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Windermere Real Estate Services Company
12

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

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

20 Plaintiffs,

21 v.

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

24 Defendant.
25
26

27 **AND RELATED COUNTERCLAIMS**
28

Case No. 5:15-CV-01921-DFM

Hon. Douglas F. McCormick

**DEFENDANT AND
COUNTERCLAIMANT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION *IN LIMINE* TO
EXCLUDE OPINION OF
PLAINTIFFS' EXPERT PETER
WROBEL RE: NET VALUE
[FRE 104, 402, 403, 702, 703]**

Date: June 18, 2018

Time: 10:00 a.m.

Courtroom: 6B

Complaint Filed: September 17, 2015

1 I, Jeffrey A. Feasby, declare:

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

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

11 3. Attached as Exhibit 1 to this declaration is a true and correct copy of
12 the Windermere Real Estate Services Company Area Representation Agreement For
13 The State Of California between Services SoCal and WSC dated May 1, 2004
14 (“Area Representation Agreement”). This document was attached to the parties’
15 respective complaints and counterclaims, was exchanged in discovery, and was
16 attached as an exhibit to a number of depositions of the parties and their
17 representatives.

18 4. On September 16, 2016, the parties exchanged their initial expert
19 witness disclosures and reports. Attached hereto as Exhibit 2 is a true and correct
20 copy of the report by Peter D. Wrobel that was included with plaintiffs’ expert
21 witness disclosure.

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

4 I declare under penalty of perjury under the laws of the State California that
5 the foregoing is true and correct, and that this declaration was executed on
6 April 25, 2018.

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/s/ Jeffrey A. Feasby

Jeffrey A. Feasby

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EXHIBIT 1

original 03 Agreement.

COPY

WINDERMERE REAL ESTATE SERVICES COMPANY

AREA REPRESENTATION AGREEMENT

FOR THE STATE OF CALIFORNIA

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AREA REPRESENTATION AGREEMENT

THIS AGREEMENT is to be effective as of the 1st day of MAY, 2004, between WINDERMERE REAL ESTATE SERVICES COMPANY, ("WSC"), a Washington Corporation with its principal place of business at 5424 Sand Point Way N.E., Seattle, Washington, 98105, and Windermere Services Southern California, Inc. ("WSSC" or "Area Representative"), a California corporation with its principal place of business at Palm Sprints, California.

RECITALS

A. WSC owns the Trademark and currently licenses real estate brokerage firms to use the Trademark. WSC desires to expand its operations and licenses into the Region and to have Area Representative offer licenses to use the Trademark in the Region and to administer and provide support and auxiliary services to Windermere licensees in the Region.

THEREFORE, the parties covenant and agree as set forth in this Agreement.

1. Definitions

1.1 "Continuing License Fees" shall refer to the ongoing percentage-based fees paid by licensees on a monthly basis.

1.2 "Gross License Fees" shall mean 100% of the license fees paid by licensees in the Region.

1.3 "Initial License Fees" shall refer to the one-time, lump sum license fees paid by licensees upon the execution of a license agreement.

1.4 "Principals" shall mean the shareholders of Area Representative which at the date of execution of this Agreement are as follows:

Name	% Ownership
Bob Deville	% 50
Bob Bennion	% 50

1.5 "Region" shall mean the State of California.

1.6 "Trademark" shall mean the trade names "Windermere Real Estate", "Windermere" and variations of those names, and all trademarks, service marks, related symbols and logotypes, owned by WSC and used in connection with real estate brokerage services and activities and licensing activities, together with all related names, marks and symbols used in connection with these activities.

1.7 "Windermere System" shall mean the standards, methods, procedures, techniques, specifications and programs developed by WSC for the establishment, operation and promotion of independently owned real estate brokerage offices, as those standards, methods, procedures, techniques, specifications and programs may be added to, changed, modified, withdrawn or otherwise revised by WSC. These programs include without limitation the Windermere Foundation, Windermere Personal Marketing Programs, Premier Properties Program, Windermere Retirement Plan for Real Estate Salespersons and Windermere salesperson educational formats and outlines.

2. Grant of Area Representation Rights.

WSC hereby grants to Area Representative, and Area Representative hereby accepts the non-exclusive right to offer Windermere licenses to real estate brokerage businesses to use the Trademark and the Windermere System in the Region in accordance with the terms of the Windermere License Agreement. Area Representative agrees not to make or authorize any use, direct or indirect, of the Trademark for any other purpose or in any other manner. Licenses offered will in all cases be subject to the approval of WSC and will be granted and issued by WSC to the licensee.

Area Representative agrees that during the entire term of this Agreement, including the period of notice of expiration of the term, Licensee will in good faith actively and with Area Representative's best efforts engage in the business described herein using the Trademark, and will not, either directly or indirectly, (i) engage in any other competing activity or (ii) sell all or any part of Area Representative's business or operating assets to a person or entity engaged in a competing real estate brokerage and/or franchising business.

3. Administration of Windermere System.

WSC hereby delegates to and Area Representative hereby assumes the responsibility for the administration and supervision of the use and display of the Trademark by licensees in the Region, and of the use by them of the Windermere System in the Region and the provision of support and auxiliary services to Windermere licensees in the Region in accordance with this Agreement and the policies and guidelines enunciated from time to time by WSC. Area Representative's responsibilities will include marketing Windermere licenses in the Region; establishing and operating a training, education and professional development program for licensees under the License Agreement and for their respective salespersons; implementing the intra-system referral program; offering Windermere marketing programs and Premier Properties Programs; making available samples of Windermere forms and listing and marketing materials; administering, collecting and remitting contributions to the Windermere Foundation; monitoring licensees' compliance with the errors and omissions and general liability insurance requirements; and coordination of advertising and public relations.

In addition, Area Representative's responsibilities will include the responsibility to receive, collect, account for all license fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the Region, and to remit to WSC its share of such fees. It will be Area Representative's responsibility to monitor and see that its licensees in the Region comply with and conform to the policies and guidelines enunciated by WSC, including those pertaining to the use of the Trademark, the use and display of the Trademark in accordance with standard or authorized formats, the quality of the image projected by licensees and the nature, type and quality of the services offered by licensees.

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

applicable and valid laws and regulations in the conduct of its business.

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

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

4. Term and Termination.

4.1 General. The parties approach the Transaction with optimism for its success, but recognize that its success depends on a successful and mutually consensual relationship which in turn depends on many intangibles such as philosophies of the parties and interrelationships of the principals of each party. The term of this Agreement shall commence with the "Effective Date" of the Agreement and continue until it is terminated as follows:

(a) At any time by mutual written agreement of the parties.

(b) By either party upon one hundred eighty (180) days written notice to the other party.

(c) By either party upon ninety (90) days written notice to the other party; provided that such termination shall be limited to termination for cause based upon a material breach of the Agreement described in the notice and not cured within the ninety (90) day period. The parties pledge to deal with one another in good faith and each party agrees to give the other reasonable notice and

opportunity to cure any real or perceived default or misperformance or malperformance on either party's part.

(d) By either party without giving prior notice if the other party (i) is adjudicated bankrupt or insolvent, (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of its business, (iii) voluntarily abandons its Franchise or licensing business, or (iv) is (or its principals are) convicted of or pleads guilty or no contest to a charge of violating any franchise laws and regulations and/or any real estate licensing laws and regulations.

4.2 Termination Obligation. In the event either party elects to terminate the Agreement as provided in § 4.1 (b) above (the "Terminating Party"), it is agreed that the other party (the "Terminated Party") will be paid an amount equal to the fair market value of the Terminated Party's interest in the Agreement (the "Termination Obligation"), in accordance with the provisions of this Agreement. The fair market value of the Terminated Party's interest in the Agreement will be determined by mutual agreement of the parties or, if unable to reach agreement, by each party selecting an appraiser and the two appraisers selecting a third appraiser. The fair market value of the Terminated Party's interest will be determined by the appraisers without consideration of speculative factors including, specifically, future revenue. The appraisers shall look at the gross revenues received under the Transaction during the twelve months preceding the termination date from then existing licensees that remain with or affiliate with the Terminating Party. The median appraisal of the three appraisers shall determine price, and each party agrees to be bound by the determination.

There will be no Termination Obligation if the termination by the Terminating Party is made in good faith based upon the material breach of the obligations of the Terminated Party under this Agreement continuing after reasonable notice and opportunity to cure.

4.3 Payment. The Termination Obligation shall be paid in monthly installments solely from Continuing License Fees described below, until paid in full. Monthly installments in an amount equal to twenty-five percent (25%) of the Continuing License Fees, if any, received by the terminating Party from licensees in the

Region existing at the termination date and remaining with or affiliating with the Terminating Party. The monthly payments will be made on the twenty-fifth day of the month following the receipt of the revenues, commencing with the twenty-fifth day of the month following the first full calendar month after the determination of the Termination Obligation. The parties acknowledge that the Termination Obligation is not a purchase transaction but, rather, constitutes a payment of the agreed "run-off" entitlement of the Terminated Party and for tax purposes will be expensed by the Terminating Party and recognized as income by the Terminated Party. The parties acknowledge that this provision has been specifically negotiated, and both parties agree that it constitutes a reasonable and fair liquidated amount as of the date of execution of this agreement.

4.4 No Other Obligation. Except as specifically provided herein neither party will owe any obligation to the other following termination of the Agreement, except for final accounting and settlement of any previously accrued license fees, and excluding any accrued claim for damages and associated attorneys' fees and costs, or otherwise arising by law. In the event of a termination Area Representative will have no interest in the name or Trademark and will discontinue all use of the names and Trademarks, but otherwise will not be bound by any non-competition covenant.

5. Anticipated Effective Date.

The parties desire the Effective Date of the transaction contemplated by this Agreement to be January 1, 2004 and the parties will use their best efforts to comply with all legal and regulatory requirements so as to permit commencement of the Agreement on that date. In the event the parties are unable to meet that effective date it will be as soon thereafter as is possible and mutually agreed by the parties.

6. Retention of Proprietary Interest in Name and Trademark.

Exclusive ownership of the proprietary rights in and to the Windermere Real Estate tradename and Trademarks shall be retained by WSC and the use thereof by Area Representative is by the license granted by WSC under this

Agreement and shall be in accordance with the terms of this Agreement. WSC will have the sole right to file, in its own name, all state and federal trademark and service mark registrations for the Trademark. In the event of a termination of this Agreement for any reason Area Representative will change its name to a name not containing any reference to Windermere or Windermere Real Estate and will discontinue all use or reference to the tradename and Trademark.

7. Franchise Registration or Compliance.

The parties will promptly and diligently commence and pursue the preparation and filing of all Franchise registration statements, disclosure statements, or applications required under the laws of the state of California and/or the United States of America. WSC will be responsible for any registration filing fee and for all legal expenses incurred in the revision and registration of all required disclosure documents, except that Area Representative will pay the cost of its own legal services in connection with review and cooperative efforts in the registration and the preparation of this and other related agreements or documents. The parties will jointly maintain the registration or disclosure documents and all necessary amendments, updates and/or applications for renewal, each bearing their respective costs of preparation of necessary and required audited financial statements. Required audited financial statements shall be provided to WSC not later than March 1 of each year, beginning March 1, 2005.

8. Terms of Licensees' Agreements.

Licenses will be offered to licensees in the Region, other areas or jurisdictions initially for an initial fee of \$15,000.00 (which amount will be subject to prospective change by WSC) and a continuing license or royalty fee of either five percent (5%) of the gross sales commissions ("Gross Commission Income") earned and received by the licensee, or a fixed dollar amount per agent per month. In addition licensees in the Region will be required to pay additional fees as set forth in WSC's Uniform Franchise Offering Circular (UFOC) as currently on file with the State of California, and as revised from time to time.

9. Area Representation Fee.

Initial Fees. Due to the special circumstances of this offering, Area Representative will not be required to pay any initial fee for its Area Representation rights.

10. Payment, Collection and Allocation of License Fees.

The license fees (initial and continuing) as well as all additional fees will be paid by the licensees in the Region to Area Representative which will have responsibility for collecting the fees and any applicable late charges and interest and accounting for them to and for the mutual benefit and account of Area Representative and WSC. Area Representative will provide monthly reports to WSC in a form and format acceptable to WSC. WSC will have the right at reasonable times to inspect, review and copy the books and records of Area Representative. Area Representative will pay WSC 50% of the initial and continuing license fees received by it in cash from a licensee under a License Agreement, as follows. By the 22nd day of each calendar month, Area Representative will pay WSC its 50% share of fees received in cash from licensees that month. Payment will be accompanied by a report showing the source and amount of fees received by Area Representative from each licensee, and by the report provided by the licensee showing its calculation of the percentage fees remitted.

11. Administration Fee.

All licensees in the Region will pay a monthly "Administration Fee" as set forth in the UFOC, and the license agreements executed by each licensee. The Administration Fee shall be one of the additional fees collected by Area Representative and forwarded in full to WSC. WSC may in its discretion use the Administration Fees collected in the Region for any purpose in WSC's sole discretion.

12. Windermere Foundation.

All licensees in the Region and their respective licensed sales agents will participate in the Windermere Foundation program on the same basis as other WSC licensees and their respective sales agents. Area Representative

will implement the Windermere Foundation program with the licensees under this Agreement and their respective sales agents, in accordance with the written guidelines established by WSC or the Windermere Foundation from time to time and applicable and applied consistently to all WSC licensees and their respective licensed sales agents. Under the current program, each sales agent licensed with a WSC licensee contributes \$7.50 for each real estate sales transaction (listing or selling side) in which the sales agent is involved, to the Windermere Foundation. Sales transactions for which a contribution to the foundation needs to be made do not include a licensee's outgoing referral transactions. The amount of the contribution is subject to change from time to time.

WSC shall cause the Windermere Foundation to expend the contributions received by it from the Region, less a portion of the Foundation's administration expenses, on programs presented or conducted by the Windermere Foundation in the Region, in affiliation with Area Representative. The time and amount expended and the programs and location and method of presentation shall be determined by the Windermere Foundation in cooperation with WSC and Area Representative. All such activities, programs and expenditures must be consistent with the Foundation's Bylaws and Articles of Incorporation, must not disqualify the Windermere Foundation for tax exempt treatment for income tax purposes, and may not violate any other applicable state or federal laws.

13. Technology Fees

Licensees in the Region shall pay Technology Fees in an amount determined by WSC, and as disclosed in the UFOC and the license agreements executed by each licensee. Area Representative shall be responsible for collecting all Technology Fees in the region, as one of the additional fees collected by Area Representative and forwarded in full to WSC. The Technology Fee is intended to support the operation and development of WSC's technology systems, including without limitation the public web site operated at www.windermere.com, as well as the Windermere Online Resource Center Intranet system (WORC site). Area Representative acknowledges that features available in and for the Region may be limited due to the currently small number of Windermere licensees in the Region. It is anticipated that technology services available for the Region will expand with the number of licensees. However,

such expansion will be time and cost-intensive, and may require the imposition of additional or increased Technology Fees to fund such development. Area Representative agrees to cooperate with WSC in establishing and implementing a technology strategy for the Region, and in financing the development of technology tools for the Region through increased contributions from Area Representative and/or its licensees in such amounts as determined by WSC and Area Representative.

14. No Exclusive Territory.

The license granted herein is a non-exclusive license to market and service the Trademark and the Windermere System to franchisees and prospective franchisees in the Region. WSC intends to have more than one representative for the Region, and does not intend to assign any representative any particular area or territory. At the time that this Agreement is executed Area Representative has been assigned responsibility for (and the right to collect fees from) the specific franchisees identified in Exhibit A. Additional offices may be added, and offices may be transferred to other representatives, at any time by WSC in WSC's sole judgment. Area Representative agrees to cooperate with WSC in this regard.

Area Representative shall establish and maintain an office in a location to be mutually determined by Area Representative and WSC. Area Representative must receive WSC's permission before opening additional branch offices or relocating any office, but is not restricted from seeking new franchisees from any specific geographical area. Likewise, other representatives in the Region will be free to solicit new franchisees in areas serviced by Area Representative. WSC will determine in its discretion which representative will service each franchisee in the Region, and explicitly reserves the right to reassign franchisees to a different representative at any time in WSC's sole business judgment.

15. Relationship of Parties.

Area Representative will be an independent contractor responsible for exercising full control over the internal management and day-to-day operations of its business and the administration of the Windermere System in the Region. The Agreement does not and will not create a relationship

of principal and agent, joint venture or partnership. Each party will be fully responsible for its own actions and each will agree to indemnify one another for any and all liability incurred by one by virtue of or arising out of the acts of the other. Each party will agree to obtain and keep in force comprehensive general liability insurance, automobile liability insurance and any other insurance required by law, with policy limits in amounts approved by WSC.

16. No Restriction - WSC.

Nothing contained in this Agreement shall be construed to limit the freedom and flexibility of WSC to sell itself or its assets, merge or discontinue business or to liquidate or dissolve.

17. Non-Transferability / Personal Responsibility of Principals / Modifications to Organizational Documents

a. The composition, principals and management of Area Representative has been an essential factor in the determination of WSC to enter into this Agreement. Accordingly the Agreement and Area Representative's rights under the Agreement are non-transferable without the express written consent of WSC, which may be withheld in WSC's sole discretion. Any change of the ownership of Area Representative to ownership outside the group of Principals identified in §1.4 shall be considered a transfer or assignment for this purpose, and a breach of this Agreement.

b. The Principals of Area Representative identified above in §1.4 shall be at all times actively and personally involved in the operation of Area Representative's business, and shall be personally responsible for discharging all duties of the Area Representative set forth herein. In the event any individual Principal identified herein dies, becomes permanently disabled, or ceases to be actively involved in the operation of Area Representative's business, WSC may terminate this Agreement with cause.

c. A copy of Area Representative's organizational document(s) are attached hereto as Exhibit B. Said documents were reviewed and approved by WSC as a pre-condition of the granting of this Agreement, and may not be modified without WSC's prior permission. A violation of

this provision shall be grounds for WSC to terminate this Agreement with cause.

18. Entire Agreement.

This Agreement constitutes the entire understanding of the parties and shall be subject to modification or change only in writing and signed by all of the parties.

19. Waiver. The waiver of any breach or default under this Agreement will not constitute a waiver of any other right hereunder or any subsequent breach or default.

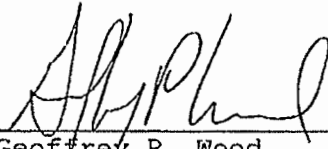
20. Arbitration. Except for equitable or injunctive relief involving intellectual property rights, the parties hereto shall submit any other dispute or controversy arising out of or related to this Agreement to binding arbitration before the American Arbitration Association pursuant to the rules of the American Arbitration Association. The decision by the arbitrators shall be binding and conclusive upon the parties, and they shall comply with such decision in good faith, and each party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment with respect to the decision of the arbitrators hereunder. The institution of any arbitration proceeding hereunder shall not relieve either party of its obligations hereunder.

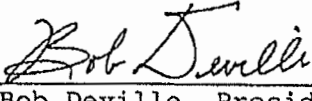
21. Attorney's Fees and Costs.

Should any party institute legal proceedings to enforce the terms and conditions of this Agreement or its rights hereunder, the substantially prevailing party shall be entitled to recover all of its reasonable expenses, including attorney fees, court costs and other expenses reasonably and necessarily incurred in connection with such proceedings and any appeal.

WINDERMERE REAL ESTATE
SERVICES COMPANY

AREA REPRESENTATIVE

By 
Geoffrey P. Wood
Chief Executive Officer

By 
Bob Deville, President

Date: 5/1/04

Date: 5-1-04

EXHIBIT A
LIST OF LICENSEES TO BE SERVICED BY AREA REPRESENTATIVE
AND SPECIAL FEE ARRANGEMENTS

<u>Carlsbad/San Diego</u>	Email: carlsbad@windermere.com Phone: (760) 434-4340	Carlsbad/San Diego 355 Carlsbad Village Drive Carlsbad, CA. 92008
<u>Desert Hot Springs</u>	Email: coachellavalley@windermere.com Phone: 760-329-3130	Desert Hot Springs 66337 Pierson Blvd. Desert Hot Springs, CA. 92240
<u>Escondido</u>	Email: escondido@windermere.com Phone: 760-291-1000	Escondido 100 South Escondido Blvd. Escondido, CA. 92025
<u>La Quinta</u>	Email: coachellavalley@windermere.com Phone: 760-564-9685	La Quinta 47-250 Washington Street Ste B La Quinta, CA. 92253
<u>Palm Springs</u>	Email: coachellavalley@windermere.com Phone: 760-327-3990	Palm Springs 850 N Palm Canyon Dr. Palm Springs, CA. 92262
<u>Rancho Mirage</u>	Email: coachellavalley@windermere.com Phone: 760-770-6801	Rancho Mirage 36101 Bob Hope Drive, Suite F-2 Rancho Mirage, CA. 92270
<u>Solana Beach</u>	Email: solana@windermere.com Phone: 858-794-5900	Solana Beach 514 Via de la Valle #102 Solana Beach, CA. 92075

1. San Diego Branches

Effective January 1, 2004, the San Diego offices will be part of Area Representative's Southern California (SCA) region. Windermere Services Northern California, Inc., the Area Representative for Northern California (NCA) will receive one half of license fees generated by the Carlsbad, Escondido and Solana Beach offices until it has received \$35,000 or January 1, 2006 whichever comes first. (Example: \$1,000 income -- \$500 to WSC; \$250 to Area Representative and \$250 to NCA).

2. Coachella Valley Offices Licensing Fees

Area Representative will retain fifty percent (50%) of all licensing fees generated by the Coachella Valley offices beginning January 1, 2004 with the exception of the Palm Springs office which will begin on July 1, 2004.

3. Other Initiation Fees and Licensing Fees

Area Representative and WSC will share all initiation and licensing fees equally for all future Windermere offices in the SCA region.

It is understood that collection of fees will be the responsibility of Area Representative, but Area Representative will not be responsible for payment of uncollectable fees.

4. Administrative Fee

Administrative Fees are currently assessed on a \$25.00 per agent per month basis. The Administrative Fees generated in the State of California will be applied to the region from which the fees were collected with the following exception:

4.1 For the period between 1/1/04 to 12/31/05:

- a. All NCA fees will be applied to the Stanford Cup expenses
- b. Fees generated from 89 SCA agents will be applied to Stanford Cup expenses.
- c. As of 1/1/04 the fees being applied from SCA agents to the Stanford Cup expenses will be reduced by any increase in the NCA agent base of 197. (Example: If agent base in NCA is 197 on 1/1/04 and 200 on 2/1/04, then only fees from 86 agents in SCA will be applied to the NCA Stanford expenses in February.)
- d. SCA participation in Stanford Cup expenses will never exceed 89 agents even if the NCA agent base drops below 197; therefore, the maximum SCA participation in each year would be \$26,700.

4.2 For the period 1/1/06 forward:

100% of SCA fees will be retained for SCA regardless of the NCA agent base.

4.3 Administrative Fee increases:

Administrative Fees are currently set at \$25.00. In the event SCA increases Administrative fees for any reason, 100% of any increased amount shall be retained for SCA. (Example: SCA increases fee to \$45.00: \$20 difference is retained by SCA and \$25.00 is applied to any fees being allocated to NCA.)

4.4 1/1/04: Initial SCA Administrative Fee Pool:
Starting 1/1/04, Administrative Fees from the first 89 SCA agents each month will be divided as set forth herein. Administrative Fees for any additional agents in the SCA area will be credited to the SCA Administrative Fund.

4.5 Accounting
Administrative fees accounting records will be maintained by Windermere Services (WSC). Agent numbers used will be as reported monthly to WSC on the Month End Statistical and Fee Calculation Form.

All fees are paid one month in arrears. For example, fees accrued in January 2004 were paid in February 2004. Accordingly all references in this Agreement to fees for any specified month or period shall be interpreted to mean fees accrued during such time, but paid a month later.

EXHIBIT B
AREA REPRESENTATIVE'S
APPROVED ORGANIZATIONAL DOCUMENTS

EXHIBIT 2



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

550 South Hope Street
Suite 2150
Los Angeles, CA 90071
pwrobel@thinkbrg.com
Telephone: 213.261.7707
Fax: 213.622.0390

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 flourish at the end.

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

PDW:com

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

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

Summary of Damages and Valuation of WSSC

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

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

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

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

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

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

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

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

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

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

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

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

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.*
[30-2013-00691532] California Superior Court, Orange County
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(deposition and trial testimony)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

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

7)
8 Plaintiffs,)

9 vs.)

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

11)
12 Defendants.)

13 -----
14 AND RELATED COUNTERCLAIMS)
15)

16 DEPOSITION OF PETER D. WROBEL
17 Irvine, California
18 Wednesday, April 5, 2017
19 Volume I
20

21
22 Reported by:

23 Gail E. Kennamer, CSR 4583, CCRR

24 Job No. 2588458

25 Pages 1 - 183

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 -----
BENNION & DEVILLE FINE HOMES,)
INC., a California corporation;)
5 BENNION & DEVILLE FINE HOMES)
SOCAL, INC., a California)
6 corporation; WINDERMERE SERVICES) 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
22
23
24
25

1 APPEARANCES:

2

3 For Plaintiffs:

4

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13 For Defendants:

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22

23 ALSO PRESENT:

24 Neil J. Beaton, CPA

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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
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