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*Attorneys for Plaintiffs and Counter-Defendants*

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

BENNION & DEVILLE FINE  
HOMES, INC., a California  
corporation, BENNION & DEVILLE  
FINE HOMES SOCAL, INC., a  
California corporation, WINDERMERE  
SERVICES SOUTHERN  
CALIFORNIA, INC., a California  
corporation,

Plaintiffs,

v.

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

Defendant.

AND RELATED COUNTERCLAIMS

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

*Hon. Manual L. Real*

**DECLARATION OF KEVIN A.  
ADAMS IN SUPPORT OF  
PLAINTIFFS AND COUNTER-  
DEFENDANTS' MOTION IN  
LIMINE TO PRECLUDE WSC  
FROM INTRODUCING EVIDENCE  
OF WORK PERFORMED ON THE  
SUNDBERG REPORT PRIOR TO  
OCTOBER 2013**

**Date:** May 15, 2017  
**Time:** 10:00 a.m.  
**Courtroom:** 880

**Action Filed:** September 17, 2015  
**Disc. Cut-Off:** August 29, 2016  
**Pretrial Conf.:** November 15, 2016  
**Trial:** May 30, 2017

1 I, Kevin A. Adams, state as follows:

2 1. I am one of the attorneys of record for Plaintiffs/Counter-Defendants  
3 Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Inc.,  
4 Windermere Services Southern California, Inc., and Counter-Defendants Robert L.  
5 Bennion and Joseph R. Deville (collectively, the "B&D Parties") in the above-named  
6 action. I am a member in good standing of the State Bar of California, and duly admitted  
7 to practice law before all of the courts of the State of California, including the United  
8 States District Court, Central District of California and the United States Court of  
9 Appeals for the Ninth Circuit. I make this Declaration in support of the B&D Parties  
10 motion in limine to preclude Windermere Real Estate Services Company ("WSC") from  
11 introducing any evidence, testimony, argument, or comment of work that was performed  
12 on the Sundberg Report prior to October 2013.

13  
14 2. As counsel for the B&D Parties, I am intimately familiar with the discovery  
15 that has taken place in this action, including the written discovery, documents produced,  
16 and deposition testimony. The written discovery requests, responses, and deposition  
17 transcripts have all been reviewed by me and are maintained at my office.

18 3. On August 26, 2016, I deposed York Baur in Seattle, Washington. During  
19 the deposition, I asked Mr. Baur questions regarding the Sundberg Report. Specifically, I  
20 inquired about the work that was performed on the report, and the timing of the report.  
21 My questions were futile because Mr. Baur could not specify the date that Sundberg was  
22 hired, or when the work was performed on the report. Attached hereto as Exhibit A is a  
23 true and correct copy of portions of the transcript of Mr. Baur's deposition.

24 ///

25 ///

26 ///

4. Although we requested it, we did not receive any other materials during discovery relating to when Sundberg was hired, or when the Sundberg report was created.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 17th day of April, 2017 in Irvine, California.

/s/ Kevin A. Adams

Kevin A. Adams

# EXHIBIT A

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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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,	)
	) No.
vs.	) 5:15-cv-01921-R-KK
	)
WINDERMERE REAL ESTATE SERVICES	)
COMPANY, a Washington	)
corporation; and DOES 1-10,	)
	)
Defendants,	)
	)
	)
AND RELATED COUNTERCLAIMS	)
	)

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VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:  
YORK BAUR

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Seattle Deposition Reporters

600 University Street, Suite 320

Seattle, Washington

DATE TAKEN: August 26, 2016  
REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005

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APPEARANCES

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ALSO PRESENT:            JOSEPH DEVILLE  
ROBERT BENNION - partial day  
ERIC FORSBERG

1 conversation with Mr. Drayna where he talked to you  
2 about the historical dealings with respect to  
3 Windermere Watch.

4 What, if anything, did you do with respect to  
5 Windermere Watch after that conversation with  
6 Mr. Drayna?

7 A. At his request, I did research on the matter  
8 inside my own company, which is why I'm aware of some  
9 of the work that had been done historically in SEO and  
10 the opinions of how that might influence the presence  
11 of Windermere Watch. And I specifically hired one of  
12 the foremost SEO experts in the country, his name is  
13 Greg Sundberg, to advise us by doing research that we  
14 funded and issuing a report with recommendations on how  
15 we could help the local franchisee improve their search  
16 engine visibility.

17 Q. When did you hire Mr. Sundberg?

18 A. I don't recall the exact date, but it would  
19 have been not long after the discussions with  
20 Mr. Drayna, so my guess would be in late first or  
21 second quarter, sometime like that, in 2013.

22 Q. And isn't it true that that is your estimate  
23 and not a guess?

24 A. Define the difference between estimate and a  
25 guess.

1 Services Company?

2 A. Yes.

3 Q. Okay. And so you're the CIO of Windermere?

4 A. I'm the acting CIO of Windermere.

5 Q. But you are --

6 A. I'm not an employee of Windermere.

7 Q. All right.

8 A. Sorry.

9 Q. Thank you. You're not an employee of

10 Windermere, and so you have been designated as a

11 corporate representative for a company you are not --

12 you are not employed by, correct?

13 A. Correct.

14 Q. And what is your role with respect to

15 Windermere Solutions?

16 A. As CEO, I'm responsible for the operation of

17 the entire company and for the delivery of a return to

18 its shareholders.

19 Q. How many employees does Windermere Solutions

20 have?

21 A. Approximately 55.

22 Q. And has that changed over time?

23 A. It has.

24 Q. And how long have you been with Windermere

25 Solutions?



1 Q. Sure. An estimate would be something that  
2 you had perceived firsthand because you were there. A  
3 guess is something that you don't have any firsthand  
4 perception of.

5 A. Yeah.

6 Q. It's merely a guess?

7 A. I was the one that hired him to do the work,  
8 so it is an estimate.

9 Q. So you estimate that you retained the  
10 services of Mr. Sundberg sometime in late first quarter  
11 2013, earlier second quarter?

12 A. Yeah. It's been a long time ago. Let's call  
13 it the first six months, probably, of the year.

14 Q. And after you retained Mr. Sundberg, do you  
15 know if he began doing work on this topic?

16 A. He did.

17 Q. And when did his work start?

18 A. Shortly after I contracted him. I don't  
19 recall.

20 Q. Okay. And between your conversation with  
21 Mr. Drayna and the retention of Mr. Sundberg, did you  
22 discuss the Windermere Watch issue with anyone else at  
23 Windermere franchisor?

24 A. It's easily possible. I don't recall.

25 Q. Okay. Did you discuss the Windermere Watch

1 advance of me, hadn't done it.

2 So I guess what I'm suggesting is, I'm  
3 aware of the question. Whenever -- whenever there's  
4 money -- more money being asked for, people have a  
5 right to ask "for what." But I can tell you that we  
6 continue to deliver an ever-expending set of  
7 capabilities, and I personally was involved in  
8 articulating that.

9 I can't speak for what Bob may or may not  
10 have said in this email string to Mr. King to generate  
11 or not generate perceptions. I wasn't there. I don't  
12 know.

13 BY MR. ADAMS:

14 Q. Are you familiar where any complaints that  
15 Mr. Johnson, who you alluded to moments ago, had with  
16 Windermere's technology?

17 A. No, because he was completely unaware of it,  
18 from what I could tell, until I presented it to him  
19 myself in his offices in September, and Mr. Bennion and  
20 Mr. Deville were at that meeting. So -- it was the  
21 first and only time I've met them.

22 Q. Now, by March 29th, 2013, had you retained  
23 the services of your SEO expert with respect to  
24 Windermere Watch?

25 A. As I testified earlier, I don't recall the

1 exact date.

2 Q. Do you recall exactly what, if anything, you  
3 did from December 2012 to the end of March 2013 with  
4 respect to Windermere Watch?

5 A. I don't recall exactly, no.

6 Q. Do you recall generally what you did that  
7 time period?

8 A. You're obviously looking at some document  
9 that has that date.

10 Is that the date that Mr. Drayna would have  
11 talked to me about that issue? Can you help me out  
12 with a date as an anchor here, because I don't -- I  
13 don't recall the exact dates.

14 Q. Sir, I'll represent to you a couple of  
15 different things. Number one, timing is incredibly  
16 important with respect to this issue. Number two, in  
17 March 29th, 2013, Mr. Bennion and Mr. Deville were  
18 asking Mr. Drayna and Mr. Wood to advise them where  
19 Windermere was with the Windermere Watch issue. I do  
20 not know, nor can I represent to you, what was relayed  
21 to you during that time, but I'm hoping that you can  
22 tell us what was relayed to you, if anything, during  
23 this March 29th time period.

24 A. Based on the nature of that, I assume that I  
25 was already involved probably by that point, and I

1 probably would have begun the conversations to either  
2 find the expert that we could apply to help further  
3 solve and provide recommendations and research, or  
4 potentially were they in discussions with Mr. Sundberg.  
5 But I don't recall the exact timing. That's what I'm  
6 trying to say.

7 Q. So you're not --

8 A. It was in re -- sorry. It was in response to  
9 this that I got engaged. It was identified by  
10 Windermere Services as a critical issue on behalf of  
11 Southern California, Bennion & Deville specifically,  
12 and that's what precipitated them coming to me for --  
13 for whatever help I could lend.

14 Q. Sir, perhaps you're not aware that this email  
15 that I just represented to you on March 29th, 2013, was  
16 followed by similar requests as to what Windermere was  
17 doing on Windermere Watch on April 20th, 2013, June  
18 12th, 2013, July 31st, 2013, and ultimately in  
19 September 2013, there was some involvement on your end  
20 that I'm aware of.

21 Are you aware when, if any, time in these  
22 communications that I've just identified, you were  
23 brought into the picture with respect to Windermere  
24 Watch?

25 A. Obviously sometime between the first one and

1 the September one because, if I recall correctly,  
2 that's when we delivered our report to Mr. Forsberg,  
3 but I can't recall the exact timing. It's three-  
4 and-a-half years ago. I'm sorry.

5 Q. And I understand that. I'm not trying to put  
6 you on the spot as to a day or time when this occurred.  
7 But I'm just wondering if you remember generally, and,  
8 if so, was it communicated to you in an email? Was it  
9 communicated to you over the phone? There have been no  
10 documents produced which identify when or how you were  
11 involved until much later in the 2013 year.

12 A. Okay. The reason for that, I suspect, is  
13 what I testified to earlier. And I -- I already  
14 testified to Mr. Drayna calling me. That's the  
15 problem, I don't -- I don't have -- I don't log phone  
16 calls so I don't remember exactly when it was.

17 My suspicion it would have been, based on the  
18 date you just gave, probably early to mid-Q2 in  
19 response to the first email that you mentioned on March  
20 29th. I would have then researched the topic  
21 internally with my team, identified the need for an  
22 outside expert, found an outside expert, and then hired  
23 Mr. Sundberg.

24 So I could imagine that process taking 30 to  
25 60 days perhaps. I don't recall exactly. And then it

1 would have taken some time for Mr. Sundberg to agree to  
2 do it. I mean, he's a -- he was employed at the time,  
3 and so he did it as a favor to me. And then some time  
4 frame for him to do his research. Then we reviewed  
5 that research and recommendation eternally and  
6 ultimately then approached Mr. Forsberg.

7 So, I guess, I suspect that call probably  
8 happened within days or a week at most probably of that  
9 March 29th email, but I'm -- I'm just estimating. I  
10 really don't remember.

11 Q. Okay. And you had an existing relationship  
12 with Mr. Sundberg before working for Windermere  
13 Solutions, correct?

14 A. Correct. He was an employee of mine when I  
15 ran the search division at InfoSpace.

16 Q. And so do you believe that it took you 30 to  
17 60 days to get ahold of Mr. Sundberg before he began an  
18 SEO analysis?

19 A. I didn't know that I needed his services  
20 until I was able to do the research inside the company  
21 to determine what the history is, what the issue was,  
22 and what needed to be done about it, and then it did  
23 take me some time. Mr. Sundberg was at the time  
24 running his own startup and was very, very busy and, as  
25 I mentioned, ultimately did this as a favor to me. But

1 I was willing to trade a little bit of time because he,  
2 as I mentioned earlier, is, in my opinion, the foremost  
3 expert, so I -- I wanted to make sure that we supplied  
4 the best resource we could.

5 Q. And so you took upwards of 60 days to get  
6 Mr. Sundberg on board. Is that your testimony today?

7 A. I'm saying I don't recall the exact time  
8 frame.

9 Q. And do you recall how long it took for  
10 Mr. Sundberg to put together his report?

11 A. No.

12 Q. Do you know if it took him six months after  
13 you first got ahold of him?

14 A. Well, it couldn't have if we started in April  
15 and delivered to Mr. Forsberg in September.

16 Q. But as you sit here, do you have any  
17 independent recollection of that?

18 A. Yes. I just told you.

19 Q. Of how long it took Mr. Sundberg?

20 A. I'm just doing the math. Based on your  
21 telling me the date of March 29th and me knowing that  
22 we delivered the report within less than six months of  
23 that time.

24 Q. So you do have independent recollection of  
25 how long it took for Mr. Sundberg to get you his report

1 from the time you engaged his services?

2 MR. FEASBY: Objection. Misstates  
3 testimony.

4 THE WITNESS: Yeah, no. I said I didn't.  
5 You asserted six months, and it's not six months. It's  
6 less than six months based on calendar math.

7 BY MR. ADAMS:

8 Q. And do you recall them -- a meeting with  
Mr. Deville in Southern California?

A. I do.

Q. Who else was present at that meeting, if  
anyone?

A. It was a larger group. The people I recall  
4 in attendance were Mr. Deville, Mr. Bennion,  
15 Mr. Jacobi, Mr. Wood, Rich Johnson, his business  
16 partner Brian, whose last name escapes me, and then the  
17 two of them who were the local franchise owners had --  
18 they had started up recently, and they brought in a few  
19 other staff members at various points throughout the  
20 presentation to -- for very specific topics. I don't  
21 remember who they were.

22 Q. And did you discuss Windermere's technology  
23 during that meeting?

24 A. Yes.

25 Q. Was it a training session for the technology?



1 Q. But you do recall that the report was  
2 prepared -- let me strike that.

3 How long was the report prepared after you  
4 engaged Mr. Sundberg's services?

5 A. I've testified that --

6 MR. FEASBY: Objection.

7 THE WITNESS: -- I don't recall.

8 MR. FEASBY: Asked and answered.

9 THE WITNESS: This is three years ago,  
10 so, I appreciate that you're asking me the dates for a  
11 reason, but it's three years ago.

12 BY MR. ADAMS:

13 Q. So it's possible Mr. Sundberg could have been  
14 engaged in September of 2013. You just don't recall,  
15 correct?

16 A. I suspect it was before then, but, yeah, I  
17 don't recall the exact engagement date. I could  
18 certainly go find out, by the way. I mean, it's -- I  
19 have a record of my exchanges with him, I'm sure.

20 Q. Well, we've asked for these materials in this  
21 litigation, sir. Do you know if they were produced?

22 A. I have no idea. I presume they were.

23 Q. What makes you presume that they were?

24 A. Because we have excellent technical staff  
25 that does their best to comply with these requests.

1 Q. And who was that staff that did their best to  
2 comply with these requests?

3 A. I don't recall exactly whom. It would have  
4 been members of my technical operations staff.

5 (Whereupon Exhibit 132 was  
6 marked for the record.)

7 Q. I'm handing you a document that has been  
8 marked an Exhibit 132. And this is a single-page email  
9 from Mr. Sundberg to Mr. Forsberg and you dated October  
10 17th, 2013.

11 Do you see that?

12 A. I do.

13 Q. And do you understand this email to be the  
14 email in which Mr. Sundberg communicated his proposal  
15 to Mr. Forsberg?

16 A. Yes.

17 Q. And do you understand that Mr. Sundberg was  
18 relaying to Mr. Forsberg that he looked forward to  
19 seeing Windermere Watch fall to the bottom of the  
20 search results?

21 A. Yes, I see that.

22 Q. And do you know whether or not this was the  
23 report that you are referring to today?

24 A. Yeah, it -- it looks like it's the attachment  
25 to the email there.

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CERTIFICATE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of YORK BAUR was taken stenographically before me on August 26, 2016, and thereafter transcribed under my direction;

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

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

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