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*Attorneys for Plaintiffs and Counter-Defendants*

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

BENNION & DEVILLE FINE	)	Case No. 5:15-cv-01921-R
HOMES, INC., a California	)	<i>Hon. Manual L. Real</i>
corporation, BENNION & DEVILLE	)	
FINE HOMES SOCAL, INC., a	)	<b>DECLARATION OF KEVIN A.</b>
California corporation,	)	<b>ADAMS ISO THE B&amp;D PARTIES'</b>
WINDERMERE SERVICES	)	<b>OPPOSITION TO WINDERMERE</b>
SOUTHERN CALIFORNIA, INC., a	)	<b>REAL ESTATE SERVICES</b>
California corporation,	)	<b>COMPANY'S MOTION IN <i>LIMINE</i></b>
	)	<b>TO EXCLUDE GARY KRUGER</b>
Plaintiffs,	)	<b>FROM TESTIFYING AT TRIAL</b>
	)	
v.	)	
	)	Date: August 7, 2017
WINDERMERE REAL ESTATE	)	Time: 10:00 a.m.
SERVICES COMPANY, a	)	Courtroom: 880
Washington corporation; and DOES	)	
1-10.	)	Action Filed: September 17, 2015
	)	Trial: None Set
Defendants.	)	

AND RELATED COUNTERCLAIMS )

1 I, Kevin A. Adams, declare 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-  
6 named action. I am a member in good standing of the State Bar of California, and  
7 duly admitted to practice law before all of the courts of the State of California,  
8 including the United States District Court, Central District of California and the  
9 United States Court of Appeals for the Ninth Circuit.

10 2. I make this Declaration in support of the B&D Parties’ opposition to  
11 Windermere Real Estate Services Company’s (“WSC”) Motion *in Limine* to  
12 exclude Gary Kruger from testifying at trial.

13 3. As counsel for the B&D Parties, I am intimately familiar with the  
14 pleadings and discovery that has taken place in this action. The pleadings, written  
15 discovery requests, and responses have all been drafted and/or reviewed by me and  
16 are maintained at my office.

17 4. On August 29, 2016, each of the parties filed their original witness  
18 lists with the Court. [See Dkt Nos. 50, 53.] Since that time, the trial in this case has  
19 been continued multiple times. There is no current trial date in the matter.

20 5. Gary Kruger was not identified in the B&D Parties’ initial witness list  
21 because he is an out-of-state resident that could not be compelled through  
22 subpoena to testify at trial. On May 20, 2017, I spoke with Mr. Kruger – the  
23 creator and operator of windermerewatch.com – and learned that, although he is  
24 outside the subpoena power of this Court, he is likely to personally attend this trial  
25 during which time he may be called on to testify.

26 6. In the nine months that passed after the parties filed their original  
27 witness lists, they engaged in significant additional discovery in the case –  
28

1 including the depositions of percipient witnesses Fred Schuster, Mike Teather,  
2 Greg Barton, Noelle Bortfeld, Michael Fanning, Brian Gooding, Rich Johnson, and  
3 Mark Oster, the depositions of and receipt of documents from expert witnesses  
4 Neal Beaton, Peter Wrobel, and David Holmes, and the receipt of subpoenaed  
5 documents from several third-parties.

6         7. Both parties contemplated the impending depositions and additional  
7 discovery in the case would require further witness and exhibit identification for  
8 trial. As such, the B&D Parties expressly “reserve[d] the right to amend, modify,  
9 or supplement this witness list following the completion of expert discovery that  
10 [was] underway.”[D.E. 50.] Similarly, WSC reserved in its witnesses list “the right  
11 to amend, modify, or supplement [its] list upon the completion of discovery.” [D.E.  
12 53.] The B&D Parties have since supplemented their witness list to include Mr.  
13 Kruger.

14         8. Mr. Kruger’s testimony is central to this case and has been subject of  
15 many, if not most, of both parties’ filings in this case. For instance, both parties  
16 thoroughly discuss Mr. Kruger in their respective pleadings. (Dkt. No. 1, ¶¶ 51, 52,  
17 92, 95; Dkt. Nos. 16, ¶¶ 70, 71, 73, 76, 78; Dkt. No. 31, ¶¶ 3, 45, 46, 47, 48, 49,  
18 51, 57, 76, 77, 79.) WSC cannot claim that this is a surprise witness.

19         9. Further, Mr. Kruger’s name and relevance to this matter repeatedly  
20 came up during written discovery and the depositions in this case.

21         10. For instance, on August 22, 2016, I deposed WSC’s General Counsel,  
22 Paul Drayna. During his deposition, Mr. Drayna testified at length regarding Mr.  
23 Kruger and Windermere Watch. Attached hereto as **Exhibit A** is a true and correct  
24 copy of portions of the transcript of the deposition of Mr. Drayna.

25         11. Similarly, on August 23, 2016, I deposed WSC employee Michael  
26 Teather. During his deposition, Mr. Teather also testified at length regarding Mr.  
27 Kruger and Windermere Watch, including his interactions with Mr. Kruger.  
28

1 Attached hereto as **Exhibit B** is a true and correct copy of portions of the transcript  
2 of the deposition of Mr. Teather. Clearly, WSC was well aware of Mr. Kruger's  
3 relevance to this lawsuit.

4 12. Additionally, WSC's produced numerous documents showing that it  
5 (i) knows of Kruger's whereabouts, (ii) had previously contacted Kruger, and (iii)  
6 had utilized a private investigator to track Kruger, potentially on more than one  
7 occasion. True and accurate copies of a couple of these documents produced by  
8 WSC during discovery in this case are attached hereto as **Exhibit C**.

9 13. Clearly, Kruger's name, contact information, and the subject of his  
10 anticipated testimony have been known to WSC since the onset of this action.

11 14. WSC's objection to the B&D Parties' inclusion of Mr. Kruger as a  
12 potential witness in the case on the grounds that he was not identified in the B&D  
13 Parties' initial disclosures is made in bad faith as WSC has named three witnesses  
14 in its witness list – *i.e.*, York Baur, Cass Herring, and Kendra Vita – that were not  
15 included in WSC's own Initial Disclosures. However, unlike the numerous  
16 references to Mr. Kruger throughout the pleadings and discovery of this case,  
17 WSC's non-disclosed witnesses were never identified in any pleading or discovery  
18 in the case. Thus, WSC's Motion *in Limine* should be seen for what it is –  
19 gamesmanship – and be summarily denied.  
20

21 15. In the unlikely event that Mr. Kruger is excluded from the B&D  
22 Parties' witness list for not being named in the Initial Disclosures, then York Baur,  
23 Cass Herring, and Kendra Vita must all be excluded from testifying at trial on the  
24 same grounds.

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1 I declare under penalty of perjury under the laws of the State of California  
2 and the laws of the United States of America that the foregoing is true and correct  
3 and that this Declaration was executed this 17th day of July, 2017 at Irvine,  
4 California.

5 /s/ Kevin A. Adams  
6 Kevin A. Adams  
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EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

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

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15  
16 VIDEOTAPED DEPOSITION OF PAUL S. DRAYNA  
17 600 University Street, Suite 320  
18 Seattle, Washington  
19 Monday, August 22, 2016  
20

21 REPORTED BY:

22 CYNTHIA A. KENNEDY, RPR, CCR 3005  
23 JOB No. 2364301  
24

25 PAGES 1 - 354

1           A.     I first -- I'm not sure I remember, to be  
2 honest. I am aware of his back story, but I don't  
3 remember when he first would have come to my  
4 attention.

5           Q.     Have you ever communicated with him?

6           A.     Not directly, no.

7           Q.     When you say "not directly," what do you  
8 mean?

9           A.     I mean not directly. I've never had any --  
10 I've never spoken to him on the phone. I've never  
11 exchanged emails with him. I've -- my only  
12 communications with him have been through counsel.

13          Q.     Okay. So -- and when say "indirectly,"  
14 you're referring to those through-counsel  
15 communications?

16          A.     Correct.

17          Q.     And through counsel, would that involve the  
18 litigation that Windermere filed against Mr. Kruger?

19          A.     Yes.

20          Q.     And outside of that litigation, did you ever  
21 have any other indirect communications with  
22 Mr. Kruger?

23          A.     No.

24                               (Whereupon Exhibit 6 was  
25 marked for the record.)



1 MR. ADAMS: I'm handing you a document  
2 that's been marked as Exhibit 6.

3 MR. FEASBY: Thank you.

4 BY MR. ADAMS:

5 Q. This document appears to be a November 2,  
6 2007, memorandum from Pat Grimm to all Windermere  
7 owners, managers, and agents.

8 Have you seen this document before?

9 A. Yes.

10 Q. Okay. Who is Pat Grimm?

11 A. Pat Grimm is now the owner of a franchise in  
12 Seattle -- a Windermere franchise in Seattle with one  
13 office on Capitol Hill in I think -- Capitol Hill  
14 neighborhood in Seattle. At the time of this memo in  
15 2007, he did not yet own that franchise. He worked at  
16 Windermere Services in Seattle. He would have been  
17 one of our key people at the time, to refer -- to use  
18 that word.

19 Q. Okay. And he was the president, at that  
20 time, of Windermere Western Washington Services?

21 A. Apparently, yes.

22 Q. And what was Windermere Western Washington  
23 Services?

24 A. I believe that at the time of this memo,  
25 there had been some effort to assign individual key

1 executives that Windermere Services for -- to have  
2 oversight over particular regions. And Pat was -- had  
3 oversight over the Western Washington area.

4 Q. And what was his title with Windermere in  
5 November of 2007?

6 A. Apparently, he was president of Windermere  
7 Western Washington Services, according to this memo.

8 Q. Did he have a separate title for Windermere?

9 A. For that -- I believe -- he was an employee  
10 of Windermere Services Company, so that was his title  
11 at Windermere Services Company.

12 Q. Thank you. Okay.

13 Now, according to this letter -- this  
14 memorandum, Windermere could have simply paid  
15 Mr. Kruger to be quiet; is that right?

16 A. Where -- to what paragraph are you offering?

17 Q. Sure. Go ahead and look to the  
18 second-to-last paragraph on page 2.

19 A. (Reviewing Exhibit 6.) That is what that  
20 paragraph says.

21 Q. And at the time Mr. Grimm wrote this memo,  
22 Windermere could have paid Mr. Kruger to discontinue  
23 the Windermere Watch website, correct?

24 A. I actually don't think that is -- I don't  
25 believe that that is accurately the case.

1 Q. Why is that?

2 MR. FEASBY: Objection to the extent it  
3 calls for any attorney/client communications.

4 THE WITNESS: I would like to answer the  
5 question. I'm trying to think if there's a way I can  
6 answer the question without divulging privileged  
7 attorney/client communications.

8 I don't remember -- there were -- at the  
9 time that we had our -- we -- Windermere Services  
10 Company filed a lawsuit against Mr. Kruger. That  
11 lawsuit was ultimately dropped, voluntarily dismissed.

12 Prior to the voluntary dismissal of that  
13 lawsuit, there were -- there were settlement  
14 negotiations that ended up not resulting in the  
15 settlement of the case.

16 Now, I do not believe -- in November of  
17 2007, I do not believe it is accurate to say that we  
18 could have simply picked up the phone, called  
19 Mr. Kruger and said, how much do you want, and it  
20 would have been over.

21 BY MR. ADAMS:

22 Q. Why would Mr. Grimm have sent a memo saying  
23 that that is the case?

24 A. I think you would have to ask Mr. Grimm  
25 that.

1 Q. Are memos of this nature typically vetted by  
2 other officers in the company?

3 A. I'm sure that there was a group process that  
4 went on in the drafting of this memo, yes.

5 Q. And when you say "group process," who's  
6 involved that the group process?

7 A. The executive-level officers of the company,  
8 Geoff Wood in 2007, or obviously it would have  
9 included Pat Grimm. I don't remember if Jill Wood was  
10 actively involved with Windermere Services yet at that  
11 time. So whoever the -- whoever the, quote, "key"  
12 people were at that time.

13 Q. And --

14 MR. FEASBY: Can we take a break when  
15 you get a chance?

16 MR. ADAMS: Yeah.

17 BY MR. ADAMS:

18 Q. And in 2007 you said that Mr. Wood was one  
19 of the key people?

20 A. Geoff Wood?

21 Q. Yes.

22 A. Yes.

23 Q. And who were the other key people that would  
24 have looked at this memo?

25 A. I'm not sure who -- I don't remember off the

1 top of my head who all of the key people were in  
2 November of 2007 nor do I know who -- the full list of  
3 who participated in the drafting of this document.

4 Q. But as you sit here today, you say that this  
5 is not correct. Windermere could not have simply paid  
6 Mr. Kruger to be quiet; is that correct?

7 A. I do not believe that it is accurate to say  
8 that in November 2007 we could have paid him to be  
9 quiet.

10 Q. But Mr. Grimm and those others involved in  
11 drafting this memo elected, regardless of that belief,  
12 to send this memo to all Windermere owners, managers,  
13 and agents, correct?

14 A. Apparently.

15 Q. And the memo goes on to read, that same  
16 paragraph, "However, Windermere has chosen not to pay  
17 what amounts to blackmail to anyone with a gripe and  
18 the intention to hold our good name hostage."

19 A. That is what it says.

20 Q. "Windermere holds itself to the highest  
21 ethical standards of -- those very standards preclude  
22 the payment of hush money."

23 Do you see that?

24 A. I do.

25 Q. And Windermere refused to pay Mr. Kruger

1 hush money.

2 A. I don't agree with that characterization of  
3 the facts either.

4 Q. My characterization or what this letter  
5 states?

6 A. What the -- what you just read.

7 Q. Okay. So you do not agree with Mr. Grimm's  
8 memo that he sent out to all owners, manages, and  
9 agents in November 2007?

10 A. I believe -- we can have the court reporter  
11 read it back. I believe your words were that  
12 Windermere refused to pay Gary Kruger hush money, and  
13 I -- I do not believe that it is accurate to say that  
14 at any time we had an opportunity to write a check and  
15 make Mr. Kruger go away.

16 Q. Okay. Notwithstanding Mr. Grimm's  
17 representation that Windermere could simply pay  
18 Mr. Kruger to be quiet.

19 A. Correct. And again, I'm -- I'm -- forgive  
20 my pause. I am trying to determine what I can say  
21 without divulging privileged attorney/client  
22 communications.

23 MR. ADAMS: All right. We can take a  
24 break now. We're off the record.

25 MR. FEASBY: Thanks.

## **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 )  
SOUTHERN CALIFORNIA, INC., a )  
California corporation, ) No.  
Plaintiffs, ) 5:15-cv-01921-R-KK  
vs. )  
WINDERMERE REAL ESTATE SERVICES )  
COMPANY, a Washington )  
corporation; and DOES 1-10, )  
Defendants, )  
\_\_\_\_\_  
AND RELATED COUNTERCLAIMS )  
\_\_\_\_\_)

VIDEOTAPED DEPOSITION EXAMINATION OF:  
MICHAEL TEATHER  
VOLUME I  
600 University Street, Suite 320  
Seattle, Washington

DATE TAKEN: August 23, 2016  
REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005  
  
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1:23 P.M.

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THE VIDEOGRAPHER: The time is 1:23 p.m.  
This is the beginning of Disk 2 in the deposition of  
Michael Teather. We're now on the record.

EXAMINATION (Resumed)

BY MR. ADAMS:

Q. Now, Mr. Teather, before we went to lunch,  
we were discussing the -- some of your exploits in  
California on behalf of Windermere.

Do you remember that?

A. Yes, I do recall that.

Q. And an item that we have yet to address is  
an item that I understand was one of the reasons you  
came to Southern California in the first instance, and  
that is Windermere Watch.

Are you familiar with Windermere Watch?

A. Yes, I'm familiar with Windermere Watch.

Q. What do you understand Windermere Watch to  
be?

A. Windermere Watch is a website run by a  
gentleman, who I believe his last name is Kruger,  
where he is sort of over-the-moon angry with  
Windermere and so he posts things, like -- anything  
sort of disparaging you could find about Windermere,

1 he posts on this website.

2 Q. And you had interactions with Mr. Kruger  
3 long before you had interactions with Mr. Bennion and  
4 Mr. Deville, correct?

5 A. I have sent an email to Mr. Kruger.

6 Q. More than one email?

7 A. I don't recall.

8 Q. What was your purpose of the email?

9 A. I was trying to -- during the time period we  
10 were talking about earlier -- that's why I got  
11 confused as to your context. When I first -- when  
12 someone asked me to help with this problem in Southern  
13 California, I thought I need to learn as much as I can  
14 about what's going on with the issues are, what affect  
15 people, and one of the things I read is that  
16 apparently Mr. Deville at some time had hired a  
17 private investigator to dig up information about the  
18 Windermere Watch or Mr. Kruger. And when I was  
19 reading through that, I found an email address, and so  
20 one of the things that we were exploring, in  
21 connection with Windermere Watch, was what could be  
22 done about it. And I think my initial interaction, in  
23 all honesty, was just to find out if, in fact, that  
24 email address lead to the person known as Mr. Kruger.

25 Q. Now, when you testified earlier about these

1 problems or concerns in Southern California, you were  
2 talking about Mr. Gooding and Mr. Johnson and problems  
3 and concerns that involve them to some extent.

4 Do you recall that testimony?

5 A. Yes, I do recall that.

6 Q. And is it your testimony now that these  
7 problems and concerns involving Mr. Johnson were  
8 brought to your attention at the same time as the  
9 problems and concerns involving Windermere Watch?

10 A. I wouldn't know.

11 Q. When did you first communicate with  
12 Mr. Kruger?

13 A. I wouldn't know. I know that I sent him an  
14 email after having read -- reading that file. So, I  
15 guess I wouldn't know.

16 Q. Okay. Now, you keep saying that term "I  
17 wouldn't know," "I wouldn't know," but we discussed  
18 earlier the fact that I'm entitled to your best  
19 estimate of times, dates, et cetera.

20 And, as you sit here, you cannot estimate as  
21 to when you communicated with Mr. Kruger?

22 A. I would like to answer your question, so  
23 it's important to you to know the precise date, if you  
24 have that email, you could show it to me and it might  
25 reflect the date, or we could take a break and I could

1 meet with my counsel and we could find that email, if  
2 we have it, and I could give you the precise date.

3 When you asked me for my best recollection,  
4 what time period, if you'd like me to guess within two  
5 years, I'd say between 2012 and 2014 is probably safe.  
6 But I just don't want to give information to you that  
7 is not helpful.

8 Q. And I don't want you to guess at anything  
9 today, but I am entitled to that best estimate.

10 If there is a document then I will show you,  
11 I'll bring it to your attention, but, until then, I am  
12 entitled to that -- to that deposition testimony.

13 What -- how was Windermere Watch brought to  
14 your attention?

15 A. It would have been before I knew -- before I  
16 was interacting with the people in Southern  
17 California. I wouldn't know the first time because  
18 I've seen it many times, so recalling what the first  
19 time was would be difficult.

20 Q. As you sit here, what is the first time that  
21 you recall learning of Windermere Watch?

22 A. Late 2000s, sometime.

23 Q. And -- and how did you learn of Windermere  
24 Watch?

25 A. I believe I was meeting with -- there's a

1 law firm in Seattle named the Demco firm, and I  
2 believe I was learning about the case that -- that  
3 brought this all about with Mr. Kruger. And I think  
4 that was the first time I was shown the actual site.

5 Q. And what was the Demco firm doing for  
6 Windermere? What brought you to their office?

7 A. I talk with the people at Demco firm quite  
8 often. They regularly represent our individual  
9 franchisees for various real estate matters in -- in  
10 the Seattle area.

11 Q. Okay. And you just happened to be  
12 interacting with the Demco firm and somebody pointed  
13 out the website and said, look, there's Windermere  
14 Watch?

15 A. No.

16 Q. Okay. Well, then did you -- was there a  
17 dispute with Windermere Watch? I mean, what -- what  
18 brought you to the Demco firm to bring about this  
19 discussion regarding Windermere Watch?

20 MR. FEASBY: Objection.

21 Mischaracterization --

22 THE WITNESS: I'm probably at the Demco  
23 firm -- I don't know, because you're fussy about  
24 estimates -- so let's say once a month I'm there for  
25 an unrelated matter, because they -- they represent or

1 work with our franchises with great regularity.

2 I had heard anecdotally at some point  
3 about this site Windermere Watch. I knew that it  
4 arose from some kind of case that took place. So I'm  
5 certain that what I did is, whatever reason I was  
6 there, I said, hey, tell me about this case -- Kruger  
7 case or whatever.

8 BY MR. ADAMS:

9 Q. And you understood that Windermere Watch was  
10 negatively affecting Windermere franchisees?

11 MR. FEASBY: Objection. Form.

12 THE WITNESS: Windermere Watch is a site  
13 that is critical of Windermere. I don't think it  
14 helps anybody to have somebody being critical of you  
15 regularly and without end.

16 BY MR. ADAMS:

17 Q. And do you think the site has any impact  
18 whatsoever on Windermere franchisees?

19 MR. FEASBY: Objection. Form.

20 THE WITNESS: I couldn't answer that  
21 question.

22 BY MR. ADAMS:

23 Q. Okay. With your experience as area  
24 representative wherever you go, do you have any  
25 knowledge of Windermere Watch impacting franchisees?

1           A.       Well, let me explain to you why you've  
2 ask -- the question's difficult to answer.

3           Q.       Why don't we answer my question and then you  
4 can give your narrative.

5                   MR. FEASBY: Object to the form of the  
6 question. It's also argumentative.

7                   THE WITNESS: I feel the need to answer  
8 your questions completely, and you are asking  
9 questions that are leading. So I apologize if we  
10 aren't communicating in a way that makes you happy,  
11 but I feel like this is my deposition, and I'm  
12 supposed to give my thoughts and impression of what  
13 happened.

14                   You asked me about the impact of the  
15 site. And I cannot tell you how it actually impacts  
16 business.

17                   For example, Mr. Deville was a frequent  
18 person who said, hey, this is a really difficult thing  
19 for my business, and, yet, he was hiring agents at a  
20 very rapid rate, like, probably as fast as anybody in  
21 the system as an individual real estate company. So  
22 if someone said, did Windermere Watch impact his  
23 business? I don't know. It's hard for me to quantify  
24 it. Is it a good thing to have a website that says  
25 bad things about you? No, it is not. Did it impact

1 business? I don't know.

2 BY MR. ADAMS:

3 Q. Mr. Teather, this is my deposition that I  
4 have noticed. I am entitled to take leading  
5 question -- ask leading questions, and if you answer  
6 all of my questions in the form as you just have,  
7 which is a nonresponsive answer, in my opinion, we  
8 will be here well past tomorrow continuing this  
9 deposition.

10 So I ask that you listen to my question,  
11 answer my question to the best of your abilities.

12 That being said, are you able -- strike  
13 that.

14 Is it your testimony today that Windermere  
15 Watch did not impact the businesses of Windermere  
16 franchisees?

17 A. No, that is not my testimony.

18 Q. Is -- do you believe that Windermere Watch  
19 impacted the business of Windermere franchisees?

20 MR. FEASBY: Objection.

21 THE WITNESS: I don't know --

22 MR. FEASBY: Form.

23 THE WITNESS: -- if Windermere Watch  
24 impacted the business of franchisees.

25 BY MR. ADAMS:



1 Q. Did any franchisees ever communicate to you  
2 that Windermere Watch had negatively impacted their  
3 business?

4 A. Yes.

5 Q. And at some point in time, you reached out  
6 to Mr. Kruger, correct?

7 A. Yes.

8 Q. Why?

9 A. Because I had read --

10 MR. FEASBY: Objection. Asked and  
11 answered.

12 THE WITNESS: I read an investigation  
13 file. Apparently Mr. Deville had hired a private  
14 investigator. In that file, I saw an email address  
15 that appeared to be for Mr. Kruger. I had no idea  
16 whether it was or wasn't. So for purposes of finding  
17 out if it was him, I sent an email to him.

18 BY MR. ADAMS:

19 Q. And you took it out on your own to email  
20 Mr. Kruger?

21 A. No.

22 Q. Who -- did someone tell you to contact  
23 Mr. Kruger?

24 A. I don't know that someone told me to  
25 contact, but I'm sure someone knew that I did it.

1 Q. Who knew that you did it?

2 A. It would have been someone on our team,

3 Mr. Drayna, Mr. Wood. Someone. I don't know who.

4 Q. Why are you so sure you knew someone knew

5 that you did it if you don't know who it was?

6 A. Because I know what my practices are, and

7 what to do regarding Windermere Watch had been a

8 hot-button issue inside of our company, so I'm certain

9 that I would not write an email for any purpose

10 without consulting with others.

11 Q. And you're certain that you drafted an email

12 to Mr. Kruger to start the communication with him?

13 A. I believe so.

14 Q. You didn't make a phone call?

15 A. Not that I recall, no.

16 Q. And what came -- what came of your

17 communication with Mr. Kruger?

18 A. I believe I got a response back that

19 indicated to me that, in fact, this may be

20 Mr. Kruger's email.

21 Q. Isn't it true that you made a phone call to

22 Mr. Kruger and he responded to you and said, you need

23 to send me an email if you want to communicate?

24 MR. FEASBY: Objection.

25 THE WITNESS: No, I do not --

1 MR. FEASBY: -- misstates testimony.

2 THE WITNESS: -- recall that happened.

3 MR. FEASBY: Mike, you need to let me  
4 finish my objection --

5 THE WITNESS: Oh, I'm sorry.

6 MR. FEASBY: -- because it's going to be  
7 difficult for the court reporter.

8 BY MR. ADAMS:

9 Q. And what was your goal in connection with  
10 communicating with Mr. Kruger?

11 A. I didn't have a goal at that time.

12 Q. You just took it upon yourself to send him  
13 an email with no goal in mind?

14 MR. FEASBY: Objection. Asked and  
15 answered. Mischaracterizes his testimony.

16 THE WITNESS: Yeah, I did not have a  
17 specific goal. What I wanted to know is if this was,  
18 in fact, an avenue to communicate with Mr. Kruger.

19 BY MR. ADAMS:

20 Q. And you didn't think that communicating with  
21 him without a goal in mind would hurt the Windermere  
22 System?

23 MR. FEASBY: Objection.

24 THE WITNESS: No.

25 MR. FEASBY: Form.

1 BY MR. ADAMS:

2 Q. Do you believe that -- well, strike that.

3 You are aware that Mr. Kruger posts

4 information about Windermere and its agents and

5 franchisees on the Windermere Watch website, correct?

6 A. Yes, I'm aware of that.

7 Q. And you're also aware that Mr. Kruger posted

8 your communications with him on the Windermere Watch

9 website, right?

10 A. No. I had no idea that that happened.

11 Q. Were you concerned that that might happen at

12 the time you contacted him?

13 A. I'm certain that I was careful in the email

14 not to write something offensive or something that I

15 wouldn't -- that I would be ashamed of if it was on

16 the website, yes.

17 Q. And then what came of that communication?

18 A. Nothing.

19 Q. You were able to get ahold of Mr. Kruger,

20 correct?

21 A. Not beyond what we've described with the

22 emails.

23 Q. Did Mr. Kruger seem amenable to

24 communicating with you?

25 A. I don't know that.

## **EXHIBIT C**

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**From:** Paul Drayna  
**Sent:** Friday, February 07, 2014 10:16 AM  
**To:** Robert Sunderland (rsunderland@sunmclaw.com)  
**Subject:** PI

Hi Robert. Back a few years ago you hired a PI to track down Gary Kruger and gather some info on him. At the time he was living with his girlfriend in Reno. Would it be okay with you if we hired the same PI to check back in, confirm where he's living now, and update info about his current situation? If not would you please put me in touch with the investigator?

-----  
Paul S. Drayna, General Counsel  
Windermere Services Co.  
5424 Sand Point Way NE  
Seattle, WA 98105  
206.527.3801  
[pdrayna@windermere.com](mailto:pdrayna@windermere.com)

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**From:** Mike Teather  
**Sent:** Tuesday, November 13, 2012 4:02 PM  
**To:** Geoff Wood; Michael Fanning  
**Subject:** Fwd: Your many calls to Gary Kruger.

Michael J Teather

Begin forwarded message:

**From:** windermerewatch <[windermerewatch@aol.com](mailto:windermerewatch@aol.com)>  
**Date:** November 13, 2012, 13:13:37 PST  
**To:** Mike Teather <[mike.teather@windermere.com](mailto:mike.teather@windermere.com)>  
**Subject:** Re: Your many calls to Gary Kruger.

Mr. Teather,

I think a meeting would only be necessary to ratify and execute any prior agreement we might reach.

Please delineate here in precise terms just what Windermere considers a solution to be.

Thank you,

—Gary Kruger

On Nov 9, 2012, at 3:10 PM, Mike Teather wrote:

Mr. Kruger,

I appreciate your reply to my email. The purpose of our meeting would be to discuss [windermerewatch.com](http://windermerewatch.com) and seek solutions. I would attend by myself, but I would speak to you as a representative of Windermere with authority to speak for the Company.

Your consideration of such a meeting is appreciated.

Michael J Teather

On Nov 9, 2012, at 14:52, "windermerewatch"

<[windermerewatch@aol.com](mailto:windermerewatch@aol.com)> wrote:

Mr. Teather,

I am perhaps amenable to such a meeting, but would still respectfully request that you state your business:

- 1.) What is the purpose and objective of such a meeting?
- 2.) Who else from Windermere would be attending?

Thank you,

—Gary Kruger

On Nov 9, 2012, at 10:33 AM, Mike Teather wrote:

Mr. Kruger,

Thank you for your reply. If you are interested then I would like to offer to meet with you at a location convenient to you.

Michael J Teather

On Nov 9, 2012, at 10:03, "windermerewatch"  
<[windermerewatch@aol.com](mailto:windermerewatch@aol.com)> wrote:

11/09/2012

Mr. Teather:

I will not speak with you on the phone.



Please state your business in an  
email to:

[windermerewatch@aol.com](mailto:windermerewatch@aol.com)

Thank you.

—Gary Kruger