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Windermere Real Estate Services Company
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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

27 **AND RELATED COUNTERCLAIMS**
28

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

Hon. Manuel L. Real

**DECLARATION OF JEFFREY A.
FEASBY IN SUPPORT OF
DEFENDANT AND
COUNTERCLAIMANT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DAUBERT MOTION *IN LIMINE* TO
EXCLUDE PLAINTIFFS' EXPERT
PETER WROBEL**

Date: May 15, 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. On September 16, 2016, the parties exchanged their initial expert
12 witness disclosures and reports. Attached hereto as Exhibit 1 is a true and correct
13 copy of the report by Peter D. Wrobel that was included with plaintiffs’ expert
14 witness disclosure. Mr. Wrobel’s report is the first instance in which the plaintiffs
15 disclosed that they were seeking damages relating to losses allegedly sustained by
16 plaintiff Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”) relating to its
17 Encinitas and Little Italy locations. These alleged damages were not set forth in any
18 of the plaintiffs’ discovery responses and none of plaintiffs’ witnesses testified
19 regarding the operation of these offices, let alone any losses allegedly sustained by
20 those offices.

21 4. Attached hereto as Exhibit 2 is a true and correct copy B&D SoCal
22 responses to WSC’s Interrogatories.

23 5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from
24 the transcript of the Deposition of Peter D. Wrobel taken on April 5, 2017 in this
25 case.

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1 6. August 29, 2016 was the discovery cutoff in this case. On that date,
2 plaintiffs produced a “Recast Profit & Loss” statement for plaintiff Windermere
3 Services Southern California, Inc. (“WSSC”). A true and correct copy of the
4 “Recast Profit & Loss” statement is attached hereto as Exhibit 4.

5 7. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from
6 the transcript of the Deposition of Robert L. Bennion taken on July 27 and 28, 2016
7 in this case.

8 8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from
9 the transcript of the Deposition of Patrick Robinson taken on July 29, 2016 in this
10 case.

11 I declare under penalty of perjury under the laws of the State California that
12 the foregoing is true and correct, and that this declaration was executed on April 17,
13 2017.

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16 /s/ Jeffrey A. Feasby
 Jeffrey A. Feasby
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EXHIBIT 1



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

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September 16, 2016

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

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

Dear Messrs. Mulcahy and Adams:

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

I. EXPERT OPINIONS

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

Damages consist of the following:

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

Net Value of WSSC as of January 2015

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

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

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

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

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

Settlement Amounts Improperly Withheld from WSSC

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

Past Losses and Future Lease Obligations – BD SoCal

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

Net Unreimbursed Windermere Watch Expenses

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

II. DOCUMENTS CONSIDERED

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

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

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

IV. COMPENSATION

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

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

Letter to Messrs. Mulcahy and Adams
September 16, 2016
Page 4

V. **PRIOR EXPERT TESTIMONY**

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

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

Very truly yours,

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

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

PDW:com

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

**Windermere Services Southern California ("WSSC")
Bennion & DeVille Fine Homes SoCal, Inc. ("BD SoCal")**

Summary of Damages and Valuation of WSSC

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

*Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate Services Company***Windermere Services Southern California ("WSSC")****Discounted Operating Cash Flows
Valuation as of January 2015**

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

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

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

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

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

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

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

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

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

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

Value of BD Fine and BD SoCal

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

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

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

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

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

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

Percentage of Settlement Payments to WSSC: 50%

Amounts Owed to WSSC: \$16,690

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

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

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

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

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

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

Note:

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

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

Future Lease costs shaded.

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

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

Note:

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

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

Bennion & Deville Fine Homes SoCal, Inc.

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

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

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

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

Exhibit A

Documents and Information Considered

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

Exhibit B

Peter D. Wrobel, CPA/ABV, CFE

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

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

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

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

Exhibit C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12/14 (deposition and trial testimony)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12/14 (deposition and trial testimony)

12/14 *Gladys Vallone v. Taco Bell Corp., et al.*
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01/15 [NC058492] California Superior Court, Los Angeles County
(deposition and trial testimony)

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

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

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

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

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

04/15 *Burley Tompkins v. Union Pacific Railroad Company*
[2:12-CV-01481-JAM-GGH] United States District Court, Eastern District of California – Sacramento
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05/15 *Jeffrey Young v. Union Pacific Railroad Company*
[BC 54293] California Superior Court, Los Angeles County
(deposition testimony)

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

06/15 *Monarch Medical Group, Inc. v. Stacia Green*
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(deposition testimony)

07/15 *In the Matter of the Patton Family Lead Trust*
02/16 [P079997] California Superior Court, Ventura County
05/16 (deposition and trial testimony)

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

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

09/15 *Jennifer Hendrickson v. Tracey Layana*
02/16 [BC514536] California Superior Court, Los Angeles County
(deposition and trial testimony)

01/16 *Jose Figueroa v. United States of America*
[15-CV-00555JFW(ASx)] United States District Court, Central District of California
(deposition testimony)

03/16 *Ronald Farina v. Hilton Worldwide, et al.*
[BC 551918] California Superior Court, Los Angeles County
(deposition testimony)

04/16 *Kim Nguyen-Amour v. International Rectified Corporation, et al.*
[BC 565159] California Superior Court, Los Angeles County
(deposition testimony)

04/16 *Lani Gulmette, et al. v. City of Los Angeles, et al.*
[BC 523080] California Superior Court, Los Angeles County
(deposition and trial testimony)

05/16 *Charles and Karen Draper v. Loma Linda University Medical Center, et al.*
[CIVDS 1109299] California Superior Court, San Bernardino County
(deposition testimony)

05/16 *Planet Desert, Inc. v. Swajian & Swajian*
[INC 1107795] California Superior Court, Riverside County
(deposition testimony)

07/16 *HSV Realty Exchange LLC v. Construction Insurance Partners LLC, et al.*
[BC 530787] California Superior Court, Los Angeles County
(deposition testimony)

08/16 *Uisu Lai v. Sarah Seif*
 [30-2015-00779669] California Superior Court, Orange County
 (*deposition testimony*)

08/16 *Nancy Lynn v. Walmart Stores, Inc., et al.*
 [BC 539472] California Superior Court, Los Angeles County
 (*deposition testimony*)

08/16 *Shawn Bennett v. Rancho California Water District*
 [RIC 1218298] California Superior Court, Riverside County
 (*deposition testimony*)

09/16 *G.P.P., Inc. v. Guardian Protection Products, Inc.*
 [1:15-cv-00321 SKO] United States District Court, Eastern District of California
 (*deposition testimony*)

EXHIBIT 2

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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
California corporation,
WINDERMERE SERVICES
SOUTHERN CALIFORNIA, INC., a
California corporation,

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIMS

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

) *Hon. Manual L. Real*

)

) **COUNTERDEFENDANT BENNION**

) **& DEVILLE FINE HOMES SOCAL,**

) **INC.'S RESPONSES TO**

) **DEFENDANT AND**

) **COUNTERCLAIMANT**

) **WINDERMERE REAL ESTATE**

) **SERVICES COMPANY'S**

) **INTERROGATORIES, SET ONE**

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1 Pursuant to Federal Rules of Civil Procedure (“FRCP”) Rule 33(b), Plaintiff and
2 Counter -Defendant Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”) hereby
3 provides responses to Defendant and Counterclaimant Windermere Real Estate Services’
4 Interrogatories, Set One. B&D SoCal expressly reserves the right to supplement, amend
5 or correct these responses.
6

7 **GENERAL OBJECTIONS**

8 B&D SoCal objects to the definition of “Prospective Franchisee” or “Prospective
9 Franchisees” as it is vague and ambiguous as to what constitutes “some level of interest.”
10 B&D SoCal will construe the phrases as encompassing entities and persons who orally or
11 through written request sought information regarding becoming a franchisee.

12 B&D SoCal objects to the definition of “Identify” with respect to an entity as
13 vastly overbroad. B&D SoCal will provide the entity’s full name, address of its principal
14 place of business, contact phone number and the full name of the person most
15 knowledgeable of the entity’s involvement. B&D SoCal objects to the other requested
16 categories of information.
17

18 **RESPONSES TO SPECIAL INTERROGATORIES**

19 **INTERROGATORY NO. 1:**

20 State all facts Relating to the B&D Parties’ contention that “Windermere Watch
21 had severely impacted Plaintiffs’ ability to function in Southern California” as alleged in
22 paragraph 64 of the FAC.

23 **RESPONSE TO INTERROGATORY NO. 1:**

24 Objection. This responding party objects to the request on the grounds that it is
25 vague, ambiguous, and overly broad as to both scope and time. The request also calls for
26 information that is not reasonably calculated to lead to the discovery of admissible
27 evidence.
28

1 Without waiving these objections, and in the interest of discovery, this responding
2 party answers as follows: Windermere Watch severely impacted Plaintiffs by diverting
3 current and potential clients to competitor brokers and agents, and by diverting current
4 and potential agents to competitor brokers and real estate franchise firms. In the real
5 estate industry, it is common for potential clients to select their real estate broker and/or
6 agent based upon information that is made available on the internet. The prominent
7 placement of Windermere Watch's negative marketing campaign in internet search
8 results – often appearing before any of the Windermere websites – had the effect of
9 diverting actual and potential clients away from Windermere's brokers and agents. The
10 number of potential clients diverted away from Plaintiffs' brokers and agents cannot be
11 known. However, agents were reporting lost listings to Plaintiffs on a frequent basis.

12 Further, the loss of actual and potential clients as a result of Windermere Watch's
13 negative marketing campaign ultimately forced many agents to disassociate themselves
14 from Windermere and to join competitor brokerage firms.

15 **INTERROGATORY NO. 2:**

16 Identify each and every "competitor" that used "elaborate PowerPoint
17 presentations - based entirely upon information obtained from the Windermere Watch
18 websites and mailings" as alleged in paragraph 67 of the FAC.

19 **RESPONSE TO INTERROGATORY NO. 2:**

20 The competitors that used "elaborate PowerPoint presentations - based entirely
21 upon information obtained from the Windermere Watch websites and mailings" include:

- 22 • Steve Rogers – Real Living Lifestyles Real Estate, address unknown.

23 B&D SoCal expects that there were other competitors but does not know their
24 identities at this time. Discovery is ongoing.

25 **INTERROGATORY NO. 3:**

26 Identify each and every Windermere "competitor" that "incorporated information
27 from Windermere Watch into their sales pitches to both agents and clients" as alleged in
28 paragraph 77 of the FAC.

1 **RESPONSE TO INTERROGATORY NO. 3:**

2 The competitors that “incorporated information from Windermere Watch into their
3 sales pitches to both agents and clients” include:

- 4 • Steve Rogers – Real Living Lifestyles Real Estate: exact address unknown;
5 • Tarbell, Realtors, Palm Desert: 74245 CA-111, Palm Desert, CA 92260; and
6 • Sothebys Realty, Palm Desert: exact address unknown.

7 B&D SoCal expects that there were other competitors but does not know their
8 identities at this time. Discovery is ongoing.

9 **INTERROGATORY NO. 4:**

10 State all facts Relating to the B&D Parties’ contention that “WSC elected not to
11 renew its Southern California offering” in 2014 as alleged in paragraph 111 of the FAC.

12 **RESPONSE TO INTERROGATORY NO. 4:**

13 Objection. This responding party objects to the interrogatory on the grounds that it
14 is vague and ambiguous as to what is being requested. The request also seeks information
15 that is not reasonably calculated to lead to the discovery of admissible evidence.

16 Without waiving these objections, and in the interest of discovery, this responding
17 party interprets the request as asking for facts supporting that WSC elected not to renew
18 its Southern California offering. Under this interpretation, B&D SoCal responds as
19 follows: WSC’s California franchise registration expired on April 20, 2014. WSC failed
20 to take steps to ensure the registration was maintained. Its failure to take these necessary
21 steps can be construed as an “election” based upon a previous pattern of maintaining the
22 registration from 2003 to 2013. Thus, WSC knew how to stay registered and knew the
23 steps necessary but choose not to register for the 2014 year.

24 Moreover, even though WSC did not renew its franchise application for Southern
25 California, it misled Plaintiffs for months into believing that the franchise registration
26 was forthcoming. For instance, in an email from Plaintiffs to Drayna, dated October 28,
27 2014, Plaintiffs wrote, “[a]sked about 4 weeks ago when we would have the new [FDD].
28 I have 2 prospects and need to have for them to sign a receipt. Please advise when we

1 will have the new [FDD].” (A true and correct copy of Deville’s October 28, 2014 email
2 is attached to the First Amended Complaint (“FAC”) as Exhibit S.) The next day, Mike
3 Teather responded, “I spoke with [Drayna] today regarding the [Southern California
4 FDD], I will make sure that it is out to you by the end of the week.” A true and accurate
5 copy of Teather’s October 29, 2014 email is attached as Exhibit T to the FAC. It is now
6 obvious that Teather wrote his email knowing that the Southern California FDD had not
7 been filed with the DBO.

8 Thereafter, on October 31, 2014, Drayna sent an email representing that the FDD
9 “[j]ust went out via UPS overnight delivery to the State of CA.” The records of the DBO
10 – attached as Exhibit G to the FAC – show otherwise. WSC could have (and should have)
11 renewed its franchise disclosure document but, for reasons set forth in ¶¶ 111-133 of the
12 FAC, chose not to.

13 **INTERROGATORY NO. 5:**

14 State all facts Relating to the B&D Parties’ contention that, at the time Bennion &
15 Deville entered into the SoCal Franchise Agreement, “the parties agreed that Services
16 SoCal would be the Area Representative for the region – not WSC or some third-party”
17 as alleged in paragraph 137 of the FAC.

18 **RESPONSE TO INTERROGATORY NO. 5:**

19 Objection. This responding party objects to the interrogatory on the grounds that it
20 is vague and ambiguous as to what is being requested. The request also seeks information
21 that is not reasonably calculated to lead to the discovery of admissible evidence.

22 Without waiving these objections, and in the interest of discovery, this responding
23 party responds as follows: On May 1, 2004, Robert Bennion and Joseph Deville, on
24 behalf of Services SoCal, on the one hand, and WSC, on the other hand, entered into the
25 Area Representation Agreement. Pursuant to the Area Representation Agreement, and in
26 exchange for certain services and support it was to provide as the Area Representative,
27 Services SoCal was entitled to 50% of all initial franchise fees and monthly royalties
28 owed to WSC under the Coachella Valley Franchise Agreement and any other franchise

1 agreement facilitated by Services SoCal in Southern California. This 50% reduction in all
2 initial franchise fees and monthly royalties created a symbiotic relationship between the
3 Area Representative business and any Windermere franchise business owned by Robert
4 Bennion and Joseph Deville. As explained in the FAC, this underlying economic benefit
5 to Robert Bennion and Joseph Deville from serving as both the Area Representative and
6 franchisee was a significant material consideration when they agreed to (and did)
7 aggressively expand their Windermere franchise operations in Southern California. That
8 expansion would not have occurred but for Robert Bennion and Joseph Deville's de facto
9 status as Area Representative in the region.

10 Moreover, without the 50% reduction in initial franchise fees and monthly
11 licensing fees provided by the Area Representation Agreement, Robert Bennion and
12 Joseph Deville would not have engaged in this subsequent mass expansion of the
13 Windermere brand in Southern California, including their subsequent execution of the
14 SoCal Franchise Agreement.

15 Additionally, the knowledge, experience, and services made available to the
16 franchisees in the region by Robert Bennion and Joseph Deville through Services SoCal
17 rendered Services SoCal an indispensable part of not only the SoCal Franchise
18 Agreement, but also the franchise agreements of many of the other franchisees in the
19 Southern California region. *See*, for example, Recital B to the SoCal Franchise
20 Agreement, which provides that Services SoCal has the right "to administer the
21 Windermere System in the Region in accordance with this Agreement." (Attached as
22 Exhibit D to the FAC.)

23 **INTERROGATORY NO. 6:**

24 State all facts Relating to the B&D Parties' contention that the technology
25 provided by WSC "had become unusable and irrelevant" as alleged in paragraph 143 of
26 the FAC.

27 **RESPONSE TO INTERROGATORY NO. 6:**

1 The technology provided by WSC has become outdated, unusable and no longer a
2 viable option for franchisees for at least the following reasons:

- 3 • Properties listed by the Windermere Southern California agents often did not
4 properly display (if at all) on WSC's websites;
- 5 • WSC's technology team was inexperienced at best, often causing numerous
6 unnecessary delays to the posting and visibility of Southern California real estate
7 listings;
- 8 • Repeated listing syndication problems for agents' listings on third-party websites,
9 often resulting in extended disruption in the syndication (i.e., publishing) of the
10 listings of Bennion and Deville's agents;
- 11 • WSC removed entirely the listings and/or pictures of real estate listings belonging
12 to numerous Southern California agents resulting in lost clients and, ultimately, the
13 loss of agents;
- 14 • Plaintiffs assumed the task of implementing technologies and services in order to
15 compensate for WSC's lack of expertise and/or attention to the differentials
16 between the Pacific Northwest and Southern California. Plaintiffs were tasked with
17 providing a website that looked and felt like Southern California – not fir trees.
18 Windermere.com continued to emphasize the Pacific Northwest in appearance and
19 content. This “pine trees over palm trees” mentality was a major impetus for
20 creation of both the SoCal website and formation of our own in-house
21 Marketing/Advertising departments;
- 22 • After 2010, Plaintiffs began expanding their website functionality along two
23 developmental paths: (1) property data management, and (2) web-based tools
24 available to the agents. Both development paths were pursued in reactivity to
25 WSC's lackluster offerings;
- 26 • Plaintiffs also were force to use their own server for processing feeds from the
27 various boards and entities in Southern California. The RETS server was
28 developed to service owners and locations throughout Southern California. It now

1 pulls data from various sources (TheMLS.com, CDAR, Sandicor, SoCalMLS,
2 MRMLS, Rim-o-the-World and growing). This allowed Plaintiffs to maintain
3 accuracy in their listings and to detect errors more quickly and efficiently than
4 WSC's technology had demonstrated. Plaintiffs' technology trumped WSC and
5 allowed them to maintain a higher rate of accuracy and accountability for their
6 agents. For example, if an issue arose, Plaintiffs were in a much better position to
7 affect corrections than they had experienced by routing issues through
8 WSC. Unlike Washington State, California does not have a unified real estate
9 listing service. Consequently California agents are often members of multiple MLS
10 systems. Because the WSC tools and website only supported one MLS affiliation,
11 Plaintiffs were forced to build a system that would allow for multiple MLS
12 affiliations;

- 13 • Plaintiffs created multiple Listhub accounts. This allowed them to react to
14 syndication issues more quickly and efficiently than WSC. In addition to Listhub,
15 Plaintiffs also created additional feeds for specific services and web sites. When
16 Zillow refused to renew their contract with Listhub, Plaintiffs created a direct feed
17 to Zillow. Plaintiffs are now feeding Trulia in a similar manner. We syndicate
18 property and agent information to Leading RE and Luxury Portfolio. These are
19 features that are necessary for California listing agents to succeed, and features that
20 WSC did not offer.
- 21 • WSC's CMA was launched with limited functionality in February 2012 (only
22 functioned on some MLS systems in Southern California and only ran on the
23 Apple iPad). To counteract this failure, Plaintiffs immediately partnered with
24 Cloud CMA and offered Southern California agents a CMA that worked on
25 multiple devices and would speak to all MLS systems within Plaintiffs' area of
26 operation;
- 27 • Trendgraphix is a useful tool that was provided by WSC to Windermere agents.
28 However, its functionality was limited to NWMLS (Washington State). Naturally,

1 this was of no value to the Southern California region. Consequently, Plaintiffs
2 partnered with the same company that created Tredgraphix and opened it up
3 to function on all major MLS systems in Southern California. This is something
4 that should have been provided by WSC;

- 5 • In addition to those mentioned above, Plaintiffs also created linkages and SSO with
6 Impact Marketing, Ptarmington Press, XPressDocs, and LeadingRE. These were
7 all useful (and often necessary) tools that WSC failed to provide;
- 8 • WSC's increasing tech fee did not correlate to any expanded service or WSC's
9 limited technological offerings in Southern California.

10 **INTERROGATORY NO. 7:**

11 State all facts Relating to the B&D Parties' contention that "WSC's technology
12 team was inexperienced at best" as alleged in paragraph 144b of the FAC.

13 **RESPONSE TO INTERROGATORY NO. 7:**

14 *See* Response to Interrogatory No. 6, above.

15 **INTERROGATORY NO. 8:**

16 State all facts Relating to Your contention that WSC failed "to provide the
17 promised 'guidance' to Plaintiffs with respect to the 'Windermere System'" as alleged in
18 paragraph 175 of the FAC.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 B&D SoCal objects to the interrogatory as vastly overbroad and further objects to
21 the extent that the interrogatory seeks information that is not reasonably calculated to
22 lead to the discovery of admissible evidence.

23 Without waiving these objections, and in the interests of discovery, this responding
24 party answers as follows:

25 Section 3 of the SoCal Franchise Agreement obligated WSC to "provide guidance
26 to Licensee with respect to the Windermere System." This guidance was to be furnished,
27 in good faith, "in the form of written materials distributed physically or electronically,
28 including through the Windermere Online Resource Center (WORC) intranet website,

1 consultations by telephone or in person, or by other means of communication.” It was
2 also understood that WSC would develop, implement, and improve components of the
3 Windermere System, including the addition of optional programs to enhance Plaintiffs’
4 businesses. Notwithstanding these contractual obligations and understandings, WSC
5 failed to provide any such services after January 1, 2012.

6 **INTERROGATORY NO. 9:**

7 State all facts Relating to Your “actual damages” suffered as a result of WSC’s
8 “breaches of the SoCal Franchise Agreement” as alleged in paragraph 176 of the FAC.

9 **RESPONSE TO INTERROGATORY NO. 9:**

10 At this stage in discovery, and without the benefit of WSC’s discovery responses
11 or expert analysis following receipt of those records, Plaintiffs’ “actual damages” are not
12 known. However, the nature of B&D SoCal’s actual damages relate to (1) its loss of real
13 estate listings, customers, and agents, (2) expenditure of funds to create and maintain the
14 technology tools that were to be provided by WSC needed to support the agents and
15 listings, (3) the expenses associated with the technology identified in response to
16 Interrogatory No. 1, above, (4) the expenditures associated with the development and
17 maintenance of a user friendly real estate website that provided the technology, tools, and
18 features that WSC’s website(s) failed to provide, (5) expenses associated with preparing
19 its own operating system and tools due to deficiencies in the Windermere System; (6) a
20 reduced ability to obtain agents, clients, and listings because of Windermere Watch; and
21 (7) expenditures in connection with the search engine optimization efforts undertaken by
22 B&D SoCal to curtail the presence of Windermere Watch. Discovery continues and this
23 responding party will supplement its response following the receipt and review of WSC’s
24 discovery responses and document production.

25 **INTERROGATORY NO. 10:**

26 State all facts Relating to Your “damages” suffered as a result of “WSC’s breach
27 of the implied covenant of good faith and fair dealing” as alleged in paragraph 182 of the
28 FAC.

1 **RESPONSE TO INTERROGATORY NO. 10:**

2 At this stage in discovery, and without the benefit of WSC's discovery responses
3 or expert analysis following receipt of those records, the full extent of Plaintiffs'
4 "damages" are not known. However, the nature of B&D SoCal's damages relate to (1) its
5 loss of real estate listings, customers, and agents, (2) expenditure of funds to create and
6 maintain the technology tools that were to be provided by WSC needed to support the
7 agents and listings, (3) the expenses associated with the technology identified in response
8 to Interrogatory No. 1, above, (4) the expenditures associated with the development and
9 maintenance of a user friendly real estate website that provided the technology, tools, and
10 features that WSC's website(s) failed to provide, (5) expenses associated with preparing
11 its own operating system and tools due to deficiencies in the Windermere System; (6) a
12 reduced ability to obtain agents, clients, and listings because of Windermere Watch; and
13 (7) expenditures in connection with the search engine optimization efforts undertaken by
14 B&D SoCal to curtail the presence of Windermere Watch. Discovery continues and this
15 responding party will supplement its response following the receipt and review of WSC's
16 discovery responses and document production.

17 **INTERROGATORY NO. 11:**

18 State all facts Relating to the B&D Parties' First Affirmative Defense of "Failure
19 to State a Cause of Action."

20 **RESPONSE TO INTERROGATORY NO. 11:**

21 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
22 to preserve his rights consistent with the Federal Rules of Civil Procedure. B&D SoCal
23 objects to this interrogatory to the extent that it calls for attorney-client work product and
24 solely privileged information. The affirmative defense of failure to state a cause of action
25 relates to whether Counterclaimants alleged facts constitute a legally cognizable cause of
26 action. Consequently, the response would by its very nature consist of attorney-client
27 work showing how Counterclaimants facts do not fit the alleged legal theories. B&D
28

1 SoCal further objects that the interrogatory is vague, ambiguous, overbroad, and unduly
2 burdensome because of its open-ended nature.

3 Without waiving these objections, and in the interest of discovery, this responding
4 party answers as follows: WSC has asserted four counterclaims for breach of contract. A
5 material element of each of those claims requires WSC to show that it has performed all
6 acts and obligations required of it under the contracts. This is not something that WSC
7 can do. Moreover, WSC's claim for breach of the Modification Agreement is not a claim
8 separate and apart from the breach of contract claim for the underlying contracts. Finally,
9 to the extent that affirmative defense applies to WSC's dismissed counterclaims, Counts
10 5 through 7, the dismissal of these claims renders moot the affirmative defense as to those
11 claims.

12 **INTERROGATORY NO. 12:**

13 State all facts Relating to the B&D Parties' Second Affirmative Defense of
14 "Waiver."

15 **RESPONSE TO INTERROGATORY NO. 12:**

16 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
17 to preserve its rights consistent with the Federal Rules of Civil Procedure. WSC's claims
18 generally concern allegations that Counter-Defendants have not paid franchise and
19 license fees. WSC has waived its rights to these fees by (1) failing to provide the products
20 and services that the fees were paying for (e.g. technology for technology fees) and (2)
21 explicitly forgiving fees as an implicit recognition of WSC's inability to provide the
22 contractually mandated services and products.

23 Moreover, to the extent that WSC's claims concern Plaintiffs creation and
24 maintenance of domain names using the term Windermere, WSC has waived any ability
25 to take action against Plaintiffs for their registration, ownership, and use of those domain
26 names as Plaintiffs relied upon the request of WSC that Plaintiffs take action to combat
27 Windermere Watch, out of which the domain names using Windermere were created.
28

1 To the extent that the affirmative defense applies to WSC's dismissed
2 counterclaims, Counts 5 through 7, the dismissal of these claims renders moot the
3 affirmative defense as to those claims. B&D SoCal continues to conduct an investigation
4 and discovery. Consequently, it is likely further facts will be known at a later time.

5 **INTERROGATORY NO. 13:**

6 State all facts Relating to the B&D Parties' Third Affirmative Defense of
7 "Estoppel."

8 **RESPONSE TO INTERROGATORY NO. 13:**

9 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
10 to preserve its rights consistent with the Federal Rules of Civil Procedure. WSC's
11 counterclaims generally concern allegations that Counter-Defendants have not paid
12 franchise and license fees. Counter-Defendants contend that WSC is estopped from
13 collecting these fees as it was obligated to perform in a certain manner, including but not
14 limited to, undertake efforts to combat Windermere Watch's counter-marketing campaign
15 and register and maintain the registration of the Windermere franchise disclosure
16 document in California. Moreover, WSC has consistently agreed to forgive or reduce the
17 amount of alleged outstanding fees owed by Plaintiffs. By failing to perform these
18 obligations, WSC is estopped from pursuing its contract claims against Plaintiffs now.
19 Further, WSC's conduct was an implicit recognition of WSC's inability to provide the
20 contractually mandated services and products. WSC's recognition that its fees were not
21 merited by the services it provided estops WSC from later claiming a right to payment of
22 100% of purportedly outstanding fees.

23 Moreover, to the extent that WSC's claims concern Plaintiffs creation and
24 maintenance of domain names using the term Windermere, WSC is estopped from taking
25 action as to Plaintiffs' registration, ownership, and use of those domain names as
26 Plaintiffs relied upon the request of WSC that Plaintiffs take action to combat
27 Windermere Watch, out of which the domain names using Windermere were created.
28

1 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
2 is likely further facts will be known at a later time.

3 **INTERROGATORY NO. 14:**

4 State all facts Relating to the B&D Parties' Fourth Affirmative Defense of
5 "Offset."

6 **RESPONSE TO INTERROGATORY NO. 24:**

7 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
8 to preserve its rights consistent with the Federal Rules of Civil Procedure. WSC's
9 counterclaims generally concern allegations that Counter-Defendants owe WSC certain
10 franchise and license fees. Counter-Defendants contend that no such fees are owed as a
11 result of WSC's numerous breaches of the parties' agreements, as set forth in the FAC.
12 However, to the extent amounts are found to be owed by the Counter-Defendants to
13 WSC, Counter-Defendants are entitled to an offset on those amounts based upon (1) any
14 franchise fees owed to Services SoCal under the Area Representation Agreement, (2)
15 Plaintiffs' unreimbursed technology and website expenditures performed at the direct or
16 implicit request of WSC, and (3) any unreimbursed amounts expended by Plaintiffs in
17 combating Windermere Watch's anti-marketing campaign.

18 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
19 is likely further facts will be known at a later time.

20 **INTERROGATORY NO. 15:**

21 State all facts Relating to the B&D Parties' Fifth Affirmative Defense of
22 "Justification, Privilege."

23 **RESPONSE TO INTERROGATORY NO. 15:**

24 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
25 to preserve its rights consistent with the Federal Rules of Civil Procedure. Any purported
26 nonpayment of fees by Counter-Defendants to WSC was privileged or justified by
27 WSC's failure to comply with the terms of the agreements and California's franchise
28 laws, as detailed in ¶¶ 148-186 of the FAC. Further, Counter-Defendants were justified

1 in taking reasonable time to release the domain names following the termination of the
2 parties' agreements.

3 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
4 is likely further facts will be known at a later time.

5 **INTERROGATORY NO. 16:**

6 State all facts Relating to the B&D Parties' Sixth Affirmative Defense of
7 "Contractual Bar – Integration Clauses/Parol Evidence Rule."

8 **RESPONSE TO INTERROGATORY NO. 16:**

9 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
10 to preserve its rights consistent with the Federal Rules of Civil Procedure. While not
11 entirely clear from the pleading, it appears that WSC, through its Amended
12 Counterclaim, is seeking reimbursement from Plaintiffs of amounts that were waived or
13 otherwise forgiven as part of the Parties' Modification Agreement. WSC is now barred
14 from claiming a right to those amounts as any such claim is barred in whole or in part by
15 the Parol Evidence Rule and the integration provisions of Section 16 of the Modification
16 Agreement.

17 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
18 is likely further facts will be known at a later time.

19 **INTERROGATORY NO. 17:**

20 State all facts Relating to the B&D Parties' Seventh Affirmative Defense of
21 "Performance."

22 **RESPONSE TO INTERROGATORY NO. 17:**

23 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
24 to preserve its rights consistent with the Federal Rules of Civil Procedure. The issue of
25 WSC's performance under the parties' agreements, or lack thereof, is detailed in the
26 FAC. In general, WSC failed to provide the services, system, trademark and brand name
27 protections, and support either expressly or implicitly contained with the parties'
28

1 agreements. WSC's failure to perform the obligations it had a duty to perform under the
2 agreements relieved Plaintiffs from having to perform under the agreements.

3 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
4 is likely further facts will be known at a later time.

5 **INTERROGATORY NO. 18:**

6 State all facts Relating to the B&D Parties' Eighth Affirmative Defense of
7 "Damages Caused by Others."

8 **RESPONSE TO INTERROGATORY NO. 18:**

9 B&D SoCal has asserted applicable or potentially applicable affirmative defenses
10 to preserve its rights consistent with the Federal Rules of Civil Procedure. WSC has
11 asserted counterclaims against Services SoCal arising out of alleged failures of Services
12 SoCal to remit certain fees, paid by franchisees, to WSC. However, this claim fails to the
13 extent that the fees were never remitted to Services SoCal by the franchisees. Although
14 Services SoCal was responsible for collecting the fees from the franchisees and remitting
15 50% to WSC, Services SoCal was not a guarantor of any of the fees. (See Ex. B to FAC,
16 §§ 3, 11-13, Exhibit A, § 3 – "It is understood that collection of fees will be the
17 responsibility of Area Representative, but Area Representative will not be responsible for
18 payment of uncollectable fees.") To the extent WSC seeks reimbursement of these fees as
19 part of their counterclaims in this case, Services SoCal are not responsible for damages
20 caused by the franchisees failure to pay WSC.

21 B&D SoCal continues to conduct an investigation and discovery. Consequently, it
22 is likely further facts will be known at a later time.

23 DATED: April 13, 2016

MULCAHY LLP

25 By: /s/ Kevin A. Adams
26 Kevin A. Adams
27 *Attorneys for Plaintiffs & Counter-*
28 *Defendants*

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 -----
4 BENNION & DEVILLE FINE HOMES,)
5 INC., a California corporation;)
6 BENNION & DEVILLE FINE HOMES)
7 SOCAL, INC., a California)
8 corporation; WINDERMERE SERVICES) Case No.
9 SOUTHERN CALIFORNIA, INC., a) 5:15-CV-01921R(KKx)
10 California corporation,)
11)

12 Plaintiffs,)

13 vs.)

14 WINDERMERE REAL ESTATE SERVICES)
15 COMPANY, a Washington)
16 corporation; and Does 1-10,)
17)

18 Defendants.)

19 -----
20 AND RELATED COUNTERCLAIMS)
21)

22 DEPOSITION OF PETER D. WROBEL
23 Irvine, California
24 Wednesday, April 5, 2017
25 Volume I

26 Reported by:

27 Gail E. Kennamer, CSR 4583, CCRR

28 Job No. 2588458

29 Pages 1 - 183

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

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BENNION & DEVILLE FINE HOMES,)
INC., a California corporation;)
5 BENNION & DEVILLE FINE HOMES)
SOCAL, INC., a California)
6 corporation; WINDERMERE SERVICES) Case No.
SOUTHERN CALIFORNIA, INC., a) 5:15-CV-01921R(KKx)
7 California corporation,)
)
8 Plaintiffs,)
)
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 Deposition of Peter D. Wrobel, Volume I
17 taken on behalf of Defendants at 4 Park Plaza, Suite 1230,
18 Irvine, California, beginning at 11:04 a.m., and ending at
19 4:08 p.m., Wednesday, April 5, 2017, before
20 Gail E. Kennamer, CSR 4583, CCRR.
21
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INDEX

WITNESS

EXAMINATION

PETER D. WROBEL

Volume I

BY MR. ADAMS

7

1 provision that you've identified here for triggering a
2 payment in the event the agreement is terminated; correct?

3 A. That's correct.

4 Q. And you quote a portion of that, if you are on
5 the correct page, under the heading, "Net Value of WSSC as
6 of January 2015"?

7 A. Yes.

8 Q. It's page 2 on Exhibit 2, and I'm looking, one,
9 two, three, four, five, six, seven -- eight lines down.

10 Do you see the quotation there?

11 A. Yes.

12 Q. I'm going to go back up to the start of that
13 sentence. I will read that.

14 "This termination triggered a clause in the May 1,
15 2004 Agreement between WSC and WSSC which provided for the
16 terminating party to pay the terminating party 'an amount
17 equal to the fair market value of the Terminated Party's
18 interest in the Agreement.'"

19 Do you see that?

20 A. Yes.

21 Q. And is that the valuation that you prepared?

22 A. Yes.

23 Q. Now, the heading here is, "Net value of WSSC."

24 Is that the number that you came to?

25 A. Yes.

1 Q. And is it your opinion that number is the same
2 as "The fair market value of the terminated party's
3 interest in the Agreement"?

4 A. Yes.

5 Q. And the agreement itself then goes on and talks
6 about a methodology to be used in determining the
7 terminated party's interest in the agreement.

8 Are you familiar with that?

9 A. I'm sorry. Are you talking about my report or
10 the agreement?

11 Q. The agreement.

12 A. Yes.

13 Q. And that provides that the terminating fee is
14 not to include a consideration and speculative factors
15 including future revenues, does it not?

16 A. Yes. It includes terminology such as that, yes.

17 Q. And if you go on under your report here, it
18 says, "This value is determined by discounting the future
19 cash flows."

20 Is it true that your analysis included an estimation
21 of what future revenues would be for purposes of valuing
22 the net value of WSSC?

23 A. Yes.

24 Q. And why did you include future revenues in your
25 analysis?

1 Q. And would that be included in the revenue that
2 you'd use for purposes of determining the value of that
3 entity?

4 A. Well, it could be. But typically you would
5 include that. That would be factored into your discounted
6 capitalization rates.

7 Q. Are you -- For purposes of your opinions, are
8 you assuming that the amounts reflected on this Schedule B
9 as having been revenue from the B&D franchisees, are you
10 assuming that that's actually paid?

11 A. On a going-forward basis, yes.

12 Q. What does that mean, on a going-forward basis?

13 A. Again, you are looking at a fair market value as
14 of a point in time in this case, January 2015. The
15 expectation is that these are revenues that would continue
16 into the future based upon the different growth rates and
17 discount rates that I have incorporated into my analysis.

18 Q. But again, when you talk about revenue, you are
19 talking about, at least in the instance of the
20 Bennion & Deville franchise, amounts that were not
21 actually paid?

22 A. That were not actually paid to WSSC. That's
23 correct for 2014, yes.

24 Q. And it's also correct for 2013; correct?

25 A. Yes.

1 Q. And also for 2015; correct?

2 A. Yes.

3 Q. And why, then, would it be proper to assume,
4 then, in the future those amounts would be paid?

5 A. As I mentioned earlier, that there are disputes
6 between Windermere and WSSC that have been ongoing that
7 involved forgiveness of certain payments and other things.
8 But in terms of trying to figure out the fair market value
9 at the point in time in January 2015, it's necessary to
10 add those numbers back, even though prior to January 2015
11 they may not have actually been paid to WSSC.

12 Q. So what standard of value, then, did you use in
13 this matter for purposes of coming to the net value for
14 WSSC?

15 A. What standard of value? I guess I don't quite
16 understand your question.

17 Q. Are you aware of different standards of value
18 used by valuation experts in terms of valuing business
19 entities?

20 A. Well, I mean, there are different standards that
21 certain valuation professionals follow. I mean, I guess I
22 just don't understand your question.

23 Q. Which entity provides the ABV accreditation?

24 A. The AICPA.

25 Q. Does the AICPA have any standards for valuation

1 the present value of cash flows. That, however, I don't
2 believe would give you an accurate fair market value.

3 You could also use revenue multipliers. There are
4 other different models that you can use. I believe this
5 is the appropriate model to use.

6 Q. The discounted cash flow model?

7 A. Yes.

8 Q. Why do you think it's appropriate in this
9 instance?

10 A. Because this is an ongoing services business,
11 and you have a mix of assets and liabilities that generate
12 a cash flow. Any -- Anybody interested in the fair market
13 value in an arm's length transaction is primarily
14 interested in this type of company what cash flows could
15 be generated in the future.

16 Using, for example, a book value, I don't believe
17 that would generate -- generate an accurate number.

18 Q. And you mentioned that this is an ongoing
19 services business. Were you told that that's the case?

20 A. Well, I believe as of January 2015, if you are
21 calculating a fair market value of this company, that the
22 expectation would be that the company was ongoing at that
23 point, in terms of the interest that might be -- in terms
24 that the company was being sold to somebody.

25 Q. If it wasn't going to be ongoing, how would that

1 what the number would be based on the franchise fee
2 valuation if you were to use the recasted numbers.

3 I also had a subsequent conversation with Mr. Barton
4 about that issue, and he agreed that that would be an
5 appropriate way to utilize his particular analysis would
6 be merely to change the average net revenues to include
7 the recasted amounts.

8 Q. Did you discuss with Mr. Barton whether or not
9 the recasted financial statements were prepared
10 specifically for this litigation?

11 A. I'm not sure I discussed it with him, but that's
12 absolutely what they were prepared for.

13 Q. And who told you that?

14 A. Well, I requested that they be done.

15 Q. And why is that?

16 A. Well, because in order to do an accurate fair
17 market value, it was necessary to see what all the -- what
18 the additional revenues would be if you included the
19 B&D -- SoCal and B&D Fine revenues into the number, so
20 that's what I asked Mr. Barton to do.

21 Q. And is that something that you could have done
22 with the documentation that was provided to you?

23 A. Yes, I believe I could have.

24 However, I wanted the CPA that had a lot more
25 familiarity with the company to do it for me, and I had

1 A. Yes.

2 Q. Do you think it's speculative at all to make an
3 assumption like that going out more than three years into
4 the future?

5 A. No.

6 Q. For purposes of -- Well, then, for your purposes
7 on this then, the settlement amounts improperly withheld,
8 there have only been certain amounts that have been
9 withheld so far; is that correct?

10 A. I believe that's correct.

11 Q. And would that be reflected in the first number
12 that you have there on Schedule 3 and Schedule 4?

13 A. That's correct.

14 Q. And, in fact, it would be half of the number
15 there listed?

16 A. I'm sorry. Yes, that's correct. Half of the
17 number.

18 Q. So at least as of the date of your report for
19 the King settlement, WSSC would be owed 2,000 -- Well,
20 half of \$4,332; correct?

21 A. That's what half the number is, yes, that's
22 correct.

23 Q. And the same, if you take a look at Kirksey,
24 which is Schedule 4 -- that's K-i-r-k-s-e-y -- they'd be
25 entitled to half of the 14,187?

1 A. That's correct.

2 Q. And so for purposes of your analysis here, then,
3 this is really just a math exercise, you add the payment
4 amount, and then you discount to present value?

5 A. Yes. It is fairly straightforward arithmetic.

6 Q. And, then, with regard -- I'm going to jump
7 ahead to the net unreimbursed Windermere Watch expenses.

8 A. Yes.

9 Q. These are amounts that were provided to you by
10 Mr. Adams -- excuse me -- in the documentation provided by
11 Mr. Adams?

12 A. Yes.

13 Q. Do you know who prepared that? Do you have a
14 Bates number at the bottom of that?

15 A. I don't. It's tab -- It's document 60.1 in my
16 binder.

17 Q. Take a look. See if those --

18 A. They are different.

19 Q. They are?

20 A. I'm sorry. Yeah. This is a different document.

21 Q. Looks like I got a whole bunch of them here.

22 So we have two sets of Bates stamps in your Exhibit A
23 that look like, more or less, the same.

24 Does that match? Does that one match the Bates
25 number? If you look at -- the bottom are different than

1 A. Yes.

2 MR. FEASBY: I would like to mark we'll mark the
3 one that begins with the Bates Number 35688 as Exhibit 9.

4 And then the one that is marked Bates Number 42551 as
5 Exhibit 10.

6 (Deposition Exhibit 9 was marked for identification
7 by the court reporter.)

8 (Deposition Exhibit 10 was marked for identification
9 by the court reporter.)

10 BY MR. FEASBY:

11 Q. If you look further down, on the bottom third,
12 and it says -- It's under the Excel spreadsheets that are
13 listed summary of Windermere Watch expenses?

14 A. Yes.

15 Q. No Bates number?

16 A. Correct.

17 Q. Do you know whether that's the document you have
18 in front of you there?

19 A. It is the document that's listed as 60.1 in my
20 binder.

21 Q. And were all of these documents provided to you
22 at the same time?

23 A. No. This particular document, the 60.1, was
24 provided in response to, I believe, an email request that
25 I made to get the updated Windermere Watch expenses.

1 Q. So what is the timeframe, then, on the one that
2 you have there?

3 A. This goes from January 2013 to September of
4 2015.

5 Q. Through September. Okay.

6 And, then, so aside from the exhibits that we marked
7 as 9 and 10, not including amounts for February, March,
8 April, May, June, July, August, September, are there any
9 other differences between the spreadsheet that you have
10 there and the Exhibits 10 -- excuse me -- 9 and 10?

11 A. It looks like every single -- I'm looking at
12 every single month, and the numbers on 60.1 are higher, it
13 looks like on, every month from January 2013 through
14 September of 2015.

15 Q. Did you, when you received that document that
16 you asked for, did you compare it to the numbers in these
17 other -- in these other documents that you reviewed?

18 A. Yes.

19 Q. Did you notice any discrepancies at that time?

20 A. Yes. I mean, they were different. Well, no.
21 Excuse me. I reviewed Exhibits 9 and 10. And, then,
22 subsequent to that, I noticed that there were no -- I just
23 happened to notice on, like, Exhibit 10, that after
24 February 2015, there are no numbers at all. So I
25 requested an updated listing and received that.

1 Q. And maybe I'm confused, but the one that you
2 have in your binder there, the updated listing that you
3 received, I think you indicated that the numbers -- some
4 of the numbers, as reflected on Exhibit 9 and 10, are
5 different than as reflected on the exhibit in your binder;
6 is that not true? I might have misheard.

7 A. Well, yeah. I'm sorry. The totals for every
8 month on page 60.1 are different than Exhibits 9 and 10.

9 Q. Okay. Did you discuss with anyone the reasons
10 for those differences?

11 A. I'm trying to remember. In the meeting that I
12 had in this office with Mr. Bennion and Mr. Deville and
13 other people from his firm, I think they indicated that
14 they were either in the process of updating a spreadsheet
15 or that maybe -- I just don't recall if we had the
16 spreadsheet, and the indication was that it hadn't been
17 updated, but that they would send me updated Windermere
18 Watch expenses, and I subsequently asked for it again, and
19 I received it.

20 Q. The updated expenses included revised numbers
21 for 2013, 2014, and January of 2015?

22 A. Yes. They are -- Oh, yes. That's correct.
23 Again, I'm not even sure I saw this at that particular
24 meeting. I may have. I just don't recall. But I know I
25 specifically asked for updated Windermere Watch numbers

1 and received this.

2 Q. So for purposes of your opinion, as reflected in
3 your report, you relied on the spreadsheet that you have
4 there in your binder?

5 A. That's correct.

6 Q. And you didn't rely on Exhibit 9 or 10?

7 A. Well, I mean, it appears just to be -- I mean,
8 it's something I considered, and then I realized that,
9 then, I was provided with something that I was -- that was
10 termed as an updated list, so I looked -- I used those
11 numbers to prepare Schedule 8.

12 Q. And the updated numbers, they are higher?

13 A. That is correct. They are higher.

14 Q. And so, then, you took those, as reflected in
15 the spreadsheet, and you added them together to get under
16 Schedule 8, 2013, the 94,113 number?

17 A. Yes.

18 Q. And did the same, added them together to get the
19 2014 number, 85,999?

20 A. Yes.

21 Q. And same for 2015, 52,122 number?

22 A. That is correct.

23 Q. On the schedule, you have credits listed. What
24 were those credits for?

25 A. (Indicating.)

1 It's my understanding these are just additional
2 Windermere Watch unreimbursed expenses. These relate
3 to -- looking at 60.3 in my binder, which --

4 Q. I'm sorry.

5 A. -- it's an email with a spreadsheet embedded
6 within it. It says this is an email dated September 6,
7 2016 from Mr. Adams to, actually, Mr. Pohlot.

8 And it says:

9 "Joe,

10 "Here is the detail for the Windermere Watch expenses
11 that were credited to the clients back in June 2014."

12 And it attached a April 29, 2014 email from Troy
13 McFadden to Patrick Robinson.

14 Q. So those amounts were -- I'm sorry -- What is
15 your understanding regarding those credits?

16 A. These are amounts that were credited back to
17 clients and represent an unreimbursed Windermere Watch
18 expense that's not incorporated on page 60.2.

19 Q. Well, are they -- Were they additional expenses
20 or were they reimbursements?

21 A. No, no. I'm sorry. They are reimbursements.

22 Q. Okay. That's --

23 A. You subtract one from the other.

24 Q. I was trying to figure out the numbers, then, on
25 the net expenses.

1 A. Yeah.

2 Q. Are you aware of any of the circumstances
3 surrounding those reimbursements?

4 A. I might have been at some point. I don't
5 recall.

6 Q. You don't remember any details of that?

7 A. No.

8 Q. Do you recall whether or not those
9 reimbursements were meant to cover all expenses that had
10 been incurred by WSSC up to that point in time?

11 A. I don't recall if there was a discussion about
12 that. I mean, based upon the numbers I'm looking at, that
13 apparently did not occur.

14 Q. So for purposes of your opinion regarding the
15 unreimbursed Windermere Watch expenses, you simply took
16 the numbers that were provided to you by your client,
17 subtracted credits that were provided to you by your
18 client, and then came up with the number?

19 A. Yes.

20 Q. And that's just simple math?

21 A. Yes. It is simple arithmetic.

22 MR. FEASBY: Go off the record.

23 (A recess is taken.)

24 BY MR. FEASBY:

25 Q. Looking at Schedule 2A, we talked about the Area

1 A. Yes.

2 Q. I'm sorry. I will bounce around again.

3 Schedule 2A.

4 A. (Indicating.)

5 Q. The terminal cash flow that you have there --

6 A. Yes.

7 Q. -- under the date December 31st, 2020.

8 A. Yes.

9 Q. How did you calculate that?

10 A. I divide the -- Well, you have to determine the
11 capitalization rate, which is -- which would be -- it's
12 also the same numbers that we utilize by the Mentor
13 report, which is you take the 18 percent discount rate and
14 subtract a long-term growth rate of 2 percent to get a
15 discount -- to get a cap rate of 16 percent. If you
16 divide the last year's cash flow by that number, you --
17 you get a terminal value.

18 Q. And, then, so the -- So that's using the number,
19 then, to the left of it, the 527,000?

20 A. Yes. You divide that by .16. You get 1.3.

21 Q. And, then, that's the present value factor
22 there?

23 A. Well, it's the terminal cash value is 3.2 and
24 you present value it further.

25 Q. Okay.

1 A. That's the amount in five years, and then you
2 bring it back to today's -- today's dollars.

3 Q. And that -- Is that just -- So we're talking
4 about the same thing. The terminal value that you are
5 using, is that the same as the actual present value
6 factor? Is that the two-point --

7 A. No. You calculate a terminal value because you
8 don't extend this all the way. This appears to be -- you
9 know, the assumption is that this is a going concern and
10 will continue to go. There are different ways to show
11 that, and one way is you predict the cash flows for the
12 next five years. And at that point, then you capitalize
13 that amount, and then you get a value what it's worth in
14 five years, and then you discount that to the present
15 value.

16 Q. Okay. So did you use an actual present value
17 factor?

18 A. Well, yes. I used 18 percent discount rate. I
19 mean, the factor would be, I guess, the reciprocal of that
20 number.

21 Q. I gotcha.

22 A. Something like that. Not quite, but something
23 like that.

24 Q. So in order to assume that this entity would be
25 a going concern, did you need to build in the franchise

1 A. Well, no. I mean, again, you're looking at an
2 arm's length transaction. Presumably, the investor would
3 have necessary capital to do whatever he needs to do, but
4 the expectation would be that the franchise fees would be
5 paid.

6 Q. Other than the research that's reflected in the
7 Mentor Group, did you do any additional research into the
8 real estate industry in developing your opinion of the net
9 value of WSSC?

10 A. No. Other than just discussions I had with
11 Bennion -- Mr. Bennion and Mr. Deville about in general
12 the real estate market in Southern California.

13 Q. Do you remember those discussions with them?

14 A. Yes. That it was houses were continuing to
15 sell, and that housing prices had been increasing.

16 Q. Turning to the opinion regarding the losses and
17 the lease obligations.

18 A. (Indicating.)

19 Okay.

20 Q. On page 3 of your report it says, "It is my
21 understanding that WSC induced WSSC to open two offices in
22 the San Diego area - Encinitas and Little Italy."

23 Do you see that?

24 A. Yes.

25 Q. What is your understanding based on?

1 A. Well, again, discussions I had with counsel and
2 some of the pleadings I looked at, it's my understanding
3 that Windermere had indicated that they would obtain -- I
4 can't remember the proper term for it -- but they would
5 exercise reasonable efforts, something to that effect, to
6 deal with the problem of Windermere Watch. And based upon
7 that, that Bennion & Deville had opened up additional
8 offices, two in particular, Encinitas and San Diego, that
9 it's my understanding that had -- had Mr. Bennion and
10 Mr. Deville been aware that Windermere Watch was not going
11 to be dealt with properly by -- by Windermere itself, that
12 they would not have opened those offices.

13 Q. And you mentioned that you saw that in the
14 pleadings?

15 A. Or discussions. I think there's been some
16 discussion of that in the pleadings and also discussions I
17 had with counsel.

18 Q. Was that in the Complaint that you thought you
19 saw those allegations?

20 A. I don't recall.

21 Q. Do you know whether or not there's any fraud
22 claims in this case?

23 A. (Indicating.)

24 I'm looking at the First Amended Complaint. At least
25 it appears in the First Amended Complaint, there is not --

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

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth;
7 that any witnesses in the foregoing proceedings,
8 prior to testifying, were placed under oath; that a
9 verbatim record of the proceedings was made by me
10 using machine shorthand which was thereafter
11 transcribed under my direction; further that the
12 foregoing is an accurate transcription thereof.

13 I further certify that I am neither financially
14 interested in the action nor a relative or employee
15 of any attorney or any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed
17 my name.

18 Dated: April 17, 2017

19
20 
21

22 GAIL E. KENNAMER, CSR 4583, CCRR
23
24
25

EXHIBIT 4

Windermere Services Southern California, Inc.

Recast Profit & Loss

For the Years Ended December 31,

	2015	2014	2013	2012	2011
REVENUE					
B & D Fine Homes CV & Coast Fran Fee	\$ 270,000	\$ 365,000	\$ 390,000	\$ 390,000	\$ 315,000
Third Party Revenue	210,756	113,213	105,260	99,377	106,594
	<u>480,756</u>	<u>478,213</u>	<u>495,260</u>	<u>489,377</u>	<u>421,594</u>
EXPENSES					
Advertising	(240)	(115)	2,289	-	13,300
Bank Charges	300	300	351	813	466
Business Taxes	1,161	800	-	1,912	800
Dues and Subscriptions	50	50	260	260	699
Legal and Professional Fees	88,211 *	12,304	14,533	52,293	195,321
Meals and Entertainment	5,832	370	-	1,389	2,922
Miscellaneous	43	372	597	391	1,180
Office Salaries	52,650	52,650	52,650	97,650	119,620
Office Expense	4	123	-	2,201	2,833
Payroll Taxes	5,358	5,358	5,358	8,407	21,226
Payroll Service Fees	682	682	2,634	2,434	2,365
Postage	868	947	797	778	460
Rent	14,953	14,953	14,953	14,953	24,922
Telephone	3,184	4,905	4,512	5,221	3,980
Travel	10,662	5,462	2,574	4,648	6,344
Vehicle Expenses	-	23	-	364	2,310
	<u>183,718</u>	<u>99,184</u>	<u>101,508</u>	<u>193,714</u>	<u>398,748</u>
INCOME FROM OPERATIONS	297,038	379,029	393,752	295,663	22,846
OTHER INCOME (EXPENSES):					
Owners' salaries & payroll tax	-	(20,000)	(129,180)	(129,782)	(129,292)
Depreciation & Amortization	(265)	(266)	(2,295)	(2,295)	(4,279)
Interest Income	-	-	30,095	60,991	90,655
Interest Expense	-	-	-	-	(380)
	<u>(265)</u>	<u>(20,266)</u>	<u>(101,380)</u>	<u>(71,086)</u>	<u>(43,296)</u>
NET INCOME (LOSS)	\$ 296,773	\$ 358,763	\$ 292,372	\$ 224,577	\$ (20,450)

* Includes litigation fees of \$84,494.



B&D0069838

EXHIBIT 5

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 BENNION & DEVILLE FINE HOMES,)
INC., a California)
5 corporation, BENNION & DEVILLE)
FINE HOMES SOCAL, INC., a) Case No.
6 California corporation,) 5:15-CV-01921 R
WINDERMERE SERVICES SOUTHERN) (KKx)
7 CALIFORNIA, INC., a California)
corporation,)
8)
Plaintiffs,)

9 vs.

10 WINDERMERE REAL ESTATE
11 SERVICES COMPANY, a Washington
corporation; and DOES 1-10,
12 Defendant.
13 -----
14

15
16 DEPOSITION OF ROBERT L. BENNION
17 Irvine, California
18 Thursday, July 28, 2016
19 Volume II
20

21 Reported by:
22 Shari Stellhorn
23 CSR No. 2807
24 Job No. 2330920A
25 PAGES 93 - 227

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
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 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

15
16
17 

18
19 SHARI STELLHORN

20 CSR No. 2807
21
22
23
24
25

EXHIBIT 6

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

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 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

Page Line

25 20

Change: No to Yes.

Reason: Satchile offices did not pay franchise fees.

Change: _____

Reason: _____

Change: _____


Reason: _____

Change: _____


Reason: _____

patrick

Page	Line	Change:
_____	_____	Reason: _____
		Change: _____
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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.



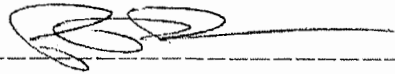
 Signature

8/19/16

 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 Aug 19, 2016, at
6 Rancho Mirage, California.

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11 SIGNATURE OF WITNESS
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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