or any attorney or financially interested in its outcome;

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition, within 30 days, upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my  
hand and 7th day of September 2016.

Cynthia A. Kennedy, RPR

NCRA Registered Professional Reporter  
Washington Certified Court Reporter No. 3005  
License expires November 16, 2016

# EXHIBIT B

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
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5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE )  
8 FINE HOMES SOCAL, INC., a ) Case No.  
9 California corporation, ) 5:15-CV-01921 R  
10 WINDERMERE SERVICES SOUTHERN ) (KKx)  
11 CALIFORNIA, INC., a California )  
12 corporation, )  
13 )

14 Plaintiffs, )

15 vs.

16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,  
19 Defendant.  
20

21 -----  
22 AND RELATED COUNTERCLAIMS.  
23 -----  
24

25 DEPOSITION OF PATRICK ROBINSON  
Irvine, California  
Friday, July 29, 2016

Reported by:  
Shari Stellhorn  
CSR No. 2807  
Job No. 2330921B

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, )  
INC., a California )  
corporation, BENNION & DEVILLE)  
FINE HOMES SOCAL, INC., a ) Case No.  
California corporation, ) 5:15-CV-01921 R  
WINDERMERE SERVICES SOUTHERN ) (KKx)  
CALIFORNIA, INC., a California)  
corporation, )  
 )  
Plaintiff, )  
vs.  
WINDERMERE REAL ESTATE  
SERVICES COMPANY, a Washington  
corporation; and DOES 1-10,  
Defendants.

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Deposition of PATRICK ROBINSON, taken on behalf of  
Defendant and Cross-Complainant, at 4 Park Plaza,  
Suite 1230, Irvine, California, beginning at  
12:00 p.m. and ending at 1:45 p.m. on Friday,  
July 29, 2016, before Shari Stellhorn, Certified  
Shorthand Reporter No. 2807.



1 commissions, it's gross net commissions.

2 Q And go ahead and look at page -- or excuse  
3 me -- Exhibit 66. Do you recognize this document?

4 A Yes.

5 Q What is this document?

6 A This is the Windermere statement of  
7 outstanding fees.

8 Q And this was a document that's prepared by  
9 Windermere in Seattle?

10 A Yes.

11 Q And then would they send these statements  
12 to you?

13 A Yes.

14 Q Would you receive statements for all the  
15 franchises in Southern California?

16 A Generally, yes, I would.

17 Q And were you required to do anything with  
18 those statements?

19 A I either -- I needed to look over them and  
20 either send them out to the owners or I would  
21 indicate back to the person in Seattle to okay to  
22 send them out. I would reconcile with my numbers  
23 and look them over.

24 Q So you would take these, compare them to  
25 the numbers that you had from your spreadsheet and

1 confirm that they were accurate?

2 A Yes.

3 Q And which statements would you send out  
4 versus the statements that were sent out by Seattle?  
5 Does that make sense?

6 A It would be this one. Rarely did I send  
7 this out; I let them send it out. They ran it by me  
8 to look it over and okay it to send out.

9 Q So the statements to the franchisees would  
10 typically then come from Seattle; is that correct?

11 A Yes.

12 Q On rare occasions you would forward them  
13 out?

14 A Yes.

15 Q Is that true also of the statements that  
16 were going to Bennion & Deville Fine Homes?

17 A I believe so. That's what these -- yes, I  
18 believe so.

19 Q And to be clear, would you reconcile the  
20 statements that were generated for all of the  
21 franchisees in Southern California?

22 A Yes.

23 Q And this statement here has got a date at  
24 the top Wednesday, September 30th, 2015, and the  
25 first -- on the first page underneath says

1 Windermere Real Estate SoCal; do you see that?

2 A Yes.

3 Q And is that Bennion & Deville Fine Homes  
4 SoCal, is that the franchise?

5 A Yes.

6 Q And if you look at the statement it's got  
7 office name there on the left; do you see that?

8 A I do.

9 Q And the offices listed here if you go down  
10 are Carlsbad, La Mesa Village and Laguna Niguel; do  
11 you see that?

12 A Yes.

13 Q And for each of these it looks like the  
14 balance started accruing in July of 2014; do you see  
15 that?

16 A Yes.

17 Q And it continues on a monthly basis through  
18 August 1st of 2015; do you see that?

19 A Yes.

20 Q Is it your recollection that  
21 Bennion & Deville Fine Homes SoCal had not been  
22 paying its franchise fees throughout this period of  
23 time?

24 A Yes.

25 Q And if you look then on page that's Bates

1 stamp 57045, this looks like a statement that's got  
2 listed there, Windermere Real Estates Coachella  
3 Valley, Inc. Is that Bennion & Deville Fine Homes?

4 A Yes.

5 Q That's the franchise?

6 A Yes.

7 Q And it lists here a number of office names  
8 Cathedral City, Indian Wells Main; correct?

9 A Yes.

10 Q Indio, La Quinta, Palm Springs, Portola and  
11 it goes on from there. Do you recognize this as the  
12 offices that were open by Bennion & Deville Fine  
13 Homes at that time?

14 A Yes.

15 Q And this statement also reflects or appears  
16 to reflect the balance beginning to accrue as of  
17 July 2014; do you see that?

18 A Yes.

19 Q And at least Cathedral City runs through  
20 June of 2015; do you see that there?

21 A Yes.

22 Q Do you know whether that office closed  
23 after June of 2015?

24 A Yes, it did.

25 Q And then Indian Wells is the next one and

1 it also starts on July of 2014; do you see that?

2 A Yes.

3 Q And then it runs through August of 2015 --

4 A Yes.

5 Q -- on the next page there?

6 Do you recall during this time

7 Bennion & Deville Fine Homes being delinquent on its  
8 franchise fees and technology fees?

9 A Yes.

10 Q And do you know whether or not they were  
11 current up until July of 2014?

12 A I don't recall.

13 Q If they weren't current or there was an  
14 amount owing, would you expect that it would be  
15 reflected on this statement?

16 A Yes.

17 Q In addition to the work that you did for  
18 Windermere Services SoCal, Bennion & Deville, Inc.  
19 And Bennion & Deville Fine Homes, you were also the  
20 liaison between Seattle and Mr. Deville and  
21 Mr. Bennion on some personal loans; is that correct?

22 A No.

23 Q No. Do you recall interacting with anyone  
24 in Windermere in Seattle regarding payments on  
25 personal loans that had been made to Mr. Deville and

## INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line.

### ERRATA SHEET

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Change: No to Yes.

Reason: Satchile offices did not pay franchise fees.

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 \_\_\_\_\_ Subject to the above changes, I certify that the transcript is true and correct.

\_\_\_\_\_ No changes have been made. I certify that the transcript is true and correct.

  
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8/19/16  
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I declare under penalty of  
perjury under the laws of the State of  
California that the foregoing is true  
and correct.

Executed on Aug 19, 2016, at  
Rancho Mirage, California.



SIGNATURE OF WITNESS



1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 Certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set  
6 forth; that any witnesses in the foregoing  
7 proceedings, prior to testifying, were  
8 administered an oath; that a record of the  
9 proceedings was made by me using machine  
10 shorthand which was thereafter transcribed  
11 under my direction; that the foregoing  
12 transcript is a true record of the  
13 testimony given.

14 Further, that if the foregoing pertains to  
15 the original transcript of a deposition in  
16 a Federal Case, before completion of the  
17 proceedings, review of the transcript [ ]  
18 was [ ] was not requested. I further  
19 certify I am neither financially  
20 interested in the action nor a relative or  
21 employee of any attorney or any party to  
22 this action.

23 IN WITNESS WHEREOF, I have this date

24 Subscribed my name.

25 Dated: August 5, 2016



SHARI STELLHORN

CSR No. 2807

# EXHIBIT C

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, )  
INC., a California )  
corporation, BENNION & DEVILLE)  
FINE HOMES SOCAL, INC., a ) Case No.  
California corporation, ) 5:15-CV-01921 R  
WINDERMERE SERVICES SOUTHERN ) (KKx)  
CALIFORNIA, INC., a California)  
corporation, )  
 )  
Plaintiffs, )

vs.

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

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DEPOSITION OF ROBERT L. BENNION  
Irvine, California  
Thursday, July 28, 2016  
Volume II

Reported by:  
Shari Stellhorn  
CSR No. 2807  
Job No. 2330920A  
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1  
2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE) Case No.  
8 FINE HOMES SOCAL, INC., a ) 5:15-CV-01921 R  
9 California corporation, ) (KKx)  
10 WINDERMERE SERVICES SOUTHERN )  
11 CALIFORNIA, INC., a California)  
12 corporation, )  
13 )  
14 Plaintiffs, )  
15 vs.  
16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,,  
19 Defendants.  
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Deposition of ROBERT L. BENNION, Volume II, taken on behalf of Defendant and Cross-Complainant, at 4 Park Plaza, Suite 1230, Irvine, California, beginning at 9:13 a.m. and ending at 12:45 p.m. on Thursday, July 28, 2016, before Shari Stellhorn, Certified Shorthand Reporter No. 2807.

1 that or not.

2 Q Do you know whether either of the entities  
3 stopped paying franchise and tech fees in July 2014?

4 A Please repeat the question.

5 Q Do you know whether either of the entities 09:49:15  
6 stopped paying tech fees in July of 2014?

7 A I would have to look at our records.

8 Q Do you recall whether or not in July of  
9 2014 Bennion & Deville Fine Homes So. Cal was having  
10 any financial issues that would prevent it from 09:49:33  
11 paying the fees owed to Windermere Seattle?

12 A I would have to look at our records.

13 Q You don't remember any specific event  
14 happening about that time?

15 A Well, the coast was continuing to struggle, 09:49:51  
16 so it was tied to the coast, keeping that going.

17 Q The --

18 A I would say yes the coast, for the So. Cal.

19 Q What about for Bennion & Deville Fine  
20 Homes? 09:50:12

21 A It was feeding the coast to keep the coast  
22 going, the money was going from Bennion & Deville  
23 Fine Homes to keep the doors open on the coast.

24 Q And --

25 A So it created a problem, Bennion & Deville 09:50:22

1 Fine Homes Coachella Valley was doing fine but all  
2 of those profits or revenue was going to keep the  
3 coast going.

4 Q And do you know whether these statements  
5 from Windermere Seattle reflect the -- is this the 09:50:37  
6 50% that is owed to Windermere Seattle or is this  
7 the total fees owed by each of these branches?

8 A I would have to look at our records and go  
9 over that with Patrick. I can make an estimate.

10 Q Well, I think if we -- I think if we could 09:51:09  
11 probably figure it out if we look at this. Take a  
12 look at the Carlsbad office, July 1st, 2014; do you  
13 see that?

14 A Yes.

15 Q It has the \$5,000 license fee? 09:51:23

16 A Yes.

17 Q \$975 tech fee?

18 A Yes.

19 Q And then interest?

20 A Yes. 09:51:32

21 Q And then the subtotal of all those  
22 \$6,360.02?

23 A Yes.

24 Q If the license fee was a flat \$5,000, then  
25 this amount here would reflect a total amount owed 09:51:46

1 I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
2 Certify:

3 That the foregoing proceedings were taken  
before me at the time and place herein set  
4 forth; that any witnesses in the foregoing  
proceedings, prior to testifying, were  
5 administered an oath; that a record of the  
proceedings was made by me using machine  
6 shorthand which was thereafter transcribed  
under my direction; that the foregoing  
transcript is a true record of the  
7 testimony given.

8 Further, that if the foregoing pertains to  
the original transcript of a deposition in  
a Federal Case, before completion of the  
9 proceedings, review of the transcript [ ]  
was [ ] was not requested. I further  
10 certify I am neither financially  
interested in the action nor a relative or  
11 employee of any attorney or any party to  
this action.

12 IN WITNESS WHEREOF, I have this date

13 Subscribed my name.

14 Dated: August 9, 2016

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18  
19 SHARI STELLHORN

20 CSR No. 2807  
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# EXHIBIT D



**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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Materials Reviewed.....	5
Summary of Opinions .....	5
Work Performed and Basis for Opinions .....	6
Conclusions .....	15
Fees.....	15
Signatures .....	15

### **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**<sup>1</sup>

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"),

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>
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.<sup>4</sup>
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.<sup>5</sup> On January 13, 2009, WSC, through a related entity, provided a \$500,000 loan to Bennion & Deville.<sup>6</sup> The loan was to be paid in full by March 1, 2014, but the two sides later agreed to extend that date an additional

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<sup>2</sup> Exhibit\_36\_JosephRDeville.

<sup>3</sup> Exhibit\_22\_JosephRDeville.

<sup>4</sup> Exhibit\_24\_JosephRDeville.

<sup>5</sup> First Amended Counterclaim, dated October 14, 2015, including Exhibit I.

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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, 2011<sup>9</sup>, 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.

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<sup>7</sup> Exhibit\_43\_JosephRDeville.

<sup>8</sup> Exhibit\_37\_JosephRDeville.

<sup>9</sup> 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.<sup>10</sup> 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;

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<sup>10</sup> 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.<sup>11</sup>
- 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 fees<sup>12</sup>:
  - 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.

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<sup>11</sup> “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.

<sup>12</sup> 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."<sup>13</sup> 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.<sup>14</sup> 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

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<sup>13</sup> Deposition of Joseph R. Deville, dated July 28, 2016, Exhibit 36.

<sup>14</sup> 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 \$41,815<sup>15</sup>, 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

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<sup>15</sup> 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.

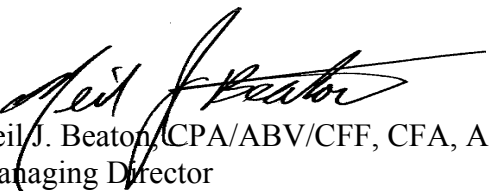
### **CONCLUSIONS**

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.

### **FEEES**

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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>rd</sup> 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 <sup>th</sup> 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



<i><b>VENUE</b></i>	<i><b>SPONSOR</b></i>	<i><b>DATE</b></i>	<i><b>SUBJECT</b></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



<b><i>VENUE</i></b>	<b><i>SPONSOR</i></b>	<b><i>DATE</i></b>	<b><i>SUBJECT</i></b>
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 &amp; 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 <sup>th</sup> 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

<b><i>VENUE</i></b>	<b><i>SPONSOR</i></b>	<b><i>DATE</i></b>	<b><i>SUBJECT</i></b>
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

<b><i>VENUE</i></b>	<b><i>SPONSOR</i></b>	<b><i>DATE</i></b>	<b><i>SUBJECT</i></b>
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

<i><b>VENUE</b></i>	<i><b>SPONSOR</b></i>	<i><b>DATE</b></i>	<i><b>SUBJECT</b></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	WSCPA	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

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**Documents Reviewed and/or Considered**


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**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

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**Documents Reviewed and/or Considered**


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**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	

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**Documents Reviewed and/or Considered**

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**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
<b>Owner Wages (1)</b>			
Deville	\$ 251,809	\$ 344,141	\$ 347,467
Bennion	\$ 248,281	\$ 328,552	\$ 347,467
<b>Total Wages</b>	<b>500,090</b>	<b>672,693</b>	<b>694,934</b>
<b>From Income Statement (1)</b>			
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 (2)
Landscaping Maintenance	\$ -	\$ -	\$ 2,300 (2)
Laguna Condo	\$ -	\$ -	\$ 96,000 (2)
50% Meals and Entertainment	\$ 34,186	\$ 35,638	\$ 35,810 (2)
Cell Phone	\$ -	\$ -	\$ 3,360 (2)
<b>Total Expenses</b>	<b>173,742</b>	<b>172,129</b>	<b>396,830</b>
<b>Total Wages and Expenses</b>	<b>\$ 673,832</b>	<b>\$ 844,822</b>	<b>\$ 1,091,764</b>
		<b>2012-2014 Total</b>	<b>\$ 2,610,418</b>

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

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

Footnotes:

(1) Damage calculation based on breach of contract for Modification Agreement, source document Exhibit\_51\_Joseph R Deville, Vol , II



# EXHIBIT E

1  
2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE )  
8 FINE HOMES SOCAL, INC., a ) Case No.  
9 California corporation, ) 5:15-CV-01921 R  
10 WINDERMERE SERVICES SOUTHERN ) (KKx)  
11 CALIFORNIA, INC., a California )  
12 corporation, )  
13 )  
14 Plaintiffs, )  
15 vs.  
16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,  
19 Defendant.  
20  
21 -----

22  
23 DEPOSITION OF JOSEPH R. DEVILLE  
24 Irvine, California  
25 Wednesday, July 27, 2016  
Volume II

26 Reported by:  
27 Shari Stellhorn  
28 CSR No. 2807  
29 Job No. 2330918A  
30 PAGES 259 - 426

1  
2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE) Case No.  
8 FINE HOMES SOCAL, INC., a ) 5:15-CV-01921 R  
9 California corporation, ) (KKx)  
10 WINDERMERE SERVICES SOUTHERN )  
11 CALIFORNIA, INC., a California)  
12 corporation, )  
13 )  
14 Plaintiffs, )  
15 vs.  
16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,,  
19 Defendants.  
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21  
22  
23  
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25

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Deposition of JOSEPH R. DEVILLE, Volume II, taken  
on behalf of Defendant and Cross-Complainant, at  
4 Park Plaza, Suite 1230, Irvine, California,  
beginning at 9:08 a.m. and ending at 2:42 p.m. on  
Wednesday, July 27, 2016, before Shari Stellhorn,  
Certified Shorthand Reporter No. 2807.

1 APPEARANCES:  
2 For Plaintiffs:  
MULCAHY LLP  
3 BY: KEVIN A. ADAMS, ESQ.  
4 Park Plaza, Suite 1230  
4 Irvine, CA 92614  
949.252.9377  
5 kadams@mulcahyllp.com  
6  
For Defendants:  
7 PEREZ WILSON VAUGHN & FEASBY  
BY: JEFFREY A. FEASBY, ESQ.  
8 CHRISTOPHER ROWLETT, ESQ.  
750 B Street, Suite 3300  
9 San Diego, CA 92101  
619.702.8044  
10 feasby@perezwilson.com  
rowlett@perezwilson.com  
11  
12 Video Operator: Joann Yager  
13 Also Present: Mike Teather  
Bob Bennion

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1 BY MR. FEASBY:

2 Q Mark this as Exhibit 57. This is an e-mail  
3 from Paul Drayna to Robert Sunderland; do you see  
4 that there?

5 A Yes. 11:48:51

6 Q Have you seen this e-mail before?

7 A No.

8 Q If you turn the page it's attaching a  
9 document attached, it's a June 3rd, 2014, letter and  
10 then if you go back two more pages, it's an 11:49:07  
11 amendment to a Promissory Note.

12 Have you seen the June 3rd letter before?

13 A I don't recall.

14 Q Do you recognize the amendment to the  
15 Promissory Note? 11:49:30

16 A Well, my name is typed but I don't have  
17 anything signed.

18 Q I'm just asking if you recognize it as you  
19 look at it. Does that look familiar at all?

20 A Yes. 11:49:43

21 Q Okay. Going back to the June 3rd letter,  
22 again, this is a letter from Mr. Teather to your  
23 attorney Robert Sunderland; correct?

24 A Yes.

25 Q And it says at the top, "I am writing to 11:49:55



1 summarize the status of our recent discussions"; do

2 you see that?

3 A Yes.

4 Q Under No. 1, "balloon payment on 2009

5 loan"; do you see that? 11:50:07

6 A Yes.

7 Q And under this it says -- I'm going down

8 the paragraph. "Your clients have requested a

9 36-month extension of this loan fully amortizing the

10 remaining balance over the period. Enclosed with 11:50:25

11 this letter is a document to formally amend the note

12 accordingly. Please have your client sign and

13 return this document as soon as possible"; do you

14 see that?

15 A Yes. 11:50:34

16 Q Do you recall reaching an agreement with

17 Windermere at or about this time to extend repayment

18 of the 2009 loan?

19 A Yes.

20 Q And that was an accom- -- accommodation 11:50:45

21 that they made to you; correct?

22 A Yes, but we had this discussion whenever

23 they would make a loan, they would put four or five

24 years on it with a balloon and then tell us and then

25 we'll look at it and reamortize. 11:50:58

Page 371

1 Q And to be clear, the initial lender was  
2 CARMED, LLC, which was an affiliated company that  
3 was owned by the principals at Windermere; correct?

4 A I assume so, yes.

5 Q And then it was transferred -- do you 11:51:14  
6 remember the loan being transfer at some point to  
7 another entity --

8 A No, I don't. I'm sorry.

9 Q To another entity, JFF, LLC.?

10 A No, but I'm not questioning who has the 11:51:22  
11 loan.

12 Q No. 2 heading there it says Windermere  
13 Watch, and it references a series of communications  
14 between the parties on this issue?

15 A Yes. 11:51:34

16 Q And the claims made that Windermere had  
17 breached the 2012 agreement to make commercially  
18 reasonable efforts to address the ongoing activities  
19 of Mr. Kruger and Windermere Watch; do you see that?

20 A Yes. 11:51:48

21 Q And it notes the initial -- the demand that  
22 was made by Mr. Sunderland for reimbursement that we  
23 saw in the other letter, the \$64,000?

24 A Yes.

25 Q And then talks about the fact that that 11:51:57

1 amount had been increased to a total amount of  
2 \$85,200?

3 A Yes.

4 Q And Windermere agreed to apply that as a  
5 credit to past due franchise fees owed; correct? 11:52:13

6 A Yes.

7 Q Yes?

8 A Yes.

9 Q And then the next paragraph there starting  
10 at the bottom of page -- of the first page, it says, 11:52:26  
11 "It is my understanding that WSC's agreement to the  
12 loan extension and the \$85,200" --

13 A Where are we?

14 Q The next paragraph starting at the bottom  
15 of the first page. So I'm not sure which page 11:52:40  
16 you're on.

17 MR. FEASBY: I'm sorry, the first page of  
18 the letter, WSC 1821, the paragraph starting at the  
19 bottom.

20 THE WITNESS: Okay. 11:52:51

21 MR. ADAMS: Thank you.

22 BY MR. FEASBY:

23 Q "It is my understanding that WSC's  
24 agreement to the loan extension and the \$85,280 fee  
25 credit resolves all current issues and that as of 11:52:59

1 the date of this letter, WSC is not in breach of any  
2 obligations contractual or otherwise owed to your  
3 clients"; do you see that there?

4 A Yes.

5 Q And at that time was it the agreement of 11:53:11  
6 the parties?

7 A Yes.

8 Q It says, "Barring any material change in  
9 Mr. Kruger's activities, we have agreed that there  
10 is nothing further that WSC can or should be doing 11:53:22  
11 with regard to Windermere Watch at this time and  
12 that your clients will bear the expense of any SEO  
13 efforts on their part without taking future credits  
14 or offsets from amounts they owe WSC."

15 Do you see that? 11:53:39

16 A Yes.

17 Q And was that the parties agreement at that  
18 time?

19 A Yes.

20 Q And then it also goes on to says, "We 11:53:42  
21 agreed that ongoing SEO expenses will be more than  
22 offset by the substantial discounts in both  
23 franchise and technology fees granted to your  
24 clients."

25 Was that your understanding at that time? 11:53:52

1 A Yes.

2 Q And then the last item there, "Reporting of  
3 branches and satellites, this discuss, as you  
4 mentioned, Mr. Teather reviewing that issue and that  
5 the issue had been clarified. It says, "Thank you 11:54:11  
6 again for helping us to clarify this issue"; do you  
7 see that?

8 A Yes.

9 Q And then at the bottom it says, "If this  
10 letter does not accurately summarize the status of 11:54:23  
11 the issues above or if you believe there are any  
12 material issues I have omitted, please let me know."

13 Do you see that?

14 A Yes.

15 Q And Mr. Sunderland never said any letter in 11:54:32  
16 response to this letter that you're aware of  
17 contesting any of the issues that Mr. Teather set  
18 forth herein?

19 A Not that I'm aware of.

20 Q And then -- if we look at -- 11:54:46  
21 (Exhibit 58 was marked for identification  
22 by the court reporter.)

23 BY MR. FEASBY:

24 Q I'm going to mark this next one as  
25 Exhibit 58. This is the signed amendment to the 11:55:21

1 Promissory Note that we were looking at before; do  
2 you see that?

3 A Yes.

4 Q And this amendment then pushed out the due  
5 date for the final payments owing on the 2009 loan 11:55:46  
6 that we looked at before; correct?

7 A Yes.

8 Q And Paragraph 2, No. 2, it says at the  
9 bottom there, "Except as expressly modified herein,  
10 all terms of the note and other loan documents 11:56:03  
11 remain unchanged and remain in full force and  
12 effect"; do you see that?

13 A Yes.

14 Q And is that your signature there at the  
15 bottom? 11:56:13

16 A Yes.

17 MR. FEASBY: If you'd like, now is a good  
18 time to break for lunch. We can keep going. It's  
19 really up to you guys what you want to do?

20 THE WITNESS: I'm okay. How much longer do 11:56:33  
21 you think we're going to be?

22 MR. ROWLETT: Let's go off the record so we  
23 don't have to record all this.

24 VIDEO OPERATOR: Going off the record. The  
25 time is 11:56 a.m. 11:56:46

1 (Recess.)

2 VIDEO OPERATOR: Back on the record. The  
3 time is 1:21 p.m.

4 THE WITNESS: I'd like to correct a  
5 statement that I made. 01:21:19

6 BY MR. FEASBY:

7 Q Okay. Just for the record, we're returning  
8 from lunch and you had lunch with your attorney and  
9 Mr. Bennion; is that correct?

10 A Correct. 01:21:28

11 Q And after that lunch you now seek to  
12 clarify some testimony you gave?

13 A Correct.

14 Q And what testimony is that?

15 A Can I see Mr. Teather's letter? 01:21:36

16 Q I believe it's Exhibit 57. It's the  
17 attachment to the e-mail there. Is that what you're  
18 referring to?

19 A Yes.

20 Q Okay. 01:21:54

21 A My business partner brought it to my  
22 attention and I heard the last -- I think it was  
23 your last question to Paragraph 2 where, "It is my  
24 understanding that Windermere Service Company  
25 agreement to the loan extension and \$85,280 fee 01:22:21

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## INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line.

### ERRATA SHEET

Page	Line	Change:	Reason:
<u>359</u>	<u>21</u>	Change: <u>Yes to No: All <sup>or temporary</sup> <del>Scatter</del> locations.</u>	Reason: <u>I misheard the question.</u>
<u>374</u>	<u>7</u>	Change: <u>Yes to No</u>	Reason: <u>Corrected later in transcript.</u>
<u>374</u>	<u>16</u>	Change: <u>Yes to No</u>	Reason: <u>Corrected later in transcript.</u>
<u>375</u>	<u>1</u>	Change: <u>Yes to No.</u>	Reason: <u>11</u>



Page

Line

389

20

Change: "didn't" to "wouldn't"

Reason: improper tense.

Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Change: \_\_\_\_\_

Reason: \_\_\_\_\_

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Reason: \_\_\_\_\_

Change: \_\_\_\_\_

✓

Subject to the above changes, I certify that the transcript is true and correct.

\_\_\_\_\_ No changes have been made. I certify that the transcript is true and correct.

Joseph Q. Deville  
Signature

8-25-16  
Date

1 I declare under penalty of  
2 perjury under the laws of the State of  
3 California that the foregoing is true  
4 and correct.

5 Executed on 8-25-16, 2016, at  
6 Seattle, WA.

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SIGNATURE OF WITNESS

1 I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
2 Certify:

3 That the foregoing proceedings were taken  
before me at the time and place herein set  
4 forth; that any witnesses in the foregoing  
proceedings, prior to testifying, were  
5 administered an oath; that a record of the  
proceedings was made by me using machine  
shorthand which was thereafter transcribed  
6 under my direction; that the foregoing  
transcript is a true record of the  
7 testimony given.

8 Further, that if the foregoing pertains to  
the original transcript of a deposition in  
a Federal Case, before completion of the  
9 proceedings, review of the transcript [ ]  
was [ ] was not requested. I further  
10 certify I am neither financially  
interested in the action nor a relative or  
11 employee of any attorney or any party to  
this action.

12  
13 IN WITNESS WHEREOF, I have this date  
Subscribed my name.

14 Dated: August 9, 2016

15  
16  
17 

18  
19 SHARI STELLHORN

20 CSR No. 2807

# EXHIBIT F

# **AMENDMENT TO PROMISSORY NOTE**

**Seattle, WA**

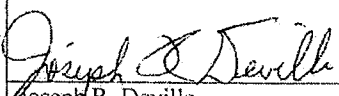


This is an amendment to that certain Promissory Note (the "Note") dated January 13, 2009 between Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally ("Borrower"), and CARMED, LLC, a Washington limited liability company ("Lender"), in the original principal sum of five hundred one thousand dollars and zero cents (\$501,000.00).

## **RECITALS**

- A. CARMED, LLC assigned the Note to JFF, LLC, a Washington limited liability company in September 2013, and since that time JFF has been and remains the Lender. Hereafter all references to "Lender" shall mean JFF, LLC, its successors and assigns.
- B. The Note provided that it was due in full no later than March 1, 2014. Borrower have requested an extension to the Note, which Lender has agreed to grant.

Now therefore it is agreed as follows:

1. Borrower acknowledges and agrees that as of May 23, 2014, the remaining unpaid balance of the Note was \$330,739.35. Since May 23, 2014, Borrower has paid an additional \$30,683.55 (Check No. 44559 dated 6-2-14: \$5,838.23; Check No. 44893 dated 7-2-14: \$5,838.23; Check No. 45200 dated 7-30-14: \$5,838.23; Check No. 45488 dated 8-29-14: \$13,168.86); these four payments shall be timely credited against the \$330,739.35 loan balance. The outstanding Note balance shall be amortized with interest from May 23, 2014 over Thirty Six (36) months. Commencing on June 30, 2014 and continuing on the last day of each month thereafter Borrower shall make monthly payments in the sum of Ten Thousand Two Hundred Twenty Seven Dollars and Eighty Five Cents (\$10,227.85). The full remaining principal balance of this Note, together with all accrued and unpaid interests thereon, and any and all other sums due under this Note or the other Loan Documents, shall be due and payable on or before May 31, 2017.
2. Except as expressly modified herein, all terms of the Note and other Loan Documents (including without limitation the Security Agreement and Assignment Agreements dated January 13, 2009) remain unchanged, and remain in full force and effect.

BORROWER	BORROWER	LENDER
 Joseph R. Deville	 Robert L. Bennion	 JFF, LLC By Geoffrey P. Wood Its Manager
Date: 10-3-14	Date: 10-3-14	Date: 10-3-14

Exhibit

58

WITNESS: Deville  
DATE: 07/27/16  
Shari Stellhorn  
CSR No. 2807

**WSC 348**