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

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

Plaintiffs,

v.

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

Defendant.

AND RELATED COUNTERCLAIMS

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

*Hon. Manual L. Real*

**DECLARATION OF KEVIN A.  
ADAMS IN SUPPORT OF THE  
B&D PARTIES' OPPOSITION TO  
WSC'S *DAUBERT* MOTION IN  
*LIMINE* TO EXCLUDE  
PLAINTIFFS' EXPERT PETER  
WROBEL**

**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 opposition to Windermere Real Estate Services Company’s (“WSC”) *Daubert* motion in  
11 *limine* to exclude expert Peter Wrobel.

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

16 3. On August 22, 2016, I deposed Paul S. Drayna in Seattle, Washington.  
17 Attached hereto as **Exhibit A** is a true and correct copy of portions of the transcript of  
18 Mr. Drayna’s deposition.

19 4. On April 5, 2017, counsel for WSC deposed Peter Wrobel. Attached hereto  
20 as **Exhibit B** is a true and correct copy of portions of the transcript of Mr. Wrobel’s  
21 deposition. I personally defended the deposition.

22 I declare under penalty of perjury under the laws of the United States of America  
23 that the foregoing is true and correct and that this Declaration was executed this 24th day  
24 of April, 2017 in Irvine, California.

25 /s/ Kevin A. Adams

26 Kevin A. Adams  
27  
28

# EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, )  
INC., a California corporation, )  
BENNION & DEVILLE FINE HOMES )  
SOCAL, INC., a California )  
corporation, WINDERMERE SERVICES )  
SOUTHERN CALIFORNIA, INC., a )  
California corporation, )  
Plaintiffs, )  
vs. ) No.  
WINDERMERE REAL ESTATE SERVICES ) 5:15-cv-01921-R-KK  
COMPANY, a Washington ) VOLUME I  
corporation; and DOES 1-10, )  
Defendants, )  
\_\_\_\_\_)  
AND RELATED COUNTERCLAIMS )

VIDEOTAPED DEPOSITION OF PAUL S. DRAYNA  
600 University Street, Suite 320  
Seattle, Washington  
Monday, August 22, 2016

REPORTED BY:  
CYNTHIA A. KENNEDY, RPR, CCR 3005  
JOB No. 2364301  
  
PAGES 1 - 354

1 APPEARANCES

2

3 FOR THE PLAINTIFF:

4

5 BY: KEVIN A. ADAMS, ESQ.

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11

12 FOR THE DEFENDANT:

13

14 BY: JEFFREY A. FEASBY, ESQ.

15 Perez Wilson Vaughn & Feasby

16 Symphony Towers

17 750 B Street, 33rd Floor

18 San Diego, CA 92101

19 (619) 702-8044

20 feasby@perezwilson.com

21

22 ALSO PRESENT:

23 JOSEPH DEVILLE

24 ROBERT BENNION (morning session only)

25 LUCAS CHEADLE, VIDEOGRAPHER

1           A.       It states that it is a suggested donation.

2           Q.       And why, if you know, was the Windermere  
3 Foundation fee changed from a required transaction to  
4 a suggested donation?

5                   MR. FEASBY:  Objection, to the extent  
6 that it calls for disclosure of attorney/client  
7 communications.

8                   THE WITNESS:  I agree that to answer  
9 that question, I would have to divulge discussions I  
10 had with my clients that I believe to be privileged.

11 BY MR. ADAMS:

12          Q.       And without identifying what those  
13 discussions are, which clients are you referring to?

14          A.       Windermere Services Company and the  
15 Windermere Foundation.

16          Q.       And did you speak to an individual at those  
17 companies?

18          A.       Yes.

19          Q.       Who were the individuals?

20          A.       The individuals -- probably numerous  
21 individuals.  They would have included Geoff Wood and  
22 Christine Wood.

23          Q.       Who is your direct report at Windermere?

24          A.       Geoff Wood.

25          Q.       And do you report to anyone else?

1           A.     No.

2           Q.     And what's Geoff Wood's role --

3           A.     He --

4           Q.     -- with Windermere? I'm sorry.

5           A.     He was the CEO.

6           Q.     And do you also report to Geoff Wood in

7 connection with your work performed for these other

8 affiliated or related entities?

9           A.     Some of them.

10          Q.     Who else do you report to?

11          A.     With respect to Windermere Real Estate

12 Company and the Windermere Real State Northwest, Inc.,

13 my primary reporting is to Jill Wood and John O.

14 Jacobi, who -- I should explain for the record that

15 John Jacobi -- there is a John Jacobi Sr. and a John

16 Jacobi Jr. John Jacobi Jr. is John O'Brien Jacobi.

17 He is commonly referred to as OB for short; OB, as in

18 O'Brien. So if I, today, refer to OB Jacobi, I am

19 referring to John O. Jacobi.

20          Q.     Thank you. And I will try to do the same.

21                 Okay. October 2003, you were providing

22 legal services for Windermere, correct?

23          A.     Yes.

24          Q.     Okay. And were you at all involved in

25 Mr. Deville and Mr. Bennion's discussions with

1 Windermere about the acquisition of the area  
2 representative territory for Southern California?

3 A. I was involved in that project. I don't  
4 know that I would characterize it that I was involved  
5 in -- I don't know what you mean by "the discussions."

6 Q. Were you involved in any negotiations  
7 involving the purchase of that -- of that region?

8 A. I don't believe that I was involved in the  
9 negotiations, no.

10 Q. Were you involved in drafting any of the  
11 legal documents relating to that transaction?

12 A. I was.

13 Q. What did you draft?

14 A. I drafted the Area Representation Agreement.

15 Q. And did you have any understanding as to who  
16 the area representative was, if anyone, prior to  
17 Mr. Deville and Mr. Bennion's purchase of that  
18 territory?

19 MR. FEASBY: Objection. Form.

20 THE WITNESS: I am not sure that I --  
21 it's accurate to say that they purchased that  
22 territory.

23 Prior to them becoming area  
24 representatives, my recollection is that there was an  
25 existing area representative or an existing



1 relationship with an individual named Mark Ewing.

2 BY MR. ADAMS:

3 Q. And who -- who was Mark Ewing?

4 A. I was not with the company at the time when  
5 Mr. Ewing came on board, so my knowledge of that  
6 history is very limited.

7 Q. And when you joined the company, what did  
8 you understand Mark Ewing's role to be?

9 A. My understanding is that Mark Ewing owned  
10 one or more real estate offices in, I believe,  
11 Silicone Valley and that when his real estate company  
12 joined Windermere, he also had some role in attempting  
13 to recruit additional franchisees in the state.

14 Q. And as you sit here, do you have any  
15 knowledge as to whether or not Mr. Bennion and  
16 Mr. Deville purchased that Southern California region  
17 from Mr. Ewing?

18 A. My understanding -- or my recollection is  
19 that they did not purchase the Southern California  
20 region from Mr. Ewing, that what did happen  
21 subsequently is -- well, that's -- no, I do not  
22 believe they purchased any territory from -- they did  
23 not purchase the area representation rights from  
24 Mr. Ewing.

25 Q. And were you involved in any discussions

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           A.    Well, for several reasons.

2           One is I believe the terminology is speculative  
3   future revenues, so the revenues that I calculate are not  
4   speculative in my opinion.

5           Secondly, I believe that the language in that  
6   particular clause and paragraph in the Area Representation  
7   Agreement is something subject to interpretation by  
8   lawyers, which I'm not. I have been advised by counsel  
9   that the methodology I used is appropriate under that  
10  provision.

11          Q.    Based on your reading and your understanding of  
12  the provisions of the Area Representation Agreement, do  
13  you believe that your methodology is proper?

14          A.    Yes.

15          MR. ADAMS: I'm going to make a belated  
16  objection to the extent it calls for a legal conclusion.

17          BY MR. FEASBY:

18          Q.    The answer is "Yes"?

19          A.    Yes.

20          Q.    And why do you believe that?

21          A.    For the same reasons I mentioned earlier.

22          Q.    The agreement, then, goes on to say that "The  
23  appraiser shall look at the gross revenues received under  
24  the transaction during the 12 months preceding the  
25  termination date from the existing licensees that remain

1 as I can tell, this provision does not say the fair market  
2 value is the sum of revenues for the last 12 months. So  
3 in order to do a business valuation, yes, it doesn't say  
4 quote, "starting point," but that is -- that is a point  
5 that a business valuation expert would look at in  
6 determining the value of WSSC.

7 BY MR. FEASBY:

8 Q. Okay. It says, as we talked about before, "The  
9 fair market value of the Terminating Party's interest will  
10 be determined by the appraisers without consideration of  
11 speculative factors including, specifically, future  
12 revenue."

13 So you read that to mean that as long as the future  
14 revenues aren't speculative, they can be considered?

15 A. Well, yes. I mean, I think that is in order to  
16 do the valuation of a -- of WSSC, a fair market value  
17 consideration of non-speculative factors, which include  
18 the future revenues, need to be incorporated into that  
19 analysis.

20 Q. Now, I don't necessarily agree with you if you  
21 are evaluating WSSC, but what if you are evaluating its  
22 interest in the agreement?

23 A. Same thing. You would -- If you are valuing the  
24 fair market value of somebody's interest in an agreement  
25 or somebody's interest in a company, it's necessary to --

1 There's lots of things that you need to evaluate.

2 In this particular company, this is a service company  
3 that generates a certain amount of revenue and profit. So  
4 you need to evaluate a lot of different factors when you  
5 consider fair -- to determine what a fair market value is.

6 Q. Even factors that the agreement says should be  
7 excluded?

8 A. Well, I believe it says you should exclude  
9 speculative factors. Well, I agree with that. You should  
10 exclude speculative factors.

11 Q. And, then, going back, then, to the sentence  
12 after that when we talk about the 12 months preceding.

13 A. Yes.

14 Q. And then it talks -- So for purposes of your  
15 analysis, I'm looking at Schedule B, is it fair to say  
16 that you included -- you used the years 2013, 2014, and  
17 2015 to come up with your valuation?

18 A. Well, I considered everything that's on Schedule  
19 2B. However, in my particular valuation, the process that  
20 I started with was the 2014 revenue numbers.

21 However, any business valuation expert would consider  
22 other information which includes, for example, revenues  
23 that WSSC earned for the year 2015 when the company shut  
24 down.

25 So even though the numbers don't reflect a partial

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 PAUL S. DRAYNA was taken stenographically before me on August 22, 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 6th day of September, 2016.

\_\_\_\_\_  
Cynthia A. Kennedy, RPR  
NCRA Registered Professional Reporter  
Washington Certified Court Reporter No. 3005  
License expires November 16, 2016

## EXHIBIT B

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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 ) Case No.  
SOUTHERN CALIFORNIA, INC., a ) 5:15-CV-01921R(KKx)  
California corporation, )  
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Plaintiffs, )  
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vs. )  
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WINDERMERE REAL ESTATE SERVICES )  
COMPANY, a Washington )  
corporation; and Does 1-10, )  
 )  
Defendants. )  
-----  
AND RELATED COUNTERCLAIMS )  
\_\_\_\_\_ )

DEPOSITION OF PETER D. WROBEL  
Irvine, California  
Wednesday, April 5, 2017  
Volume I

Reported by:  
Gail E. Kennamer, CSR 4583, CCRR  
Job No. 2588458  
Pages 1 - 183



1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 -----  
4 BENNION & DEVILLE FINE HOMES, )  
INC., a California corporation; )  
5 BENNION & DEVILLE FINE HOMES )  
SOCAL, INC., a California )  
6 corporation; WINDERMERE SERVICES ) Case No.  
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7 California corporation, )  
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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. Kenamer, CSR 4583, CCRR.  
21  
22  
23  
24  
25

1           A.    Yes.

2           Q.    And what are those standards?

3           A.    Well, the primary standard as a licensed CPA in  
4 California and as a member of the AICPA is called the Code  
5 of Professional Conduct, that that is what governs our  
6 work.

7           Q.    And are those primarily ethical considerations?

8           A.    Well, some -- some are. I guess it's hard to  
9 say all of them are ethical, but they involve -- they  
10 involve not just issues of integrity, but also of  
11 sufficient reliable evidence and being competent, being  
12 able to do the work, that sort of thing.

13          Q.    Are you familiar with any specific standards  
14 that the AICPA has for ABVs?

15          A.    I don't think so. I don't think they have any  
16 specific standards. I mean, they have -- they have  
17 guidance publications that talk about different ways that  
18 you can value companies and stuff; but in terms of  
19 standards, as I understand them, it's the Code of  
20 Professional Conduct pretty much covers everything that we  
21 do.

22          Q.    One of the sets of standards, at least as I  
23 understand it for the AICPA, is the statement on standards  
24 for valuation services. Are you familiar with those or  
25 SSVS 1?

1 A. Yes.

2 Q. And did you follow the requirements of SSVS 1 in  
3 preparing your valuation of WSSC?

4 A. The best of my recollection, I believe I have.

5 Q. Are there any of those standards that you are  
6 aware of that you did not follow in this matter?

7 A. No.

8 Q. And do those standards provide for using net  
9 value as a standard of value?

10 A. Well, the best of my recollection, that they  
11 indicate that there are different ways to value companies,  
12 and one of which would be involving discounted cash flows  
13 or some sort of present value of future cash flows or  
14 future income. So you can -- That's my recollection of  
15 that, the methodology that I utilized in my report is --  
16 is consistent with any standards promulgated by the AICPA.

17 Q. And so we talked about it a little bit. The  
18 discounted cash flow model that you used, and then in your  
19 report it's referred to as the net value. What is the  
20 definition of net value?

21 A. Well, what I was trying to do was -- not what I  
22 tried -- what I did is calculate what the fair market  
23 value of WSSC was.

24 The reason I use net was because I made an adjustment  
25 to take into account the fact that WSSC actually made some

1 money in 2015. So if you are trying -- If you are doing  
2 this valuation and trying to figure out what are the  
3 damages suffered by -- by the plaintiffs in this matter,  
4 it's necessary to calculate the fair market value, but  
5 also to take into account the fact that there were some --  
6 there were some funds that were earned, or that would have  
7 been earned in 2015 after the date of the valuation. So  
8 that's what the net value is doing is just taking into  
9 account the fact that after the date of the valuation, the  
10 plaintiffs actually would have or actually received --  
11 received monies. So when you are trying to calculate the  
12 damages, it's necessary to take that out.

13 Q. You are referring to damages, and I just want to  
14 be clear. The damages that you are talking about in this  
15 instance are the damages as set forth in the termination  
16 obligation in the Area Representation Agreement?

17 A. Well, again, the termination or the area  
18 agreement deals with the fact that you need to calculate  
19 the fair market value. In this case, I did it as of  
20 January 2015. In terms of damages, there is one further  
21 adjustment that needed to be done, which is the fact that  
22 after 2015, January 2015, WSSC would have received some  
23 additional funds, and so those are being subtracted out to  
24 calculate what the damage number would be.

25 Q. So is the number reflected in your report the

1 damages number or the termination obligation number under  
2 the Area Representation Agreement?

3 A. I guess both are reflected. In my report it  
4 shows what is the fair market value, and then a final  
5 adjustment was made to calculate what the damages related  
6 to that would be.

7 Q. Can you show me where that is?

8 A. It's on Schedule 2A. The fair market value is  
9 2.889, \$299.

10 Q. I'm sorry. I didn't mean to interrupt. Just  
11 make sure I'm tracking you.

12 And that number, then, it's your opinion that that's  
13 the termination obligation under the Area Representation  
14 Agreement?

15 A. Yes.

16 Q. Okay.

17 A. That's the fair market value.

18 In order to calculate damages, then an adjustment  
19 would be made for monies received after that date.

20 Q. I see what you are saying. That makes sense to  
21 me. Okay.

22 What is your definition of fair market value?

23 A. There are standard definitions of it. That  
24 would be in these standards, but it's typically the value  
25 of a -- trying to think of the proper word. It's an arm's

1 length -- It's the fair market value of WSSC at an arm's  
2 length transaction between two parties. There is more to  
3 it than that, but that's generally what it is. It's an  
4 independent transaction calculating what the fair market  
5 value would be.

6 Q. Then under your report, net value of WSSC as of  
7 January 2015, it's your opinion that that is the fair  
8 market value of that entity's interest in the agreement at  
9 the time of termination?

10 A. Well, again, the fair market value is the  
11 \$2.88 million number, and then there's an additional  
12 subtraction.

13 Q. Okay. That makes sense.

14 Are you familiar with Section 4.3 in the termination  
15 agreement -- excuse me -- the Area Representation  
16 Agreement?

17 A. Yes.

18 Q. And this provides for the payment of the  
19 termination obligation. Do you see that?

20 A. Yes.

21 Q. Did you take this into account at all in  
22 calculating your number for the net value of WSSC as of  
23 January 15, 2015?

24 A. No.

25 Q. Do you think that it would be important to

1 consider this at all for purposes of your opinions?

2 A. No. I mean, it's something that I considered.  
3 But again, what I was asked to do is calculate the fair  
4 market value as of a date and time, which is what I have  
5 done.

6 Q. And that number hasn't been discounted at all  
7 based on historical license fees that have been paid as  
8 applied to this payment schedule in Section 4.3?

9 A. That's correct. It does not incorporate the  
10 payment schedule.

11 Q. Did you review any deposition testimony from  
12 this case?

13 A. Yes.

14 Q. Whose depositions did you review or transcripts  
15 did you review?

16 A. Mr. -- Well, after the -- After the filing of  
17 his report, I read Mr. Barton's deposition.

18 Q. Was there anything in that deposition that  
19 caused you any concern regarding the valuation that you  
20 had done -- Strike that.

21 Was there anything in that deposition that caused you  
22 any concern regarding the opinions you had reached in your  
23 report?

24 A. No.

25 And I would also add that I believe that there -- In

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  
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